TO: TOWN COUNCIL

FROM: TOWN MANAGER

RE: DRAFT BLUE GOOSE FACILITY LEASE AGREEMENT

ISSUE
A Blue Goose facility use and lease agreement could address certain changes that the South Placer Heritage Foundation would favor, like extending the lease term, and things the Town would favor like how development fees will be paid and Town use of the Blue Goose Shed.

RECOMMENDATION
Discuss and give Staff direction. At the 2/19/11 Goals Workshop Council indicated that a meeting with Foundation Board of Directors might be useful. If that is something Council wishes to do then please identify what it wishes to talk about so an agenda can be prepared and meeting date set.

CEQA
There are no CEQA issues in revising the lease terms. The lease requires that uses are subject to Town regulations and those include addressing CEQA requirements.

MONEY
Costs are detailed in the text of this report. In general approving the lease agreement with the changes noted continues to bring lease money into the Town coffers and allows for Town use of the facility; it also allows the Foundation to better sub-lease portions of the Shed to spur sales, provide services, encourage employment, and add festivities.

DISCUSSION
For about the last five years the Heritage Foundation and Town have had an understanding that the Town could use the Blue Goose Shed at no cost for about 6 to 8 times per year for public purposes related to the government of the Town. Over time the Shed has experienced a growing paid use because it has become a popular place to hold events. Occasionally people and groups have asked to use the Shed under Town auspices and thereby avoid paying the rental fees that are necessary to operate the Shed.

When the matter of facility use was discussed at the May 2010 Council meeting, Council Member Scherer wanted to determine how much development fee money the Town had waived on the Blue Goose shed.

In 2005 the South Placer Heritage Foundation asked that the project fees (then calculated at $98,482) that are associated with development in the Town be waived. Council directed that staff negotiate with the Foundation on a development agreement and come back at a later date. There has not been any negotiation nor a development agreement made. For part of the intervening time (to Dec 2008) the Town did not own the underlying land and Union Pacific, as property owner, had no interest in participating in a development agreement. The Foundation pressed ahead to raise funds and remodel a facility that has proven to be a valuable community resource. Work was done according to code with approved plans and specifications, and the Foundation paid for the building plan check and inspections. The planning part of the process (use permit and/or development agreement) has not been done. It has been deferred, along with the development fees.

Council did not waive development fees. The fees were deferred pending the preparation of a development agreement or use permit. Today the lease agreement may serve that purpose.

The use of the facility by the Town started in 2004 when the Foundation was granted a temporary use for 6 events that was later increased to 8 events during the period November 2004 to November 2005. The purpose of adding two events was to accommodate a Sheriff use and a Del Oro HS use in April 2005. The other events were private uses of some kind. It is likely that this number of uses became the basis for the 6 to 8 uses that the Town has informally had since that time. Again, there was no formal agreement on the number of Town uses.

Town use of the Blue Goose Shed has been helpful in the past. It gave the Town an alternative to Memorial Hall which was being used more frequently, and to the Library that was not real conducive for Town meetings though it worked in a pinch. In time the Town uses were set at 8 per year. The sense was that the Town would be unlikely to use it more than that. The Town has never used the facility 8 times in a year even when the Town has allowed other entities to use a Town slot. Over the last couple of years there were two times that the Del Oro Aquatic group asked to use the facility, there was a use by Assemblyman Gaines, there was a use by a Del Oro student group, a use by the Dry Creek Watershed group last year and there may have been one other use by a public agency. Since the Town refurbished the Depot the need for Town use of the Blue Goose shed has been minimal. The last Town use was a Downtown Plan meeting in 2009.

Council considered the use agreement three times in 2010 as follows:

MAY 11, 2010 COUNCIL MINUTES

No public comment.

Councilmember Scherer stated the following:

- he would like to put this forward to next month
- he would like to see incorporated into the issue the matter of waiver of traffic impact fees or how we are going to be handling those
- at the time that we had a handshake agreement it was over the discussion of the waiver of traffic mitigation impact fees that needs to be incorporated into this agreement as to whether we are waiving fees, how much are we waiving or if we are incorporating into the agreement
- are we amortizing them over a period of time and how many meetings are we really going to trade for how much money
- we need to incorporate the issue of co-sponsored events with groups like McLaughlin, school events and other groups/organizations that come forward it's a way that we can give something to our community without going into the financial operating budget of the Town

Following further discussion on the matter, a motion was made to continue this item to June 8, 2010 Council meeting. On motion by Councilmember Ucovich, seconded by Councilmember Scherer and passed by voice vote.

JUNE 8, 2010 COUNCIL MINUTES

Continued to July 13, 2010 Council meeting.

JULY 13, 2010 COUNCIL MINUTES

No public comment.

Councilmember Ucovich stated the following:

- if a non-profit group wanted to use this building, rather than giving them money, it is easier to give them a day at the Blue Goose (kind of a trade-off)
- he agrees with staff's recommendation to craft a development agreement with the Foundation

Mayor Liss stated the following:
- with the amount of fees that are on the table, we have to get something of comparable value to the amount of fees waived
- he was disappointed that we haven't had more success, this year, in working with the Blue Goose on the land use issues in the course of the Downtown study
- we should refer this to staff to negotiate a development agreement

Councilmember Kelley stated the following:
- it takes a certain amount of time to put a development agreement together
- we should not be involved in giving away the use of the Blue Goose to anyone other than for government purposes
- he suggested approving this agreement for now in order to have something in place and to move forward

Councilmember Scherer stated the following:
- it is important to address the waiver of fees
- the development agreement should not have excessive restrictions on the Town and what we can use the Blue Goose for
- it is important to keep an option open if we are co-sponsoring an event
- he is in favor for moving forward with a development agreement

Councilmember Morillas stated the following:
- she is in favor of a development agreement
- on the free days that are given to the Town, we should not be giving it away to people in the community
- there are costs associated with keeping the buildings up and we shouldn't be giving it away free

Following further discussion on the matter, a motion was made to direct staff to develop a development agreement and in the interim continue operating with Randy Elder and the handshake agreement. On motion by Councilmember Scherer, seconded by Councilmember Morillas and passed by voice vote. (5/0)

So the way things were left in 2010 was to work on a development agreement. The development agreement is a special process in planning law that would probably be a bureaucratic overkill in the case of the Blue Goose shed. The Loomis Zoning Code describes it thusly:

"Development agreement means a contract between the town and an applicant for a development project, in compliance with the municipal code, and Government Code 65864 et seq. A development agreement is intended to provided assurance to the applicant than a approved project may proceed subject to policies, rules, regulations and conditions for approval applicable to the project at the time of approval, regardless of any changes to town policies, rules, and regulations after project approval. In return, the town may be assured that the applicant will provide infrastructure and/or pay fees required by a new project." [Loomis Zoning Code Pg 440 Definitions]

Government Code section 65864 et seq that is referred to in the Loomis Zoning Code describes a host of processes involved in a development agreement. To wit:

GOVERNMENT CODE SECTION 65864-65869.5

65864. The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

65865. (a) Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article.

(b) Any city may enter into a development agreement with any

person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of the property as provided in this article. However, the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

(c) Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.

(d) A city, county, or city and county may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of development agreements.

(e) For any development agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article.

65865.1. Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

65865.2. A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

65865.3. (a) Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(b) The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health or safety, or both.

(c) Except as otherwise provided in subdivision (d), this section applies to any development agreement which meets all of the following requirements:

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(d) This section does not apply to any territory subject to a development agreement if that territory is incorporated and the effective date of the incorporation is prior to January 1, 1987.

65865.4. Unless amended or canceled pursuant to Section 65868, or modified or suspended pursuant to Section 65869.5, and except as otherwise provided in subdivision (b) of Section 65865.3, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific

plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866.

65865.5. (a) Notwithstanding any other provision of law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, the legislative body of a city or county within the Sacramento-San Joaquin Valley shall not enter into a development agreement for property that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the development agreement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) This section does not change or diminish existing requirements of local flood plain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

65866. Unless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent

a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

65867. A public hearing on an application for a development agreement shall be held by the planning agency and by the legislative body. Notice of intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

65867.5. (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

65868. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Section 65867. An amendment to an agreement shall be subject to the provisions of Section 65867.5.

65868.5. No later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

65869. A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program

has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

65869.5. In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

If a development agreement process got started today it would take 18+ months to get through. To wit:

1. Scoping meetings to flesh out the project in the manner the Heritage Foundation would like and augment that with how some people in the Town would like the project to be. With luck there would be one meeting each at PROSC, Planning Commission and Council though it would be prudent to figure a couple more meetings.
   Time: 3 to 6 months.

2. Heritage Foundation prepares a project application. It would likely go through several iterations. Full sets of plans would be needed describing at a minimum what has been done and what is likely to be done in the future.
   Time: 1 to 2 months.

3. An environmental check list to determine whether a mitigated negative declaration could be used or if there are issues trigging a full EIR. This process could involve more scoping meetings, with luck one each at PROSC, Planning Commission and Council. Time: 3 to 4 months.

4. The environmental document would need to be completed.
   Time: 3 – 6 months. If a focused EIR is needed add another 3 – 6 months. If a EIR is needed add an extra 12 months.

5. When documents are ready (during the EIR process Town Staff will have begun writing reports needed for the hearings) the first meeting would likely be at the PROSC.
   Time: 1 month maybe 2.

6. The documents along with PROSC recommendations then go to a formal hearing at the Planning Commission.
   Time: 2 months maybe 3.

Assuming no appeal of a Planning Commission decision the Heritage Foundation could start considering new uses for the parts of the building they wish to lease out in Spring 2012 or Spring 2014 depending on the environmental analysis and the number of meetings to hash and re-hash things.

What isn't noted in the foregoing is cost. The Heritage Foundation will likely have to pay around $75,000 for plans and meetings, another $35,000 to $125,000 for environmental work, and still have the Town fees on the order of $100,000 and possibly more if the fees are recalculated to today's rates in which case the cost would be around $160,000.

PREFERRED COURSE OF ACTION

In light of the foregoing information the following draft lease was developed to forego the development agreement process because the lease describes the conditions by which the Foundation uses Town property. The draft includes the following:

- the Town use of the Blue Goose Shed
- a method to pay back the Town for having sat on the development fees for approximately 6 years now.

Clause changes to the present lease are shown in boxes where needed in the text.

DRAFT
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 WITH: "The Premises shall only be used by Lessee and its 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. Lessee will make parking 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.

CHANGE: 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 Leasee'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.

NEW CLAUSE CONCERNING FACILITY USE – to be formatted, assigned a clause number and better located in the foregoing lease agreement.

DEAL POINTS

1. The Foundation will make the Blue Goose shed available for Town meeting use for up to four (4) meetings per calendar year at no charge to the Town. Meetings in excess of this amount will be charged facility rental at the Foundation's customary rates or the Foundation can choose to waive rental charges as it may determine.

2. A meeting of the Town is defined as a noticed meeting for government purposes such as hearings, workshops and other events approved by the Town Council. Meetings scheduled by the Town will be subject to the availability of shed facilities.

3. The Town will name the Foundation as additional insured on Town insurance when using the Blue Goose shed meeting facilities.

NEW CLAUSE CONCERNING DEVELOPMENT FEE OFFSETS – to be formatted, assigned a clause number and better located in the foregoing lease agreement.

DEAL POINTS

1. The Town and Foundation recognize that the work that the Foundation has accomplished on the Blue Goose Shed has come about because of a tremendous community outpouring of volunteer effort, cash donations and donated materials some of which have come from outside of Loomis from people who support the Foundation's efforts in Loomis.

2. The Foundation understands that the development fees, as calculated in 2005, associated with Blue Goose Shed improvements and use to date require payment to the Town. The detail of the fees are as follows:

BLUE GOOSE DEVELOPMENT FEES

	2005
DRAINAGE	5,207
MAJOR ROAD CIRCULATION	44,460
HORSESHOE BAR INTERCHANGE	33,540
SIERRA COLLEGE CIRCULATION	N/A
KING/TAYLOR CIRCULATION	3,659
COMMUNITY FACILITY	6,500
DRY CREEK WATERSHED	2,397
PARK & RECREATION	0
QUIMBY IN-LIEU PARK FEE	N/A
PARK ACQUISITION	N/A
PARK FACILITY IMPROVEMENTS	N/A
	95,763
PLANNING FEES (CUP)	2,719
TOTAL	98,482

ASSUMPTIONS:
Building is 26,000 sq ft
Land area is 1.68 acres (as shown on Union Pacific lease in 2005)
Building plan check and inspection fees paid at current rates
Foundation responsible for other fees (county, schools, fire etc) directly to those agencies.

NOTE: Consider eliminating Community Facility portion of fee because the Blue Goose shed is a community facility.

3. The Town agrees that the development fees can be paid by cash payment and/or in lieu value equivalents. The Town and Foundation agree that the development fees will be paid over time according to the following chart:

2005 DEVELOPMENT FEE						**98,482**
Less cost of Depot building given to Town						_____
Less cost of Depot storage during construction						_____
Less Community Facility development fee						-6,500
Less Town uses of Blue Goose shed since 2005						-4,000
2	per year	times	5	yrs times	$400	
			BALANCE TO BE PAID OVER TIME			**87,982**
Less est Foundation grounds/parking lot improvements						-40,000
Less est Town uses of Blue Goose shed over 30 year lease						-48,000
4	per year	times	30	times	$400	
DEVELOPMENT FEE BALANCE ESTIMATED IN 2041						-18

Current rental costs for Blue Goose Shed use are:

$400	Monday thru Thursday
$950	Friday or Saturday
$700	Sunday

4. The Town use days will carry over from year to year and be added to the end of the term for use in subsequent years.

5. The fee credit for Town use, set today at $400, will increase from time to time per the Foundation policy and thereby could decrease the number of years of use.

6. If the Foundation grounds/parking lot improvements exceed the costs estimated then the excess will be subtracted from the use days thereby lowering the number of days or the number of years that Town use of the Blue Goose shed would be needed to offset the remaining development fees.

7. It is agreed that the Foundation can pay off the development fee balance in cash at any time. Once fees are paid off the free use days for the Town will cease unless otherwise negotiated by the Town and Foundation.

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

LESSOR

By: _____
Rhonda Morillas, Mayor

LESSEE

By: _____
Randy Elder, President

ATTEST:

By: _____
Town Clerk

ATTEST:

By _____
_____

APPROVED AS TO FORM:

By: _____
Town Clerk

APPROVED AS TO FORM:

By _____
Foundation 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)

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)