

**USE AGREEMENT FOR TAMALPAIS VALLEY COMMUNITY CENTER
203 Marin Avenue**

This Use Agreement for Tamalpais Valley Community Center (TVCC) (hereinafter "Agreement") dated September 20, 2017, is made and entered into by and between the Tamalpais Community Services District, a government agency (hereinafter "TCSD"), and the Tamalpais Valley Improvement Club, a non-profit public benefit corporation (hereinafter "TVIC"). TCSD and TVIC may be collectively referred to herein as the "Parties."

RECITALS

- A. TCSD is the owner of the real property located within unincorporated Marin County, at 203 Marin Avenue, Mill Valley, California, 94941 and more particularly described as parcel numbers 200-200-22 and 052-032-12 (hereinafter "Premises" or the "Community Center"/or TVCC).
- B. TVIC owned the Premises until 2017 when the Premises were sold to TCSD. A premise of the sale, TVIC will continue to use the premises for purposes identified in this Agreement.
- C. As a condition of this sale, TVIC has also requested that TCSD agree to certain other conditions set forth in this Agreement.
- D. The TCSD finds the proposed use by TVIC of the Premises is consistent with the public interest because it will provide continued services to the community central to its mission.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. PERMISSION TO ENTER AND USE PROPERTY.

The TCSD hereby grants permission to TVIC (including its officers, employees, and agents) to use the Premises in accordance with the terms of this Agreement.

2. TERM.

The term of this Agreement shall commence upon delivery of a fully executed copy of this Agreement to the parties and shall continue as long as the Parties remain in existence, unless amended or terminated by the mutual written consent of the Parties.

3. PERMITTED USES.

The following shall be permitted at no cost:

- a. TCSD shall make the Premises available to TVIC for TVIC's exclusive use and enjoyment, up to a maximum of twenty (20) days each year in connection with TVIC's preparation for and presentation of its primary fundraising event, Rhubarb Revue. TVIC shall present its schedule of use to TCSD on or before November 14 of the year preceding the year of use; provided, however, that in the event TVIC should schedule its primary fundraising event for presentation to the public other than during the month of May, TVIC will present its schedule of use not later than seventy-five (75) days before its first use. Once TVIC has presented its schedule of use to TCSD, in the event that TVIC reasonably determines it is

necessary to modify its scheduled use of the Community Center, TVIC shall notify TCSD and TCSD agrees to use its best efforts to accommodate TVIC's request. TVIC shall have the right to modify the nature or form or details of its primary fundraising event, and its scheduled days of use, on reasonable notice to TCSD on or before the date it presents its schedule to TCSD for TVIC's use of the Community Center. The formula for calculation of the twenty (20) days referenced above is set forth on the attached lease agreement referenced in the Purchase and Sale Agreement dated September 20, 2017 and incorporated by this reference.

- b. In the event TVIC needs to use the Community Center for set painting, work on lights or sound system, or other similar activities in connection with its principal fundraising event, and such time has not been included in TVIC's schedule of use previously submitted to and approved by TCSD, TVIC will request the time needed to do so from TCSD's Events Coordinator, and he or she will use his or her best efforts to accommodate TVIC's request and authorize such required.
- c. TVIC shall be permitted to use the Community Center for Town Halls, Candidate Nights, or similar events ("Community Uses"), after providing notice to TCSD, and pending availability. TVIC's Community Uses of the Premises shall not be calculated against the twenty (20) day use requirement outlined in section 3(a).
- d. The Board of Directors of TVIC shall be permitted to meet in any TCSD facilities, including but not limited to the TCSD offices, the Community Center, and the Cabin, pending availability, as determined by TCSD's Events Coordinator.
- e. If TVIC is granted permission to use TCSD facilities for an event, it shall be allowed use of the kitchen, including appliances.
- f. TVIC shall be allowed use of dressing rooms and equipment in the loft for its "Rhubarb Revue" or similar event, but only if a TCSD employee or agent is available to oversee use of the equipment.

4. COMMUNITY CENTER IMPROVEMENTS

- a. As long as the Parties remain in existence, the name of the Community Center shall continue to be the "Tamalpais Valley Community Center."
- b. As long as the Parties remain in existence, the gold TVIC letters shall remain over the stage and the lobby shall continue to display TVIC's history, including but not limited to plaques, photos, and other agreed upon items.
- c. Within sixty (60) days after TCSD's purchase of the Premises, TCSD shall have made and installed in the lobby a plaque with the names of the persons responsible for building "TVIC Hall." TCSD will be responsible for the maintenance of the plaque, and other historical items.

5. THE ARCHIVES STORAGE.

TVIC and TCSD have agreed to finance, build and maintain a Archives Storage as set forth in the Agreement Regarding Construction and Financing of Archives Storage attached hereto as Exhibit

1., attached. After the Archives Storage is built on the Premises, it will be used solely by TVIC and the Tamalpais Valley Historical Guild until such time when it may be vacated. All utilities and exterior maintenance shall be paid for by TCSD. TVIC shall not be required to pay rent for its use of the Archives Storage.

6. HAZARDOUS MATERIALS.

TVIC shall not (a) use, generate or store, or allow its employees, contractors or agents to use, generate or store any Hazardous Materials on the Premises, except for those materials required to perform the Work permitted under this Agreement and in compliance with all federal, state and local laws and regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on the Premises. "Hazardous Materials" are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Section 9601, *et seq.*) or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Sections 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.

TCSD shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements of this Agreement. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.

TVIC agrees to assume responsibility and liability for, and defend, indemnify and hold harmless TCSD, its elected officials, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees, and expenses in connection therewith) arising from the introduction on the Premises of any Hazardous Materials or non-hazardous wastes by TVIC (including its employees, contractors and agents) or from any New Environmental Condition caused by, or any Pre-existing Environmental Condition contributed to or exacerbated by, the acts or omissions of TVIC (including those of its employees, contractors and agents) during its use and possession of the Premises.

8. INSURANCE. TCSD shall, throughout the duration of this Agreement, maintain insurance to cover TVIC (including its agents, representatives, contractors, and employees) in connection with the performance under this Agreement.

9. REPORTING DAMAGES. If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, TVIC shall immediately notify the TCSD, and TVIC shall promptly submit to the TCSD, a written report (in a form acceptable to the TCSD) with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of damaged property; (b) name and address of witnesses, and (c) name and address of any potential insurance companies.

10. INDEMNIFICATION. TVIC shall indemnify, hold harmless, and defend the TCSD (including its elected officials, officers, agents and employees) from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and

attorney's fees) resulting or arising from TVIC's use under this Agreement (with the exception of the active negligence or willful misconduct of the TCSD).

11. **ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the TVIC's duties be delegated, without the written consent of the TCSD. Any attempt to assign or delegate this Agreement without the written consent of the TCSD shall be void and of no force or effect. A consent by the TCSD to one assignment shall not be deemed to be a consent to any subsequent assignment.

12. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

13. **NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: TCSD

Tamalpais Community Services District
305 Bell Lane
Mill Valley, CA 94941
(415) 388-6393
Attn: General Manager

To: TVIC

Tamalpais Valley Improvement Club
P.O Box 1446
Mill Valley, CA 94942
(415) 383-3691
Attn: President

14. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

15. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Marin.

16. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

17. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

18. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

19. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the work described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

20. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power and legal authority to enter into and to execute this Agreement on behalf of the respective legal entities of the TVIC and the TCSD. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the TCSD and TVIC do hereby agree to the full performance of the terms set forth herein.

Tamalpais Valley Improvement Club

By: 
Curry Eckelhoff, President

Endorsed By:


Olivia Jacobs, Secretary


Roberta Ricketts, Board Member


Ellen Peterson, Board Member

Tamalpais Community Services District

By: 
Heather Abrams, General Manager

Endorsed By:


Stephen Bartschat, Board President


Steven Levine, Board Vice President


Jeff Brown, Board Member


James Jacobs, Board Member


Matt McMahon, Board Member

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Chairman
Deputy Chairman
Secretary

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