

## RESOLUTION NO. 3592-2013

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AGREEMENT FOR LEASE OF GYMNASIUM WITH MENDOCINO COAST RECREATION AND PARK DISTRICT AND AUTHORIZING CITY MANAGER TO EXECUTE SAME UPON EXECUTION BY LESSEE

**WHEREAS**, Mendocino Coast Recreation and Park District (MCRPD) desires a location to use for skating, basketball league sports, and other recreational activities; and

**WHEREAS**, MCRPD has agreed to enter into a Lease Agreement for the gymnasium at 213 E. Laurel Street, Fort Bragg, California; and

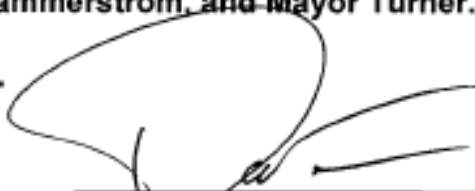
**WHEREAS**, City desires to lease the property to MCRPD and MCRPD desires to lease the property from the City, upon the terms and conditions set forth in the Gymnasium Lease Agreement which is attached and incorporated herein as "Exhibit A"; and

**WHEREAS**, based upon the fact that the leased property is to be used to provide recreational programs for Fort Bragg residents, the City Council finds that it is in the interest of all parties to support the request by MCRPD to lease the gymnasium space.

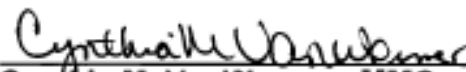
**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve the Gymnasium Lease Agreement with Mendocino Coast Recreation and Park District and authorizes City Manager to execute same upon execution by lessee.

The above and foregoing Resolution was introduced by Councilmember Deitz, seconded by Councilmember Hammerstrom, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 11<sup>th</sup> day of February, 2013, by the following vote:

**AYES:** Councilmembers Deitz, Hammerstrom, and Mayor Turner.  
**NOES:** None.  
**ABSENT:** Councilmember Courtney.  
**ABSTAIN:** None.

  
\_\_\_\_\_  
**DAVE TURNER,**  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
Cynthia M. VanWormer, MMC  
City Clerk

# EXHIBIT A

## GYMNASIUM LEASE AGREEMENT

This Gymnasium Lease Agreement (this "**Lease**") is made and entered into as of this 1<sup>st</sup> day of January, 2013, by and between the City of Fort Bragg, a municipal corporation ("**Landlord**") and Mendocino Coast Recreation and Park District ("**Tenant**"). Landlord and Tenant are hereafter collectively referred to as the "**Parties**."

### RECITALS

A. The Landlord is the owner of real property located at 416 N. Franklin Street, Fort Bragg, CA. (the "**Property**").

B. The Property includes rentable gymnasium space (the "**Premises**"), as depicted in Exhibit A attached hereto and incorporated herein by this reference.

C. The Tenant desires to lease the Premises from the Landlord, and the Landlord desires to lease the Premises to the Tenant conditioned upon the terms therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant hereby agree as follows:

### ARTICLE 1.

#### BASIC LEASE PROVISIONS

1.1 **Landlord's contact information:** Linda Ruffing, City Manager, City of Fort Bragg, 416 North Franklin Street, Fort Bragg, CA 95437.

1.2 **Tenant's contact information:** Beth Pine, Mendocino Coast Recreation and Park District, 300 S. Lincoln Street, Fort Bragg, CA 95437.

1.3 **Rented Area:** More particularly described as the area shown in Exhibit A, attached.

1.4 **Commencement Date:** March 1, 2013

1.5 **Term:**  1  year.

1.6 **Expiration Date:** The last day of the month in which the Term ends.

1.7 **Option(s) to Extend Term:** Tenant may request a Lease Extension of no more than one year upon submitting a written notice to the Landlord 30 days prior to the Expiration Date. Landlord retains the sole right to deny or approve any extension request including, but not limited to, conditioning such approval on a change in the terms and conditions of this Lease. Any approval of a Lease Extension request shall be in writing signed by both parties.

1.8 **Rent:**  \$250  per month plus the cost of electricity and propane attributed to the use of Premises.

1.9 **Security Deposit:** One month's rent (pre-paid).  
**Cleaning/Repair Deposit:** N/A

- 1.10 **Permitted Uses:** Gymnasium use for skating, basketball league sports, and other recreational activities.
- 1.11 **Parking:** No reserved parking. Parking is "On-Street" on a "first come, first served" basis.

## ARTICLE II. DEFINITIONS

**Definitions.** As used in this Lease, the following terms shall have the definitions set forth below. Additional terms are defined in the remainder of this Lease.

2.1 **Additional Rent** means any amount of rent beyond the "Rent" as described in section 1.8 that Tenant is required to pay Landlord (e.g., late fees, or administrative charges), pursuant to this Lease.

2.2 **Alterations** means any decorations, modifications, additions or improvements made in, on, about, under or contiguous to the Premises by or for the benefit of Tenant including but not limited to, telecommunications and/or data cabling, lighting, HVAC and electrical fixtures, pipes and conduits, partitions, cabinetwork and carpeting.

2.3 **Commencement Date** is the date set forth in Section 1.4, and means the date upon which (i) Tenant shall be permitted to occupy the Premises for the conduct of Tenant's operations, and (ii) the date upon which Tenant's obligation to pay Rent shall commence.

2.4 **Premises** means the rented premises shown on Exhibit A.

2.5 **Property** means real property located at 416 N. Franklin Street, Fort Bragg, CA.

2.6 **Rent** means the monthly amount (in dollars) to be paid by Tenant to Landlord, pursuant to section 1.8

2.7 **Term** means the term of this Lease as set forth in Section 1.5 as such may be modified pursuant to the terms hereof.

## ARTICLE III PREMISES AND TERM

3.1 **Leased Premises.** Subject to and upon the terms and conditions set forth herein, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The Premises consist of a gymnasium, two restrooms, small office area, and access hallway as depicted in the diagram attached hereto as Exhibit A. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Property except as specifically stated in this Lease.

3.1.1 **Appurtenant Rights.** Tenant is granted the right during the Term to the nonexclusive use of the premises. Tenant will have nonexclusive access to bathroom

facilities as shown on Exhibit A, attached. Landlord shall be responsible for performing normal and customary maintenance of the restrooms, floors and other portions of the Premises on a weekly basis to include custodial care of the facility and restocking of paper supplies in restrooms. Tenant shall be responsible for any damage caused to the Premises arising from or relating to Tenant's occupation and use of the Premises.

3.2 Term and Commencement. The Term of this Lease shall commence on the Commencement Date, and unless sooner terminated as provided herein, the Term shall be for the period set forth in Section 1.5 as the same may be extended by an amendment to this Lease duly signed by both parties.

3.3 No Representations. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty as to the suitability or fitness of the Premises for the conduct of Tenant's business, and that neither Landlord nor any agent of Landlord has agreed to undertake any alterations or additions or to construct any tenant improvements to the Premises except as expressly provided in this Lease.

#### ARTICLE IV

##### RENT, OPERATING EXPENSES, AND DEPOSITS

4.1 Monthly Rent. From and after the Commencement Date, Tenant shall pay to Landlord for each calendar month of the Term, the monthly Rent set forth in Section 1.8. Each monthly installment of Rent shall be due and payable to Landlord in advance, on the first (1st) day of each calendar month during the Term, without abatement, deduction, claim or offset except as otherwise expressly provided herein, and without prior notice, invoice or demand, at Landlord's address or such other place as Landlord may designate from time to time.

4.2 Prorations. Monthly installments for any fractional calendar month at the beginning or end of the Term shall be prorated based on the number of days in such month.

4.3 Late Charge. Tenant acknowledges that the late payment of Rent will cause Landlord to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Landlord and Tenant agree that if Landlord does not receive any such payment within five (5) calendar days after such payment is due, Tenant shall pay to Landlord as Additional Rent an amount equal to five percent (5%) of the overdue amount as a late charge for each month or partial month that such amount remains unpaid. The Parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant. Acceptance of any late payment and/or late charge therefore shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other event of default under this Lease.

#### ARTICLE V

##### USE OF PREMISES

5.1 Permitted Use. The Premises shall be used solely for the purposes set forth in Section 1.10 ("Permitted Use") and for no other purpose without written consent of Landlord, which may be granted or withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done in or about the Premises or the Property, nor bring or keep anything therein that would in any way subject Landlord to liability, increase the premium rate of or affect any fire, casualty,

rent or other insurance relating to the Property or any of the contents of the Premises, or cause a cancellation of, or give rise to any defense by an insurer to any claim under, or conflict with, any policies for such insurance. If any act or omission of Tenant results in an increase in premiums, Tenant shall pay to Landlord upon demand the amount of such increase.

5.2 Signage. Tenant shall obtain the prior approval of the Landlord, which approval may be withheld in Landlord's reasonable discretion before placing any sign or symbol on doors or windows or elsewhere in or about the Premises so as to be visible from the public areas or exterior of the Property, or upon any other part of the Property, including building directories. Any signs or symbols which have been placed without Landlord's approval may be removed by Landlord. Upon expiration or termination of this Lease, all signs installed by Tenant shall be removed and any damage resulting therefrom shall be promptly repaired by Tenant, or such removal and repair may be done by Landlord and the cost charged to Tenant as Additional Rent.

5.3 Repairs and Replacements. City shall be responsible for normal and customary repair and maintenance of the Premises other than tenant improvements, fixtures and furnishings. Tenant shall, at Tenant's sole expense, make all repairs, replacements, alterations, or improvements to the extent triggered by or related to (i) Tenant's particular use of the Premises, including necessary plumbing repairs from use of restrooms, and/or (ii) any improvements or alterations made by or on behalf of Tenant to the Premises. If Tenant fails to make such repairs, replacements, alterations, or improvements, at Landlord's option, Landlord may, after providing Tenant no less than thirty (30) days' prior written notice, perform any such required work and Tenant shall pay Landlord's costs incurred in connection with such work, plus a percentage of such costs sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs and expenses in connection therewith. Notwithstanding anything to the contrary set forth in this Article, Landlord shall perform any major repairs to the building housing the Premises. However, in the event the Premises are damaged as a result of Tenant's use and occupation of the Premises, the repair of all such damages shall be the responsibility of Tenant.

5.4 Parking. Tenant parking is "on-street" and is a "first-come, first served" basis.

## ARTICLE VI

### ALTERATIONS AND ADDITIONS

6.1 Alterations and Improvements. Tenant may not make any Alterations to the Property or Premises without the prior written approval of Landlord. Any Landlord-approved alterations shall be done at Tenant's expense, in a good and workmanlike manner, in conformity with plans and specifications reviewed and approved by Landlord, and in compliance with all applicable laws. Tenant shall obtain all necessary governmental approvals and permits for such alterations. Tenant shall give Landlord not less than ten (10) business days' notice prior to the commencement of construction so that Landlord may post a notice of nonresponsibility on the Premises. In no event shall any alteration, without the prior written consent of Landlord:

- (i) affect the exterior of the Property,
- (ii) affect any structural portion of the Property, including without limitation, the roof,
- (iii) require any change to the basic floor plan of the Premises or any change to the structural or mechanical components of the Premises,
- (iv) diminish the value of the Premises,
- (v) result in an increase in demand for building services or utilities,

- (vi) cause an increase in the premiums for hazard or liability insurance carried by Landlord, or
- (vii) overload the floor load capacity or unduly burden the plumbing, heating, ventilation, air conditioning, electrical or other basic systems that serve the Property.

6.2 Liens. Tenant shall not permit any mechanics', materialmen's or other liens, to be filed against the Property or against Tenant's leasehold interest in the Premises. Landlord has the right at all times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens. If Tenant fails to cause the release of record of any lien(s) filed against the Premises or Tenant's leasehold estate therein, by payment or posting of a proper bond within ten (10) days from the date of the lien filing(s), then Landlord may, at Tenant's expense, cause such lien(s) to be released by any means Landlord deems proper, including but not limited to payment of or defense against the claim giving rise to the lien(s). All sums reasonably disbursed, deposited or incurred by Landlord in connection with the release of the lien(s), including but not limited to all costs, expenses and attorney's fees, shall be due and payable by Tenant to Landlord as Additional Rent on demand by Landlord.

## ARTICLE VII INSURANCE AND INDEMNITY

7.1 Indemnity. To the fullest extent permitted by law, Tenant shall defend (with counsel reasonably acceptable to Landlord), indemnify and hold Indemnitees harmless from and against any and all claims arising out of or relating directly or indirectly to this Lease or the Premises ("Claims"), including without limitation, Claims for or relating to loss of or damage to property, injury or death of any person, and economic losses and consequential or resulting damage of any kind, including any Claim arising from or in connection with or in any way attributable to: (i) the use or occupancy, or manner of use or occupancy of the Premises or the Property by Tenant or any invitee, guest or licensee of Tenant, (ii) any act, error, omission or negligence of Tenant or Tenant Parties or any invitee, guest or licensee of Tenant in, on or about the Property including without limitation Claims which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, any act or omission of Tenant, (iii) any activity, work, or thing done, omitted, permitted, allowed or suffered by Tenant or Tenant Parties in, at, or about the Premises or the Property, or (iv) any breach or default in performance of any obligation on Tenant's part in the performance of any covenant or agreement to be performed under this Lease, except to the extent caused by the sole gross negligence or willful misconduct of the Indemnitees. The provisions of this section shall not be construed or interpreted as restricting, limiting or modifying Tenant's insurance obligations under this Lease and are independent of such obligations. Tenant's compliance with insurance requirements set forth in this Lease shall not restrict, limit or modify Tenant's indemnification obligations hereunder. The provisions of this section shall survive the expiration or earlier termination of this Lease.

7.2 Tenant's Insurance. Tenant shall, at its sole expense, procure and maintain throughout the Term (plus any later periods where Tenant may be in occupancy of the Premises) all of the insurance coverages, of the type and amounts as described in Exhibit B, attached.

**ARTICLE VIII**  
**ASSIGNMENT AND SUBLETTING**

8.1 Landlord's Consent Required. Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Lease, or permit all or any part of the Premises to be subleased or used or occupied for any purpose by anyone other than Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be void and shall constitute an event of default entitling Landlord to terminate this Lease and to exercise all other remedies available to Landlord under this Lease and at law.

8.2 No Release of Obligations. The consent by Landlord to an assignment or subletting hereunder shall not relieve Tenant or any assignee or subtenant from the requirement of obtaining Landlord's express prior written consent to any other or further assignment or subletting. No subtenant may assign its sublease, or further sublet its subleased premises, without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Neither an assignment or subletting nor the collection of rent by Landlord from any person other than Tenant shall be deemed a waiver of any of the provisions of this Article or release Tenant from its obligations to comply with this Lease, and Tenant shall remain fully and primarily liable for all of Tenant's obligations under this Lease.

**ARTICLE IX**  
**DAMAGE AND DESTRUCTION**

9.1 Repair and Restoration; Termination Rights. If all or part of the Premises is damaged by fire or other casualty, such that access to or use and occupancy of the Premises is materially impaired, within forty-five (45) days of the date of the damage, Landlord shall notify Tenant of the estimated time, in Landlord's reasonable judgment, required for repair or restoration ("**Repair Period**"). If the estimated Repair Period is one hundred eighty (180) days or less, Landlord shall proceed promptly and diligently to repair or restore the Premises or the portion of the Premises necessary for Tenant's occupancy, and this Lease shall remain in effect, except that for the time unusable, Tenant shall receive a Rent abatement for that part of the Premises rendered unusable in the conduct of Tenant's business. If the estimated Repair Period is in excess of one hundred eighty (180) days from the date of the casualty, Landlord, at its option, shall either (a) commence to repair the damage, in which case this Lease shall continue in full force and effect, or (b) terminate this Lease as of the date specified by Landlord in a notice of termination, and this Lease shall terminate on the date specified in the notice.

9.2 Damage Near End of Term. Notwithstanding anything to the contrary set forth in this Article, if the Premises are damaged during the last three (3) months of the Term, Landlord and Tenant shall each have the option to terminate this Lease by giving written notice to the other of the exercise of that option within thirty (30) days after the damage or destruction, and this Lease shall terminate as of the date specified in such notice which shall be not before the date of such notice nor more than 30 days after the date of such notice.

9.3 Rent Apportionment. If Landlord or Tenant elects to terminate this Lease under this Article IX, Tenant shall pay Rent, prorated on a per diem basis and paid up to the date of the

casualty. If the Premises are wholly untenable and this Lease is not terminated, Rent shall abate on a per diem basis from the date of the casualty until Premises are ready for occupancy by Tenant or the default is cured. If part of the Premises is untenable, Rent shall be prorated on a per diem basis and abated in proportion to the portion of the Premises which is unusable until the damaged part is ready for Tenant's occupancy. Notwithstanding the foregoing, if any damage was caused by the gross negligence or willful misconduct of Tenant, its employees or agents, then, in such event, Tenant agrees that Rent shall not abate or be diminished.

9.4 Waiver of Statutory Provisions. The provisions of this Lease, including those in this Article IX, constitute an express agreement between Landlord and Tenant that applies in the event of any damage to the Premises or Property. Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code §§ 1932(2) and 1933(4), relating to any rights or obligations concerning any such casualty.

## ARTICLE X

### SURRENDER OF PREMISES; HOLDING OVER

10.1 Surrender of Premises. On expiration of this Lease, Tenant shall surrender the Premises in the same condition as when the Term commenced, ordinary wear and tear excepted. Except for furniture, equipment and trade fixtures (other than those which are affixed to the Premises so that they cannot be removed without material damage to the Premises) all alterations, additions or improvements made in or upon the Premises, either by Landlord or Tenant, may, at Landlord's election, become Landlord's property without compensation to Tenant; provided that, upon reasonable written request of Landlord, Tenant shall, at its expense and without delay, remove any alterations, additions or improvements (including, without limitation, all telecommunications equipment and cabling, and all alterations and improvements made by Tenant after the Commencement Date) made to the Premises by Tenant and designated by Landlord to be removed, and shall repair any damage to the Premises caused by such removal. If Tenant fails to complete such removal or to repair the Premises, Landlord may complete such removal and repair, and Tenant shall reimburse Landlord therefor. If Tenant fails to remove such property as required under this Lease, Landlord may dispose of such property in its sole discretion without any liability to Tenant, and further may charge the cost of any such disposition to Tenant.

10.2 Hold Over Tenancy. If Tenant remains in possession of the Premises after expiration or earlier termination of this Lease, Tenant shall be deemed, at Landlord's option, to occupy the Premises as a tenant from month-to-month. During such tenancy (and prior to any termination by Landlord), Tenant agrees to pay Landlord, monthly in advance, an amount equal to the greater of (i) the then fair market rental (as reasonably determined by Landlord) for the Premises, or (ii) one hundred thirty percent (130%) of the Rent which would become due the last month of the Term, together with all other amounts payable by Tenant to Landlord under this Lease. Except as provided in the preceding sentence, such month-to-month tenancy shall be on the same terms and conditions of this Lease except that any rights or options pertaining to additional space shall be deemed to be terminated and shall be inapplicable thereto. Landlord's acceptance of Rent after such holding over with Landlord's written consent shall not result in any other tenancy or in a renewal of the initial term of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease without Landlord's written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay Rent during the holdover period in an amount equal to the greater of (i) one hundred fifty percent (150%) of the then fair market rental (as reasonably



determined by Landlord) for the Premises, or (ii) two hundred percent (200%) of the Rent which would become due the last month of the Term, together with all other amounts payable by Tenant to Landlord.

## ARTICLE XI

### LANDLORD'S RESERVED RIGHTS.

11.1 Rights Reserved to Landlord. Without notice and without liability to Tenant, and without effecting an eviction or disturbance of Tenant's use or possession, Landlord shall have the right to (i) make changes in the legal status of the Premises or the Property as Landlord shall deem appropriate in its sole discretion, provided such changes do not substantially interfere with Tenant's use of the Premises for the Permitted Use; (ii) enter the Premises at reasonable times and with reasonable advance notice (and at any time in the event of an emergency), to inspect or repair the Premises and to perform any acts related to safety, protection, or improvement of the Premises; (iii) install and maintain signs on and in the Premises and the Property; and (iv) make such rules and regulations as, in the reasonable judgment of Landlord, may be needed from time to time for the safety of the tenants, the care and cleanliness of the Premises and the Property and the preservation of good order therein. Landlord shall at all times retain a key with which to unlock all of the doors in the Premises, except Tenant's vaults and safes. If an emergency necessitates immediate access to the Premises, Landlord may use whatever force is necessary to enter the Premises and any such entry to the Premises shall not constitute a forcible or unlawful entry into the Premises, a detainer of the Premises or an eviction of Tenant from the Premises or any portion thereof.

## ARTICLE XII

### DEFAULT AND REMEDIES

12.1 Tenant's Default. It shall be an "Event of Default" hereunder if Tenant shall:

(a) fail to pay when due any monthly installment of Rent, or fail to pay any other amount owed by Tenant to Landlord under this Lease as and when due and such failure continues for five (5) days following written notice thereof to Tenant by Landlord;

(b) fail to provide any certificate, instrument or assurance as required by this Lease if the failure continues for ten (10) days after written notice of the failure to Tenant;

(c) make a general assignment for the benefit of its creditors or file a petition for bankruptcy or other reorganization, liquidation, dissolution or similar relief or have a proceeding filed against Tenant seeking any relief mentioned in this subsection (c) which is not discharged within sixty (60) days thereafter. Landlord acknowledges that Tenant is presently involved in a pending Chapter 9 bankruptcy proceeding, and agrees that the pendency of that proceeding shall not constitute an event of default under this Lease;

(d) abandon or vacate the Premises for more than three (3) consecutive months;

(e) assign this Lease or sublease any portion of the Premises in violation of Article XIII;  
or

(f) fail to comply with any other provision of this Lease in the manner required hereunder and such failure continues for thirty (30) days after written notice thereof to Tenant by

Landlord (or if the noncompliance cannot by its nature be cured within the 30-day period, if Tenant fails to commence to cure such noncompliance within the 30-day period and thereafter diligently prosecute such cure to completion).

12.2 Remedies on Default. Upon the occurrence of an Event of Default, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord at law or in equity. These remedies are not exclusive but instead are cumulative.

(a) Continue Lease. Landlord may continue this Lease in full force and effect. In such case, so long as Landlord does not terminate Tenant's right to possession, this Lease will continue in effect and Landlord shall have the right to collect Rent when due, and may undertake efforts to relet the Premises, or any part of them, to third parties for Tenant's account. Tenant shall be liable to Landlord for all reasonable costs Landlord incurs in reletting the Premises including without limitation, expenses of remodeling the Premises required by the reletting. Tenant shall pay to Landlord the Rent due under this Lease on the date the Rent is due, less the Rent Landlord receives from any reletting. No act by Landlord allowed by this Section shall terminate this Lease unless Landlord terminates Tenant's right to possession. After an Event of Default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

(b) Terminate Lease. Landlord may terminate this Lease and Tenant's right to possession of the Premises at any time following an Event of Default. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance or efforts to relet the Premises shall not constitute a termination of Tenant's right to possession. On termination, Landlord shall have the right to recover from Tenant all of the following:

- (i) The amount of any unpaid Rent that had been earned at the time of termination of this Lease;
- (ii) The amount of unpaid Rent that would have been earned after the date of termination of this Lease less any amount of the unpaid Rent that Tenant proves could have been reasonably avoided;
- (iii) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform obligations under this Lease, including, without limitation, expenses of remodeling the Premises for a new tenant, and any special concessions made to obtain a new tenant; and
- (iv) Any other amounts, in addition to or in lieu of those listed above that may be permitted by law.

12.3 Landlord's Default. Landlord's failure to perform any of its obligations under this Lease shall constitute a Landlord Event of Default hereunder if the failure continues for thirty (30) days after written notice of the failure from Tenant to Landlord. If the required performance cannot be completed within thirty (30) days, Landlord's failure to perform shall not constitute a Landlord Event of Default if Landlord undertakes to cure the failure within such thirty (30) day period and diligently and continuously attempts to complete the cure as soon as reasonably possible. Tenant waives any right to terminate this Lease and to vacate the Premises upon Landlord's

default under this Lease. Tenant's sole remedy on Landlord's default is an action for damages or injunctive or declaratory relief.

### ARTICLE XIII MISCELLANEOUS

13.1 No Waiver. No receipt and retention by Landlord of any payment tendered by Tenant in connection with this Lease shall constitute an accord and satisfaction, or a compromise or other settlement, notwithstanding any accompanying statement, instruction or other assertion to the contrary unless Landlord expressly agrees to an accord and satisfaction, or a compromise or other settlement, in a separate writing duly executed by Landlord. Landlord will be entitled to treat any such payments as being received on account of any item or items of Rent, interest, expense or damage due in connection herewith, in such amounts and in such order as Landlord may determine at its sole option. Any waiver of any condition or provision set forth in this Lease shall not be deemed a waiver of any subsequent breach of such condition or provision or of any other condition or provision, nor shall any such waiver be deemed a continuing waiver.

13.2 Severability. The Parties intend this Lease to be legally valid and enforceable in accordance with all of its terms to the fullest extent permitted by law. If an arbitrator or a court of competent jurisdiction holds any provision hereof to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this Lease would be defeated by loss of the invalid or unenforceable provision.

13.3 Governing Law; Venue; Construction. This Lease shall be construed according to the laws of the State of California without regard to principles of conflict of laws. Any action or proceeding that relates to, or arises from, this Lease shall be brought in a state court of competent jurisdiction located in Mendocino County. The captions used for the Sections and Articles of this Lease have been inserted for convenience only and shall not be used to alter or interpret the content of this Lease.

13.4 Binding Effect; Survival. The covenants, conditions, warranties and agreements contained in this Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The representations and warranties of Landlord and Tenant and the indemnification obligations of Landlord and Tenant set forth herein shall survive the expiration or termination of this Lease as shall all other provisions hereof which are intended to survive such expiration or termination.

13.5 Time. Time is of the essence of each provision of this Lease.

13.6 Entire Agreement; Amendments. This Lease and Exhibits A and B, attached hereto and incorporated herein by this reference, constitutes the final, complete, and exclusive statement of the terms of the agreement between Landlord and Tenant pertaining to the lease of the Premises and supersedes all prior and contemporaneous understandings or agreements of the parties. This Lease may not be amended or modified except in a writing signed by both Parties.

13.7 Notices. All notices delivered pursuant to this Lease shall be in writing and delivered to Landlord or Tenant at the applicable address designated in Section 1.1 or to such other address as may hereafter be designated by either party by written notice delivered to the other party in accordance with this Section. Such notices shall be effective on the earlier to occur of actual

receipt or: (i) if mailed, three (3) days after posting at a United States post office, (ii) upon receipt if mailed by certified mail with return receipt requested, and (iii) upon delivery if delivered by overnight delivery service and delivery is confirmed by the delivery service.

13.8 Force Majeure. Except as otherwise provided in this Lease, the time for performance of an obligation other than payment of money under this Lease shall be extended for the period during which a party is prevented from performing due to Unavoidable Delay. "Unavoidable delay" shall mean any and all delay beyond the applicable party's reasonable control, including without limitation, delays caused by the other party; governmental restrictions, regulations, controls, preemptions or delays; orders of civil, military or naval authorities; strikes, labor disputes, lock-outs, shortages of labor or materials or reasonable substitutes therefore; Acts of God; fire, earthquake, floods, explosions or other casualties; extreme weather conditions or other actions of the elements; enemy action, civil commotion, riot or insurrection.

13.9 Attorneys' Fees. If any judicial remedy or arbitration is undertaken to enforce or interpret any provision of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, expert witness's fees, post judgment collection costs, and other expenses, in addition to any other relief to which such party may be entitled.

13.10 Authority. Each party warrants and represents that it has full authority to enter into this Lease, that this Lease constitutes a binding obligation of such party, and that the individual(s) signing on behalf of such party are duly authorized to bind such party hereto.

13.11 Landlord Approvals. Whenever the consent or approval of Landlord is required hereunder, such consent or approval may be granted or withheld by the City Manager or his or her designee, unless the City Manager determines in his or her discretion that such matter shall be referred to Landlord's governing body for consideration.

13.12 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by any other party. This Lease shall take effect when signed by all Parties.

NOW THEREFORE, Landlord and Tenant executed this Lease as of the date first written above.

**TENANT**

Mendocino Coast Recreation and Park District

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD**

CITY OF FORT BRAGG,  
a municipal corporation

By: \_\_\_\_\_

Linda Ruffing, City Manager

ATTEST:

APPROVED AS TO FORM:

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Cynthia M. VanWormer, MMC  
City Clerk

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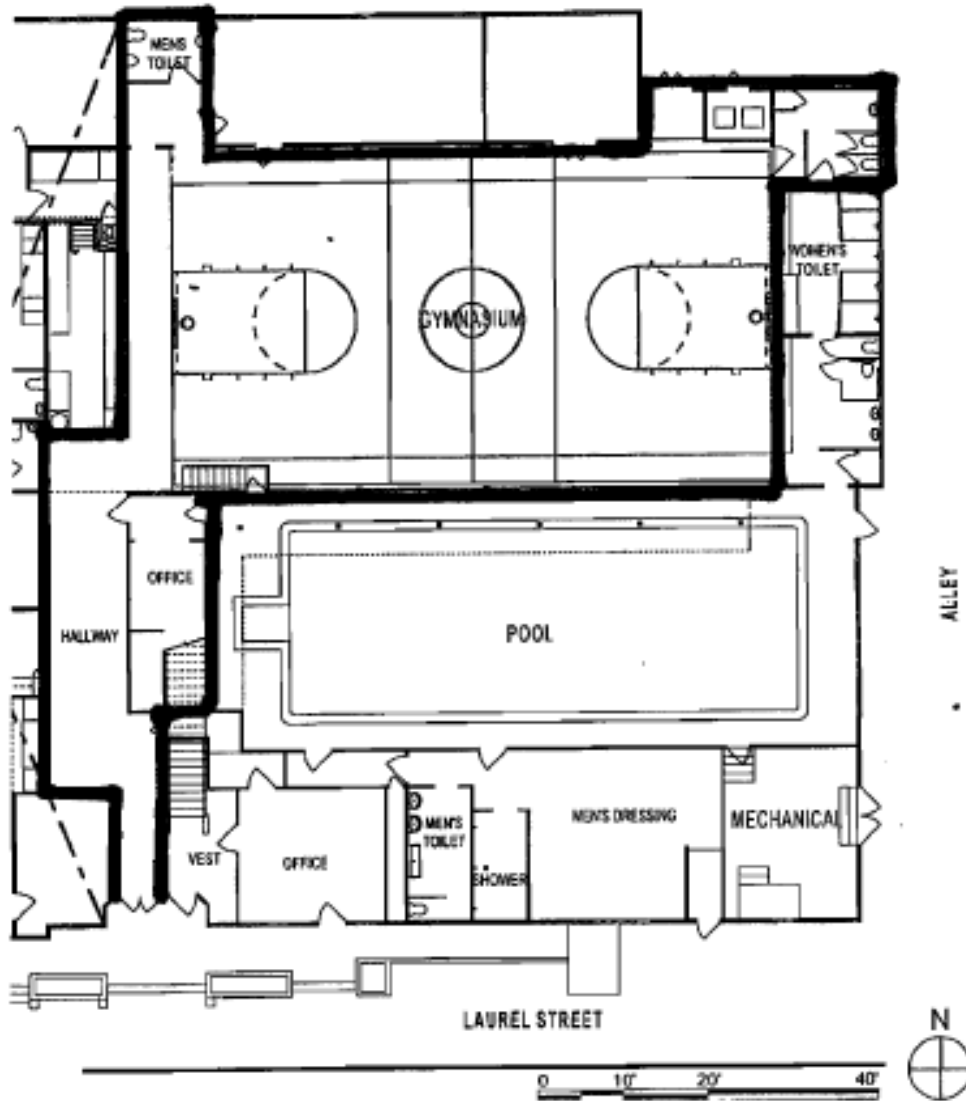
David S. Warner, City Attorney

## **List of Exhibits**

Exhibit A: Premises Being Leased (including common area)

Exhibit B: Insurance Requirements

EXHIBIT A: PREMISES (with common area depicted)



## EXHIBIT B: INSURANCE COVERAGES

- (1) **Commercial general liability insurance** including contractual liability coverage, written on an "occurrence" policy form, covering bodily injury, property damage and personal injury arising out of or relating (directly or indirectly) to Tenant's operations, assumed liabilities, or use or occupancy of the Premises or the Property naming the Landlord as an additional insured, with minimum coverage in the amount of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage and Two Million Dollars (\$2,000,000) in the aggregate;
- (2) **Property insurance** protecting Tenant against loss or damage by fire and such other risks as are insurable under then available standard forms of "all risk" insurance policies, covering Tenant's personal property and trade fixtures in or about the Premises or the Property, and any improvements or Alterations in the Premises, in an amount of one hundred percent (100%) of actual replacement cost or highest insurable value;
- (3) **Workers' compensation insurance** in not less than statutory limits; and
- (4) If Tenant operates owned, leased or non-owned vehicles on the Property, **comprehensive automobile liability insurance** with a minimum coverage of one million dollars (\$1,000,000) per occurrence, combined single limit.

The foregoing policies shall protect Tenant as named insured, and Landlord and the other Indemnitees as additional insureds (except for Workers' Compensation insurance). Landlord reserves the right to increase the foregoing amount of required liability coverage from time to time (but not more than once each calendar year) and to require that Tenant cause any Tenant Parties conducting activities in or about or occupying the Premises to obtain and maintain similar types and amounts of insurance.

Each insurance policy, except for Workers' Compensation, must include an endorsement to provide that the policy and the coverage provided shall be primary, that Landlord, although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord by reason of acts or omission of Tenant, and that any coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant. Each such insurance policy or a certificate thereof, including appropriate endorsements, shall be delivered to Landlord by Tenant on or before the Commencement Date, and thereafter renewal policies, certificates, and appropriate endorsements at least thirty (30) days prior to the expiration dates of expiring policies.

Tenant shall cause its insurance companies issuing property (first party) insurance and workers' compensation insurance to waive any subrogation rights that those companies may have against Landlord, as long as the insurance is not invalidated by the waiver.