
To: Mayor and City Council

From: Mary Neilan, City Manager

Subject: **Renewal of Lease Agreement between Belvedere Tiburon Joint Recreation (BTJR) and City of Belvedere for Belvedere Community Center (BCC)**

Recommended Motion/Item Description

Approve Lease Agreement.

Background

The City has leased the BCC to BTJR since 1988. The facility provides space for an array of recreation programs, community events and private functions serving the entire Tiburon Peninsula. The Lease Agreement, largely unchanged from the 1988 original, expired December 31, 2014, and needs to be renewed.

Findings

The Agreement has been revised to eliminate irrelevant or outdated provisions and to include language that clarifies the roles and responsibilities of tenant and landlord. Historically, the City has paid for all maintenance of the facility and all utility charges incurred; the draft Agreement continues this arrangement. Language was also retained that allows BTJR to rent the BCC to others with proceeds shared between BTJR and the City. In fact since 2009, the City has had an informal agreement to “donate” the City’s share (about \$5,000/year) back to BTJR.

The insurance and indemnification provision was revised to require that BTJR procure general liability insurance, naming the City as additional insured. As of July 1, they have such a policy in effect. The City’s own property insurance protects the leased property. The term of the new Lease Agreement is five years, backdated to January 1, 2015, to reflect the ongoing lease relationship.

The revised lease has been reviewed by the BTJR Executive Director.

Fiscal Impact

If the Lease is approved as written, the City will continue to pay building maintenance and utility costs for BTJR use of the BCC. Annual recurring expense is estimated at \$22,000. Additional extraordinary expenses are occasionally necessary, such as last year’s furnace replacement (\$7,500).

Recommendation

Approve Lease Agreement. If the Council wishes to amend terms of the Lease, staff will make those changes and present them to BTJR.

Attachments

1. Revised Lease Agreement
2. Current Lease Agreement

ATTACHMENT 1

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (the "Agreement") is made and entered into this 10th day of August, 2015, by and between the CITY OF BELVEDERE ("Landlord"), and the BELVEDERE/TIBURON JOINT RECREATION COMMITTEE ("Tenant"), with reference to the following facts:

RECITALS

- A. Landlord and Tenant entered into that certain Lease Agreement dated December 6, 1988, modified on August 2, 1999, July 13, 2009 and June 11, 2012 (collectively, the "Lease"), whereby Tenant is leasing from Landlord and Landlord is leasing to Tenant those premises comprising the area on attached Exhibit "A" (the "Premises") on the ground floor of the Belvedere Community Building located at 450 San Rafael Avenue, Belvedere California (the "Building"); and
- B. Landlord and Tenant mutually desire to restate, amend, and extend the term of the Lease by entering into this Agreement as follows; and
- C. Upon and subject to the terms, covenants, and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Premises as outlined on attached Exhibit "A," on the ground floor of the Belvedere Community Building located at 450 San Rafael Avenue, Belvedere, California.

AGREEMENT

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

1. OCCUPANCY AND USE.

- a) Tenant shall use and occupy the Premises for the following purposes and for no other use or purposes without the prior written consent of Landlord in its sole discretion.
 - i) Conducting recreational and educational programs offered by Tenant pursuant to that certain Amended and Restated Joint Powers Agreement for the Belvedere/Tiburon Joint Recreation Committee & Program, dated October 8, 2001 by and between the City of Belvedere and the Town of Tiburon, as may be amended from time to time.
 - ii) For periodic rental by private or otherwise independent groups for parties, meetings, receptions, or other like activities. Use of the Premises for the purposes described in this subparagraph will be subject to rules, regulations, guidelines, and conditions established by Tenant and approved by Landlord. Income derived from this subsection shall be divided between the parties subject to section 3 of this Agreement.

- iii) For periodic weekday use by community groups when available at an average of no more than fifteen (15) hours per week at an hourly rate to be approved by Landlord, which income shall be retained solely by Tenant for the administration of the scheduling program, subject to section 3 of this Agreement.
- b) In giving, withholding, or conditioning Landlord's approval, pursuant to this section, the following principles shall apply: (i) Landlord shall be entitled to disapprove activities involving unacceptable risk or liability as determined by Landlord; (ii) activities shall be those suitable for the residents of Belvedere and Tiburon; (iii) the type and charges for programs shall be comparable to those conducted by other similar community operated recreation departments in and around Marin County (taking into account Tenant's source of funding); and (iv) Landlord may consider the activities described to the public at or about the time Belvedere approved the concept of a Belvedere Community Center and when solicitations were made for donations to fund those improvement.
- c) Tenant shall serve as "Managing Tenant" of the Premises and as such, shall be responsible for scheduling all third-party usage and interfacing with all users of the Premises pursuant to this section.
- d) Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the rate of any insurance upon the Building or any of its contents, cause a cancellation of such insurance, or otherwise affect such insurance in any manner. Tenant shall at its sole cost and expense promptly comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may thereafter be in force and with the requirement of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's use of the Premises or permissible alterations or improvements made by or for Tenant or Tenant's acts.
- e) Any use of the Premises by Tenant or third party not allowed under this Agreement and/or in violation of this section shall be enjoined by a court of competent jurisdiction, and Tenant hereby agrees that such injunctive relief is an appropriate remedy for Landlord. The parties hereby agree that the losing party shall pay all attorneys' fees and costs associated with such legal proceedings.

2. **TERM.** The term of this Agreement (the "Term") shall be for a period of five years, commencing on January 1, 2015 ("Commence Date") and ending on December 31, 2019 ("Expiration Date") (or until sooner terminated as herein provided). If the Joint Powers Agreement pursuant to which Tenant is formed terminates for any reason whatsoever (including, the exercise by Landlord of its rights to terminate such Agreement, pursuant to said Joint Powers Agreement), the Agreement shall terminate.

3. **DIVISION OF THIRD PARTY RENT.** The amounts collected from parties who use the Premises pursuant to section 1 of this Agreement, net of direct costs incurred by Tenant in connection with such use, shall be shared between Tenant and Landlord, which proportionate share shall be determined to the mutual satisfaction of Landlord and Tenant on an annual basis based on factors that would enable Tenant to recover all Tenant incurred costs associated with managing and operating the Premises, and to enable Landlord to defray costs associated with utilities and the custodial maintenance services for the Premises.
4. **ADDITIONAL ALTERATIONS.** Tenant shall not make or suffer to be made any additional alteration, additions, or improvements (“Alterations”) in, on, or to the Premises or any part thereof without the prior written consent of Landlord which may be given, conditioned, or withheld in Landlord’s sole discretion. In the event Landlord consents to the making of any Alterations by Tenant, the same shall be made by Tenant, at Tenant’s sole cost and expense, in accordance with plans and specifications reasonably approved by Landlord. Any contractor, person, or other entity selected by Tenant to make any Alterations must first be reasonably approved in writing by Landlord. Upon or before the Expiration Date, Tenant shall, upon demand by Landlord, at Tenant’s sole cost and expense, remove any Alterations made by or for the account of Tenant, designated by Landlord to be removed (provided, however, that upon the written request of Tenant prior to installation of such Alterations, Landlord shall advise Tenant whether or not such Alterations must be removed upon or before the Expiration Date), and Tenant shall at its sole cost and expense, repair, and restore the Premises to its original condition, subject to normal wear and tear and casualty damage.
5. **REPAIR, MAINTENANCE, AND UTILITIES.**
 - a) Landlord shall be responsible for the following repair and maintenance obligations: (i) maintenance and repair of all exterior and interior portions of the Building and grounds, and all areas of the Building other than the Premises; and (ii) repairs and maintenance of the Building systems for electrical, mechanical, HVAC or plumbing, and all controls appurtenant thereto; provided, however, that the standard for such repair and maintenance shall be determined by Landlord and shall be subject to availability of funds for such purpose. Furthermore, Landlord shall at its sole cost and expense maintain and repair damage caused by normal wear and tear to the interior portion of the Premises, including any fixtures or equipment contained therein, excepting Tenant’s Alterations. The scheduling, timing, extent, and all other aspects of the repair and maintenance obligations under this section shall be at the reasonable discretion of Landlord.
 - b) Landlord shall be responsible for the payment of the cost of utilities such as gas, electricity, water, garbage collection, and any other like services provided to the Premises on a periodic basis as costs for those services are incurred. Landlord shall also provide custodial maintenance services for the Premises. The scheduling, timing, extent, and all other aspects of the custodial maintenance services required under this section shall be at the reasonable discretion of Landlord.

- c) Any Tenant Alterations within the Premises shall be maintained at the sole cost and expense of Tenant. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Section 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect. In addition, Tenant hereby waives and releases its right to terminate this Agreement under Section 1932(1) and 1933(4) of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect. If Tenant fails after ten (10) days' notice by Landlord to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by Landlord at the expense of Tenant and the expense thereof incurred by Landlord shall be reimbursed immediately as additional charges after submission of a bill or statement therefor.
 - d) Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the payments required pursuant to this Agreement be abated by reason of: (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing utilities and services; (ii) failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by Acts of God or the elements, labor disturbances of any character, any other accidents or other conditions beyond the reasonable control of Landlord, or by the making of repairs or improvements to the Premises or to the Building; or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or the Building.
 - e) Tenant shall bear the full cost of repairs or maintenance interior or exterior, structural or otherwise, to preserve the Premises in good working order and condition, arising out of: (i) the performance or existence of any Tenant Alterations; (ii) the installation, use or operation of Tenant's property or fixtures; (iii) the moving of Tenant's property or fixtures in or out of the Building or in and about the Premises; or (iv) the acts, omissions, or negligence of Tenant, any third party pursuant to section 1 of this Agreement, or any person claiming or acting through or under Tenant, or any of their servants, employees, contractors, agents, visitors or licensees, or the use or occupancy or manner of use or occupancy of the Premises by Tenant or any such person.
- 6. LIENS.** Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished, or obligations incurred by Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be considered additional charges and shall be payable to it by Tenant on demand.

7. ASSIGNMENT AND SUBLETTING.

- a) Without Landlord's prior written approval, which may be given or withheld in Landlord's absolute discretion, Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, sublet, encumber, pledge, or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively, "Assignment"), or permit the Premises to be occupied by anyone other than Tenant or license the Premises (collectively, "Sublease") or any portion thereof except as contemplated by section 1 above.
- b) No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Agreement, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this section shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Agreement. The acceptance of rent or additional charges by Landlord from a proposed assignee or sublessee shall not constitute consent to such Assignment or Sublease by Landlord.

8. INSURANCE AND INDEMNIFICATION.

- a) Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury or damage to any person or property in or about the Premises by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct), and without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, basement, or other portion of the Premises or the Building, or caused by gas, fire, oil, electricity or any other cause whatsoever, in, on, or about the Premises or the Building or any part thereof.
- b) Tenant shall defend at its sole expense, with counsel acceptable to Landlord, indemnify, and hold harmless, to the fullest extent allowed by law Landlord, its councilmembers, officers, officials, employees, volunteers, agents, and assignees ("indemnitees") from and against any and all liability, actions, claims, or loss of any kind and description, (including, but not limited to, injury to, and death of any person, damage to property, or for contribution or indemnity claimed by third parties) arising, resulting from, or in any way connected with the use of the Premises or Building by Tenant, its agents, employees, and/or subcontractors, and any third party users pursuant to section 1 of this Agreement, except to the extent such loss is caused by Landlord's gross negligence or willful misconduct. Tenant further agrees to indemnify and hold indemnitees harmless from and defend indemnitees against any and all claims by or on behalf of any person, firm or corporation, arising from transactions of Tenant concerning the Premises, and will further indemnify and hold indemnitees harmless from and defend indemnitees against any and all claims arising from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Agreement, or arising from any act or negligence of Tenant, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, counsel fees, expenses and liabilities

incurred in connection with any such claim or action or proceeding brought thereon. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any claims or liability occurring prior to such expiration or termination, whether or not such claims were filed or liability was established prior to expiration or termination of this Agreement.

- c) Any third party user of the Premises pursuant to section 1 of this Agreement must carry and provide evidence of comprehensive general liability insurance coverage to Landlord's sole satisfaction with a combined single limit of liability of no less than \$ 1,000,000 per occurrence, or such greater or lesser amounts as Landlord shall determine in light of the cost of coverage and the need for such insurance. Tenant and Landlord shall be listed as an additional insured.
- d) Tenant shall procure at its sole cost and expense and keep in effect during the Term of this Agreement comprehensive general liability insurance coverage, including contractual liability, with a minimum combined single limit of liability of One Million Dollars (\$1,000,000). Such insurance shall name Landlord as an additional insured, shall specifically include the liability assumed hereunder by Tenant (provided that the amount of such insurance shall not be construed to limit the liability of Tenant hereunder), and shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing and applicable insurance in force for or on behalf of Landlord. Said insurance shall also provide that Landlord shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage. Tenant shall promptly deliver policies of such insurance and certificates to Landlord. Tenant's compliance with the provisions of this section shall in no way limit Tenant's liability under any provisions of this Agreement.
- e) Tenant shall provide evidence of Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California. Employers Liability with limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy. The policy shall include a written waiver of the insurer's right to subrogate against the Landlord.
- f) Notwithstanding the insurance requirements of this section of the Agreement, Landlord and Tenant are required to satisfy any and all insurance requirements as set forth in that certain Amended and Restated Joint Powers Agreement for the Belvedere/Tiburon Joint Recreation Committee & Program, dated October 8, 2001 by and between the City of Belvedere and the Town of Tiburon, as may be amended or revised from time to time (the "Joint Powers Agreement"). In the event the insurance requirements in this Agreement and the Joint Powers Agreement conflict, the terms in the Joint Powers Agreement shall control.
- g) Notwithstanding anything to the contrary herein, no individual representative of Landlord or Tenant, including committee members of the Belvedere-Tiburon Joint Recreation Committee, Councilmembers of the City of Belvedere or Town of Tiburon, or any elected or appointed official, employee, or volunteer shall have individual personal liability under this Agreement.

- h) Tenant shall not be obligated to provide fire or casualty insurance covering the Building. The decision of whether and to what extent the Building shall be covered by such casualty insurance shall be solely within the discretion of Landlord and at Landlord's sole expense. Landlord shall have no responsibility to Tenant for any loss or damage incurred by Tenant as a result of fire or other cause of loss or damage, and any insurance coverage of Landlord may choose to procure shall not cover any personal property, fixture, or other improvements of Tenants.
- 9. WAIVER OF SUBROGATION.** Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, public liability, workers' compensation, and other insurance maintained by either of them at any time during the Term insuring or covering the Building or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might otherwise, if at all, have against the other party, and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.
- 10. RE-ENTRY BY LANDLORD.** Landlord reserves and shall at all times have the right to enter the Premises to inspect, repair, or maintain the same, and/or to alter, improve, or repair the Premises and any portion of the Building.
- 11. DEFAULT.**
- a) The failure to perform or honor any covenant, condition or representation made under this Agreement is material and shall constitute a default hereunder by Tenant upon expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of twenty (20) days from the date of written notice from Landlord within which to cure any default in the payment of any and all payments due pursuant to this Agreement. Tenant shall have a period of twenty (20) days from the date of written notice from Landlord within which to cure any other default under this Agreement; provided, however, that with respect to any default other than the payment of monies due under this Agreement or additional charges that cannot reasonably be cured within twenty (20) days, the default shall not be deemed to be uncured if Tenant commences to cure within twenty (20) days from Landlord's notice and continues to prosecute diligently the curing thereof. Upon an uncured default of this Agreement by Tenant, Landlord shall have the right to terminate this Agreement and all other rights and remedies available to Landlord at law or in equity.
- b) Landlord shall have a period of thirty (30) days from the date of written notice from Tenant within which to cure any default under this Agreement; provided, however, that with respect to any default that cannot reasonably be cured within thirty (30) days, the default shall not be deemed to be uncured if Landlord commences to cure within thirty (30) days from Tenant's notice and continues to prosecute diligently the curing thereof.
- 12. DAMAGE BY FIRE, ETC.** If the Premises or the Building are damaged by fire or other casualty, Landlord shall have the option to terminate this Agreement with no liability to Tenant.

- 13. RIGHT OF LANDLORD TO PERFORM.** All covenants and agreements to be performed by Tenant under any of the terms of this Agreement shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent or additional charges. If Tenant shall fail to pay any sum of money, other than payments due under this Agreement or additional charges, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Agreement. All sums so paid by Landlord and all necessary incidental costs together with interest thereon at the maximum rate permitted by law, from the date of such payment by Landlord shall be payable as additional charges to Landlord on demand.
- 14. SURRENDER OF PREMISES.** Unless otherwise agreed in writing by the parties, Tenant shall surrender the Premises upon the Expiration Date of the Agreement to Landlord in the same condition as when received, broom clean, ordinary wear and tear, and any Alterations pursuant to section 5 of this Agreement excepted. Tenant shall repair any damage to the Premises occasioned by the removal of Tenant's Alterations, fixtures, furnishings, equipment, or other personal property. All of Tenant's property which is removable pursuant to the provisions of this Agreement shall be removed by Tenant on or before the Expiration Date and all property not so removed shall be deemed abandoned by Tenant and title passed to Landlord and Landlord shall have the right either to require Tenant to remove said property from the Premises, or to dispose of said property itself in its discretion.
- 15. WAIVER.** If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Agreement, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. Furthermore, the acceptance of rent or additional charges by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Agreement, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such rent or additional charges. Failure by Landlord to enforce any of the terms, covenants or conditions of this Agreement for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant or condition contained in this Agreement may only be made by a written document signed by Landlord.
- 16. NOTICES.** Except as otherwise expressly provided in this Agreement any bills, statements, notices, demands, requests, or other communications given or required to be given under this Agreement shall be effective only if rendered or given in writing, sent by registered or certified mail or delivered personally, (i) to Tenant (A) at Tenant's address set forth below, if sent prior to Tenant's taking possession of the Premises, or (B) at the Premises if sent subsequent to Tenant's taking possession of the Premises, or (C) at any place where Tenant may be found if sent subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or (ii) to Landlord at Landlord's address set forth below; or (iii) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the

provisions of this Paragraph 18. Until Landlord or Tenant give written notice to the other party of a change in their address for notices, the address for each party shall be as follows:

Landlord: The City of Belvedere – Attn: City Manager
450 San Rafael Avenue
Belvedere, CA 94920-2336

Copy to: Belvedere City Attorney
369-B 3d St. #182
San Rafael, CA 94901

Tenant: Belvedere/Tiburon Joint Recreation Committee – Attn: Recreation Dir.
The Ranch at Dairy Knoll
600 Ned’s Way
Tiburon, CA 94920

17. SUCCESSORS AND ASSIGNS. Subject to the provisions of section 7, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective legal and personal representatives, successors, and assigns.

18. ATTORNEYS’ FEES. If Tenant or Landlord brings any action or arbitration for any relief against the other, declaratory or otherwise, arising out of this Agreement, including any suit by Landlord for the recovery of rent or additional charges or possession of the premises, the losing party shall pay to the prevailing party a reasonable sum for attorneys’ fees, which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not the action is prosecuted to judgment.

19. ARBITRATION.

(a) In the event of any dispute between Landlord and Tenant or between Landlord and Subtenant pursuant to terms and conditions of this Agreement or under any sublease, such dispute shall be subject to arbitration according to the procedures and the terms and conditions of this paragraph. The party wishing to initiate arbitration shall give written notice thereof to the other party specifying with particularity the facts and circumstances which give rise to the dispute and the precise nature of the dispute. Within thirty days (30) after the delivery of such notice by the initiating party to the other party both parties shall notify the other of the name and address of the person to act as arbitrator on its behalf. The arbitrator shall be a person with vocational experience directly relating to the relationship of landlords and tenants who would qualify as an expert witness over objection to give opinion testimony addressed to the issue specified in the initiating party’s notice in a court of competent jurisdiction. Neither arbitrator so selected shall be an employee, officer, public official, director, or consultant of either party or have any other similar relationship to any party to the dispute; provided, however, that such arbitrators shall not be disqualified from serving solely on the basis of their residence within either Belvedere or Tiburon. If either party fails to notify the other of the appointment of its arbitrator within the time

specified, then the arbitrator appointed shall be the arbitrator to determine the issue. Within ten (10) days after appointment of the first two arbitrators they shall meet to select a third arbitrator which selection shall be completed within thirty (30) days after selection of the initial two arbitrators. The third arbitrator shall meet the standards required of the initial two arbitrators however the third arbitrator shall not be a resident of either Tiburon or Belvedere. In the event of a failure or refusal or inability of any arbitrator to act, his or her successor shall be appointed by the party who originally appointed him but in the case of the third arbitrator, his successor shall be appointed in the same manner as provided for appointment of the third arbitrator. The fees and expenses of the arbitrators shall be paid equally by the parties; provided, however, that the arbitrators shall be entitled to include as a part of their decision the requirement that the losing party pay the fees and expenses of all arbitrators. The arbitrators shall have the right to consult experts and competent authorities with factual information or evidence pertaining to the issues that are the subject of the arbitration but any such consultation shall be made in the presence of the parties to the arbitration with full right on their part to cross-examine. The arbitrators shall render their decision and award in writing with counterpart copies to the parties to the arbitration. The arbitrators shall have no power to modify the provisions of this Agreement.

- (b) Notwithstanding the terms and conditions of subparagraph (a) Landlord and Tenant agree that a condition to Tenant's right to continue to occupy the Premises during the pendency of any arbitration proceeding shall be Tenant's performance of the terms and conditions of the Agreement as determined or interpreted by Landlord. By way of example, but without limiting the foregoing provision, if Tenant disagrees with the amount of, or terms and conditions of, the insurance required by Landlord pursuant to this Agreement and if Tenant wishes to arbitrate such dispute, Tenant shall nevertheless provide the insurance required by Landlord during the pendency of the arbitration or discontinue using the Premises during such period.

20. MISCELLANEOUS.

- a) The laws of the State of California shall govern the interpretation, validity, and enforcement of this Agreement.
- b) In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorneys' fees, costs, and expenses incurred.
- c) This Agreement, together with all exhibits, constitutes the entire Agreement and understanding between the Parties and supersedes any previous agreement(s). The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties. There have been no representations made by Landlord or understandings made between the parties other than those set forth in this Agreement and its exhibits.
- d) The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the City of Belvedere and

the Belvedere/Tiburon Joint Recreation Committee. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

- e) The paragraph headings herein are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Agreement.
- f) Time is of the essence of this Agreement and all of its provisions.
- g) The provisions of this Agreement are joint and severable. If for any reason whatsoever any of the provision hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LANDLORD
City of Belvedere

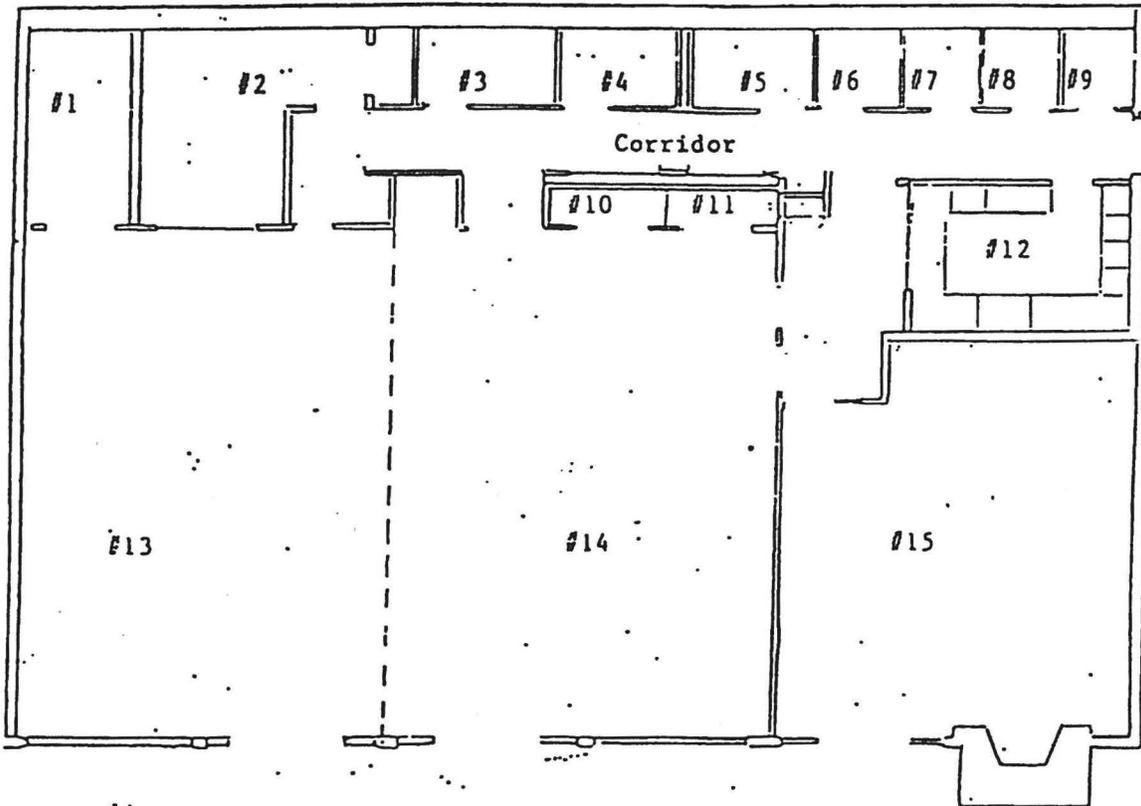
TENANT
Belvedere/Tiburon Joint Recreation Committee

By _____
Mayor

By _____
Chair

EXHIBIT A

FLOOR PLAN OF "MASTER PREMISES"



- | | |
|-------------------------|---------------------------------------|
| #1 Main Storage Room | #8 Utility Room |
| #2 Dance Office | #9 Mechanical Room |
| #3 Girls Locker Room | #10 Small Storage Room |
| #4 Boys Locker Room | #11 Public Address System Room |
| #5 Handicapped Restroom | #12 Kitchen |
| #6 Restroom | #13 Multi-purpose Room 1 (Dance) |
| #7 Restroom | #14 Multi-Purpose Room 2 (Recreation) |
| | #15 Founders Room |

ATTACHMENT 2

**THIRD MODIFICATION TO LEASE AGREEMENT BETWEEN
CITY OF BELVEDERE AND BELVEDERE/TIBURON JOINT RECREATION
COMMITTEE**

This agreement, which modifies the lease agreement dated August 2, 1999, and the previous modification into by the parties ("the Lease"), is entered into by and between THE CITY OF BELVEDERE ("Landlord") and BELVEDERE-TIBURON JOINT RECREATION COMMITTEE ("Tenant")

RECITALS

- A. Attached hereto as Exhibit A is a true and correct copy of the Lease.
- B. The parties to this agreement intend to modify the Lease as set forth below.
- C. Other than the below modification, all terms and conditions of the Lease continue in full force and effect.

MODIFICATION

- 1. The foregoing recitals are hereby incorporated into this modification.
- 2. The "scheduled expiration date" (also referred to as "Expiration Date" set forth in paragraph 2 of the Lease is changed from December 31, 2010, to December 31, 2014.

Dated: _____

LANDLORD
City of Belvedere

By: _____
Mayor

Dated: _____

TENANT
BELVEDERE-TIBURON JOINT
RECREATION COMMITTEE

By: _____
Chair

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 2nd day of August, 1999, by and between THE CITY OF BELVEDERE (herein called "Landlord"), and BELVEDERE/TIBURON JOINT RECREATION COMMITTEE (herein called "Tenant").

Upon and subject to the terms, covenants and conditions hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those premises (the "Premises") comprising the area substantially as outlined in red on attached Exhibit "A," in the ground floor of the Belvedere Community Building, located at 450 San Rafael Avenue, Belvedere, California (the "Building").

1. **OCCUPANCY AND USE.** Tenant shall use and occupy the premises for the following purposes and for no other use or purposes without the prior written consent of Landlord (City Council of Belvedere):
 - (a) Conducting recreation and educational programs offered by the Tenant (i) pursuant to that certain Amended and Restated Joint Powers Agreement for Belvedere/Tiburon Joint Recreation Committee & Program, dated September 8, 1992 by and between the City of Belvedere and the Town of Tiburon and (ii) approved by Landlord.
 - (b) Rental of space with special considerations approved by the Tenant and Landlord for The Marin Peninsula Ballet Company (MPBC) a California nonprofit corporation directed by Jill Taylor-Keck, on terms and conditions approved by Tenant, for the purpose of conducting dance classes for children and adults in the Belvedere/Tiburon area, related dance activities, and incidental office use., Tenant may at any time take over direct use of the portion of the Premises rented with special considerations to MPBC. In such event, tenant shall not be obligated to pay rent previously payable by MPBC.
 - (c) In giving, withholding or conditioning Landlord's approval, pursuant to subparagraph 1 above, the following principles shall be applicable: (i) Landlord shall be entitled to disapprove activities involving unacceptable risk or liability as determined by Landlord, (ii) activities shall be those suitable for the residents of Belvedere and Tiburon, (iii) the type and charges for programs shall be comparable to those conducted by other similar community operated recreation departments in and around Marin County (taking into account the Tenant's source of funding), (iv) Landlord may consider the activities described to the public at or about the time Belvedere approved the concept of a Belvedere Community Center and when solicitations were made for donations to fund those improvement, (v) Tenant shall serve as "Managing Tenant" of the facility and as such, shall be responsible for scheduling third-party usage, arranging custodial maintenance and interfacing with all users of the facility.

(d) For periodic rental by private or otherwise independent groups for parties, meetings, receptions or other like activities. Use of the Premises for the purposes described in this subparagraph (d) will be subject to rules, regulations, guidelines and conditions established by the Tenant and approved by the Landlord.

(e) For periodic weekday use of the facility by community groups when available at an average of fifteen (15) hours per week at an hourly rate to be approved by Landlord, which income shall be retained solely by Tenant for the administering of the scheduling program.

2. **TERMS AND POSSESSION.** The term of this Lease (the "Term") shall be for a period of ten years, commencing on July 1, 1999 ("scheduled commence date") and ending on June 30, 2009 ("scheduled expiration date") (or until sooner terminated as herein provided). If the Joint Powers Agreement, pursuant to which Tenant is formed, terminates for any reason whatsoever (including, the exercise by Landlord of its rights to terminate such Agreement, pursuant to Paragraph 16 thereof), this Lease Agreement shall terminate; provided, however, that if this Lease terminates because Landlord exercises its right to terminate the Joint Powers Agreement under circumstances where no arrangements have been made for a successor to take over the operations of Tenant, Landlord shall repay Tenant a prorata amount of Tenant's Forty Thousand Dollar (\$40,000) contribution to construction of the improvements based on straight line amortization over a five (5) year period commencing upon the execution of this Lease reduced by the amount, if any, required to restore the Premises to their original condition, subject to reasonable wear and tear and casualty damage. The dates upon which the Term shall commence and terminate pursuant to this Paragraph 2 are herein called the "Commence Date" and the "Expiration Date," respectively.

3. **THIRD PARTY USAGE; ADDITIONAL CHARGES FOR EXPENSES.**

a) The amounts collected from parties who use the Premises pursuant to Paragraphs 1(b) and 1(d), net of direct costs incurred by Tenant in connection with such use, shall be shared between the Tenant and the Landlord.

b) Additional Charges for Expenses: Landlord shall be obligated to pay the cost of gas, electricity, water, garbage collection or any other like services provided to the Premises on a periodic basis as cost for those services is incurred. Tenant shall remit to Landlord a share of the third party rental income, which amount shall be mutually determined by Tenant and Landlord on an annual basis to enable Tenant to recover all Tenant incurred costs associated with managing and operating the facility, and to enable Landlord to defray costs associated with utilities and custodial maintenance of the facility

4. **COMPLIANCE WITH LAWS.** Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein which will in any way increase the rate of

any insurance upon the Building or any of its contents or cause a cancellation of such insurance or otherwise affect such insurance in any manner, and Tenant shall at its sole cost and expense promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may thereafter be in force and with the requirement of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's unique use of the Premises or alterations or improvements made by or for Tenant or Tenant's acts.

5. **ADDITIONAL ALTERATIONS.** Tenant shall not make or suffer to be made any additional alteration, additions or improvements ("Alterations") in, on or to the Premises or any part thereof without the prior written consent of Landlord which may be given, conditioned or withheld in Landlord's absolute discretion. In the event Landlord consents to the making of any Alterations by Tenant, the same shall be made by Tenant, at Tenant's sole cost and expense, in accordance with plans and specifications reasonably approved by Landlord, and any contractor or person selected by Tenant to make the same must first be reasonably approved in writing by Landlord. Upon the expiration or sooner termination of the Term, Tenant shall upon demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence remove any Alterations made by or for the account of Tenant, designated by Landlord to be removed (provided, however, that upon the written request of Tenant prior to installation of such Alterations, Landlord shall advise Tenant whether or not such Alterations must be removed upon the expiration or sooner termination of this Lease), and Tenant shall forthwith and with all due diligence, at its sole cost and expense, repair and restore the Premises to its original condition, subject to normal wear and tear and casualty damage.

6. **REPAIR AND MAINTENANCE.**

- (a) Landlord shall be responsible for the following repair and maintenance obligations: (i) maintenance and repair of all exterior and interior portions of the Building and grounds, and all areas of the Building other than the Premises, (ii) repairs and maintenance of the Building systems for electrical, mechanical, HVAC or plumbing (including any portion of the plumbing system located entirely within the Premises, to but not including the fixtures) and all controls appurtenant thereto; provided, however, that the standard for such repair and maintenance shall be determined by Landlord and shall be subject to availability of funds for such purpose. Furthermore, Landlord shall at its sole cost and expense maintain and repair damage caused by normal wear and tear to the interior portion of the Premises, including any fixtures or equipment contained therein. Any additional tenant improvements, alterations, additions, fixtures or equipment installed by or on behalf of Tenant within the Premises shall be maintained at the sole cost and expense of Tenant. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Section 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. In addition, Tenant hereby waives and releases its right to terminate this Lease under Section 1932(1) of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. If Tenant fails after ten (10) days' notice by Landlord to proceed with due diligence to make

repairs required to be made by Tenant, the same may be made by Landlord at the expense of Tenant and the expense thereof incurred by Landlord shall be reimbursed immediately as additional charges after submission of a bill or statement therefor.

- (b) Landlord shall establish and maintain a segregated account in an amount to be approved by Landlord from time to time (and Landlord initially approves Ten Thousand Dollars [\$10,000]). The source of funds for such account shall be the revenue from third party usage pursuant to Paragraph 3(a), provided, however, that such funds shall first be applied to whatever debt service exists until such debt service is retired, and then used as follows:
 - (i) For repair and maintenance directly associated with third party usage described in Paragraphs 1(a) (c) and (d) above.
 - (ii) For repairs, maintenance or replacements of the kitchen equipment, fireplace, display cases, furniture or other fixtures and equipment in the community center, which are not owned by Tenant.
 - (iii) Any surplus remaining upon expiration of this Lease shall be used first for restoration of the Premises to their original condition, reasonable wear and tear and damage from casualty excepted, with any balance payable to Landlord.
- (c) Tenant shall bear the full cost of repairs or maintenance interior or exterior, structural or otherwise, to preserve the Premises and the Project in good working order and condition, arising out of (i) the performance or existence of any alteration or modification to the Premises made by Tenant; (ii) the installation, use or operation of Tenant's property or fixtures; (iii) the moving of Tenant's property or fixtures in or out of the Building or in and about the Premises; or (iv) the acts, omissions or negligence of Tenant or any person claiming or acting through or under Tenant, or any of their servants, employees, contractors, agents, visitors or licensees, or the use or occupancy or manner of use or occupancy of the Premises by Tenant or any such person.

7. **LIENS.** Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be considered additional charges and shall be payable to it by Tenant on demand.

8. ASSIGNMENT AND SUBLETTING.

- (a) Without Landlord's prior written approval, which may be given or withheld in Landlord's absolute discretion, Tenant shall not directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or Tenant's leasehold estate hereunder (collectively, "Assignment"), or permit the Premises to be occupied by anyone other than Tenant or license the Premises (collectively, "Sublease") or any portion thereof except as contemplated by Paragraphs 1(b), 1(d), and 1(e) above.
- (b) No consent by Landlord to any Assignment or Sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the Assignment or Sublease. The consent by Landlord to any Assignment or Sublease shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other Assignment or Sublease. Any Assignment or Sublease that is not in compliance with this Paragraph 8 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of rent or additional charges by Landlord from a proposed assignee or sublessee shall not constitute consent to such Assignment or Sublease by Landlord.

9. INSURANCE AND INDEMNIFICATION.

- (a) Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury or damage to any person or property in or about the Premises by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct), and without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, basement or other portion of the Premises or the Building, or caused by gas, fire, oil, electricity or any cause whatsoever, in, on or about the Premises or the Building or any part thereof.
- (b) Tenant shall indemnify and hold Landlord harmless from and defend Landlord against any and all claims or liability for any injury or damage to any person or property whatsoever: (i) occurring in, on or about the Premises or any part thereof; or (ii) occurring in, on or about the Building when such injury or damage shall be caused in whole or in part by the Building when such injury or damage shall be caused in whole or in part by the act, neglect, fault of, or omission of any duty with respect to the same by Tenant, its agents, servants, employees or invitees, except to the extent caused by Landlord's negligence or willful misconduct. Tenant further agrees to indemnify and hold Landlord harmless from and defend Landlord against any and all claims by or on behalf of any person, firm or corporation, arising from the conduct or management of any work or thing whatsoever done by Tenant in or about or from transactions of Tenant concerning the Premises, and will further indemnify and hold Landlord harmless from and defend Landlord against any and all claims arising from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or arising from any act or negligence of Tenant, or any of its agents, contractors, servants, employees or licensees, and from and against all costs,

counsel fees, expenses and liabilities incurred in connection with any such claim or action or proceeding brought thereon. Furthermore, in case any action or proceeding is brought against Landlord by reason of any claims or liabilities, Tenant agrees to defend such action or proceeding at Tenant's sole expense by counsel reasonably satisfactory to Landlord. The provisions of this Paragraph 9 shall survive the expiration or termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination, whether or not such claims were filed or liability was established prior to expiration or termination of this Lease.

- (c) Tenant is currently insured under the liability policies/programs of Belvedere and Tiburon. Tenant is liable for the deductible under each policy/program and the City's insurance program is responsible for any liability above the deductible, and ultimately the Cities are liable for any excess liability over the insurance limits. So long as Tenant is covered under either Belvedere or Tiburon's policy/program, Tenant shall be deemed to have satisfied the insurance requirements under this Lease.
- (d) Except during such period as Tenant is providing insurance coverage approved by Landlord, pursuant to subparagraph (c) above and meeting the requirements of such subparagraph, Tenant shall procure at its cost and expense and keep in effect during the Term comprehensive general liability insurance including contractual liability with an minimum combined single limit of liability of Five Million Dollars (\$5,000,000) or such greater or lesser amounts as Landlord shall reasonable determine in light of the cost of such coverage and the need for such insurance. Such insurance shall name Landlord as an additional insured, shall specifically include the liability assumed hereunder by Tenant (provided that the amount of such insurance shall not be construed to limit the liability of Tenant hereunder), and shall provide that it is primary insurance, and not excess over or contributory with any other valid, existing and applicable insurance in force for or on behalf of Landlord, and shall provide that Landlord shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage. Tenant shall deliver policies of such insurance and certificates, Landlord may, at its option, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as additional charges within five (5) days after delivery to Tenant of bills therefor. Tenant's compliance with the provisions of this Paragraph 9(d) shall in no way limit Tenant's liability under any of the other provisions of this Paragraph 9.
- (e) Notwithstanding anything to the contrary herein, no individual representative of Landlord or Tenant, including committee members, Council members, or any elected or appointed official shall have individual personal liability under this Lease agreement.
- (f) Tenant shall not be obligated to provide fire or casualty insurance covering the Building. The decision of whether and to what extent the Building shall be covered by casualty insurance shall be solely within the discretion of Landlord and at

Landlord's sole expense. Landlord shall have no responsibility to Tenant for any loss or damage incurred by Tenant as a result of fire or other casualty.

10. **WAIVER OF SUBROGATION.** Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, public liability, workers' compensation and other insurance maintained by either of them at any time during the Term insuring or covering the Building or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might otherwise, if at all, have against the other party, and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.
11. **SERVICES AND UTILITIES.**
 - (a) Landlord shall provide the repair and maintenance described in Paragraph 6(a) above.
 - (b) Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the rental herein reserved be abated by reason of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing utilities and services; (ii) failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by Acts of God or the elements, labor disturbances of any character, any other accidents or other conditions beyond the reasonable control of Landlord, or by the making of repairs or improvements to the Premises or to the Building; or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or the Building.
12. **RE-ENTRY BY LANDLORD.** Landlord reserves and shall at all times have the right to re-enter the Premises to inspect, repair or maintain the same, and to alter, improve or repair the Premises and any portion of the Building.
13. **DEFAULT.** The failure to perform or honor any covenant, condition or representation made under this Lease shall constitute a default hereunder by Tenant upon expiration of the appropriate grace period hereinafter provided. Tenant shall have a period of twenty (20) days from the date of written notice from Landlord within which to cure any default in the payment of rent or additional charges. Tenant shall have a period of twenty (20) days from the date of written notice from Landlord within which to cure any other default under this Lease; provided, however, that with respect to any default other than the payment of rent or additional charges that cannot reasonably be cured within twenty (20) days, the default shall not be deemed to be uncured if Tenant commences to cure within twenty (20) days from Landlord's notice and continues to prosecute diligently the curing thereof. Upon an uncured default of this Lease by Tenant, Landlord shall have the right to terminate this Lease and all other rights and remedies available to Landlord at law or in equity.

Landlord shall have a period of thirty (30) days from the date of written notice from tenant within which to cure any default under this Lease; provided, however, that with respect to any default that cannot reasonably be cured within thirty (30) days, the default shall not be deemed to be uncured if Landlord commences to cure within thirty (30) days from Tenant's notice and continues to prosecute diligently the curing thereof.

14. **DAMAGE BY FIRE, ETC.** If the Premises or the Building are damaged by fire or other casualty, Landlord shall have the option to terminate this Lease with no liability to Tenant.
15. **RIGHT OF LANDLORD TO PERFORM.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent or additional charges. If Tenant shall fail to pay any sum of money, other than rent or additional charges, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease. All sums so paid by Landlord and all necessary incidental costs together with interest thereon at the maximum rate permitted by law, from the date of such payment by Landlord shall be payable as additional charges to Landlord on demand.
16. **SURRENDER OF PREMISES.** At the end of this Term or any renewal thereof or other sooner termination of this Lease, Tenant will peaceably deliver to Landlord possession of the Premises, together with all improvements or additions upon or belonging to the same, by whomsoever made, in the same condition as received, or first installed, subject to normal wear and tear and damage by fire, earthquake, Act of God, or the elements alone excepted. Tenant may, upon the termination of this Lease, remove all movable furniture and equipment belonging to Tenant, at Tenant's sole cost, title to which shall be in Tenant until such termination, provided that Tenant repairs any damage caused by such removal. Property not so removed shall be deemed abandoned by Tenant, and title to the same shall thereupon pass to Landlord. Upon request by Landlord, unless otherwise agreed to in writing by Landlord, Tenant shall remove, at Tenant's sole cost, any or all alterations to the Premises installed by or at the expense of Tenant and all movable furniture and equipment belonging to Tenant which may be left by Tenant and repair any damage resulting from such removal.
17. **WAIVER.** If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. Furthermore, the acceptance of rent or additional charges by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such rent or additional charges. Failure by Landlord to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be

deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant or condition contained in this Lease may only be made by a written document signed by Landlord.

18. **NOTICES.** Except as otherwise expressly provided in this Lease, any bills, statements, notices, demands, requests, or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing, sent by registered or certified mail or delivered personally, (i) to Tenant (A) at Tenant's address set forth below, if sent prior to Tenant's taking possession of the Premises, or (B) at the Premises if sent subsequent to Tenant's taking possession of the Premises, or (C) at any place where Tenant may be found if sent subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or (ii) to Landlord at Landlord's address set forth below; or (iii) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Paragraph 18. Until Landlord or Tenant give written notice to the other party of a change in their address for notices, the address for each party shall be as follows:

Landlord: The City of Belvedere – Attn: City Manager
 450 San Rafael Avenue
 Belvedere, CA 94920-2336

Copy to: Belvedere City Attorney
 874 Fourth Street
 San Rafael, CA 94901-3246

Tenant: Belvedere/Tiburon Joint Recreation Committee – Attn: Recreation Dir.
 1505 Tiburon Boulevard, Suite A
 Tiburon, CA 94920

19. **SUCCESSORS AND ASSIGNS.** Subject to the provisions of Paragraph 8, the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective legal and personal representatives, successors and assigns.
20. **ATTORNEYS' FEES.** If Tenant or Landlord brings any action or arbitration for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or additional charges or possession of the premises, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees, which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not the action is prosecuted to judgment.

21. **ARBITRATION.**

- (a) In the event of any dispute between Landlord and Tenant or between Landlord and Subtenant pursuant to terms and conditions of this Lease or under the sublease, such dispute shall be subject to arbitration according to the procedures and the terms and conditions of this paragraph. The party wishing to initiate arbitration shall give written notice thereof to the other party specifying with particularity the facts and circumstances which give rise to the dispute and the precise nature of the dispute. Within thirty days (30) after the delivery of such notice by the initiating party to the other party both parties shall notify the other of the name and address of the person to act as arbitrator on their behalf. The arbitrator shall be a person with vocational experience directly relating to the relationship of landlords and tenants who would qualify as an expert witness over objection to give opinion testimony addressed to the issue specified in the initiating party's notice in a court of competent jurisdiction. Neither arbitrator so selected shall be an employee, officer, public official, director, or consultant of either party or have any other similar relationship to any party to the dispute; provided, however, that such arbitrators shall not be disqualified from serving solely on the basis of their residence within either Belvedere or Tiburon. If either party fails to notify the other of the appointment of its arbitrator within the time specified, then the arbitrator appointed shall be the arbitrator to determine the issue. Within ten (10) days after appointment of the first two arbitrators they shall meet to select a third arbitrator which selection shall be completed within thirty (30) days after selection of the initial two arbitrators. The third arbitrator shall meet the standards required of the initial two arbitrators however the third arbitrator shall not be a resident of either Tiburon or Belvedere. In the event of a failure or refusal or inability of any arbitrator to act, his successor shall be appointed by the party who originally appointed him but in the case of the third arbitrator, his successor shall be appointed in the same manner as provided for appointment of the third arbitrator. The fees and expenses of the arbitrators shall be paid equally by the parties; provided, however, that the arbitrators shall be entitled to include as a part of their decision the requirement that the losing party pay the fees and expenses of all arbitrators. The arbitrators shall have the right to consult experts and competent authorities with factual information or evidence pertaining to the issues that are the subject of the arbitration but any such consultation shall be made in the presence of the parties to the arbitration with full right on their part to cross-examine. The arbitrators shall render their decision and award in writing with counterpart copies to the parties to the arbitration. The arbitrators shall have no power to modify the provisions of this Lease.
- (b) Notwithstanding the terms and conditions of subparagraph (a) Landlord and Tenant agree that a condition to Tenant's right to continue to occupy the premises during the pendency of any arbitration proceeding shall be Tenant's performance of the terms and conditions of the Lease as determined or interpreted by Landlord. By way of example, but without limiting the foregoing provision, if Tenant disagrees with the amount of, or terms and conditions of, the insurance required by Landlord pursuant to paragraph 9(d) above, and if Tenant wishes to arbitrate such dispute, Tenant shall

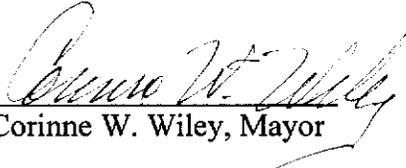
nevertheless provide the insurance required by Landlord during the pendency of the arbitration or discontinue using the Premises during such period.

22. **MISCELLANEOUS.**

- (a) The term "Premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) the space demised and improvements now or at any time hereinafter comprising or built in the space hereby demised. The paragraph headings herein are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. The term "Landlord" shall include Landlord and its successors and assigns. In any case where this Lease is signed by more than one person, the obligations hereunder shall be joint and several. The term "Tenant" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their and each of their respective successors, executors, administrators, and permitted assigns, according to the context hereof.
- (b) Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the State of California. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument by the parties hereto.
- (c) If, for any reason whatsoever, any of the provision hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LANDLORD
City of Belvedere

By 
Corinne W. Wiley, Mayor

TENENT
Belvedere/Tiburon Joint Recreation Committee

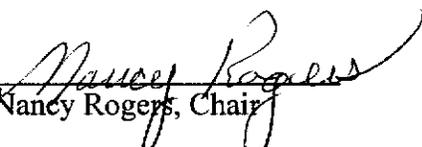
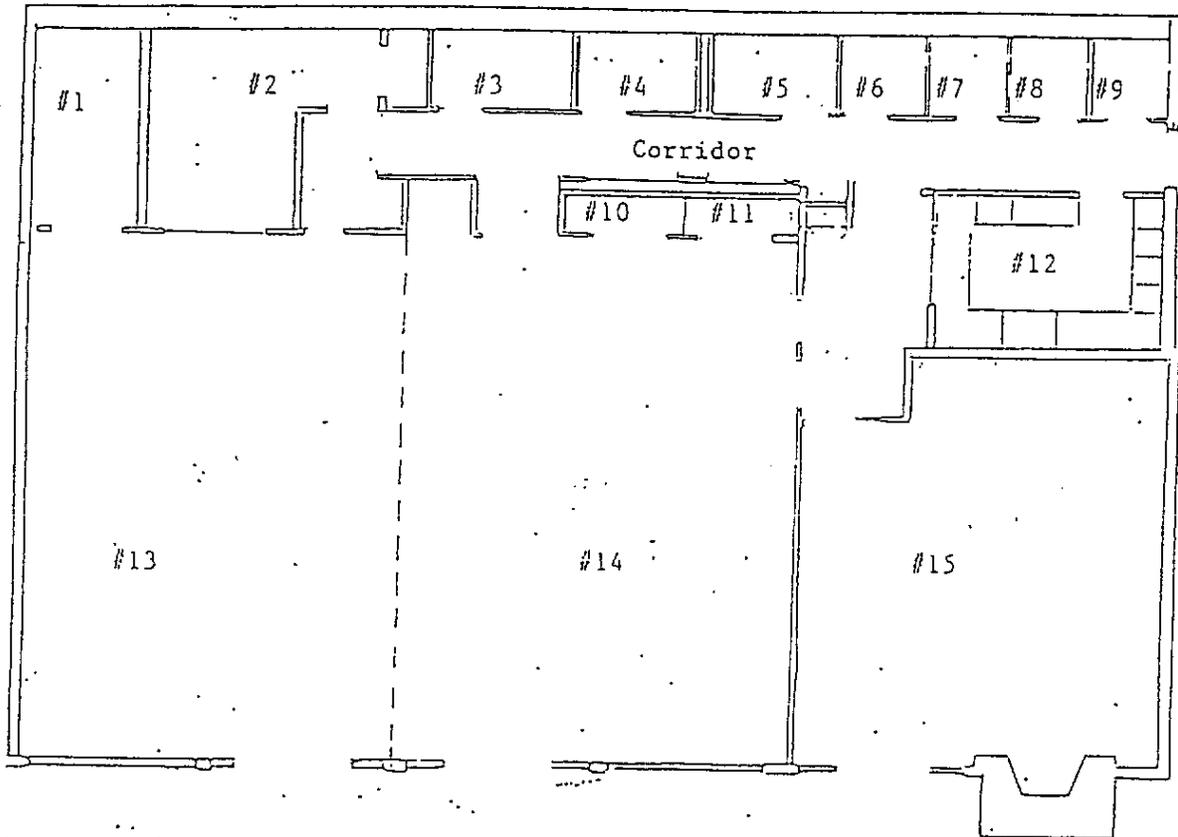
By 
Nancy Rogers, Chair



EXHIBIT A

FLOOR PLAN OF "MASTER PREMISES"



- | | |
|-------------------------|---------------------------------------|
| #1 Main Storage Room | #8 Utility Room |
| #2 Dance Office | #9 Mechanical Room |
| #3 Girls Locker Room | #10 Small Storage Room |
| #4 Boys Locker Room | #11 Public Address System Room |
| #5 Handicapped Restroom | #12 Kitchen |
| #6 Restroom | #13 Multi-purpose Room 1 (Dance) |
| #7 Restroom | #14 Multi-Purpose Room 2 (Recreation) |
| | #15 Founders Room |

12-6-88

EXHIBIT E

SCHEDULE OF ROUTINE MAINTENANCE

1. Once a week general cleaning and maintenance of facility [multi-purpose, office, lockers, restroom] including
 - a. Overall cleaning of bathrooms and locker rooms
 - b. Floors in office and hall
 - c. Floors (sweep, damp mop when necessary) in Multi-purpose
 - d. Mirrors in Multi-purpose
2. General cleaning and maintenance in Multi-purpose, hall, lockers, restrooms after outside (non Dance Association) use of Multi-purpose, including damp mop of floor when used by outside parties.
3. Garbage Collection