

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **JULY 26, 2011**

From: *JD* **JAMES DURFEE / MARK RIDEOUT** *MR*

Subject: **LEASE AGREEMENT – COURTHOUSE ATHLETIC CLUB**

ACTION REQUESTED / RECOMMENDATION: Adopt a Resolution delegating authority to the Director of Facility Services, or his designee, to negotiate and execute a new lease agreement between the County of Placer and 49 Fitness, Inc., dba Courthouse Athletic Club for the health club facility located at the Placer County Government Center, based on the attached Material Terms, and subject to approval by County Counsel and Risk Management.

BACKGROUND: The Courthouse Athletic Club, operated by 49 Fitness, Inc., (CAC) has managed a health club facility at the Placer County Government Center in Auburn (PCGC) since 1980. CAC's latest lease of the 21,022 square foot facility at 11558 F Avenue, Auburn commenced in 2006 and expired on October 31, 2009. This lease included key provisions to allow CAC to remain fiscally sustainable until its projected closure in 2009. These provisions included a 3-year defined term with no options, a 25% rent reduction during the final six months of the term, and a plan for repayment of accumulated past due balances. Subsequent changes CAC's business plan and in the County's schedule to reuse this portion of the PCGC have facilitated an ongoing month-to-month holdover tenancy. Even with the improvements that CAC has made over the years, the facility is now nearing the end of its useful lifespan and continued operation of the 67-year-old building is proving uneconomical. The Comprehensive Facilities Master Plan update, as presented to your Board on March 22, 2011, by Facility Services, identifies the area including the CAC facility as a site for potential commercial development.

Property Management responded to CAC's request for a term-lease and negotiated an agreement that will achieve both the County's goals to accommodate future development while generating revenue and CAC's ability to sustain operations in its final years. The attached Material Terms detail a 3-year Initial Term, which may be followed by one 2-year and five 1-year Option Terms. All of the Option Terms would require 180-days advance written notice from CAC and the County's written consent or refusal prior to the beginning of the Option Term. CAC's ability to exercise any Option Term would be subject to CAC not being in default of its payment schedule or any other lease provision at the commencement of the Option Term. The 2-year Option Term would contain termination language so that either party could terminate the Lease upon 12-months advance written notice. Based on the \$0.43 per square foot per month rental rate that your Board approved on January 11, 2011, monthly rent will commence at \$9,039.46. This rent will continue throughout the Initial Term, and annual rental adjustments based upon the Consumer Price Index would begin at commencement of a 2-year Option Term.

Staff acknowledges that CAC has been affected by the recent downturn in the economy, which has resulted in its declining membership and revenues. Coupled with increasing costs to maintain the aging facility while consistently paying its current rent, CAC has failed to satisfy the terms of its earlier repayment plan. As a result, CAC has a current outstanding balance of approximately \$34,000, which includes the equivalent of one-month rent for security deposit. Staff has determined that it would be more advantageous for both parties if a significant majority of the balance were paid up front thereby avoiding a longer term installment plan with accumulating interest charges.

As is typical in commercial leases, Staff negotiated one month of free rent for each of the three years of the Initial Term. CAC must replace these monthly rent payments with three installments of \$9,039.46 that will be applied towards the outstanding balance. After applying these payments the remaining balance would be reduced to approximately \$6,800. As a condition of the Lease, CAC would pay this remaining balance by making twelve consecutive monthly payments of approximately \$600 (based upon 10% interest). The shorter-term payment plan and defined Initial and Option Terms of this Lease Agreement would allow the planned closure of the CAC to occur in a timely manner and enable the County to accommodate future development in this portion of PCGC.

In order to proceed with the leasing actions necessary for continued occupancy, Facility Services requests that your Board direct staff to complete the Agreement and approve the attached Resolution authorizing the Director of Facility Services, or his designee, to complete and execute the Agreement following approval by County Counsel and Risk Management and, to carry out the terms and conditions of the Lease Agreement.

ENVIRONMENTAL CLEARANCE: The lease of this facility is Categorically Exempt from review pursuant to Section 15301 of the California Environmental Quality Act. This Section provides for activities, including leasing of existing facilities, when there is no expansion of use beyond that previously existing.

FISCAL IMPACT: This Lease Agreement will generate approximately \$298,302 during the three-year Initial Term. The rent received will be deposited into the DeWitt Development Fund and used towards the ongoing operation and maintenance of PCGC Facilities.

JD:MR:LM:NT:DB

ATTACHMENT: RESOLUTION
EXHIBIT A – MATERIAL TERMS OF LEASE AGREEMENT

cc: COUNTY EXECUTIVE OFFICE

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Before the Board of Supervisors County of Placer, State of California

In the matter of: A RESOLUTION AUTHORIZING THE
DIRECTOR OF FACILITY SERVICES, OR HIS DESIGNEE,
TO NEGOTIATE AND EXECUTE A LEASE AGREEMENT
BETWEEN THE COUNTY OF PLACER AND 49 FITNESS, INC.
DBA COURTHOUSE ATHLETIC CLUB FOR THE CONTINUED
OCCUPANCY OF THE FACILITY LOCATED AT THE
PLACER COUNTY GOVERNMENT CENTER
AT 11558 F AVENUE, AUBURN, CA

Resol. No: _____

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, 2011 by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:

Chairman, Board of Supervisors

Clerk of said Board

WHEREAS, Since 1980, 49 Fitness, Inc. dba the Courthouse Athletic Club (CAC) has leased the 21,022 square foot CAC facility located at the Placer County Government Center (PCGC) at 11558 F Avenue, in Auburn, CA from the County of Placer; and,

WHEREAS, CAC desires to continue leasing the facility based upon the Material Terms attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED, that the Placer County Board of Supervisors does hereby authorize the Director of Facility Services, or his designee, to negotiate and execute a Lease Agreement based on the Material Terms attached hereto as Exhibit A, between the County of Placer and CAC, for the CAC's occupancy of the facility located at PCGC at 11558 F Avenue, in Auburn, CA; and execute the Lease Agreement on behalf of your Board subject to approval of County Counsel and Risk Management.

EXHIBIT A – MATERIAL TERMS OF LEASE AGREEMENT



COUNTY OF PLACER FACILITY SERVICES DEPARTMENT

Phone 530-886-4900 Fax 530-889-6809
www.placer.ca.gov

JAMES DURFEE, DIRECTOR
MARY DIETRICH, ASSISTANT DIRECTOR
WILL DICKINSON, DEPUTY DIRECTOR
JOEL SWIFT, DEPUTY DIRECTOR
MARK RIDEOUT, DEPUTY DIRECTOR
VALERIE BAYNE, ADMIN. SVS. MANAGER

July 11, 2011

Art Chappell
Courthouse Athletic Club
11558 F Avenue
Auburn, CA 95603

Dear Mr. Chappell,

RE: Proposed Material Terms for Courthouse Athletic Club's New Lease Agreement

This letter serves to memorialize the proposed Material Terms that will become the basis of the new Lease Agreement between the County and the Courthouse Athletic Club once approved by the County Board of Supervisors:

Lease Term: 3-year initial term with one 2-year option followed by five 1-year options. All of the options would require CAC's written notification to the County at least 180 days prior to the expiration of the existing term and will require the County's written consent or refusal prior to the beginning of the option term. CAC's ability to exercise any option is subject to CAC not being in default of any term of the Lease and in particular CAC's payment in full of arrears. Should CAC be in default of its agreed upon payment schedule or any other lease provision at commencement of the option term, then the option shall be null and void. Acknowledgement language will be added to the Lease recitals to address the potential for development that would encompass CAC's existing Premises and that this may be a basis for withholding consent.

Termination by CAC: Subject to CAC not being in default of any term of the Lease and in particular CAC being current on its payment of rent and other charges:

- During the first 2-year option, either party may terminate the Lease, upon 12 months advance written notice to either party.
- During any of the option terms, CAC may terminate the Lease by providing no less than 60 days and no greater than 365 days advance written notice to County. Following receipt of such early termination notice, the monthly Rent during the remaining months of the option term will be reduced accordingly:
 1. For term remaining that is six months or less, the monthly rent will be reduced by 50%.
 2. For term remaining that is between six and twelve months, the current monthly rent will be reduced by 25%.

Rent: Effective January 1, 2011 and throughout the 3-year initial term, the monthly Rent will be \$9,039.46. No rental adjustments will be imposed during the initial term. However, annual rental adjustments based upon the Consumer Price Index (CPI) will begin at commencement of the 2-year option term.

11476 C Avenue Auburn CA 95603
Entrance at 2855 2nd Street

Administration – Building Maintenance – Capital Improvements – Museums – Parks
Property Management – Environmental Engineering – Utilities

Mr. Art Chappell
Courthouse Athletic Club
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Free Rent and Rent Reductions: CAC will be granted three month's free rent contingent upon CAC replacing these three monthly rent payments with three installments of \$9,039.46 that will be applied towards CAC's balance owed resulting in a remaining balance of approximately \$6,800.00 (Based on a current outstanding balance of \$34,000). This amount would then be paid in twelve monthly payments of approximately \$600.00 per month (based on 10% interest).

Tenant Improvements Provided by Placer County: The County will:

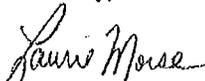
- Continue to maintain the parking lot through the patching of holes and sealing of cracks as needed and as resources are available. Striping may also be provided at County's discretion.
- Spread road base in the area located between the east side of the CAC building and the drainage reservoir.
- Deduct the verified cost of paint from past due rent.

Roof Maintenance: CAC will conduct such inspections by retaining the services of a Structural Engineer suitable to the County. The scope of such inspection shall include those areas which are reasonably visible and accessible. Following this inspection the engineer will provide an original brief summary letter to the County as well as to CAC. Any improvements, modifications and/or alternations recommended or required as a result of these inspections will be at the expense of the CAC.

Post Acquisition Tenant and Waiver of Relocation Reimbursement. CAC agrees to the County's "post-acquisition tenant" language. This language indicates that CAC is not eligible for relocation costs as a "displaced person" upon termination of the Lease.

Staff will recommend these terms contingent on CAC's maintenance of a current status and provision of structural reports pursuant to the current Lease. If these proposed terms are acceptable, please sign below and return your signature page to my attention. Upon receipt, staff will prepare its staff report targeting the July 26th Board of Supervisors meeting to recommend that the Board authorize the Director of Facility Services to execute the new Lease Agreement, based on these Material Terms.

Sincerely,


Laurie Morse
Property Manager

cc: Jim Durfee
Mark Rideout

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Courthouse Athletic Club (CAC) accepts and agrees to the incorporation of the above Material Terms into the preparation of a new Lease Agreement between CAC and the County. CAC and the County recognize and agree that the enforceability of the terms of any future resulting lease agreement shall be subject to prior approval by the Placer County Board of Supervisors or its designee, and CAC.

ACCEPTANCE OF MATERIAL TERMS



A handwritten signature in cursive script, appearing to read 'Art Chappell', is written over a horizontal line.

DATE: 7/11/11