

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
BOARD OF DIRECTORS MEETING**

DATE: March 14, 2018
TO: Board of Directors
FROM: Kelly McCullough, Finance Manager
REVIEWED BY: Rafael Payan, General Manager
SUBJECT: Consideration and Approval of Facility Use Agreement with Carmel Little League for De Dampierre Baseball Park

RECOMMENDED ACTION

Staff respectfully recommends renewing the Draft Facility Use Agreement with Carmel Little League for use of the De Dampierre Baseball Park

FISCAL IMPACT:

Five Dollars (\$5.00) Revenue

FUNDING SOURCE:

Not applicable

FUNDING BALANCE:

Not applicable at this time.

DISCUSSION:

Staff recently met with John Lockwood, President of the Carmel Little League, doing business as Carmel Unified Youth Baseball (CUYB) and discussed renewal of the De Dampierre Baseball Park Facility Use Agreement (**ATTACHMENT 1**). The last agreement was entered into on July 1, 2008. That agreement was for a five (5) year term with the option to extend for an additional five (5) years.

Carmel Little League has been using the De Dampierre Park in Carmel Valley to conduct its yearly recreational baseball training and playing activities for the youth of Carmel and Carmel Valley for many years. CUYB desires to renew the agreement. Use of the site includes three existing playing fields and associated facilities (including parking lots, announcer's booths, bleacher seating, snack bar, barbeque, restrooms and picnic areas). The term of the new agreement would run from August 1, 2018 through July 31, 2023, a 5-year term, with an option to extend the term for an additional five (5) year period. Rent for each five (5) year term is \$5.00. The attached agreement provides more clarification than the previous agreement on the CUYB's responsibilities and insurance requirements. Staff has negotiated the terms with CUYB and CUYB has agreed to the terms.

When the premises are not in use by the Carmel Little League, the playing fields and picnic areas shall be made available for use by other members of the public. Use is on a first come basis.

Staff respectfully recommends that the Board approve the agreement for Carmel Little League's continued use of De Dampierre Park.

ATTACHMENTS:

1. Draft De Dampierre Baseball Park Facility Use Agreement

**MONTEREY PENINSULA REGIONAL PARK DISTRICT
DE DAMPIERRE BASEBALL PARK FACILITY USE AGREEMENT**

This Park Facility Use Agreement ("Agreement") is made and effective as of the 1st day of July, 2018, by and between Monterey Peninsula Regional Park District ("MPRPD"), a special district of the State of California, whose address is 60 Garden Court, Suite 325, Monterey, CA 93940, and Carmel Little League, DBA Carmel Unified Youth Baseball (CUYB), a California non-profit corporation governed by the provisions of California's Nonprofit Corporation Law ("CUYB"), whose address is P.O. Box 222895, Carmel, CA 93922. MPRPD and CUYB, in consideration of the mutual promises contained herein, agree as follows:

MPRPD is the owner of land and improvements commonly known and numbered as De Dampierre Park, 55 Paso Hondo, Carmel Valley, CA 93924 (the "Property") and legally described as follows ("Premises"): see attached "Exhibit A."

CUYB is in need of property upon which to conduct its yearly recreational baseball training and playing activities for the youth of Carmel and Carmel Valley. MPRPD owns property which is particularly well suited and sited for such use, and desires to enhance the recreational opportunities of the residents of Carmel, Carmel Valley, and of the District by making the subject property available for use by CUYB for its recreational baseball activities.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

I. PREMISES

MPRPD rents to CUYB, and CUYB rents from MPRPD that certain real property consisting of three existing playing fields and associated facilities (including parking lots, announcer's booths, bleacher seating, snack bar, barbeque, restrooms and picnic areas) located in Carmel Valley and more commonly referred to as De Dampierre Park.

II. TERM

MPRPD hereby rents the Premises to CUYB, and CUYB hereby rents the same from MPRPD, for an "Initial Term" beginning August 1, 2018 and ending July 31, 2023; provided, however that CUYB or MPRPD may terminate this AGREEMENT by giving at least thirty (30) days written notice to either party.

MPRPD shall use its best efforts to give CUYB possession as nearly as possible at the beginning of the AGREEMENT Term. If MPRPD is unable to timely provide the Premises, rent shall abate for the period of delay. CUYB shall make no other claim against MPRPD for any such delay.

Any holding after the terms of this agreement expires, with MPRPD's consent, shall create a month-to-month tenancy that either party may terminate by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable laws. Such notice may be given on any date.

III. OPTION TO EXTEND

Under the condition that the CUYB is not in default of any provisions of the AGREEMENT, CUYB is given the option to extend the term for an additional five (5) year period, following expiration of the initial term. The extended time period is subject to MPRPD's written approval. Approval will not be unreasonably withheld. On the date that is 3 months prior to the expiration of the initial term (the "Exercise Date"), CUYB shall automatically be deemed to have provided notice to MPRPD of its intent to renew the Agreement unless, prior to that date, CUYB has notified MPRPD that CUYB does not wish to exercise such extension option. Provided that, if CUYB is in default beyond any applicable cure period on the Exercise Date, the exercise of the option shall be totally ineffective, or if to commence, the extended term shall not commence and this agreement shall expire at the end of the initial term.

IV. RENT

CUYB shall pay to MPRPD as rent for each five (5) year term, the sum of \$5.00, to be paid in advance on the first day of commencement of the initial term or each extended term. All rent shall be paid to MPRPD at the following address: Monterey Peninsula Regional Park District, 60 Garden Court, Suite 325, Monterey, CA 93940.

V. USE

The premises are for sole use as **Carmel Little League**. CUYB may use the premises for recreational "PONY" baseball and related uses provided, however, that the playing fields and picnic areas, when not in actual use by the CUYB, shall be made available for use by other members of the public, subject to reasonable rules and regulations established by CUYB and approved in writing by MPRPD.

When not in actual use by the CUYB, non-exclusive public use of the playing fields and picnic area, excluding the barbecue area shall be on a first come basis. Exclusive use of the playing fields, picnic area and barbecue shall be by reservation with a representative of the CUYB. Fees and conditions for such exclusive use shall be subject to prior written approval by MPRPD.

CUYB's Initials(_____)

MPRPD's Initials (_____)

CUYB shall not unlawfully discriminate against users or potential users of the premises.

No other use is permitted without the MPRPD's prior written consent. Notwithstanding the forgoing, CUYB shall not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device. CUYB must abide by all applicable laws and regulations affecting use of the Premises.

VI. SUBLEASE AND ASSIGNMENT

CUYB shall not assign this Agreement.

VII. REPAIRS AND MAINTENANCE

CUYB, at its sole cost, shall maintain in good condition all portions of the premises, including, without limitation, all CUYB's personal property. CUYB shall keep the premises and structures in a neat and safe condition of repair, reasonably satisfactory to MPRPD. Notwithstanding the foregoing, CUYB shall not be responsible for the repair or replacement of damage or destruction that is related to uses by the public not connected with or arising out of CUYB's use and activities.

During the Term, CUYB shall make, at CUYB's sole expense, all necessary repairs to the Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, the exterior walls and hallways, however including interior walls and all plaster, tile, structural glass and glazing, light fixtures, interior plumbing, hereby waiving all rights as provided in Sections 1941 and 1942 of the Civil Code of the State of California. CUYB shall, in maintaining said premises in good sanitary order and condition, hire or furnish their own janitorial service without any expense to the MPRPD.

TENANT agrees to perform the following obligations:

- A.** To keep the premises as clean and sanitary as their conditions permit including restrooms;
- B.** To dispose of all rubbish, garbage, and other waste in a clean and sanitary manner;
- C.** To refrain from willfully or wantonly destroying, defacing, damaging, impairing, or removing any part of the premises or the facilities, equipment, or appurtenances, or permitting any person on the premises to commit such acts; and,

CUYB's Initials(_____)

MPRPD's Initials (_____)

D. To reasonably refrain from disturbing, annoying, or interfering with the occupants of the neighboring properties. CUYB may not use the premises for any unlawful purpose, violate any law or ordinance, or permit waste or nuisance on the premises.

VIII. ALTERATIONS AND IMPROVEMENTS

CUYB shall cooperate with MPRPD in developing an overall improvement plan for use of the premises for recreational baseball and related uses.

CUYB may make those improvements as set out in any approved Improvement Plan, but shall not make any other alterations or improvements to the premises without MPRPD's prior written consent.

CUYB, at CUYB's expense, shall have the right, following MPRPD's written consent, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Premises from time to time as CUYB may deem necessary or desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. CUYB shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Premises, and fasten the same to the premises. Any and all alterations to the Premises must be made in a workmanlike manner. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by CUYB at the commencement of the Term or placed or installed on the Premises by CUYB thereafter, shall remain CUYB's property free and clear of any claim by MPRPD. If CUYB is not in default of any provisions of this Agreement, CUYB shall have the right to remove the same at any time during the term of this Agreement provided that all damage to the Premises caused by such removal shall be repaired by CUYB at CUYB's sole expense to MPRPD's reasonable satisfaction.

IX. PROPERTY TAXES

CUYB shall solely pay all taxes, assessments, licenses, fees, and other charges before delinquency that are levied and assessed against CUYB's personal property installed or located in or on the premises or use thereof, and all income and sales tax levied against CUYB's business on the premises, that become payable during the term.

CUYB's Initials(_____)

MPRPD's Initials (_____)

X. INSURANCE

Public Liability and Property Damage Insurance. CUYB, at its sole cost, shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000 per incident, and property damage limits of not less than \$2,000,000 per incident, insuring against all liability of CUYB and its authorized representatives arising out of and in connection with CUYB’s use or occupancy of the premises as related to any CUYB sponsored activity and event.

All public liability insurance and property damage insurance shall insure performance by CUYB of the indemnity provisions of [see Indemnity section]. CUYB shall name MPRPD as an additional insured on said policies.

- A.** If the Premises or any other part of the Property is damaged by fire or other casualty resulting from any act or negligence of CUYB or any of CUYB's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and CUYB shall be responsible for all costs of repair not covered by insurance.
- B.** MPRPD shall maintain fire and extended coverage insurance on the Property and the Premises in such amounts as MPRPD shall deem appropriate. CUYB shall be entirely responsible, at its sole expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Premises.
- C.** Without limiting CUYB’s indemnification of MPRPD, and prior to commencement of Agreement, CUYB shall obtain, provide and maintain at its sole expense, during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to MPRPD.

General liability insurance. CUYB shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

Property insurance. Upon commencement of construction of CUYB improvements and betterments, or installation of equipment, with prior written approval of MPRPD, CUYB shall obtain and maintain insurance on CUYB’s improvements and betterments. Policy shall be provided for

CUYB’s Initials(_____)

MPRPD’s Initials (_____)

replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

Commercial property insurance. Upon commencement of construction of CUYB improvements and betterments, or installation of equipment, with prior written approval of MPRPD, CUYB shall obtain and maintain insurance on CUYB's and any improvements. Coverage shall be at least as broad as the Insurance Services Offices broad causes of loss form CP 10 20, and approved of in writing by MPRPD. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. MPRPD shall be included as an additional insured and as loss payee on any such insurance. MPRPD shall not be liable for any business income or other consequential loss sustained by CUYB. MPRPD shall not be liable for any loss of CUYB's personal property even if such loss is caused by negligence of MPRPD, MPRPD's employees or agents.

Other Insurance Provisions or Requirements

Proof of insurance. CUYB shall provide certificates of insurance to MPRPD as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for Workers' Compensation. Insurance certificates and endorsements must be approved by MPRPD's risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with MPRPD at all times during the term of this contract. MPRPD reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CUYB shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CUYB, its agents, representatives, employees, or subconsultants.

Primary/noncontributing. Coverages provided by CUYB shall be primary and any insurance or self-insurance procured or maintained by MPRPD shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of MPRPD before

CUYB's Initials(_____)

MPRPD's Initials (_____)

MPRPD's own insurance or self-insurance shall be called upon to protect it as a named insured.

MPRPD's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, MPRPD has the right but not the duty to obtain the insurance it deems necessary and any premium paid by MPRPD will be promptly reimbursed by CUYB within 10 days of receiving notice from MPRPD, or MPRPD will withhold amounts sufficient to pay premium from CUYB payments. In the alternative, MPRPD may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the California State Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved in writing by the MPRPD's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against MPRPD, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow CUYB or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CUYB hereby waives its own right of recovery against MPRPD, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non-estoppel). CUYB acknowledges and agrees that any actual or alleged failure on the part of the MPRPD to inform CUYB of non-compliance with any requirement imposes no additional obligations on MPRPD nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the CUYB maintains higher limits than the minimums shown above, MPRPD requires

CUYB's Initials(_____)

MPRPD's Initials (_____)

and shall be entitled to coverage for the higher limits maintained by the CUYB. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to MPRPD.

Notice of cancellation. CUYB agrees to oblige its insurance agent or broker and insurers to provide to MPRPD with no less than a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. Proof of such obligation shall be in the form of a special endorsement.

Additional insured status. General liability policies shall provide, or be endorsed to provide, that MPRPD and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall include endorsement covering liabilities arising out of the CUYB's "operations" in the rented space. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to, and has received, MPRPD's prior written approval.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that CUYB insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CUYB agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CUYB, provide the same minimum insurance coverage and endorsements required of CUYB. CUYB agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CUYB agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to MPRPD for review.

Agency's right to revise specifications. MPRPD reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CUYB no less than ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CUYB, MPRPD and CUYB may renegotiate CUYB's compensation.

CUYB's Initials(_____)

MPRPD's Initials (_____)

Self-insured retentions. Any self-insured retentions must be declared to and approved in writing by MPRPD. MPRPD reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved in writing by MPRPD.

Timely notice of claims. CUYB shall give MPRPD prompt and timely notice of claims made or suits instituted that arise out of or result from CUYB's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CUYB shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection.

CUYB's personal property, fixtures, equipment, inventory and vehicles shall not be insured by MPRPD against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

XI. INDEMNITY

CUYB shall hold MPRPD harmless from all damages arising out of any damage to any person or property occurring in, on, or about the premises, except that MPRPD shall be liable to CUYB for damage resulting from the acts or omission of MPRPD or its authorized representatives; or from damage to any person or property occurring in, on or about the premises and related to uses by the public not connected with or arising out of CUYB's use and activities. A party's obligation under this paragraph to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified.

Except for the sole negligence of MPRPD, CUYB shall defend, indemnify and keep and hold MPRPD, including MPRPD's officers, employees and agents, their successors and assigns, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of CUYB, sustained in, on or about the demised premises or arising out of CUYB's use or occupancy thereof, as a proximate result of the acts or omissions of CUYB, its employees and agents, or its contractors, licensees, invitees or subtenants, their successors and assigns or arising out of the condition of the property. MPRPD shall, by written notice to

CUYB's Initials(_____)

MPRPD's Initials (_____)

CUYB, advise CUYB as soon as practicable regarding any potential liability of CUYB under this Section.

XII. UTILITIES

CUYB shall solely pay all charges for water, sewer, gas, electricity, telephone and other services, utilities, and connection charges used by CUYB on the Premises during the term of this Agreement unless otherwise expressly agreed in writing by MPRPD.

XIII. OBTAINING ZONING AND OTHER PERMITS

CUYB, at its sole cost, shall be responsible for obtaining any required permits necessary for the conduct of CUYB's use of the premises.

XIV. SIGNS

Following MPRPD's prior written consent, CUYB shall have the right to place on the Premises, at locations selected by CUYB, any signs which are permitted by applicable zoning ordinances and private restrictions. MPRPD may refuse consent to any proposed signage that is in MPRPD's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Premises or use of any other tenant. MPRPD shall assist and cooperate with CUYB in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for CUYB to place or construct the foregoing signs. CUYB shall repair all damage to the Premises resulting from the installation or removal of signs installed by CUYB. CUYB authorizes the MPRPD to place a "For Sale" sign on the Premises at any time, and a "For Rent" sign on the Premises within the ninety (90) day period preceding termination of this Agreement.

XV. ENTRY

MPRPD and its authorized representatives shall have the right to enter the premises at any time.

XVI. PROPERTY RULES

TENANT will comply with all MPRPD applicable rules for De Dampierre Park, and applicable District-wide ordinances.

CUYB's Initials(_____)

MPRPD's Initials (_____)

XVII. PUBLIC REGULATIONS

CUYB shall not, either by act or omission, place MPRPD in a position where it is in violation of its statutory powers or duties as set forth in the Public Resources Code, Sections 5500 et seq. as said sections exist or may hereinafter be amended, or any other rule or regulation governing the powers, duties and obligations of MPRPD, anything herein to the contrary notwithstanding.

XVIII. DAMAGE AND DESTRUCTION

If for any reason the premises or any part thereof are damaged and or deemed unusable, the MPRPD shall not be held liable. Either party may terminate this agreement on no less than 30 days written notice.

XIX. DEFAULT

Failure to perform any provision of this Agreement, if the failure to perform is not cured within 30 days after written notice has been given to CUYB, shall constitute a default by CUYB; provided that, if such performance cannot be completed within the 30-day period, CUYB shall not be in default under this Agreement if CUYB in good faith commences performance within the 30-day period and diligently and in good faith proceeds therewith to completion. MPRPD's remedies, in the event CUYB commits a default, shall include in addition to any remedies now or later allowed by law, the right to terminate CUYB's right to possession of the premises at any time, by giving written notice to CUYB of said termination of possession.

If default shall at any time be made by CUYB for any reasons, including but not limited in the payment of rent when due to MPRPD as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to CUYB by MPRPD, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by CUYB, and such default shall continue for fifteen (15) days after notice thereof in writing to CUYB by MPRPD without correction thereof then having been commenced and thereafter diligently prosecuted, MPRPD may declare the term of this Agreement ended and terminated by giving CUYB written notice of such intention, and if possession of the Premises is not surrendered, MPRPD may reenter said premises. MPRPD shall have, in addition to the remedy above provided, any other right or remedy available to MPRPD on account of any CUYB default, either in law or equity. MPRPD shall use reasonable efforts to mitigate its damages.

CUYB's Initials(_____)

MPRPD's Initials (_____)

XX. MEDIATION

Prior to filing any court action, the parties agree that they shall first participate in mediation of any dispute arising under this Agreement. The mediator shall be selected by agreement of the parties, or if they are unable to agree upon a mediator, the mediator shall be selected by the Presiding Judge of the Superior Court of Monterey County. The cost of mediation shall be borne by the parties equally. At least 10 calendar days before the date of the mediation, each side shall provide the mediator with a statement of its position and copies of all supporting documents. Each party shall send to the mediation a person who has authority to bind the party. If a party has participated in the mediation and is dissatisfied with the outcome, that party may proceed with filing of appropriate court action.

XXI. CONDEMNATION

If any legally constituted authority condemns the Premises and/or Property or such part thereof which shall make the Premises unsuitable for renting, this Agreement shall cease when the public authority takes possession, and MPRPD and CUYB shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

XXII. SUBORDINATION

CUYB accepts this Agreement subject and subordinate to all existing mortgage, deed of trust or other lien presently existing or hereafter arising upon the Premises, or upon the Property and to any renewals, refinancing and extensions thereof, but CUYB agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion.

XXIII. NOTICE

All notices shall be deemed properly delivered if in writing and delivered personally or mailed first class, postage prepaid to the parties shown in the opening paragraph of this Agreement.

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States Postal Service certified mail, return receipt requested, addressed as follows:

CUYB's Initials(_____)

MPRPD's Initials (_____)

If MPRPD to: Monterey Peninsula Regional Park District
Attn: General Manager
60 Garden Court, Suite 325
Monterey, CA 93940

If CUYB to: Carmel Unified Youth Baseball
Attn: President
P.O. Box 222895
Carmel, CA 93922

MPRPD and CUYB shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

XXIV. WAIVER

The waiver of any breach of any term, condition and/or obligation under this Agreement shall not be construed as a continuing waiver of the same breach or a waiver if any subsequent breach.

XXV. SUCCESSORS

The provisions of this Agreement shall extend to and be binding upon MPRPD and CUYB and their respective legal representatives, successors and assigns.

XXVI. CONSENT

MPRPD shall not unreasonably withhold or delay its consent with respect to any matter for which MPRPD's consent is required or desirable under this Agreement. CUYB shall not unreasonably withhold or delay its consent with respect to any matter for which CUYB's consent is required or desirable under this Agreement.

XXVII. PERFORMANCE

If there is a default with respect to any of MPRPD's covenants, warranties or representations under this Agreement, and if the default continues more than fifteen (15) days after notice in writing from CUYB to MPRPD specifying the default, CUYB may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until CUYB shall have been fully reimbursed for such expenditures. If this Agreement terminates prior to

CUYB's Initials(_____)

MPRPD's Initials (_____)

CUYB's receiving full reimbursement, MPRPD shall pay the unreimbursed balance to CUYB on demand.

XXVIII. ENTIRE AGREEMENT

This Agreement contains all the agreements of the parties and cannot be amended or modified except by a written agreement and consent by both parties.

XXIX. SEVERABILITY

The unenforceability, invalidity, or illegality or any provision shall not render the other provisions unenforceable, invalid, or illegal.

XXX. COMPLIANCE WITH LAW

CUYB shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to CUYB's use of the Premises. MPRPD shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Premises.

XXXI. FINAL AGREEMENT

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof by and between MPRPD and CUYB. This Agreement may be modified only by a further writing that is duly executed by both parties.

XXXII. GOVERNING LAW

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of California and venue shall only be in the County of Monterey.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CUYB _____ Date _____
(Signature)

(Print name & Title)

Address _____ City _____ State _____ Zip _____

CUYB's Initials(_____)

MPRPD's Initials (_____)

MPRPD agrees to rent the Premises on the above terms and conditions.

MPRPD _____ Date _____
(Signature)

(Print Name & Title)

Address _____ City _____ State ____ Zip _____

CUYB's Initials(_____)

MPRPD's Initials (_____)