

RESOLUTION NO. 2178-07

**A RESOLUTION OF THE WINDSOR TOWN COUNCIL APPROVING
AMENDMENT NO. 3 TO THE GROUND LEASE AND DEVELOPMENT AGREEMENT
BETWEEN THE TOWN OF WINDSOR AND THE WINDSOR LIONS CLUB AND
AUTHORIZING TOWN MANAGER TO EXECUTE ON BEHALF OF TOWN**

WHEREAS, the Town of Windsor ("Town") is party to an agreement with the Windsor Lions Club ("Lions Club") entitled "Ground Lease and Development Agreement/Lakewood Meadows Park Community Center," dated December 3, 1991; and,

WHEREAS, the Town Council has approved the First Amendment to the agreement on May 4, 1994 and a Second Amendment to the agreement on July 5, 1995; and,

WHEREAS, the Town owns the subject property and recognizes the contributions that Lions Club has made in the development of the Lakewood Meadows Park Community Center, now known as the Windsor Community Center; and,

WHEREAS, the Town desires to continue to partner with the Lions Club by leasing office and storage space, reserving meeting and event space, and offering the first right of refusal to operate a beverage concession to facility renters; and,

WHEREAS, the Town and Lions Club wish to amend the Agreement to reflect the partnership between the Town and the Lions Club; and,

WHEREAS, the Lions Club Board of Directors has reviewed and approved Amendment No. 3 to the Ground Lease and Development;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Windsor hereby approves Amendment No. 3 to the Ground Lease and Development Agreement between the Town and Lions Club and authorize the Town Manager to execute said Amendment No 3 attached hereto and incorporated herein as Exhibit A.

PASSED, APPROVED, AND ADOPTED this 14th day of November, 2007 by the following vote:

AYES: COUNCILMEMBERS ALLEN, FUDGE, GOBLE, SALMON
NOES: NONE
ABSTAIN: NONE
ABSENT: MAYOR PARKER



DEBORA FUDGE, MAYOR PRO TEM

ATTEST:



MARIA DE LA O, TOWN CLERK

Exhibit A: Third Amendment to Ground Lease and Development Agreement

**THIRD AMENDMENT TO GROUND LEASE AND DEVELOPMENT AGREEMENT
Windsor Community Center**

This Third Amendment (“Third Amendment”) to Ground Lease and Development Agreement (“Ground Lease”) is made on _____, 2007, between the Town of Windsor, a municipal corporation, as assignee pursuant to Assignment of Lease dated September 29, 1992 (LANDLORD), and the WINDSOR LIONS CLUB, a private non-profit corporation (TENANT), for the purpose of making certain amendments to the Ground Lease.

Section 1

Paragraph 15 is deleted and a new paragraph 15 is added to read as follows:

“15. INSURANCE

TENANT shall procure and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Lease hereunder by the TENANT, TENANT’s agents, representatives, employees and volunteers. TENANT shall comply with the insurance requirements which are required by LANDLORD at the time of the execution, or any amendment thereof, of this Lease in Exhibit “F”, attached hereto and incorporated herein by reference. The LANDLORD shall review the insurance requirements and coverage on an as needed basis and, if deemed appropriate, shall request that LANDLORD obtain additional insurance coverage as identified by the LANDLORD. If TENANT fails or refuses to procure or maintain insurance as required by this Lease, or fails or refuses to furnish LANDLORD with required proof that the insurance has been procured and is in force and paid for, LANDLORD shall have the right, at LANDLORD’S election and with notice, to terminate this Lease.

Section 2

Paragraph 18 is deleted and a new paragraph 18 is added to read as follows:

“18. BEVERAGE CONCESSION.

LANDLORD agrees to authorize TENANT to maintain a beverage concession at the Windsor Community Center and the Windsor Town Green, subject to the terms and conditions of a separately executed “License Agreement for Beverage Concession” by and between LANDLORD and TENANT. The “License Agreement for Beverage Concession” shall not exceed the term of this lease established in Paragraph 3.” The term of the “License Agreement for Beverage Concession” shall be for a three-year period, with the option to renew at the sole discretion of the LANDLORD.”

Section 3

Exhibit C is repealed in its entirety and a new Exhibit C, in the form attached hereto, is added to the Ground Lease and Development Agreement.

Section 4

Exhibit F is repealed in its entirety and a new Exhibit F, in the form attached hereto, is added to the Ground Lease and Development Agreement.

Section 5

Except as set forth above, the "Ground Lease and Development Agreement," made on December 3, 1991, amended by the First Amendment on May 4, 1994, and amended by the Second Amendment on July 6, 1995, shall remain in full force and effect.

TOWN OF WINDSOR

Dated: _____

by _____
J. Matthew Mullan, Town Manager

WINDSOR LIONS CLUB

Dated: _____

by _____
Jim Boyer, President

Attachments:
Exhibit C
Exhibit F

EXHIBIT "C"

Revised November 14, 2007

The Windsor Lions Club (Tenant) may use the identified areas of the Windsor Community Center ("Community Center") during the times stated herein and as established by the Town of Windsor ("Town"):

1. The Windsor Lions Club shall abide by all policies outlined in the Facility Use and Reservation Policy unless otherwise stated in this Exhibit.
2. The right to occupy and maintain one of the Windsor Community's Center's offices and closet on stage for the purpose of storage.
3. The right to display a four-by-six (4 x 6) foot Windsor Lions Club display cabinet in a prominent location of the Windsor Community Center.
4. The right to use a meeting room and kitchen in the Windsor Community Center for weekly meetings at no cost to the Tenant, for up to four hours per week scheduled in advance in January for the following year. The use of the kitchen includes a portion of the refrigerator and freezer as identified by the Town. Food must be stored in marked containers and be monitored by Tenant to meet Sonoma County, Health Services, Environmental Health Division standards regarding the storage and removal of expired food.
5. The right to schedule in advance and use the entire Community Center building for up to twelve (12) days per year for 50% of the established resident/non-profit rate charged by the Town for the rental of the Community Center including Elsbree Hall, Renee Room, South Room, kitchen and security/damage deposit. Tenant shall be charged the established resident/non-profit rate to use all other Town facilities, including parks, athletic fields, the Senior Center, and the Huerta Gym.
6. The right to install and use a telephone in the office, costs paid by Tenant.
7. The Town shall have access to office space for fire and safety inspections. The Town is not required to give advance notice for fire and safety inspections.
8. Tenant shall report any maintenance and/or repair issues, any unusual behavior observed at the Community Center, and any accidents and/or other incidents associated with the Community Center.

EXHIBIT "F"

Revised November 14, 2007

Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.
3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Licensee shall sign a declaration as described in California Health and Safety Code Section 19825.
4. Host Liquor Excess Liability as required by the State of California whenever alcohol is being served or sold.

Minimum Limits of Insurance. TENANT shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Worker's Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease, if applicable.
4. Host Liquor Liability: \$1,000,000 (occurrence form CG 0033).

Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the LANDLORD. At the option of the LANDLORD, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the LANDLORD, its officers, officials, employees and volunteers, or the TENANT shall provide a financial guarantee satisfactory to the LANDLORD guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions: The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The LANDLORD, its officers, officials, employees and volunteers are to be covered as Insureds as respects: liability arising out of work or operations as performed by or on behalf of the TENANT; or automobiles owned, leased, hired or borrowed by the TENANT.
2. For any claims related to this agreement, the TENANT's insurance coverage shall be primary insurance as respects the LANDLORD, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the LANDLORD, its officers, officials, employees or volunteers shall be in excess of the TENANT's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt, requested, has been given to the LANDLORD.
4. The Worker's Compensation endorsement shall contain a Waiver of Subrogation against the LANDLORD. The TENANT shall provide to the LANDLORD an endorsement from the Worker's Compensation insurer, if any, agreeing to waive all rights of subrogation against the LANDLORD for injuries to employees for the Insured resulting from work for the LANDLORD or use of the LANDLORD's premises or facilities.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the LANDLORD.

Verification of Coverage. TENANT shall furnish the LANDLORD with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the LANDLORD or on other than the LANDLORD's forms provided those endorsements conform to the LANDLORD's requirements. All certificates and endorsements are to be received and approved by the LANDLORD after Lease commences. The LANDLORD reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time."