

**USE AGREEMENT BETWEEN
TOWN OF YOUNTVILLE
AND
DONAVAN'S WELLNESS SOLUTIONS**

This Use Agreement is effective as of July 16, 2024 (the "Effective Date"), by and between the Town of Yountville, a municipal corporation, ("Town") and Donovan's Wellness Solutions, a California limited liability company ("User") (collectively, "Parties"; individually "Party") ("Agreement").

RECITALS

WHEREAS, Town is the owner of that certain real property located at 6554 Yount Street, Yountville, CA 94599 (APN 036-070-026-000) and certain improvements thereon, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Site").

WHEREAS, the Town of Yountville has a goal of providing interim use of the Site to include a wellness center available to the community.

WHEREAS, the Parties hereto desire to enter into this Agreement for use and operation of the Site for outdoor recreation and/or as an indoor recreation and fitness center.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the, parties hereto agree as follows:

I. Term

This term of this Agreement shall commence on the Effective Date and shall remain in effect for a period of five (5) years, unless extended by written agreement of the Parties or terminated earlier in accordance with Section XI ("Termination") below.

II. User's Use of Site

A. The Town will make the Site available to User for the following activities:

Operation of a fitness center to include providing equipment and staffing for a workout gym to include stationary equipment and various fitness classes.

B. Use of the Site by User shall not be inconsistent with or interfere with the regular conduct of Town business at, on, or near the Site.

C. The Town grants User the use of those parking areas and structures necessary for the full utilization of said Site during such periods when said Site is used for the aforementioned activities in accordance herewith.

III. User's Duties

A. User shall, at its sole cost and expense, be responsible for:

- i. Beginning on September 1, 2024 or when improvements are completed (the "Operating Date"), operating and making the Site available for use by members as follows:
 - a. Hours of Operation:
 1. Between 7:00 a.m. to 7:00 p.m. on Mondays through Thursdays; and
 2. Between 8:00 a.m. to 2:00 p.m. on Fridays through Sundays.
 - b. User may reduce or increase these hours of operation upon written consent from the Town.
 - c. Notwithstanding the foregoing, User shall not be required to operate or open the Site on federal holidays or when operation of the Site is infeasible due to, including but not limited to, local weather disasters or building maintenance issues, provided, however, that User must operate a minimum of 346 days per calendar year.
- ii. Charging the Membership Rates described in **Exhibit B**, attached hereto and incorporated herein by reference, for access to and use of the Site.
- iii. All maintenance responsibilities described in **Exhibit C**, attached hereto and incorporated herein by reference.
- iv. Ensuring User's use of the Site is under the direct supervision of a responsible employee or agent of User who will be present at all times during such use.
- v. Collecting and processing any and all payments for the services provided or products sold by User at the Site.
- vi. Any special setup required for User's use of the Site.
- vii. Providing all materials, equipment, staffing, and supervisory personnel necessary for User's activities, it being understood and agreed, however, that certain permanent equipment owned by the Town on Site may be used for such activities upon approval of the Town Manager.

- viii. Designating a point of contact for Town to communicate with for all urgent operational problems and providing Town notice of changes in reporting personnel within one (1) week of the change.

Complying with (and causing any and all of its employees, agents, visitors, and licensee, to comply with) all laws, codes, statutes, ordinances and regulations applicable to this Agreement and use of the Site. User shall neither discriminate nor permit discrimination against any person or group of persons on the grounds of race, sex, creed, national origin, color, disability as defined by law, religion, age, medical condition, marital status, ancestry, sexual orientation, or other protected basis. A breach of this provision is cause for termination of the Agreement. In the event of a breach of this provision, and a failure to cure such breach within a period of thirty (30) days following Town's written notice specifying that a breach has occurred, Town shall be entitled to terminate this Agreement.

- B. User acknowledges that it has fully inspected the Site and accepts the same, in its existing condition, and agrees that no demands for alterations, repairs, or additions are to be made upon the Site. If a change is noted in Site condition or Site has in some way been damaged, User acknowledges the responsibility for informing Town of the situation as soon as possible after learning of the change or damage. User shall, at its own expense, maintain the Site in good working order and repair and in a neat, clean and sanitary condition. User shall surrender the Site at termination of the Agreement in as good a condition as received, normal wear and tear excepted. Notwithstanding the foregoing, User shall not be liable under this Agreement for damage that occurs from other activities or parties not under User's control or supervision in shared spaces.

IV. Fees

- A. In consideration for the use of the Site, on or before the Effective Date and annually thereafter, User shall pay the sum of \$1.00 per year that the Site is used for the license granted in this Agreement (the "License Fee").
- B. Beginning when User's monthly net operating revenue first meets or exceeds the Breakeven Point as defined below, User's remaining revenue will be paid to the Town on a quarterly basis. User shall submit quarterly profit and loss statements to the Town throughout the term of this Agreement.
- C. "Breakeven Point" is considered met when revenue from memberships, drop-ins, group exercise classes and on-site personal training cover the following expenses for three (3) consecutive months:
 - a. All pre-opening expenses
 - b. All capital expenses
 - c. All month-to-month expenses for operating the Site

- d. Management fee of \$12,500 per month in year one and including a 3% increase each year. \$12,875 per month in year two. \$13,261 in year three. \$13,659 in year four. \$14,068 year five.
- D. User shall maintain any and all ledgers, books of account, invoices, and other business records or documents evidencing or relating to gross operating revenues, even if there is a change of ownership, for a minimum of three (3) years, or for any longer period required by law, from the date of expiration or termination of this Agreement. All such records shall be made available for inspection, audit, and/or copying with 7 days written notice from the Town, if possible.
- E. Town reserves the right to use any and all available legal and equitable remedies to collect any License Fee(s) and/or revenues owed under this Section.
- F. Payment for use of the Site specified in this Agreement shall be made payable to the Town of Yountville, 6550 Yount St., Yountville, CA 94599.

V. Marketing

- A. Marketing is the responsibility of User.
- B. User shall have full ownership over the branding and data of Yountville Fit, Yountville Fitness, and the Yountville Fit logo.
- C. The Town shall obtain prior written approval from User before using or distributing materials or imagery containing the Yountville Fit logo, except where disclosure of Town records containing the Yountville Fit logo is required by law pursuant to court order or the California Public Records Act.
- D. The Town shall offer advertisement space in the Parks and Recreation Guide that the Town produces three times per year, at cost, to User.
- E. The Town shall include a button on the main page of the Parks and Recreation website which will direct visitors to the Yountville Fit Website.
- F. The Town Parks and Recreation Department shall send two email blasts to the entirety of the mailing list managed by Parks and Recreation and post once per quarter on Parks and Recreation and Town of Yountville social media accounts including Facebook and Instagram, promoting Yountville Fit.
- G. All exterior signage, whether permanent or temporary, must be approved by the Town prior to installation by User.

VI. Maintenance

Maintenance responsibilities of the Parties for use of the Site are set forth in **Exhibit C** hereto. Except as set forth in **Exhibit C**, the maintenance of Site shall be the responsibility of the Town, unless otherwise agreed to in writing. If maintenance is not adequately performed by User, the Town will have the necessary work performed and bill User therefor. When possible, advance notification of inadequate maintenance will be given to allow User an opportunity to provide additional maintenance to avoid such additional billing.

VII. Disputes

In the event of a disagreement between the Town and User on the interpretation of any provision of this Agreement, the Parties shall meet and confer at mutually agreeable times to attempt to resolve any differences or disputes.

VIII. Insurance

- A. Without limiting User's indemnification provided herein below, User shall maintain at all times during the term of this Agreement the following insurance coverages:

- General Liability:
 - General Aggregate: \$4,000,000
 - Products Comp/Op Aggregate \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$2,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any 1 person) \$ 5,000
- Workers' Compensation:
 - Workers' Compensation Statutory Limits
 - EL Each Accident \$1,000,000
 - EL Disease - Policy Limit \$1,000,000
 - EL Disease - Each Employee \$1,000,000

- B. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

- C. General Liability Insurance. Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- D. Claims-Made Policies. If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the Agreement. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after termination of the Agreement. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, User must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- E. Additional Insured Endorsements. The Town, its Town Council, Boards, Commissions, officers, and employees of Town must be endorsed as an additional insured for each policy required herein, other than Worker’s Compensation, for liability arising out of this Agreement by or on behalf of User. User’s insurance policies shall be primary as respects any claims related to or arising out of this Agreement. Any insurance, pooled coverage or self-insurance maintained by the Town, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf.
- F. Waiver of Subrogation. User hereby waives all rights of subrogation against the Town. User shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- G. Report of Claims to Town. User shall report to the Town, in addition to User’s insurer, any and all insurance claims submitted to User’s insurer in connection with the use of the Site pursuant to this Agreement.
- H. Premium Payments and Deductibles. User must disclose all deductibles and self-insured retention amounts to the Town. The Town may require User to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, Town must approve all such amounts prior to execution of this Agreement. Town has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. User shall be responsible for all premiums and deductibles in all of User’s insurance policies. The amount of deductibles for insurance coverage required herein are subject to Town’s approval.

- I. Duty to Defend and Indemnify. User's duties to defend and indemnify Town under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration or early termination of this Agreement.

IX. Indemnification

- A. User shall indemnify, defend, and hold harmless the Town, its officers, officials, agents, employees, and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees and interest arising out of or in connection with User's use of the Site pursuant to this Agreement or its negligent failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence, or willful misconduct of the Town.
- B. User shall be solely responsible for all personal property, fixtures and improvements located at the premises, belonging to User. User acknowledges and agrees that this hold harmless and indemnification provision extends to any loss or damage to the contents of the premises, personal property owned by User or by a third party, and whether to any furniture, equipment, supplies, or fixtures. If Town authorizes the use of the Site by any party other than User, such third party use shall be subject to an agreement which shall include a clause releasing User from liability for any damage caused to the Site by such use.
- C. No elective or appointive councilmember, commission member, officer, employee or other agent of the Town shall be personally liable to the User, its successors, and assigns, in the event of any default or breach by the Town or for any amount which may become due to the User, its successors, and assigns under this Agreement, or for any obligation of the Town under this Agreement.
- D. If any claim or action is brought against the Town relating to User's use of the Facilities in connection with this Agreement, User shall render any reasonable assistance that the Town may require in the defense of that claim or action.
- E. The provisions of this Section IX extend to all User's activities on Site pursuant to the terms of this Agreement. The provisions of Section IX shall survive termination of this Agreement.

X. Access

Certain employees or agents of User may be issued keys by the Town Manager. Keys are not to be duplicated. Lost keys shall be the responsibility of each respective individual, and User will be billed by the Town for the cost of replacement.

XI. Termination

A. Without Cause.

- i. Either Party may terminate this Agreement, for any reason or no reason whatsoever, by delivering written notice to the other Party at least one hundred twenty (120) days prior to the termination date.
- ii. If Town should terminate this Agreement without cause, Town shall compensate User as follows:
 - a. If terminated without cause within the first (1st) year of the Term, Town shall pay User \$125,000.
 - b. If terminated without cause within the second (2nd) year of the Term, Town shall pay User \$100,000.
 - c. If terminated without cause within the third (3rd) year of the Term, Town shall pay User \$75,000.
 - d. If terminated without cause within the fourth (4th) year of the Term, Town shall pay User \$50,000.
 - e. If terminated without cause within the fifth (5th) year of the Term, shall pay User \$25,000.
- iii. In no case shall User be entitled to reimbursement in an amount exceeding one hundred twenty-five thousand dollars (\$125,000.00), nor any additional reimbursement or compensation other than provided herein, including, but not limited to, payment for any alleged damages or injures (including lost opportunity damages) purportedly caused by the termination of this Agreement by Town hereto.

- B. For Cause. Either Party may terminate this Agreement for cause by delivering written notice stating the reasons for such termination to the other Party at least 7 days in advance of termination. Should Town terminate this Agreement for cause as described above, User shall not be entitled to any reimbursement provided under subdivision (A) of Section XI. Nor shall User be entitled to payment for any alleged damages or injures (including lost opportunity damages) purportedly caused by the termination of this Agreement by Town hereto.

- C. Ownership of Property. Any items of User's Property which shall remain in or on the Site for 45 days after termination of this Agreement may, at the option of the Town, be deemed abandoned and in such case may be removed or disposed of by Town in any manner allowed by law.

User shall reimburse Town for the costs of removal or disposal at Town's option. User's Property is defined as any personal property, fixtures or improvements remaining in or on the Site at that time, owned by User.

- D. Remedies. Parties retain any and all available legal and equitable remedies for Parties breach of this Agreement.

XII. Non-assignment

The benefits and/or obligations of User under this Agreement shall not be assignable by User to any other person or entity without Town's prior written approval.

XIII. No Third-Party Beneficiaries

Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the Parties.

XIV. Binding on Successors

This Agreement shall be binding on the successors and assigns of the Parties.

XV. Relationship of the Parties

- A. User is, and shall at all times remain as to Town, a wholly independent contractor.
- B. User shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise to act on behalf of Town as an agent. User, its officers, employees and agents shall not have any power to bind or commit Town to any decision or course of action, and User, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of Town or that it or they have the power to bind or commit the Town. Neither Town nor any of its agents shall have control over the conduct of User or any of User's employees, except as set forth in this Agreement.
- C. User shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all its employees, agents, or subcontractors. Town shall not be liable for any payment, compensation, or federal and state taxes for any of User's employees, agents, or subcontractors.
- D. Under no circumstances shall User or its officers, employees, or agents look to Town as an employer. User, its officers, employees, and agents shall not be entitled to any benefits. Town makes no representation as to the effect of this independent contractor relationship on any previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and User specifically assumes the responsibility for making such a determination. User shall be

responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.

- E. In the event that User or any employee, agent, or subcontractor of User providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the Town, User shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of User or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

XVI. Notice

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, or e-mail, addressed as follows:

TOWN:
6550 Yount St.
Yountville, CA 94599
(707) 844-8851
ATTN: Town Manager
E-mail: BRaulston@yville.com

DONAVAN'S WELLNESS SOLUTIONS

ATTN: Donovan Almond
E-mail:

Any notice personally given shall be effective upon receipt. Any notice sent by mail shall be effective five (5) days after deposit in the United States mail. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice sent by e-mail shall be effective the day of delivery if emailed to the email address listed above and simultaneously deposited in the U.S. mail, postage prepaid.

XVII. Integration, Entire Agreement, Amendment

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

XVIII. California Law

This Agreement shall be governed by and the rights, duties and obligations of the Parties and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and

conditions of this Agreement shall be maintained in the Superior Court of Napa County, California.

XIX. Waiver

The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

XX. Severability

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

XXI. Headings

The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or subsection thereof at the head of which it appears, the language of the section or subsection shall control and govern in the construction of this Agreement.

XXII. No Presumption Against Drafter

Each Party had an opportunity to consult with an attorney in reviewing and drafting this Agreement. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting.

XXIII. Counterparts; Electronic Signatures

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“Town”
The Town of Yountville

“User”
Donavan’s Wellness Solutions LLC.

By: Brad Raulston

By: Donavan Almond

Date: _____

Date: _____

By: _____

Date: _____

Approved as to Form:

Gary B. Bell, Town Attorney

Approved as to Form:

Hilary Gaede, Town Clerk

Exhibits:

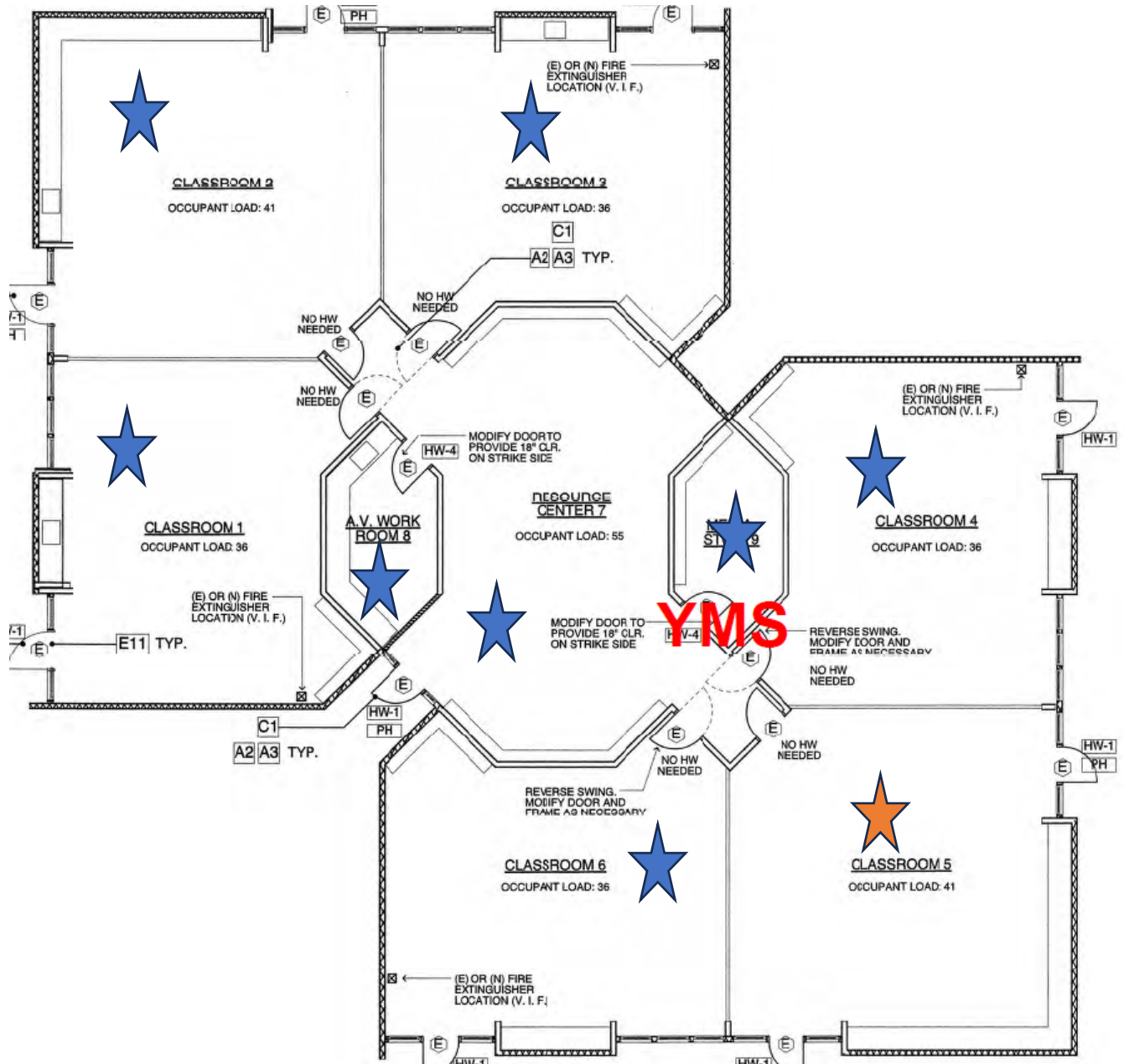
- Exhibit “A” Site Description
- Exhibit “B” Monthly Membership Rates
- Exhibit “C” Maintenance of Site

EXHIBIT “A”
SITE DESCRIPTION

Real property located at 6554 Yount Street, Yountville, CA 94599 (APN 036-070-026-000) – Yountville Commons Wellness Center consisting of exclusive use of the main lobby and entrance (Resource Center on attached plan), three rooms to the north side of the building (Classrooms 1, 2, & 3 on the attached plan) and exclusive use of 2 classrooms (Classrooms 4 and 6 on the attached plan) on the south end of the building, one storage/office space (A.V. Workroom on the attached plan) and a second storage space (Media Stor. on the attached plan).

User will also have shared use of the Men’s and Women’s Restrooms facilities and the outdoor spaces when available. User will also have shared use of room 5 on the attached plan. Use of outdoor spaces and room 5 must be coordinated and scheduled in writing/via email with the Parks and Recreation Department at least 7 days prior.

Town shall maintain ownership of all Site improvements and furnishings provided in the original design to include lobby furniture, mirrors, flooring and existing storage.



 Shared Space

 User Space

EXHIBIT “B”
Monthly Membership Rates

- For Yountville Residents under 55 yrs.: \$70-\$100 per person/per month
- Yountville Based Businesses and Employees: \$70 - \$120 per person/per month
- For Yountville Resident Senior (55 yrs and up) and Town Employees: \$50 - \$80 per person/per month
- User may add a onetime initiation fee or up to \$50 per person for Yountville Residents/Business Employees for onboarding costs.
- User will have a mechanism or procedure to ask for verification from members to prove residency, age, and place of employment to qualify for specialty rates.

EXHIBIT “C” MAINTENANCE OF SITE

This **Exhibit “C”** provides for specific maintenance responsibilities for the Site listed herein. Except as specifically set forth in this **Exhibit “C”**, the maintenance of Site shall be the responsibility of the Town, unless otherwise agreed to in writing.

User shall be responsible for:

- Purchase/Lease and Maintenance of all initial exercise and office equipment related to the wellness center.
- Basic cleaning of facility between Town scheduled weekly cleaning.
- Repairing any damage to the site caused by User.
- Phone service.
- Internet and cable service.

Town shall be responsible for:

- Facility custodial services at least twice per week to include the Wellness Center and shared restrooms.
- Parking Lot maintenance and repair.
- All outdoor building maintenance and repair.
- General indoor facility maintenance and repair of damages not caused by User.
- User Improvements for opening to include flooring, painting, storage removal, HVAC repairs, and other agreed upon improvements.
- Utility costs to include water, shared trash and recycling service, sewer and power.