

ORIGINAL



COUNTY OF EL DORADO
FACILITY USE AGREEMENT #740-00610
POLLOCK PINES RECREATION UNLIMITED, INC.
FOR COMMUNITY SERVICES SENIOR NUTRITION PROGRAM

THIS AGREEMENT, made and entered into by and between the COUNTY OF EL DORADO, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and the POLLOCK PINES RECREATION UNLIMITED, INC., a non-profit organization, whose principal place of business is 5581 Gail Street, Pollock Pines, CA 95726 (hereinafter referred to as "POLLOCK PINES RECREATION");

W I T N E S S E T H

WHEREAS, the POLLOCK PINES RECREATION is the owner of that certain real property located in El Dorado County, California, commonly known as POLLOCK PINES RECREATION, located at 5581 Gail Street, Pollock Pines, CA (hereinafter referred to as the "PROPERTY"), and

WHEREAS, the POLLOCK PINES RECREATION desires to grant to the COUNTY and the COUNTY desires to receive authorization from the POLLOCK PINES RECREATION to use said PROPERTY for the purpose of a meal site for the Senior Nutrition Programs, and

WHEREAS, it is the intent of the parties hereto that such use shall be in conformity with all applicable state and local laws;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the COUNTY and POLLOCK PINES RECREATION mutually agree as follows:

1. PREMISES

- The POLLOCK PINES RECREATION is to provide the following:
- A. For the consideration set forth herein below, the POLLOCK PINES RECREATION hereby authorizes the COUNTY to use that certain building known as the POLLOCK PINES RECREATION, located at 5581 Gail Street in Pollock Pines and the related kitchen and adjacent parking facilities, for the purpose of serving meals to the elderly and provision of other activities incidental thereto, through its El Dorado County Senior

Programs. Such use is hereby authorized on Monday through Friday each week, from 10:00 a.m. to 3:00 p.m. (3:30 on bingo day).

- B. Use of existing POLLOCK PINES RECREATION banquet tables and chairs.
- C. Use of supplies and maintenance of the rest rooms located in said facility.
- D. Assure routine repairs and maintenance of equipment owned by the POLLOCK PINES RECREATION is provided in a timely manner.
- E. Assure that the facility is neat, clean and in a suitable condition for use by the COUNTY under the terms of this agreement.
- F. Assure that adequate hot water is available to supply the County dishwasher with 140 degrees water at the dishwasher inlet.

The COUNTY is to operate its Senior Nutrition Program under the following described conditions:

- A. Promotion, operation and staffing of the Senior Nutrition Program is the sole responsibility of the COUNTY and will be carried out in compliance with the Federal requirements of Title III C of the Older Americans Act.
- B. Provide all necessary locks to secure the COUNTY'S storage cabinets.
- C. Provide for the repair and maintenance of equipment owned by the COUNTY.
- D. Assure that the facility is left in a neat and clean condition after each day's use.
- E. Use of the POLLOCK PINES RECREATION by COUNTY shall be subject to such reasonable rules of the POLLOCK PINES RECREATION as are generally applied to the use of said premises.

2. **PROHIBITED USE**

COUNTY shall not commit or permit the commission of any acts on the Premises nor permit the use of the Premises in any way that will:

- (a) increase the existing fire rates or cancel any fire, casualty, liability or other insurance policy insuring the building or its contents;
- (b) violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Premises;
- (c) obstruct or interfere with the rights of other tenants or occupants of the building or injure or annoy them; and
- (d) constitute commission of a waste on the Premises.

3. TERMS AND OPTIONS

This Agreement shall be for a period of one (1) year commencing on July 1, 2006 and ending on June 30, 2007. This Agreement may be renewed in five (5) subsequent one (1) year increments by mutual written consent of the parties to this Agreement. However, either party may, at any time during the term of this Agreement or extension thereof, terminate this Agreement by giving thirty (30) days notice in writing to the other party of its intention to do so. Either party may terminate this Agreement if the terms and conditions herein are not fully complied with by either party by giving ten (10) days written notice of intent to do so. Said monthly rent amount shall be adjusted on July 1, 2007, and annually thereafter, in an amount equal to two (2%) of the current monthly rent amount.

4. PAYMENT

In consideration hereof the COUNTY agrees to compensate the POLLOCK PINES RECREATION to offset costs incurred by POLLOCK PINES RECREATION directly arising from the use of the premises by the COUNTY. Rent payments not to exceed of \$450.50 per month. The total amount paid by the COUNTY to the POLLOCK PINES RECREATION during the term of this Agreement shall not exceed \$4,955.50. Payments shall be sent to: Pollock Pines Recreation Unlimited, Inc., 6352 Zircon Drive, Pollock Pines, CA 95726; Don Schlavin.

Said payments are in consideration of the costs incurred for the items listed below:

Electricity	Cleaning Supplies	Fire Extinguishers & Servicing
Propane Gas for Heating	Maintenance Costs	Snow Removal
Telephone	Refuse Disposal	Floor Maintenance
Water	Pest Control	

Any capital improvements made by the POLLOCK PINES RECREATION shall not be considered for reimbursement by the COUNTY unless specific written approval is provided by the COUNTY in advance of said capital improvements. POLLOCK PINES RECREATION agrees to use additional revenues received above and beyond the costs itemized above to purchase fold and roll type tables and other equipment intended to facilitate the safer and less physically demanding task of equipment movement and storage.

5. EQUIPMENT

Any equipment purchased by the COUNTY for the Senior Nutrition Program shall remain the property of COUNTY and may be removed from the POLLOCK PINES RECREATION

premises at the discretion of the COUNTY.

6. INSURANCE REQUIREMENTS:

POLLOCK PINES RECREATION shall maintain at its own expense during the term hereof, insurance on or about or in connection with the PROPERTY of the types and in the minimum amounts described generally as follows:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of the POLLOCK PINES RECREATION as required by law in the State of California. For the purpose of this Agreement, Worker's Compensation and Employers' Liability Insurance is not required.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. POLLOCK PINES RECREATION shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is in full force and effect.
- D. The insurance shall be issued by insurance company acceptable to the El Dorado County Risk Manager, or be provided through partial or total self-insurance likewise acceptable to the COUNTY's Risk Manager.
- E. The certificate of insurance must include the following provisions stating that the COUNTY of El Dorado, its officers, officials, and employees are included as additional insured, but only insofar as operations under this Agreement are concerned. This provision shall apply to liability policies except worker's compensation and professional liability insurance.
- F. The POLLOCK PINES RECREATION's insurance coverage shall be primary as respects the COUNTY, its officers, officials, and employees. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, or employees shall be excess of the POLLOCK PINES RECREATION's insurance and shall not contribute with it.
- G. The POLLOCK PINES RECREATION's insurance coverage shall not be cancelled without thirty (30) days prior written notice to COUNTY.
- H. Any deductibles or self-insured retention must be declared to and approved by the COUNTY. At the option of the COUNTY, either: insurer shall reduce or eliminate such deductibles or self-insured retention as respects the COUNTY, its officers, officials

and employees; or USER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- I. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials and employees.
- J. The insurance companies shall have no recourse against the COUNTY of El Dorado, its officers, officials or employees for payment of any premiums or assessments under any policy issued by any insurance company.
- K. POLLOCK PINES RECREATION's obligations shall not be limited by the foregoing requirements and shall survive the expiration of this Agreement.
- L. In the event POLLOCK PINES RECREATION cannot provide an occurrence policy, POLLOCK PINES RECREATION shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of this Agreement.
- M. The Certificate of insurance shall meet additional standards as may be determined by the COUNTY's Risk Manager as essential for protection of the COUNTY.

7. INDEMNIFICATION/HOLD HARMLESS

COUNTY shall defend, indemnify and hold the POLLOCK PINES RECREATION harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney fees and costs incurred, brought for, or on account of injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to PROPERTY, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the COUNTY's activities, use of the PROPERTY, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, and employee(s) of any of these, except for the active negligence of the COUNTY, its officers and employees, or as expressly prohibited by statute. This duty of POLLOCK PINES RECREATION to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

8. ALTERATIONS

COUNTY shall not make or permit any other person to make any alterations to the Premises without the written consent of POLLOCK PINES RECREATION first obtained. Should POLLOCK PINES RECREATION consent to the making of any alterations to the Premises by

the COUNTY, subsequent to execution of this Agreement, said alterations shall be made at the sole cost and expense of COUNTY by a contractor or other person selected by COUNTY and approved in writing by POLLOCK PINES RECREATION before work commences. Any and all alterations, with the exception of previously approved relocatable walls and other alterations readily removable without significant damage to the building premises, interior or exterior, shall on expiration or sooner termination of this Agreement, become the property of POLLOCK PINES RECREATION and remain on the Premises.

9. NOTICES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered. Notices to COUNTY shall be in duplicate and addressed as follows:

**County of El Dorado
360 Fair Lane
Placerville, CA 95667
Attn: Director
Phone: (530) 621-5846**

Notices to POLLOCK PINES RECREATION shall be addressed as follows:

**Pollock Pines Recreation Unlimited, Inc
6352 Zircon Drive
Pollock Pines, CA 95726
Attn: Don Schlavin, President
Phone: (530) 644-1407**

10. WAIVER

The waiver of any breach of any of the provisions of this Agreement by POLLOCK PINES RECREATION shall not constitute a continuing waiver or a waiver of any subsequent breach by COUNTY either of the same or of another provision of this Agreement.

11. SOLE AND ONLY AGREEMENT

This instrument constitutes the sole and only Agreement between POLLOCK PINES RECREATION and COUNTY respecting the Premises and correctly sets forth the obligations of POLLOCK PINES RECREATION and COUNTY to each other as of its date. Any agreements or representations respecting the Premises or their leasing by POLLOCK PINES RECREATION to COUNTY not expressly set forth in this instrument are null and void.

12. SEVERABILITY

If any provision, clause or part of the Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this Agreement or the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.

13. CALIFORNIA FORUM AND LAW

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

14. TIME OF ESSENCE

Time is expressly declared to be of the essence of this Agreement.

15. ATTORNEY'S FEES

Should any litigation be commenced between POLLOCK PINES RECREATION and COUNTY concerning the Premises, this Agreement, or the rights and duties of either POLLOCK PINES RECREATION or COUNTY in relation thereto, the party, POLLOCK PINES RECREATION or COUNTY, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

16. ADMINISTRATIVE RESPONSIBILITY

The County Officer or employee with responsibility for administering this Agreement is the Director of General Services Department, or successor.

This document constitutes the entire Agreement between the parties and incorporates or supersedes all prior written or oral agreements or understandings.

DEPARTMENT CONCURRENCE:

Dated: 6/6/06

Signed: 

**Doug Nowka, Assistant Director
Community Services**

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

POLLOCK PINES RECREATION UNLIMITED, INC.

Dated: _____

Signed: Don Schlavin
Don Schlavin, President
Pollock Pines Recreation

Unlimited, Inc.

COUNTY OF EL DORADO

Dated: 6/6/06

Signed: James R. Sweeney
JAMES R. SWEENEY, Chairman
Board of Supervisors

ATTEST:

Cindy Keck, Clerk of
The Board of Supervisors

By: Cindy Keck
Deputy Clerk

Dated: 6/6/06