

**FACILITY USE AGREEMENT WITH TKO YOUTH FOUNDATION FOR USE OF
THE FITNESS ROOM AT JEROME COMMUNITY CENTER**

THIS FACILITY USE AGREEMENT (“Agreement”) is dated September 21, 2021 and is entered into between the CITY OF SANTA ANA, a charter city and municipal corporation (“City”) and TKO Youth Foundation (“TKO”), a California non-profit corporation. City and TKO also collectively referred to herein as “the Parties.”

RECITALS

- A. The City is the owner of Jerome Community Center located at 726 South Center Street in the City of Santa Ana; and
- B. TKO is a non-profit California corporation founded in 1994 whose purpose is to serve as a gang prevention and after school youth program; and
- C. TKO has been training local Santa Ana youth in boxing for two decades and offers educational support including scholarships. TKO’s mission is to challenge the youth in their program to achieve their academic and athletic potential; and
- D. TKO requires participants in its program to maintain a minimum grade point average and monitors their academic performance; and
- E. City acknowledges the community need for programs such as those offered by TKO that encourage Santa Ana youth to engage in sports and offer supervised activities in a safe environment after school.

NOW THEREFORE, in consideration of mutual covenants herein contained, the Parties do hereby promise and agree as follows:

- 1. The City hereby grants to TKO the limited right to use the Fitness Room in the City’s Jerome Community Center to provide boxing classes, training, to hold periodic tournaments and for equipment storage pursuant to the terms of this Agreement. Attached as Exhibit A and incorporated herein by reference is a diagram of the City’s Jerome Community Center identifying the location of the Fitness Room (“Fitness Room.”)
- 2. Term. The term of this Agreement shall begin on the date set forth above and end on September 30, 2023 unless terminated pursuant to Sections 14 or 16 of this Agreement.
- 3. Consideration. City acknowledges the public benefit provided by TKO to the youth of the City of Santa Ana through its program and the fact that, TKO is a non-profit corporation with 501(c)(3) status. Starting September 1, 2022, TKO will pay to City a fee for use of the Fitness Room, per month, as determined by the City’s

Miscellaneous Fee Schedule. All payments shall be made by the 1st day of each month in the form of a cashier's check or ACH electronic transfer made payable to "City of Santa Ana."

4. Improvements to the Fitness Room.
 - A. City will allow TKO to make certain non-permanent improvements to Fitness Room as mutually agreed upon in writing between the Parties. These improvements include installation of a boxing ring and punching bags.
 - B. TKO shall pay for all improvements. City will not pay any costs associated with any improvements pursuant to this Agreement.
 - C. City shall have final approval of all design, engineering, construction, specifications and improvements.
 - D. After improvements are completed, TKO will not make any additional improvements or alterations to the Fitness Room without the prior written consent of the City Manager or her designee. The Fitness Room shall remain the property of the City. Upon expiration or termination of the Agreement or when the Fitness Room is needed for other City uses, TKO shall return Fitness Room to its original condition, unless otherwise specified by the City.
5. Operational Rules and Regulations. TKO shall comply with all operational rules and regulations promulgated by the Executive Director of Parks, Recreation and Community Services, City Manager or City Council regarding the operation of City's Jerome Community Center, including but not limited to, hours of operation and COVID-19 protocols.
6. Hours of Use. Unless the Jerome Community Center is closed, TKO shall be allowed to use the Fitness Room Monday- Friday from 2:00 p.m. to 7:00 p.m., unless other hours and days are agreed to in writing by the City's Executive Director of Parks, Recreation and Community Services Agency. City officials and employees will at all times have access to the Fitness Room.
7. Maintenance. TKO shall at all times maintain Fitness Room in good condition and repair and in a clean and safe condition reasonably satisfactory to the City's Executive Director of Parks, Recreation and Community Services Agency.
8. Damage to Facility. TKO shall be liable for any damages to the Fitness Room caused by any act of negligence of TKO, its partners, agents, servants, contractors,

representatives, guests, employees, invites or customers. City may at its option, repair such damage, and TKO agrees to reimburse City for the total cost of repair.

9. Compliance with Laws and Licensing. TKO shall comply with all applicable federal, state and local laws. TKO shall at all times during the term of this Agreement have and maintain in force any and all licenses, permits or approvals required by law for the conduct of TKO's activities under this Agreement.

10. Indemnification.

- A. TKO shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and volunteers from and against any claims, liabilities, damages, losses, costs, expenses incurred or suffered by City on account of any personal injuries or property damage resulting from the use of Fitness Room pursuant to this Agreement or any activity or negligent omission of TKO or its employees, agents, volunteers or contractors. In the event that City is named as a codefendant, TKO shall notify City of such fact and shall represent City in such legal action unless City undertakes to represent itself in such legal action. TKO further agrees to indemnify, hold harmless, and pay all costs of defense of the City, including fees and cost for special counsel to be selected by the City, regarding any action challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms, or effects of this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceedings.
- B. TKO agrees to indemnify the City from and against any contamination of the Fitness Room with hazardous materials by TKO occurring after the commencement of this Agreement. TKO further agrees to defend and hold harmless the City from and against all actions, agreements, attorney's fees, causes of action, claims, contracts, costs, covenants, damages, debts, demands, expenses, judgments, lawsuits, liabilities, liens, losses, obligations, and orders which arise during or after the term of this Agreement related to the existence of hazardous materials at the Fitness Room or in the groundwater under the Fitness Room except for: (1) the cost of any remediation of Hazardous Materials deposited in the soil by City or its employees, agents or contractors; and (2) any third party personal injury actions which allege exposure to such undiscovered Hazardous Materials as a result of use of the Fitness Room. "Hazardous Materials" as used herein shall be interpreted broadly to mean any hazardous or toxic substance, material or waste that now is or hereafter becomes regulated by any local

government authority, the State of California, or the United States Government.

11. Insurance. TKO shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use allowed hereunder and the results of that use by TKO, its agents, representatives, employees and subcontractors pursuant to the scope and coverage noted below:

- A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. This insurance coverage is not required if TKO has no employees.
- C. Other Provisions Applicable to Insurance Requirements:
 - i. If the TKO maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
 - ii. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - iii. Additional Insured Status- the City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of TKO including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to TKO's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
 - iv. Primary Coverage- For any claims related to this contract, TKO's insurance coverage shall be primary coverage at least as broad as

ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the TKO's insurance and shall not contribute with it.

- v. Notice of Cancellation- Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- vi. Waiver of Subrogation- TKO hereby grants to City a waiver of any right to subrogation, which any insurer of TKO may acquire against the City by virtue of the payment of any loss under such insurance. TKO agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- vii. Self-Insured Retentions- Self-insured retentions must be declared to and approved by the City. The City may require TKO to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- viii. Acceptability of Insurers- Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- ix. Claims Made Policies- If any of the required policies provide claims-made coverage:
 - 1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - 3. 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, TKO must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- x. Verification of Coverage- TKO shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements

to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive TKO's obligation to provide them.

- xi. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
 - xii. Special Risks or Circumstances- The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
12. Assignment. TKO shall not assign all or any portion of this Agreement, nor shall TKO, without the written consent of the City Council, enter into any agreement allowing the use by another person of the Fitness Room granted by this Agreement.
13. Relationship of the Parties. Nothing in this Agreement shall effect or create a partnership between the Parties. Any persons retained by TKO shall at all times be its employees or independent contractors and not employees or independent contractors of the City. TKO shall have no power to incur debt, obligation or liability on behalf of the City. The City shall not have control over the conduct of TKO, except as set forth in this Agreement. TKO shall not, at any time, or in any manner, represent that it or any of its officers, agents, employees, contractors or volunteers are in any manner employees or contractors of the City.
14. Termination for Cause. Should TKO be dissolved or if a petition in bankruptcy or insolvency be filed by or against TKO, whether voluntarily or involuntarily, or if use of Fitness Room is abandoned for a period of thirty (30) days; or if the uses conducted so as to constitute a public nuisance, or if any of the provisions of this Agreement are breached and the breach if not corrected within ten (10) days after written notice from the City to TKO, then the City may immediately terminate this Agreement by written notice to TKO and recover and resume possession of Fitness Room.
15. Remedies for Termination for Cause. In the event of TKO's breach, default, abandonment or insolvency, City may:
- A. Terminate the Agreement and recover from TKO any amount necessary to compensate City for all detriment proximately caused by TKO's failure to perform its obligations under this Agreement.
 - B. Should TKO default in the performance of any of the terms, conditions, or obligations contained in this Agreement, City may, in addition to the remedies available pursuant to the law and this Agreement, re-enter and
- Facility Use Agreement With TKO Youth Foundation

regain possession of the Fitness Room in the manner provided by the laws of the State of California.

16. Termination without cause. The Parties each may terminate this Agreement with thirty (30) days' notice in writing to the other Party.
17. Fingerprinting, Background Checks and Identification Badges. TKO shall provide proof to City that all TKO officials, employees and any volunteers are fingerprinted and background checked prior to conducting any work at Jerome Community Center or in Fitness Room. TKO employees and volunteers shall prominently display badges or identification cards, in a form mutually agreed upon by the Parties, at all times while at Jerome Community Center or in Fitness Room. TKO badges or identification cards shall state that official, employee or volunteer works for or is affiliated with TKO. Badges or identification cards shall not display City name or logo.
18. Taxes. The Parties agree that if the City or Jerome Community Center are assessed any taxes or similar fees or charges due to the activities of TKO pursuant to this Agreement or TKO's permitted users, then TKO shall bear the entire cost of said taxes, assessment, fees or charges.
19. Liens. TKO will not permit any mechanics' liens or materialmen's' liens or any other type of lien to stand against the Jerome Community Center by any use, occupancy or improvement by TKO or any agent, employee, or contractor of TKO.
20. Nondiscrimination: TKO shall not discriminate in the course of its activities in or about the Fitness Room on the basis of race, color, disability, religion, sex, marital status, sexual orientation, gender identity, age, national origin, ancestry, military or veteran's status, disability, or any other basis prohibited by law. TKO affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.
21. Jurisdiction and Venue: This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both Parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.
22. Surrender of Premises. Upon termination or expiration of this Agreement, TKO shall immediately surrender and deliver the premises to the City in good condition and repair, together with all improvements and alternations made by TKO, and any

and all furniture, furnishings, equipment, and other personal property then located on the premises.

23. Attorney's fees and Costs. The prevailing Party shall pay all costs and reasonable attorney's fees that the other Party incurs in enforcing any of the rights or remedies provided for pursuant to this Agreement.
24. Exclusivity and Amendment. This Agreement represents the complete and exclusive statement between the City and TKO regarding the subject matter herein, and supersedes any and all other agreements, oral or written, between the Parties regarding the use of the Fitness Room. In the event of conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and an authorized representative of TKO. The Parties acknowledge that no representatives, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.
25. Assignment. TKO may not assign, transfer, delegate or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. TKO shall not allow any other person or entity to use the Fitness Room without the prior written consent of City.
26. Force Majeure. Should the performance of an act required by this Agreement to be performed by either the City or TKO be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive government laws or regulations, or any other cause except financial inability not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of the delay, and performance of the act during the period of delay will be excused, provided, however, that nothing contained in this section shall excuse the prompt payment of compensation by TKO as required by this Agreement or the performance of any act rendered difficult solely because of the financial condition of the party, City or TKO, required to perform the act.
27. Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.
28. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect such

invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had never been contained herein.

29. Conflict of Interest. TKO covenants that it presently has no interests and shall have no interests direct or indirect, which would conflict in any manner with the use authorized pursuant to this Agreement.
30. Non-Recording. Unless required by law, neither Party shall record this Agreement.
31. No Waiver. Any waiver, consent or approval by either Party of any breach, default or event of default of any provision, condition or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach, default or event of default shall be deemed a waiver of any later breach, default or event of default of the same or any other provision of this Agreement. Any failure or delay on the part of either Party in exercising any power, right or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.
32. Notice. Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and directed to the addresses below or such addresses as either party may later specify in writing. Notice is deemed effective on the date it is given if hand-delivered or received by facsimile that day. Notice given by U.S. mail shall be deemed to have been given three (3) business days after it is deposited in the U.S. mail, postage prepaid and addressed as follows:

To City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988

With copies to: Executive Director of Parks, Recreation and Community
Services
City of Santa Ana
20 Civic Center Plaza, P.O. Box 1988
Santa Ana, California 92702

To TKO: Mary Lara, Chief Financial Officer
TKO Youth Foundation
1030 West Macarthur Boulevard, Suite 85
Santa Ana, California 92707

33. Authority: Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective Parties to each of the terms of this Agreement.

34. Counterparts and Electronic Signature. The Parties agree that this Agreement may be signed in counter parts and compiled to make one original Agreement. The Parties further agree that this Agreement may be signed electronically by any means that reasonably ensures authenticity.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures this 10 day of September, 2021.

CITY

ATTEST:

Kristine Ridge
City Manager

Daisy Gomez
Clerk of Council

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

TKO YOUTH FOUNDATION

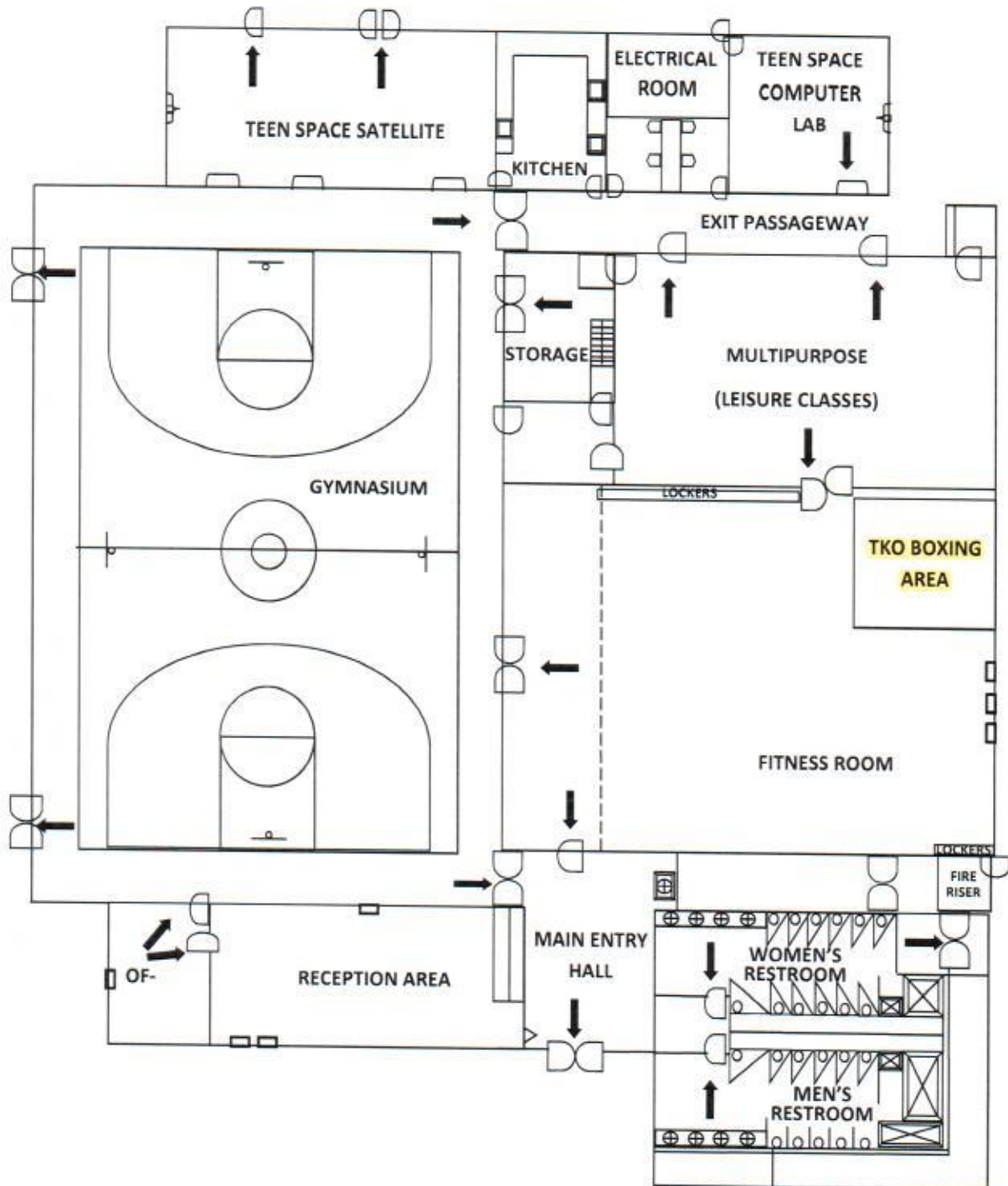
By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

John M. Raya
By: JOHN M. RAYA
Its: FOUNDER/DIRECTOR

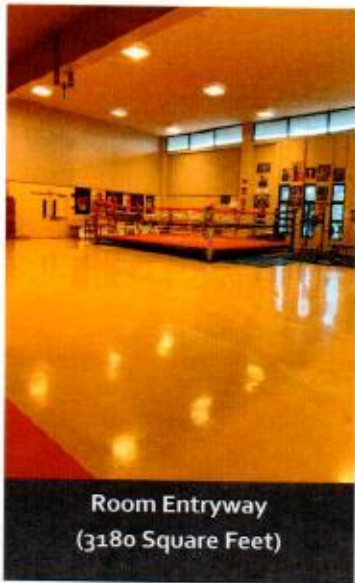
RECOMMENDED FOR APPROVAL:

Lisa Rudloff
Executive Director of Parks, Recreation,
And Community Services Agency

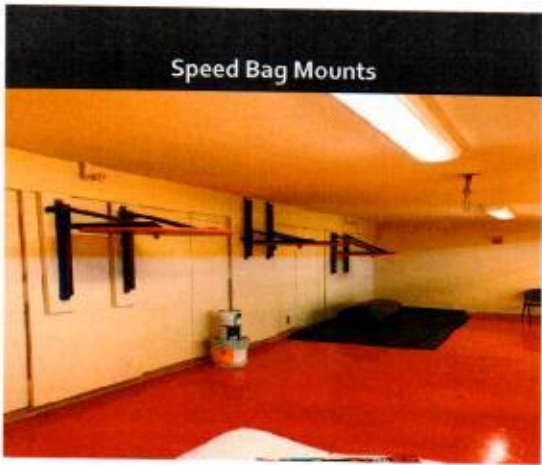
JEROME CENTER FLOOR PLAN



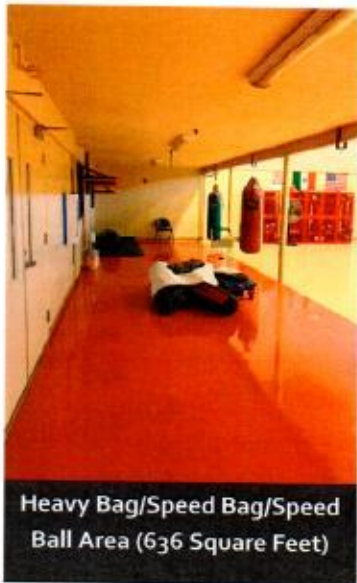
Jerome Center Fitness Room



Room Entryway
(3180 Square Feet)



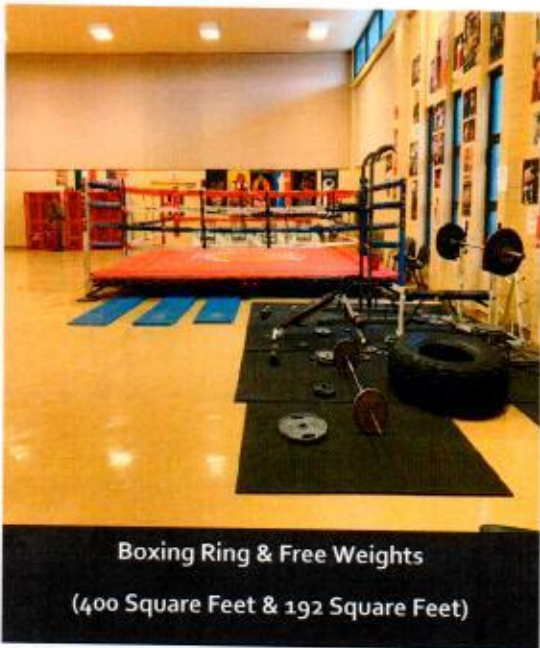
Speed Bag Mounts



Heavy Bag/Speed Bag/Speed
Ball Area (636 Square Feet)



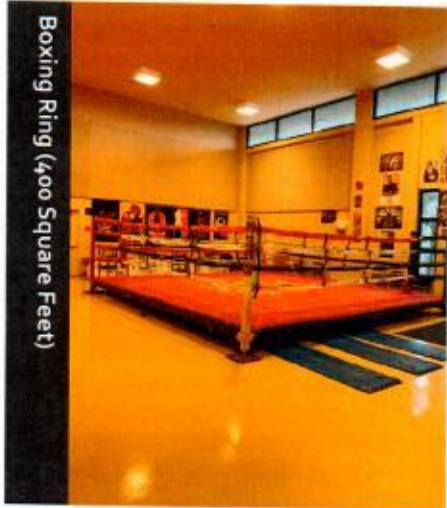
Storage Room
(149 Square Feet)



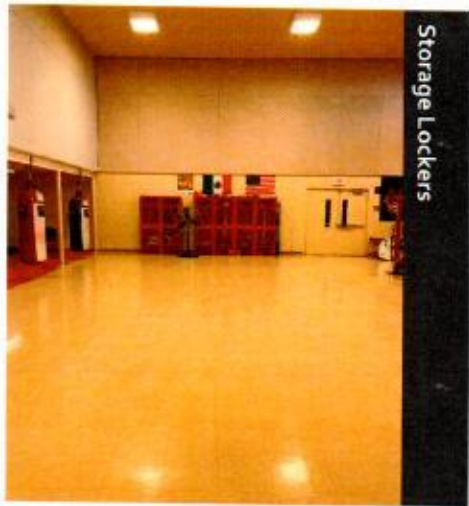
Boxing Ring & Free Weights
(400 Square Feet & 192 Square Feet)



Heavy Bags



Boxing Ring (400 Square Feet)



Storage Lockers