

**RESTATED AND REVISED
INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN THE
BYRON COMMUNITY UNIT SCHOOL DISTRICT 226
AND THE BYRON PARK DISTRICT MUNICIPAL CORPORATION**

SECTION I: AUTHORITY

This Restated and Revised Intergovernmental Cooperation Agreement (hereinafter the “Agreement”) is set forth on this 23rd day of January, 2020 (“Effective Date”) by and between the Byron Community Unit School District 226 Board of Education, Ogle County, Illinois (hereinafter the “School District”) and the Byron Park District Municipal Corporation Board of Commissioners, Ogle County, Illinois (hereinafter the “Park District”). The School District and Park District shall herein be referred to jointly as the “Parties”.

The School District is a duly organized and existing school district and body politic of the State of Illinois and a duly created, organized, existing, and now operating under and pursuant to the provisions of the Illinois School Code, as amended, 105 ILCS 5/1.1 *et seq.* (the “Illinois School Code”), is a “unit of local government” as defined in Article 7, Section 1 of the Constitution of the State of Illinois, and is a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act, as amended, 5 ILCS 20/1 *et seq.* (the “Intergovernmental Cooperation Act”).

The Park District is a duly organized body politic created under the provisions of the laws of the State of Illinois, and is now operating under and pursuant to the provisions of the Illinois Park District Code, as amended (1205 ILCS 5/1-1 *et seq.*; the “Park District Code”), is a “unit of local government” as defined in Article 7, Section 1 of the Constitution of the State of Illinois, and is a “public agency” as defined in Section 2 of the Intergovernmental Cooperation Act.

Article 7, Section 10(a) of the Constitution of the State of Illinois authorizes units of local government and school districts to contract or otherwise associate among themselves to obtain or share services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other sources to pay costs and to service debt related to intergovernmental activities.

Section 3 of the Intergovernmental Cooperation Act provides that “[a]ny power or powers, privileges, functions or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred and enjoyed jointly with any other public agency of this State . . .”

Section 5 of the Intergovernmental Cooperation Act provides that “[a]ny one or more public agencies may contract with any one or more other public agencies to perform any governmental services, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.”

SECTION II: HISTORY

This Agreement and its predecessor agreement between the School District and the Park District is and was a deliberate effort on behalf of both governmental bodies and the citizens of our districts, to solve the recreational needs of School District students and staff; while concurrently making Facilities available to the entire Byron community. This arrangement would serve the needs of the Byron community, save substantial taxes for citizens by pooling physical and human resources and avoid duplication of services. In making future decisions concerning this Agreement, the Parties hereto should try to adhere to the original purpose of this Agreement.

SECTION III: PURPOSE

The intended purpose of this Agreement is to permit the School District and the Park District to provide for the availability of “public recreational programs” to the Byron community, including students and faculty, and for the improvement and expansion of existing recreational programs offered by both Districts in the most cost efficient manner possible to the Byron community. The public recreational programs covered by this Agreement are located in “Facilities” owned by the School District as enumerated in Exhibit A. The Park District in 2020 shall issue bonds and subject to the mutual consent and cooperation of the Parties herein, intends to use a portion of the bond proceeds, estimated at approximately Four Million Dollars (\$4,000,000.00) to construct 14,000 square feet of new lobby, fitness center, offices for Park District staff, dance/aerobic studios and parking lot and to renovate 6,000 square feet for Park District before and after school care including the “Tiger Den”, locker rooms, a multipurpose room and an Esports room (“Improvements”) in certain portions of the Facilities. As such the term Facilities includes the Facilities as currently constructed and with the proposed Improvements. As the proposed Improvements funded by the Park District will all be located on School District owned land, the parties desire to further ensure that this Agreement continues to remain a long term commitment of the Parties hereto.

This Agreement permits the Park District to provide its programming in the Facilities listed and the times allocated on Exhibit A at no cost to the Park District except as set forth in Section V, Paragraph 1. The School District shall have the right to relocate and/or change the Facilities provided that the School District shall provide comparable space to the Park District for its use. Exhibit A applies as well to the future Improvements. Park District shall set its own fees for use of the Facilities by its members and users for its programming.

SECTION IV: RESPONSIBILITIES OF THE SCHOOL DISTRICT

The School District shall:

1. Maintain the buildings, grounds and parking areas of the Facilities, including necessary snow removal. Subject to limited reimbursement as set forth in Section V, paragraph 1, pay for the heating and electrical costs of those Facilities.
2. Pay for the custodial services for the Facilities subject to limited reimbursement as set forth in Section V, Paragraph 1.

3. Jointly implement a uniform Facility fee for use of the Facilities by third parties in accordance with School District Policy.

4. Set hours of use of its Facilities, jointly with the Park District prior to January 1 of each year during the Term, or as periodically revised jointly. Current Facilities and hours are set forth on Exhibit A. The School District shall have the right to revise the hours of use of the Facilities in its sole discretion by providing the Park District with forty-eight (48) hour notice. In such event, the School District shall use reasonable efforts to provide alternate space to accommodate the Park District's use.

SECTION V: RESPONSIBILITY OF THE PARK DISTRICT

The Park District shall:

1. Pay for a portion of the costs for use of the Facilities on an annual basis in an initial amount of \$27,000 due on or before January 30 in each year during the Term of this Agreement. This amount shall be adjusted annually based on actual costs. Costs determined as follows:

a. Initial Utilities at a cost of \$12,000 (approximately 10% of annual PE Center utility cost).

b. Initial Staffing at a cost of \$15,000 (custodial services).

2. Employ, manage, and supervise all necessary personnel in the public recreational programs offered at the Facilities, whether full or part time. Maintain records for all Park District personnel located at the Facilities including an organizational chart, job titles and descriptions, schedules, payroll records, criminal background check records, and records of facility key and scan card assignments.

3. Be responsible for development and management of all Park District operational procedures at the Facilities for public recreational programs provided by the Park District.

4. The School District has a behavioral policy for the use of the Facilities and consequences and penalties for failure to adhere to the behavioral policy. Park District shall adhere to the behavioral policy and for violations of the School District's behavioral policies occurring at the Facilities during public recreational programs offered by the Park District, Park District shall enforce the penalties and consequences against its users. Such enforcement by the Park District is subject to any limitations imposed by Illinois law or School District policies.

5. Appoint one Park District Commissioner and one Park District Administrative Staff Member to attend the School District's Committee of the Whole Committee in order to maintain open lines of communication concerning Facilities management, usage, purchases, repairs, and overall planning.

6. Jointly implement a uniform Facility fee for use of the Facilities by third parties in accordance with School District Policy. Park District does not issue permits for use by third parties of the Byron Middle School.

7. Set fees or memberships for use of Facilities for its recreational programming in its sole discretion. The Park District shall offer membership fees for use of the Facilities to all School District employees in the amount of \$25.00 per employee, and \$120.00 per additional dependent membership, capped at \$300.00 per family. This amount shall be reviewed annually and may be adjusted by mutual agreement of the Parties.

8. Provide materials and goods necessary to operate the public recreational programs at the Facilities and to share certain materials and goods with the School District where commonality exists, i.e. shared basketball equipment.

SECTION VI: ADMINISTRATION

There will be an annual joint meeting of the School District and the Park District in the month of October in each year during the Term on a date mutually agreed upon by these parties. All of the members of each of the Districts' boards shall be invited and encouraged to attend. A quorum is not necessary to conduct the business of the annual meeting. The purpose of this joint meeting will be for the Parties to discuss the status of the Agreement and to determine if any revisions are needed to the Agreement and to further make those proposals in written form. Any revisions to this Agreement proposed by either party, must be approved by both Boards prior to implementation.

SECTION VII: FISCAL PROCEDURES

The Parties shall keep individual records of the use of the Facilities and their operational costs associated with the use of the Facilities. The Park District shall have jurisdiction over the establishment of its memberships, programs, and activity fees and shall prepare and maintain accurate accounting records for the funds received from memberships, programs and activity fees. Park District shall prepare an annual internal audit of the funds received and shall provide the audit to the School District when completed. Such audit shall be performed by the Park District auditor and tendered to School District no later than 150 days after the end of a calendar year during the Term.

SECTION VIII: CONSTRUCTION OF THE IMPROVEMENTS AND DISPOSITION OF THE IMPROVEMENTS AND PERSONAL PROPERTY

Provided, Park District timely issue its bonds for the Improvements, the Park District will construct the Improvements on School District land substantially pursuant to the plans attached hereto as Exhibit B prepared by Larson & Darby Group ("Architect") as job number 29080 , as amended ("Plans"). The School District approved the Plans on February 27, 2020.

All Architect fees shall be paid for by the Park District pursuant to its contract with the Architect. Upon completion of the final design drawings by the Architect to be included with the bid packages, Park District shall let for public bid the Improvements and has the sole discretion to select the contractor pursuant to the bid results. Notwithstanding the foregoing, Park District shall

at a public meeting share the results with the School District and listen to input provided as to selection of the Contractor. School District represents that this procedure is in compliance with its policies and procedures.

Park District shall enter into an AIA form construction contract with either a general contractor or construction manager, at its election, subject to a guaranteed maximum price with the selected contractor and shall pay all costs of construction including permits and requiring the contractor to carry the "Builder's Risk" insurance; provided School District continue to carry its liability insurance as described herein and casualty insurance. The Park District shall require the contractor to comply with all applicable local, state and federal laws in the construction of the Improvements, including, but not limited to, the Prevailing Wage Act and the Public Construction Bond Act. The Park District shall further require that the contractor include the School District as an additional insured on its liability policies and agree to indemnify the School District against any and all liabilities, claims, damages, judgements costs, expenses and fees, including attorney fees, that the School District incurs arising from or occurring in connection with the construction of the Improvements. The Parties hereto agree that upon execution of the construction contract, Park District, Contractor and their representatives shall have reasonable access to the Facilities where the Improvements are to be located. The construction contract shall provide that construction shall commence immediately upon the end of the school year 2020 and continue as expeditiously as possible during the summer and into the fall/winter of 2020 as necessary. The parties shall jointly work together to establish appropriate areas of the Facilities which may remain open during construction and access to those areas.

During construction, School District shall have the right to approve all change orders between the contractor and the Park District and may suggest changes and additions to the Plans to be incorporated as change orders that are not of a material nature and do not result in cost increases that are material. Upon completion the Park District, Architect and contractor shall determine "substantial completion" as defined by the AIA contract and any punch list type items, but School District may offer suggestions for the consideration of the Architect and the Park District.

Upon expiration of the Term of this Agreement, both Parties shall provide an inventory to each other of all materials and equipment involved in providing the public recreational programs and School District programming and shall implement an equitable sharing of such materials and inventory. All Improvements constructed pursuant to this Agreement shall belong to the School District upon a determination of substantial completion under the construction contract; provided however Park District pursuant to the construction contract shall enforce any remedies for work failing to meet warranties pursuant to the construction contract.

In the event the Improvements will not be constructed, this Agreement shall be null and void.

SECTION IX: INSURANCE

The School District after construction of the Improvements by the Park District shall carry broad form casualty insurance for replacement cost to those Improvements together with its other school buildings and property. The School District and the Park District shall each provide their

own liability insurance coverage at their individual expense. The School District and the Park District will each name the other as an additional insured on its liability insurance policy. Copies of the insurance declaration page or a certificate of coverage from PDRMA evidencing the coverage limits below (in the case of the Park District insured by PDRMA) shall be provided to each party by January 30th in each year. Each Board will carry \$5,000,000 umbrella coverage. Insurance shall be in the following limits:

Each District shall carry liability insurance to cover the use of the Facilities as follows:

- i. Coverage and Limits.
 - a) The general liability limits.

Personal Injury/each occurrence	\$5,000,000
General aggregate	\$5,000,000
 - b) Automobile Liability (including owned, non-owned and hired vehicles):

Coverage: Combined single limit	\$1,000,000
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 - c) Umbrella Excess Liability providing increased limits of liability if the aggregate is exhausted for commercial general liability insurance and automobile liability insurance. This policy shall include coverages for the same hazards as are covered on the primary policies.

Coverage: Each occurrence/aggregate	\$5,000,000
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 - d) Workman's Compensation in statutory coverage limits.
- ii. General Terms. The insurance shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater.

SECTION X: INDEMNIFICATION

The Park District agrees to indemnify and hold the School District harmless against any and all liabilities, claim, causes of action, damages, costs, expenses and fees, including attorney fees (collectively the “losses”), that the School District incurs arising out of or occurring in connection with the Park District’s use of the Facilities in connection with this Agreement, except to the extent that any such losses are caused or contributed to, in whole or in part, by the School District.

The School District agrees to indemnify and hold the Park District harmless against any and all liabilities, claim, causes of action, damages, costs, expenses and fees, including attorney fees (collectively the “losses”), that the Park District incurs arising out of or occurring in connection with the School District’s negligent, reckless or intentional misconduct in connection with this

Agreement, except to the extent that any such losses are caused or contributed to, in whole or in part, by the Park District.

SECTION XI: AMENDMENTS

The Agreement may be amended at the annual meeting of the Parties as provided in Section VI or at any time prior or subsequent thereto at a joint meeting specifically called to consider amendments to the Agreement; provided that all amendments must be further approved by each Districts' board.

SECTION XII: AGREEMENT DURATION, TERMINATION AND DEFAULT

The term of this Agreement shall commence on the Effective Date and continue for an "Initial Term" of one five (5) year period. The Agreement shall automatically renew for two (2) successive five (5) year terms ("Renewal Terms"); provided, however, that the Agreement may be terminated by the Park District upon six (6) months advance written notice provided to the School District prior to the expiration of the Initial Term or a subsequent Renewal Term. The Initial Term and any Renewal Term are herein referred to as the "Term".

Upon the event of an uncured default by the School District, written notice must be sent to the School District by the Park District alleging the default with a ninety (90) day opportunity to cure. If the School District has implemented the cure during the 90 days and requires additional time to cure, such time will be granted provided it continues the cure in good faith. If the default is not timely cured, the Park District may at its election: 1) terminate this Agreement and pursue any remedy for damages at law or in equity or 2) without termination pursue any remedy for damages at law or in equity.

Upon the event of an uncured default by the Park District, written notice must be sent to the Park District by the School District alleging the default with a ninety (90) day opportunity to cure. If the Park District has implemented the cure during the 90 days and requires additional time to cure, such time will be granted provided it continues the cure in good faith. If the default is not timely cured the School District may without termination of this Agreement pursue any remedy for damages at law or in equity. The parties acknowledge that due to the substantial investment in the Improvements by the Park District and based further on the funding sources for those Improvements the Park District must have use of the Improvements pursuant to the terms herein for the full fifteen year term, unless terminated voluntarily by the Park District.

Venue for any proceeding shall be Ogle County.

Notwithstanding the foregoing, a default of an urgent nature, such as a failure to procure insurance, shall be cured as expediently as possible after notice of the default from the non-defaulting party.

SECTION XIII: NOTICES

All notices and communications in connection with this Agreement shall be in writing, and any notice, communication, or payment hereunder shall be deemed delivered to the addresses thereof two (2) days after deposit in any main branch United States Post Office, certified or

registered mail, postage prepaid, or (1) day after deposit thereof with any nationally known and reputable overnight courier service, delivery charges prepaid, or on the date of delivery if personally delivered. Either party may change its address by giving Notice.


Any notice to the Park District Board of Commissioners shall be addressed to the: Byron Park District, P.O. Box 423, Byron, Illinois 61010, Attention: Board President.

Notice to the School District Board of Education shall be addressed to the Byron Community Unit School District 226, 696 North Colfax Street, Byron, Illinois 61010, Attention: School Board President.


SECTION XIV: SEVERABILITY, ENTIRE AGREEMENT AND GENERAL CLAUSES

If any provisions, covenants, agreements or portions of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not invalidate any other portion of this Agreement. The Parties intend to be bound to this agreement even in the event that a portion of the agreement is declared invalid, in accordance with law. This Agreement does not create a joint venture, employee/employer relationship or any type of partnership relationship among the parties hereto. All covenants and provisions herein shall inure to the benefit of the parties hereto and nothing in this Agreement is intended to provide any right or benefit to any person or entity that is not a party to his Agreement or establish or impose a legal duty to any third party.

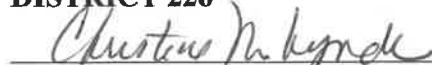
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated.

**BYRON PARK DISTRICT
MUNICIPAL CORPORATION**



Board President

ATTEST:


Board Secretary
Date: February 20, 2020

**BYRON COMMUNITY UNIT SCHOOL
DISTRICT 226**


Board President

ATTEST:


Board Secretary
Date: February 20, 2020

EXHIBIT A

**SCHOOL DISTRICT FACILITIES SUBJECT TO THIS AGREEMENT TOGETHER
WITH TIMES OF APPLICABLE USE BY THE PARK DISTRICT**

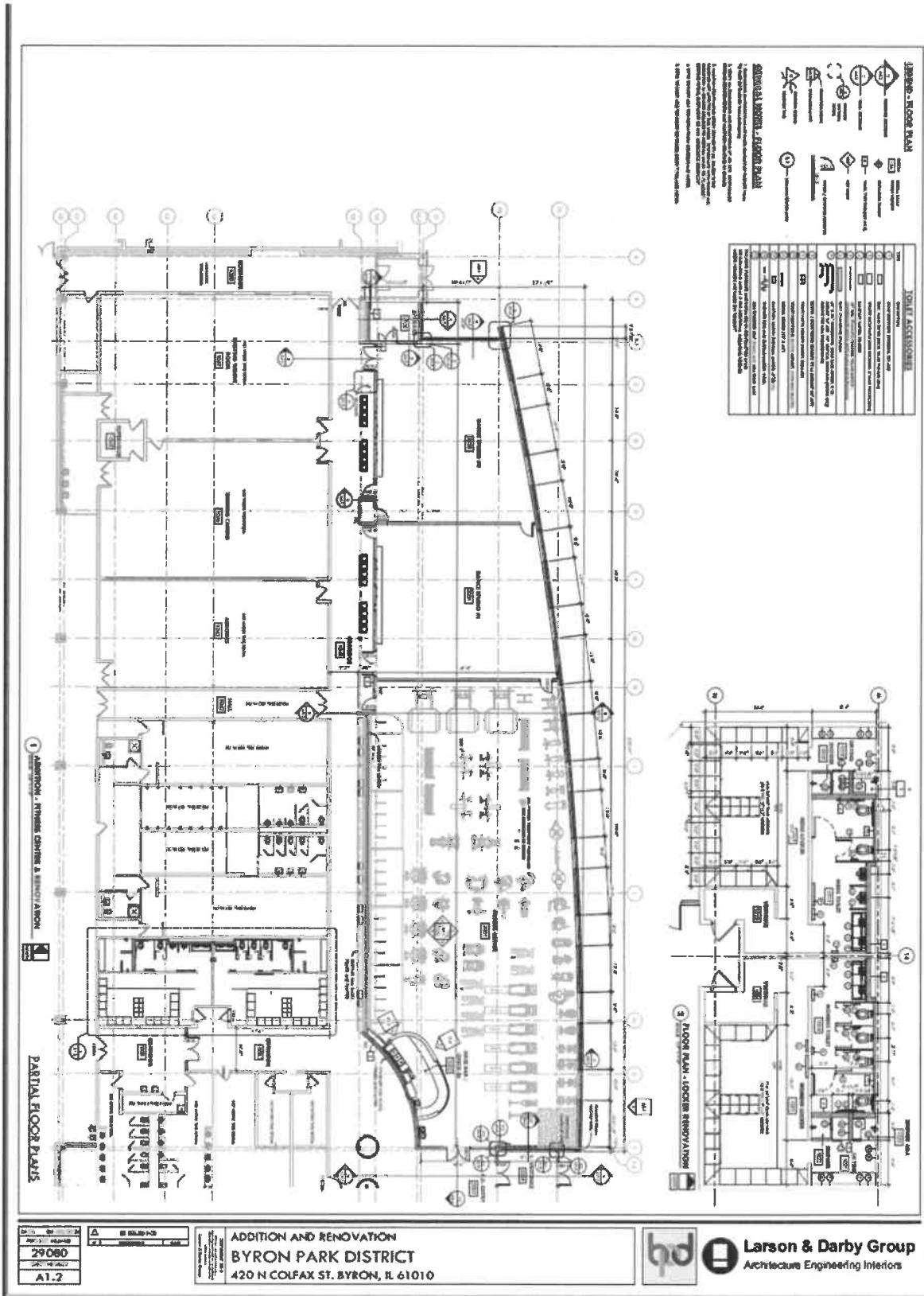
Facilities and Times of Use Available for Park District Use During the School Day. "School Day" is a day when school is in session. The School District shall have the right to revise the hours of use of the Facilities in the School District's sole discretion by providing the Park District with forty-eight (48) hour notice.

Dance Studios #1 and #2	5am-9pm
Fitness Center	5am-9pm
Park District Office Area	24 hour access for Park District staff
Storage Areas	24 hour access for Park District staff
Tiger Den/MP Room/Esports	5am-9pm

Facilities and Times of Use Available for Park District Use During Non-School Days.

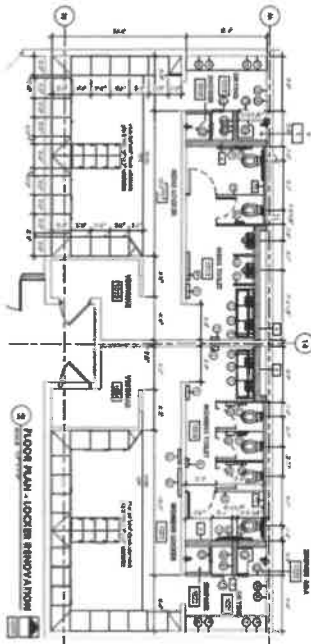
Dance Studios #1 & #2	5am-9pm
Fitness Center	5am-9pm
Park District Office Area	24 hour access for Park District staff
Tiger Den/MP Room/Esports	5am-9pm

*Other facilities and times of use by the Park District are subject to prior approval from the appropriate Byron School District Administrator. Schedules may be adjusted by mutual agreement of the Parties.



1 ADDITION - FITNESS CENTER & SERVICE AREA

PARTIAL FLOOR PLANS



DATE	BY	APP'D
2/1/2010	MLP/MB	
29060		
2/1/2010		
A1.2		

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
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ADDITION AND RENOVATION
 BYRON PARK DISTRICT
 420 N COLFAX ST. BYRON, IL 61010

Larson & Darby Group
 Architecture Engineering Interiors