

THE CITY OF SAN DIEGO
and
YOUNG MEN'S CHRISTIAN ASSOCIATION

Operating Agreement
Rancho Penasquitos Branch YMCA

COPY

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO
OPERATING AGREEMENT

THIS AGREEMENT made by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California non-profit public benefit corporation, herein called "OPERATOR,"

- A. OPERATOR is the owner of land described in Exhibit A attached hereto (the "Land").
- B. Concurrently with the execution and delivery hereof, CITY and OPERATOR shall execute and deliver a written lease whereby OPERATOR leases to CITY the Land for a term (and renewal rights) equal to the term (and renewal rights) set forth herein and a written deed whereby OPERATOR transfers to CITY the ownership of all improvements (including without limitation trade fixtures, structures, installations and additions, but excepting OPERATOR-owned machines, appliances, equipment [other than trade fixtures] and other items of personal property), whether now on the Land or hereafter placed on the Land.
- C. The parties intend to provide hereby for the terms and conditions upon which OPERATOR shall, without cost to the CITY except as may be specifically set forth herein, improve and maintain the Land and operate and manage thereon a recreational facility and community center.

In Consideration of the mutual promises and obligations of the parties as herein expressed, CITY and OPERATOR agree as follows:

SECTION 1: USES

1.1 DEFINITION. The terms defined in this section shall have the following meanings unless the context otherwise requires:

- a. "City Manager" shall mean the City Manager of the City of San Diego or his designated representative.
- b. "Facility" shall mean the Penasquitos Branch YMCA situated on the Land and shall include both the Land and CITY'S improvements referred to in Recital B above.

1.2 Uses. It is expressly agreed that the CITY and OPERATOR hereby contract solely and exclusively for the purposes of construction, operation, maintenance and management of a Recreational Facility and community center including but not limited to the following services: Teen center, child care center and social services programs, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. The actual uses authorized are more particularly described in the attached General Development Plan (Exhibit C).

OPERATOR covenants and agrees to use the Facility for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the Facility for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

The use of the Facility for any unauthorized purpose shall constitute a substantial default and subject this agreement to termination at the sole option of the CITY.

1.3 Related Council Actions. By the granting of this agreement, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Facility. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Facility.

1.4 Quiet Possession. OPERATOR, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the facility.

- 1.5 Competent Management. Throughout the term of this agreement, OPERATOR shall provide competent management of the facility to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a Recreational Facility and community center and related activities in a fiscally responsible manner.
- 1.6 Operation of Facilities. OPERATOR shall operate the Facility on such days and during such hours as set forth in Exhibit E hereof. Any change to said schedule shall be approved by the City Manager or his authorized representatives. OPERATOR shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.7 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 8.4, Schedule of Rates & Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.
- 1.8 CITY Use. The Facility shall be available to CITY for civic events and special programs, free of charge, except where OPERATOR has scheduled events or programs. After every CITY use, the Facility shall be left by CITY in the same condition found, and OPERATOR shall not be required to incur any additional costs by reason of CITY use.
- 1.9 Political Activities. The Facility shall be used exclusively for the purposes specified in Section 1, Uses, hereof. The Facility shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that OPERATOR shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the Facility with the exception of Operator's administrative offices and any portion(s) of the Facility under construction during the period of such construction. OPERATOR may develop reasonable restrictions and fees for the Facility use provided they are consistent with the rights of the general public, and are designed to allow OPERATOR to use the Facility for the purposes specified herein. OPERATOR agrees that all activities conducted at the Facility will be as stated in Section 1.2, Uses, hereof.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be fifty (50) years commencing on the first day of the calendar month following execution by the City Manager. "Agreement year" as used in this agreement shall mean the 12-month period commencing on the first day of the calendar month following the execution of this agreement by the City Manager and each subsequent 12-month period.
- 2.2 Right to Extend. Provided that OPERATOR is not in default of this agreement at the end of said fifty (50) years, this agreement shall be automatically extended for an additional forty-nine years unless OPERATOR delivers to CITY, at least six (6) months prior to the end of said fifty (50) years, written notice that OPERATOR will not extend this agreement. The extension shall be on the same agreements, considerations, covenants and conditions as are set forth herein, except as to right or further renewal and except as to rent, which shall be any amount CITY reasonably determines.

To exercise this right, OPERATOR must give CITY six (6) months advance written notice before the date on which this agreement expires.

- 2.3 Surrender of Premises. At termination of this agreement for any reason, OPERATOR shall execute, acknowledge and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the improvements as described in Recital B. The Facility shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition.

If OPERATOR fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting OPERATOR'S failure to execute this agreement provision and the notice will be conclusive evidence of the termination of this agreement and all OPERATOR'S rights to the Facility.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent is due annually in advance on or before the first day of each agreement year. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to OPERATOR. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible,

the payment shall be deemed paid upon actual receipt by the City Treasurer. OPERATOR assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.2 Rent Amount. The rent is One Dollar (\$1.00) per year, receipt of which is hereby acknowledged.
- 3.3 Inspection of Records. OPERATOR agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine OPERATOR'S compliance with this agreement. These records and accounts will be made available by OPERATOR at the Facility and will be complete and accurate showing all income and receipts from use of the Facility. OPERATOR'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this agreement and cause for termination. OPERATOR shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this agreement and, except as otherwise provided herein, all of the terms, covenants and conditions of this agreement shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. A part of the consideration for granting this agreement are qualifications and abilities of the OPERATOR. Therefore, OPERATOR shall not assign this agreement, or any interest therein, and shall not sublet the Facility or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of OPERATOR, to use or occupy the Facility or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this agreement. This agreement shall not, nor shall any interest therein, be assignable, as to the interest of OPERATOR, by operation of law, without the written consent of the City Manager.
- 4.3 MBE/WBE Assignment. OPERATOR acknowledges that it is CITY policy to encourage Minority Business Enterprise/Women Business Enterprise (MBE/WBE) involvement in CITY contracts and agreement and that a public purpose is served thereby. If OPERATOR proposes to assign this agreement to a non-MBE/WBE buyer, OPERATOR agrees to first use due diligence in finding a qualified MBE/WBE assignee. OPERATOR

shall fulfill this requirement to use due diligence by doing all of the following:

- a. OPERATOR, at its expense, shall advertise the proposed assignment of the agreement in at least one issue each of three different minority/women-focus publications of general circulation. The publications shall be approved by the City Manager, and City Manager shall provide a list of such publications to OPERATOR upon request. The ads may be either display or classified and shall state that OPERATOR desires to locate a qualified MBE/WBE buyer. The ads shall also request respondents to register their interest with a designated employee of CITY. Affidavits of publication shall be furnished to the City Manager.
- b. OPERATOR shall allow no fewer than 20 calendar days from the date of publication for interested parties to respond. Any offers from prospective MBE/WBE buyers shall be presented in writing to CITY for review, together with OPERATOR'S reason(s) for accepting or rejecting the proposal.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. OPERATOR shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the Facility, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the Facility premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the Facility;
- b. any operation, use, or occupation conducted at the Facility;
- c. any act, omission, or negligence on the part of OPERATOR, its employees, agents, subtenants, invitees, licensees; or
- d. any failure by OPERATOR to comply or secure compliance with any of the agreement terms or conditions.

5.2 Insurance.

- a. OPERATOR shall take out and maintain at all times during the term of this agreement the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or OPERATOR or by authorized representatives of CITY or OPERATOR on or in connection with the use or operation of the Facility.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Facility in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and OPERATOR. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- b. OPERATOR'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the agreement, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Facility, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the agreement. At least thirty (30) days prior to the expiration of each policy, OPERATOR shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this agreement.
 - (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving OPERATOR sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Facility. OPERATOR also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this agreement.
 - (3) Accident Reports. OPERATOR shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Facility. This report shall contain the names and addresses of the parties involved, a statement of the

circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

- (4) Failure to Comply. If OPERATOR fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. OPERATOR shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by OPERATOR on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if OPERATOR fails or refuses to take out or maintain insurance as required in this agreement, or fails to provide the proof of insurance, CITY has the right to declare this agreement in default without further notice to OPERATOR and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. OPERATOR agrees to give notice to CITY of any fire or other damage that may occur at the Recreational Facility within ten (10) days of such fire or damage. OPERATOR agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Facility clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Facility shall be damaged by any cause which puts the Facility into a condition which is not decent, safe, healthy and sanitary, OPERATOR agrees to make or cause to be made full repair of said damage and to restore the Facility to the condition which existed prior to said damage; or, at CITY'S option, OPERATOR agrees to clear and remove from the Facility all debris resulting from said damage and rebuild the Facility in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

OPERATOR agrees that preliminary steps toward performing repairs, restoration, or replacement of the Facility shall be commenced by OPERATOR within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said Facility are untenable by reason of such damage.

- 5.4 Entry and Inspection. CITY reserves and shall always have the right to enter said Facility for the purpose of viewing and ascertaining

the condition of the same, or to protect its interests in the Facility premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Facility premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to OPERATOR, to have any necessary maintenance work done at the expense of OPERATOR, and OPERATOR hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said Facility premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require OPERATOR to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. OPERATOR shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this agreement imposed on CITY.

- 5.5 Maintenance. OPERATOR agrees to assume full responsibility and cost for the construction, operation and maintenance of the Facility throughout the term. OPERATOR will make all repairs and replacements necessary to maintain and preserve the Facility in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 5.14, Development Plan, hereof, and with all applicable laws.
- 5.6 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Facility, and the Facility may not be altered by OPERATOR without prior written approval by the City Manager. Further, OPERATOR agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made at the Facility without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve OPERATOR of any obligation under this agreement to maintain the Facility in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this agreement to make or assume any expense for any improvements or alterations.
- 5.7 Utilities. OPERATOR agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Facility. All utilities will be installed underground.
- 5.8 Construction Bond. Whenever there is any construction to be performed at the Facility reasonably costing more than \$100,000, OPERATOR shall deposit with CITY, prior to commencement of said

construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by OPERATOR shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Facility restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

- 5.9 Liens. OPERATOR shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Facility and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Facility by OPERATOR or by any party other than CITY, and a lien or notice of lien is filed, OPERATOR shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

- 5.10 Taxes. OPERATOR agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon OPERATOR or the Recreational Facility, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by OPERATOR or levied by reason of the business or other OPERATOR activities related to the Facility, including any licenses or permits. OPERATOR recognizes and agrees that this agreement may create a possessory interest subject to property taxation, and that OPERATOR may be subject to the payment of taxes levied on such interest, and that OPERATOR shall pay all such possessory interest taxes. OPERATOR further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

- 5.11 Signs. OPERATOR agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found at the Facility, OPERATOR agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at OPERATOR'S cost.

- 5.12 Unavoidable Delay. If the performance of any act required of CITY or OPERATOR is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this agreement. In the event OPERATOR or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 5.13 Development Plan. OPERATOR agrees to develop the Facility premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk, which plan is hereby incorporated by this reference and described in Exhibit C. The General Development Plan for the Facilities shows in reasonable detail all structures, improvements and landscaping OPERATOR proposes to construct on the Land as part of the Facility. It is understood that said construction will be done in several phases, the timing which cannot, at present, be established. The general contents and provisions of the Development Plan are described in Exhibit C hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by OPERATOR to comply with the General Development Plan shall constitute a major default and subject this agreement to termination by CITY.
- 5.14 Hazardous/Toxic Waste. OPERATOR will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, or under or from the Recreational Facility. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704.

In the event of any release of a hazardous substance, OPERATOR shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

OPERATOR agrees to assume the defense of, indemnify and hold the CITY harmless from any and all claims, costs and expenses related to

environmental liabilities resulting from OPERATOR'S operations on the Facility, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If OPERATOR knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the Facility premises, OPERATOR shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if OPERATOR knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, OPERATOR shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. OPERATOR will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Facility. In addition, OPERATOR and OPERATOR'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this agreement, OPERATOR at the CITY'S sole option shall cause an environmental assessment of the Facility premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of OPERATOR and shall establish what, if any, hazardous substances exist on, in or under the Facility, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, County, State, or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. OPERATOR shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all cost and expense incurred.

SECTION 6: GENERAL PROVISIONS

6.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to OPERATOR at the Facility or at such other address designated in writing by OPERATOR; and to CITY as follows:

City Manager
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this agreement may by like notice designate a different address to which notices shall be sent.

- 6.2 Compliance with Law. OPERATOR shall at all times in the construction, maintenance, occupancy, and operation of the Facility premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at OPERATOR'S sole cost and expense. In addition, OPERATOR shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 6.3 CITY Approval. The approval or consent of CITY, wherever required in this agreement, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 6.4 Nondiscrimination. OPERATOR agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in OPERATOR'S use of the Facility, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 6.5 Equal Opportunity. OPERATOR shall comply with the CITY'S Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document RR-262633. OPERATOR shall submit a Workforce Analysis Report and a Certificate of Compliance with Title VII of

the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. OPERATOR understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this agreement.

- 6.6 Partial Invalidity. If any term, covenant, condition, or provision of this agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 6.7 Legal Fees. In the event of any litigation regarding this agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 6.8 Number and Gender. Words of any gender used in this agreement shall include any other gender, and words in the singular number shall include the plural, when the text requires.
- 6.9 Captions. The Agreement Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this agreement. The numbers of the paragraphs and pages of this agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this agreement.
- 6.10 Entire Understanding. This agreement and the lease agreement and Grant Deed referred to in Recital B contains the entire understanding of the parties. OPERATOR, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the Recreational Facility. Each party has relied on its own examination of the Facility, advice from its own attorneys, and the warranties, representations, and covenants of the agreement itself. Each of the parties in this agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this agreement.

The failure or refusal of any party to read the agreement or other documents, inspect the Facility, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this agreement will be valid unless it is in writing and signed by all parties.

- 6.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or OPERATORS shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or OPERATOR employs an individual who within the

twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or OPERATOR. It is not the intent of this policy that these provisions apply to members of the City Council.

- 6.12 Drug-free Workplace. OPERATOR shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988 by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The OPERATOR'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
 - c. OPERATOR shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. OPERATOR and sublessees shall be individually responsible for their own drug-free workplace programs.
- 6.13 Standard of Employees. OPERATOR and its employees shall at all times conduct themselves and the operations at the Facility in a creditable manner.

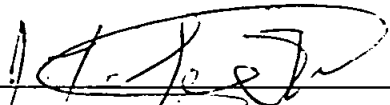
SECTION 7: SIGNATURES

7.1 Signature Page.

IN WITNESS WHEREOF, this Agreement is executed by CITY, acting by and through its City Manager, and by OPERATOR, acting by and through its lawfully authorized officers.

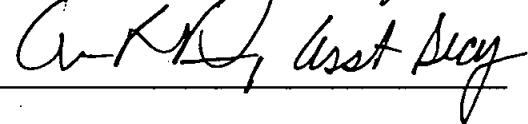
THE CITY OF SAN DIEGO

Date JAN 31 1994

By 
Property Director

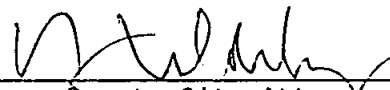
OPERATOR: YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO COUNTY

Date _____

By 
By 

APPROVED as to form and legality this 8 day of February, 1994.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

CEBK:rc(7)
9-24-93

SECTION 8: EXHIBITS

8.1 Exhibit A - Location.

8.1 LOCATION

Parcel 1:

Lots 9 and 10 of Penasquitos Towne Centre Unit 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11092, filed in the Office of the Recorder of said County November 29, 1984.

Parcel 2:

Parcel 1 of Parcel Map No. 15351, in the City of San Diego, County of San Diego, State of California, recorded August 26, 1988, File/Page No. 88-428624, Official Records of San Diego County, California, EXCEPTING THEREFROM any portion of said Parcel 1 of Parcel Map No. 15351 hereafter conveyed to the City of San Diego, a municipal corporation.

8.2 Exhibit B - General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Financial Plan
- d. Schematic Elevations
- e. Landscape Plan
- f. Others as applicable

and is filed in the Office of the City Clerk referenced to this agreement.

8.2 GENERAL DEVELOPMENT PLAN

GENERAL DEVELOPMENT PLAN PENASQUITOS FAMILY BRANCH YMCA

Exhibit 1 shows the two parcels to be developed as the Penasquitos Family Branch YMCA: Parcel 1 of Parcel Map No. 15351 (sometimes call the "linear park site") and Lots 9 and 10 of Map No. 11092.

Development of the linear park site is governed by CUP No. 90-0665; development of Lots 9 and 10 is governed by PCD Permit No. 87-0599.

Exhibits 2 through 6 show the development of Lots 9 and 10 with the main branch facilities. That development will occur in Phases I, II and IV as described in Attachment A. Phase I construction is currently planned to commence in late summer, 1993 and be completed in early spring, 1994. No time table presently exists for construction of Phases II through V; construction timing will depend on financing. The YMCA funds branch construction with donations and grants the timing of which cannot, at this time, be estimated with accuracy.

While Phase I can be developed under PCD Permit No. 87-0599, subsequent phases cannot be developed without an amendment of PCD Permit No. 87-0599. The amendment process may result in changes in Exhibits 2 through 6. It is anticipated that application for the amendment will be filed in 1994. The approval, by the City Manager, of this General Development Plan does not constitute City approval of the PCD Permit amendment.

The linear park site will be developed with three facilities. Development will probably not proceed until the San Diego County Water Authority installs a large water main through the site. The three facilities are:

1. Neighborhood park (Exhibit 7), Phase III, presently planned to be constructed by American Newland Associates. Newland, YMCA and City Park and Recreation Department have orally agreed that, upon completion of the park, YMCA will, without cost, convey the park to the City. However, the City Council must approve any such conveyance.

2. Parking for the YMCA facilities on Lots 9 and 10 (Exhibit 8, Sheet A-2). The construction is a part of Phase II. (Phase II facilities on Lots 9 and 10 cannot be used until the parking is in place.)

EXHIBIT B

3. Child care center (Exhibit 8, Sheets A-1 and A-3 through - 5). The construction is Phase V. Date of construction is not presently known.

Upon completion of Phases I through V construction the branch YMCA will provide to the Penasquitos community all of the services described in Attachment B. Some of the programs are now in place despite the lack of any facilities. Others will be implemented as various phases are completed. For instance, upon completion of Phase I, the multi-purpose room (I.A.3) will be, on some Friday and Saturday nights, a "teen center" for dancing, as well as the location for other YMCA programs.

It is presently contemplated that, when Phases I and II are completed, the facilities on Lots 9 and 10 will be open and operating during the following days and hours:

Monday through Friday: 6:00 a.m. - 11:00 p.m.

Saturday, Sunday: 7:00 a.m. - 10:00 p.m.

(The teen center will be open until midnight)

July 13, 1993

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO
COUNTY, a California non-
profit public benefit
corporation

By _____
Title _____

APPROVED this _____ day of _____, 1993

CITY OF SAN DIEGO, a
municipal corporation

By _____
_____ City Manager

YMCA OF SAN DIEGO COUNTY
PENASQUITOS GENERAL DEVELOPMENT PLAN
PHASING

Phase I. Development of Lot 10 Assessors Parcel #315-530-6

YMCA Community Center - 4690 Sq. Ft. Building & Parking Lot
(Exhibit 2) (Exhibit 3) (Exhibit 6)

A. 4690 Sq. Ft. Building

1. Administrative Office
2. Reception Station
3. Multi-Purpose Room / Teen Center
4. Adminstrative Kitchen and Store Room
5. Administrative Office Work Room
6. Mens Toilet
7. Womens Toilet

B. Parking Lot (lighted)

1. 39 Standard Parking Spaces
2. 2 Handicap Parking Spaces

C. Concrete Patio, Concrete Pathways

D. Landscaping

Phase II. Development of Lot 9 (south side) Assessors Parcel #315-530-5

Parcel 1-PM15351 (west side) and Assessors Parcel #315-490-33
Pool, Locker Rooms and Temporary Parking Lot
(Exhibit 2) (Exhibit 3) (Exhibit 6)

A. 26,585 Sq. Ft. Building

1. Lobby (temporary)

Attachment A

2. Reception Area (temporary)
 3. Administration Offices (temporary)
 4. Natatorium (swimming pool)
 - a. 5544 Sq Ft Pool (25 yd, 5 lane) (25 mtr 5 lane) (25 yd, 8 lane)
 - b. Jacuzzi
 - c. Sauna
 - d. Instruction Bleacher Area
 - e. Aquatic Office
 - f. Pool Patio Area
 5. Women's Locker Rooms/Toilet/Showers
 6. Mens Locker Rooms/Toilet/Showers
 7. Juice Bar
 8. Pool Mechanical Room
 9. Mechanical Storage Areas
 10. Fitness Training Area
 11. Aerobics/Exercise Area
- B. Site: Temporary Parking Area
1. 17 Spaces
 2. Dumpster Area
 3. Delivery Area
- C. Landscaping
- D. Offsite Parking Area - 138 Parking Spaces (east side)
3 Handicap Spaces
- Parcel I PM-15351 (east side)
Assessors Parcel #315-490-33
Penasquitos Town Center Parcel I
(Exhibit 8, Sheet A-2)

Attachment A

Phase III. Add'l Development (center part) Assessors Parcel #315-490-33
Parcel I PM 15351
Penasquitos Town Center Park
(Exhibit 7 - LC-1, LC-2, LC-3)

A. Park

1. Pedestrian Sidewalk
2. Picnic Area (tables) and Covers
3. Playground Area
4. Rest Area (benches)

Phase IV. Add'l Development of Lot 9 (north side)
Assessors Parcel #315-530-5
(Exhibit 4) (Exhibit 5) (Exhibit 6)

A. 14,010 Sq. Ft. Building

1. Administration Wing
2. Aerobics/Exercise Room
3. Lobby
4. Mens Public Toilet
5. Womens Public Toilet
6. Babysitting Area
7. Deck
8. Weight Training Areas
9. Nursery
10. PE Directors Office
11. Store Room

B. Outside Babysitting Play Area

Attachment A

C. Landscaping

D. Main Entrance Patio/Staircase and Walkway

Phase V. Add'l Development Child Care Ctr Assessors Parcel #315-490-33
Parcel 1 PM15351 (west side)
(Exhibit 8, Sheets A-1, A-3, A-4, A-5)

A. 6,994 Sq. Ft. Building

1. 7 Child Care Rooms

2. Staff Toilets

3. Kitchen

4. Teachers Room

5. Administrative Office

6. Reception Area

7. Lobby Area

8. Storage Rooms

9. Janitorial Closets

B. Parking Lot

1. 16 Spaces

2. 2 Handicap Spaces

3. Pedestrian Walkways

4. Dumpster Area

C. Outside Play Areas (2)

Attachment A

PENASQUITOS FAMILY YMCA

As an integral part of the Mater Plan design process, an in depth "Program Needs and Priorities Study" was completed. The study shows the kinds of programs which will be offered when the facility reaches total build out. The YMCA will focus on eight major program thrusts. They are as follows:

AQUATICS

Programs designed for children 3 months of age to senior citizens to provide instruction, recreation and an opportunity to maintain a healthy lifestyle. Private pools will also be secured throughout the service area to offer backyard swim lessons in neighborhoods where no YMCA pools exist.

Programs include:

- | | |
|---------------------|-----------------------|
| *Youth Swim Lessons | *Water Aerobics |
| *Youth Swim Team | *Private Swim Lessons |
| *Lap Swimming | *Recreational Swim |
| *Adult Swim Lessons | *Handicapped Swim |

CAMPING

Having pioneered the concept of organized group camps, the Penasquitos Family YMCA is committed to traditional values oriented camping programs, in addition to speciality camps which focus on learning a specific skill. These programs offer children the opportunity to develop their interpersonal skills in a fun and safe supervised environment. A special effort by the YMCA will be made to provide these enriching experiences to children from financially less fortunate homes. Some of the wide variety of programs which will be offered include:

- | | |
|-----------------------|---------------------------|
| *Traditional Day Camp | *Golf Camp |
| *Holiday Camp | *Soccer Camp |
| *Family Camp | *Cheerleading Camp |
| *Surf Camp | *InLine Hockey Camp |
| *Equestrian Camp | *Art and Photography Camp |
| *Gymnastics Camp | *Ice Skating Camp |
| *Rock Climbing Camp | *Cooking Camp |
| *Baseball Camp | *Basketball Camp |

CHILD CARE

The YMCA is the largest provider of afterschool childcare in San Diego County with 67 licensed sites serving nearly 3,000 children per day. When completed, the Penasquitos Family YMCA will operate a 5,000 square foot Childcare Center which will be licensed for one hundred children. The facility will include both a preschool and afterschool component. The child care facility will meet or exceed all licensing requirements as listed by the California State Department of Social Services.

HEALTH ENHANCEMENT

Health Enhancement includes a wide variety of programs and activities which will help people develop behavioral and attitudinal changes regarding health and fitness. A renewed focus on youth fitness is making gains in helping young people develop and maintain a healthy lifestyle. Exercise, health education, testing and evaluation, opportunities to meet others and rehabilitation from injury and disease are all components to Health and Enhancement. Programs will include:

- | | |
|-------------------------------|-------------------------|
| *Pre & Post Natal Fitness | *Fitness Assessments |
| *Weight & Circuit Training | *Yoga |
| *Aerobics Classes | *Risk Factor Clinics |
| *Traditional Exercise Classes | *Senior Fitness Classes |
| *Striding Classes | *Healthy Back |

SOCIAL SERVICES

These programs will be offered as an extension of the YMCA's Human Development Services. Programs/projects are designed to help solve some of the more pressing social issues confronting young people and families in our services area. Qualified staff will deliver services which include counseling for individual couples and families, child abuse prevention and treatment, shelter and counseling for teenagers in crisis, gang and substance abuse prevention and youth literacy and tutoring programs.

FAMILY LIFE

Programs have been designed to strengthen the family unit and provide experience for both the parent and child to enhance communication and relationships. Programs offered will include:

- *Y-Indian Parent Child Program
- *Playcare for Young Children
- *Family Camp at a YMCA Resident Camp
- *Cultural Event Days at the YMCA
- *You and Me Baby Support Classes

LEADERSHIP DEVELOPMENT

Leadership development is woven into most YMCA programs to equip children (and adults) with leadership qualities to be winners and to share their skills in service to others. Adults learn to become leaders as participants on the Board of Management, YMCA Branch Committees and "Chiefs" in the Y-Indian Program. Teens who participate in the YMCA Youth and Government Model Legislature Program and in the Junior Counselor and Counselor in Training programs develop leadership skills and an appreciation of the Democratic process.

SPORTS AND SKILL DEVELOPMENT

Sports and Skill Development programs can become the back drop for learning life values, learning to win and learning to lose. The Penasquitos Family YMCA will use sports leagues and skill development as an attractive tool for involving youngsters in developing self esteem, physical discipline and mental strength. These important programs will include:

- | | |
|-------------------------------|---------------|
| *Swim lessons | *Cycling |
| *Gymnastics | *Volleyball |
| *Competitive Surfing | *Swim Team |
| *Martial Arts | *Cheerleading |
| *Preschool Movement Education | *Soccer |
| *You and Me Baby | |

TEEN CENTER

The focal point of the initial phase of the Penasquitos Family YMCA will be Teen programming. The Teen Center will offer a wide variety of activities for local area teens. Program curriculum will be designed to include educational, physical and social activities. Examples of some of the exciting activities planned are:

- | | |
|----------------------------------|------------------------|
| *Teen Dances | *Wrestling |
| *Youth and Government | *"Funk Aerobics" |
| *Afterschool Recreation Programs | *Dance Classes |
| *Leaders Club | *Street Hockey Clubs |
| *Teen Caravans | *Saferides |
| *Speciality Camps | *Counselor in Training |

The program plans presented here are a result of extensive study by the staff, volunteers and community leaders. As needs change and new issues arise this YMCA will adapt to meet the challenges which are created.

8.3 Exhibit C - Schedule of Rates & Charges.

The rates and charges of the Penasquitos Family Branch YMCA for its activities and programs and for the use of its facilities shall be, as to both YMCA members and the public, similar to and consistent with the rates and charges of branch YMCA's in San Diego County for comparable activities, programs and facilities.

The rates and charges, and any changes thereof, shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld.

8.4 Exhibit D - Schedule of Days & Hours of Operation.

When Phases I and II are completed, the facilities on Lots 9 and 10 will be open and operating during the following days and hours (except legal holidays):

Monday through Friday: 6 a.m. - 11 p.m.

Saturday & Sunday: 7 a.m. - 10 p.m.

The teen center will be open until midnight on some Friday and/or Saturday nights.

When Phase V (child care center) is completed, that facility will be open Monday through Friday (except legal holidays) 6 a.m. - 6 p.m.

Any changes in the days and hours of operation shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld.

COPY

LEASE

THIS LEASE, made by and between YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation, hereinafter called "Landlord," and THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "Tenant," is entered into with respect to the following facts:

A. The Premises. Landlord is the owner of the land described in Exhibit A attached hereto (the "Premises").

B. Concurrent Documents. Concurrently with the execution and delivery hereof, the parties shall execute and deliver (i) "Operating Agreement Rancho Penasquitos Branch YMCA" (the "Operating Agreement") and (ii) "Deed of Conveyance and Transfer of Improvements" (the "Improvement Deed").

AGREEMENTS

IN CONSIDERATION of the mutual promises and obligations of the parties as herein expressed, Landlord and Tenant agree as follows:

1. Lease. Landlord hereby leases, and Tenant hereby takes and hires, the Premises for the term and upon the covenants and conditions herein set forth.

2. Term. The term of this Lease shall be fifty (50) years commencing on the first day of the calendar month following execution by the City Manager. "Agreement year" as used in this agreement shall mean the 12-month period commencing on the first day of the calendar month following the execution of this Lease by the City Manager and each subsequent 12-month period.

3. Right to Extend or Terminate. Provided that Landlord, as OPERATOR, is not in default of the Operating Agreement at the end of said fifty (50) years, this Lease shall be automatically extended for an additional forty-nine years unless Landlord delivers to CITY, at least six (6) months prior to the end of said fifty (50) years, written notice that Landlord will not so extend this Lease. The extension shall be on the same agreements, considerations, covenants and conditions as are set forth herein, except as to right or further renewal and except as to rent, which shall be the same amount that Tenant, as CITY, reasonably determines to be the rent for the same extension of the Operating Agreement. Tenant shall have the sole and absolute right to terminate this Lease at any time by giving Landlord at least 270 days prior written notice of termination. In the event of such early termination by Tenant, upon the date of termination (i) the Operating Agreement shall automatically terminate and

DOCUMENT NO. 00-18031-1

FILED JAN 31 1994

OFFICE OF THE CITY CLERK 09/22/93
SAN DIEGO, CALIFORNIA

COPY

(ii) Tenant shall execute, acknowledge and deliver to Landlord a deed conveying and transferring to Landlord all improvements now or hereafter on the Premises, the intent of the parties being to reverse, by said deed, the Improvement Deed. In the event of termination by Tenant for cause, or in the event of expiration of the Lease, all improvements on the premises shall continue to be owned by Tenant pursuant to the Improvement Deed.

4. Rent. Rent is due in advance. Landlord hereby acknowledges receipt of the rents due under this Lease.

4.1. Rent Amount. The rent is One Dollar (\$1.00) per year.

5. Use. Tenant shall use the Premises solely and exclusively for a recreational facility and community center.

6. The Operating Agreement. Nothing contained herein or omitted herefrom shall alter or affect the rights and obligations of Landlord as OPERATOR, or Tenant as CITY, set forth in the Operating Agreement. In the event of any conflict between this Lease and the Operating Agreement, the Operating Agreement shall, except as to last two sentences of Paragraph 3 above, prevail.

7. Notices

7.1 Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

To Landlord:

YMCA of San Diego County
4715 Viewridge Avenue, Suite 100
San Diego, California 92123

To Tenant:

City Manager, City of San Diego
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, California 92101-4155

or to any mortgages, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

7.2 Any party entitled or required to receive notice under this Lease may be like notice designate a different address to which notices shall be sent.

8. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

9. Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

10. Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

11. Captions. The section headings and captions for various paragraphs herein shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

12. Reversionary Provision. By the delivery and acceptance hereof, the parties agree that Landlord has not, by this instrument, voluntarily or involuntarily conveyed the subject property in the sense that the phrase "voluntary or involuntarily conveyed" is used in that portion of the Grant Deed (described below) which commences "The 'Reversion of Title' will read as follows:" and ends "Said Property is: (Legal Description)." Said Grant Deed is that which was executed by American Newland Associates to Operator dated April 21, 1989, recorded September 5, 1989, File No. 89-476856, Official Records of San Diego County, California.

13. Entire Understanding. This Lease, together with the Operating Agreement and the Deed contain the entire understanding of the parties. Landlord, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease, the Operating Agreement or the Deed.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any

Parcel 1:

Lots 9 and 10 of Penasquitos Towne Centre Unit 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11092, filed in the Office of the Recorder of said County November 29, 1984.

Parcel 2:

Parcel 1 of Parcel Map No. 15351, in the City of San Diego, County of San Diego, State of California, recorded August 26, 1988, File/Page No. 88-428624, Official Records of San Diego County, California, EXCEPTING THEREFROM any portion of said Parcel 1 of Parcel Map No. 15351 hereafter conveyed to the City of San Diego, a municipal corporation.

EXHIBIT A

objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

IN WITNESS WHEREOF, this Lease is executed by Landlord, acting by and through its lawfully authorized officers, and by Tenant, acting by and through its City Manager.

Date: JAN 31 1994

THE CITY OF SAN DIEGO

By J. T. [Signature]

Property Director

Date: _____

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO
COUNTY

By Richard A. Pollack, President

By A. R. [Signature], Asst Secy

Felony APPROVED as to form and legality this 8 day of February, 1994.

JOHN W. WITT, City Attorney

By [Signature]

Deputy City Attorney

0-18031

Kodama
51-A

(R-94-952)

RESOLUTION NUMBER R- 233252

ADOPTED ON JAN 10 1994

BE IT RESOLVED, by the Council of The City of San Diego, that it is hereby certified that Negative Declaration No. 87-0599, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the Declaration reflects the independent judgment of The City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a lease and an operating agreement for the Rancho Penasquitos YMCA.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
12/14/93
Or.Dept:Prop.
Job:221347
R-94-952
Form=r.nd/mndgen

(R-94-951)

RESOLUTION NUMBER R-283251

ADOPTED ON JAN 10 1994

BE IT RESOLVED, by the Council of The City of San Diego,
that the City Manager is hereby authorized to accept, for and on
behalf of The City of San Diego, a Deed of Conveyance executed by
the YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY
("YMCA"), transferring ownership of the improvements of the
Rancho Penasquitos branch YMCA from the YMCA to the City, a copy
of which Deed of Conveyance is on file in the office of the City
Clerk as Document No. RR- 283251 .

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
12/14/93
Or.Dept:Prop.
Job:221347
R-94-951
Form=r-t

*Property
C. Rodama*

(O-94-58)

ORDINANCE NUMBER O- 18031 (NEW SERIES)

ADOPTED ON JAN 31 1994

AN ORDINANCE AUTHORIZING A FIFTY-YEAR LEASE AGREEMENT WITH THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY ("YMCA") FOR THE RANCHO PENASQUITOS BRANCH YMCA, AND AUTHORIZING A FIFTY-YEAR OPERATING AGREEMENT WITH THE YMCA FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF THE RANCHO PENASQUITOS BRANCH YMCA

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

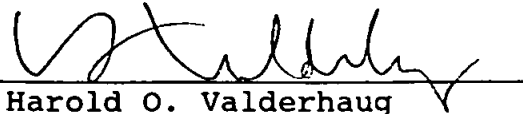
Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a fifty-year lease agreement with the YMCA, whereby the City will lease the the Rancho Penasquitos YMCA branch property located at Fairgrove Drive and Salmon River Road, off Black Mountain Road, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO- 18031-1.

Section 2. That the City Manager is hereby authorized to execute a fifty-year Operating Agreement with the YMCA for the YMCA to construct, operate and maintain the Rancho Penasquitos YMCA facilities, under the terms and conditions set forth in that Operating Agreement on file in the office of the City Clerk as Document No. OO- 18031-2.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
12/14/93
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Job:221347
O-94-58
Form=o+t

Doc. No. 88-283251	Date JAN 10 1994
Filed	
Resol. No. 8-283251	Date JAN 10 1994
App.	
COUNTY OF SAN DIEGO	
File/Page No. 1994-0124973	
Date 2-24-94	
Series _____	Book _____

**DEED OF CONVEYANCE AND
TRANSFER OF IMPROVEMENTS**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation ("OPERATOR"), hereby conveys and transfers to THE CITY OF SAN DIEGO, a municipal corporation ("CITY").

All improvements (including without limitation trade fixtures, structures, installations and additions, but excepting OPERATOR-owned machines, appliances, equipment [other than trade fixtures] and other items of personal property) now or hereafter placed on the land described in Exhibit A attached hereto during the period commencing January 1, 1993 and ending at the termination of "Operating Agreement Penasquitos Branch YMCA" described below.

The rights and obligations of each of the parties with respect to said improvements are set forth in that certain written "Operating Agreement Penasquitos Branch YMCA" between the parties and executed and delivered concurrently herewith.

By the delivery and acceptance hereof, the parties agree that Operator has not, by this instrument, voluntarily or involuntarily conveyed the subject property in the sense that the phrase "voluntary or involuntarily conveyed" is used in that portion of the Grant Deed (described below) which commences "The 'Reversion of Title' will read as follows:" and ends "Said Property is: (Legal Description)." Said Grant Deed is that which was

COPY

executed by American Newland Associates to Operator dated April 21, 1989, recorded September 5, 1989, File No. 89-476856, Official Records of San Diego County, California.

Dated: Sept. 24, 1993, 1993.

YOUNG MENS CHRISTIAN ASSOCIATION
OF SAN DIEGO COUNTY

By Richard A. Collato
President

By Alan R. Perry
Asst. Secretary

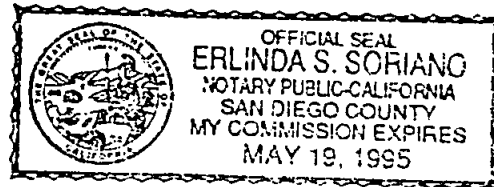
STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } SS.

On Sept. 24, 1993, before me, Erlinda S. Soriano, the undersigned, a Notary Public in and for said State, personally appeared Richard A. Collato and Alan R. Perry, ~~personally known to me~~ OR proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Erlinda S. Soriano

ERLINDA S. SORIANO
Name (Typed or Printed)



Parcel 1:

Lots 9 and 10 of Penasquitos Towne Centre Unit 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11092, filed in the Office of the Recorder of said County November 29, 1984.

Parcel 2:

Parcel 1 of Parcel Map No. 15351, in the City of San Diego, County of San Diego, State of California, recorded August 26, 1988, File/Page No. 88-428624, Official Records of San Diego County, California, EXCEPTING THEREFROM any portion of said Parcel 1 of Parcel Map No. 15351 hereafter conveyed to the City of San Diego, a municipal corporation.

EXHIBIT A

*Linda Kodama
51-A
File: YMCA 106*
(R-94-951)

RESOLUTION NUMBER R- 283251

ADOPTED ON JAN 10 1994

BE IT RESOLVED, by the Council of The City of San Diego,
that the City Manager is hereby authorized to accept, for and on
behalf of The City of San Diego, a Deed of Conveyance executed by
the YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY
("YMCA"), transferring ownership of the improvements of the
Rancho Penasquitos branch YMCA from the YMCA to the City, a copy
of which Deed of Conveyance is on file in the office of the City
Clerk as Document No. RR- 283251 .

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
12/14/93
Or.Dept:Prop.
Job:221347
R-94-951
Form=r-t

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER

TO:

CITY ATTORNEY

2. FROM: (ORIGINATOR)

PROPERTY DEPARTMENT

3. DATE October 21, 1993

4. SUBJECT: Lease and Operating Agreements - YMCA - Rancho Penasquitos Branch

5. PREPARATION OF: ☒ RESOLUTION(S) ☐ ORDINANCES(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorizing the City Manager to enter into a 50-year lease agreement with the YMCA and the City for the Rancho Penasquitos YMCA branch.
2. Authorizing the City Manager to accept a Deed of Conveyance transferring ownership of the improvements from the YMCA to the City.
3. Authorizing the City Manager to execute a 50-year operating agreement with the YMCA for construction, operation and maintenance of the Rancho Penasquitos YMCA branch.
4. Certifying that Negative Declaration No. 87-0599 has been completed in compliance with the California Environmental Quality Act of 1970, as amended and the State CEQA Guidelines, and that such Negative Declaration has been reviewed and considered by Council.

5a. CITY MANAGER'S RECOMMENDATION: Adopt the resolution: Introduce the ordinance.

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION").

COUNCIL DISTRICT: 1 COMMUNITY AREA: Rancho Penasquitos

ACTION REQUESTED BY: Property Director.

DESCRIPTIVE LOCATION: Fairgrove Drive off Black Mountain Road

ENVIRONMENTAL ASSESSMENT: The City of San Diego as Lead Agency under CEQA has prepared and completed Negative Declaration 87-0599 dated September 22, 1987 covering this activity.

HANDLING: Record Deed only. Deliver all other documents to Property Department
Attention: C. Kodama, M.S. 51-A, for further handling

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

VICKERS:Kodama

51-A

8. TELEPHONE NO.

66986/66053

9. CHECK IF "DOCKET SUPPORTING
INFORMATION" ATTACHED ☒

10. COMPLETE FOR ACCOUNTING PURPOSES:

11. ROUTING AND APPROVALS

	BUDGETED	UNBUDGETED	ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
FUND/DEPT.			✓	DEPARTMENT DIRECTOR	Robert J. Callina	10/25/93
ORGANIZATION			X	CLEARING AUTH. EAS	Chadly Subintend	11/1/93
OBJECT ACCOUNT			X	CLEARING AUTH. EOP		11/29/93
JOB ORDER			X	Plan. CLEARING AUTH. E&D		12/3/93
WORK ORDER NO.			X	CLEARING AUTH. P&R		12/10/93
C.I.P. NO.				CLEARING AUTH.		
FACILITY				CLEARING AUTH.		
AMOUNT			X	DCM CONRAD	Conrad	12-14-93
12. ESTIMATED COST:				AUDITOR		
			X	CITY ATTORNEY		
			X	ORIGINATING DEPARTMENT	W. J. Proctor	12-14-93
			✓	Mgr. Dkt. Clerk Council Rep.	12/15/93	
Job: 221347 cc: Docket REDI BOOK PAGE 192 THOMAS BROS. MAPS PAGE 36 3-A				RULES ☐ CONSENT ☒ ADOPTION COMMITTEE ☐ Refer to _____ Date 11/10/94		

DOCKET SUPPORTING INFORMATION

DATE: October 21, 1993

CITY OF SAN DIEGO

SUBJECT: Lease and Operating Agreements - YMCA - Rancho Penasquitos Branch

BACKGROUND: (DOUBLE SPACE)

In 1989, American Newland Associates conveyed a parcel of land located in Rancho Penasquitos to the YMCA for establishment of a recreational facility. The land is located at the intersection of Fairgrove Drive and Salmon River Road. The YMCA is now proposing to develop the property in five phases. Phase I is a 4690 square foot building for use as a teen center/multi purpose room and supporting administrative offices and will be completed by Summer 1994. Phases II through V, which will be built when funding is secured, include a child care center, swimming pool, weight training area and development of a park. The park will be conveyed to the City upon completion. Total value of Phase I, including construction of an adjacent parking lot, is estimated at \$700,410.

The YMCA proposes to lease its land to the City for 50 years at \$1.00 per year, develop the facility, transfer ownership of the improvements to the City, and enter into a 50 year agreement to operate the recreational facility for the City. Rent is proposed at \$1.00 per year for the operating agreement because the YMCA's development and subsequent operation of the center will provide additional park and recreation facilities for the community. The proposed lease and operating agreements include the City's standard lease provisions and options to extend the respective agreements for an additional 49 years. The City can terminate the lease in which case the operating agreement will also terminate and the improvements will then revert to the YMCA.

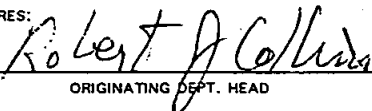
FISCAL IMPACT: The City is receiving a land lease and ownership of the improvements in lieu of Facilities Benefit Assessment fees of \$146,640 which would have otherwise been paid to the City for the YMCA's development. YMCA will operate Center at no cost to City.

BYLINE: (DEPUTY CITY MGR/DEPT. HEAD/AUTHOR INITIALS)

CONRAD:Collins:CEBK

Job: 221347

SIGNATURES:


ORIGINATING DEPT. HEAD
CITY MANAGER

(FOR MANAGERIAL DEPARTMENTS ONLY)

PLANNED COMMERCIAL DEVELOPMENT PERMIT NO. 87-0599
PLANNING COMMISSION

This Planned Commercial Development Permit Amendment is granted by the Planning Commission of The City of San Diego to AMERICAN NEWLAND ASSOCIATES, a California General Partnership, Owner/Permittee, under the conditions in Section 101.0910 of the Municipal Code of The City of San Diego.

1. Permission is granted to Owner/Permittee to modify Phase III and IV only of the Penasquitos Towne Centre, a Planned Commercial Development located on the east side of Black Mountain Road between Paseo Montalban and Twin Trails Drive.

The total development is described as Lots 1-5, 7, and 9, Parcel Map No. 13169, Lots 1-2, Parcel Map No. 14002 and Lots 1-2, Parcel Map No. 14362 (Phase I and II); Parcels 1 and 2 of Parcel Map No. 14725 (Phase III) and Lots 7-11, Penasquitos Towne Center Unit 2, Map No. 11092 (Phase IV), in the CA and R1-5000 Zone.

PCD Amendment No. 87-0599 only applies to the following portions of the Penasquitos Towne Centre:

Phase III: Portion of Parcels 1 and 2 of Parcel Map No. 14725, in the CA Zone, and

Phase IV: Lots 8-11, Penasquitos Towne Centre Unit 2, Map No. 11092, in the CA Zone.

Note: Lot 7, Penasquitos Towne Centre Unit 2, Map No. 11092 (the Service Station Site) remains under the control of PCD No. 82-0691.1.

2. Project Summary: Penasquitos Towne Centre shall be a mixed use development totaling 273,721 square feet of floor area, distributed as follows:

Retail - 179,150 square feet (PCD/AM No. 86-0908);

Gasoline Service Station - 3500 square feet
(PCD/AM 82-0691.1); under Conditional Use Permit
No. 85-0684.1 (Pending);

Theater - 10,000 square feet (PCD/AM No. 87-0599);

Post Office - 19,320 square feet (PCD/AM No. 87-0599);

Library - 18,000 square feet (PCD/AM No. 87-0599);

Telephone Switching Station - 7,251 square feet (PCD/AM No. 87-0599);

Day Care Center - 7,000 square feet (CUP No. 87-0599);

Parking Summary (total project)

1. Phase I and II (PCD/AM 86-0908)	775 spaces
2. Service Station Site (PCD/AM 82-0691.1)	9 spaces
3. Phase III and IV (PCD/AM 87-0599)	452 spaces
4. Phase IV (CUP 87-0599)	<u>116 spaces</u>
Total	1,352 spaces

3. Modifications to the Penasquitos Towne Center authorized by PCD/AM No. 87-0599 are as follows:

a. Phase III:

1. U.S. Post Office - This facility was relocated from Phase IV and increased in floor area from 4,000 square feet to 19,320 square feet.
2. Three-plex movie theater - 10,000 square feet (remains the same).

Note: Office uses have been deleted.

b. Phase IV:

1. Library - 18,000 square feet (increased from 15,000 square feet)
2. YMCA - 33,000 square feet (new use)
3. Telephone Switching Station - 7,251 square feet (new use)

Note: Child day-care nursery (reduced from 10,000 square feet to 7,000 square feet), and neighborhood park with tot lot were removed from PCD and relocated to the 4.58-acre site authorized by CUP No. 87-0599.

4. The project shall adhere, to the extent possible as illustrated in the PCD exhibits, to the design guidelines outlined in the adopted Penasquitos East Community Plan.

✓ 5. Prior to the issuance of any sign permits, sign plans shall be reviewed by the Planning Director and found to be in conformance with the approved comprehensive sign plan for the center.

6. Prior to the issuance of any building permits for structures shown on this site plan, the applicant shall submit, for Planning Director approval, elevations for said structure not included in the PCD exhibits. These elevations are to reflect the character of the elevations approved by the permit.

7. The size of the theater shall be limited to a maximum of 300 seats. Any increase over 300 will be subject to an amendment of the PCD and may require an increase in parking or a restriction on the hours of operation, in order to meet a revised parking requirement.

✓ 8. Building permits for the YMCA shall be obtained simultaneously with development of the community park as authorized by CUP No. 87-0599. Occupancy permits for the YMCA shall not be issued until completion of work on the park area has been completed.

✓ 9. A detailed pedestrian linkage plan for the YMCA, Library and the linear park shall be approved by the Planning Director prior to the issuance of building permits for the YMCA and the linear park. The linkage plan should include a cross-section (from east to west) and an enhanced pedestrian thoroughfare, defined by distinctive hardscape treatment.

10. Site design of the telephone switching station shall be revised, to the satisfaction of the Planning Director, to indicate a reduction in off-street parking to a maximum of eight spaces for employee parking and an area for equipment maneuvering. The remaining area shall be landscaped. The building may be set back further from Twin Trails Drive, to allow for a wider landscape buffer along the street frontage.

11. Before the issuance of building permits for the U.S. Post Office, a detailed set of conceptual drawings, including an adequate access plan, shall be approved by the Planning Director and City Engineer.

12. A final subdivision map shall record for Phase III, prior to the issuance of any grading or building permits.

13. Parking shall be distributed through Phase III and IV of the project, as follows:

a. Phase III:

- | | | |
|----|------------------|------------|
| 1) | U.S. Post Office | 108 spaces |
| 2) | Theater | 190 spaces |

b. Phase IV (subject to PCD/AM No. 87-0599 only)

- 1) Telephone Switching Station 8 spaces
maximum
- 2) YMCA 49 spaces on-site
- 3) Library 97 spaces

14. The applicant shall construct an interconnected traffic signal system at the intersection of Paseo Montalban and Salmon River Road. This signal is to be constructed upon inclusion in the Penasquitos East Public Facilities Financing Plan and Facilities Benefit Assessment. The applicant may request FBA credits and/or reimbursement for this improvement.

15. No fewer than 452 off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated November 5, 1987, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Planning Department standards. Parking areas shall be marked.

16. No permit for grading or construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to the Planning Department;
- b. The Planned Commercial Development Permit is recorded in the office of the County Recorder.

17. Before issuance of any building permits, complete grading and building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A" dated November 5, 1987, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

18. Before issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A" dated November 5, 1987, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended.

19. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located.

20. This Planned Commercial Development Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0910 of the Municipal Code. Any such extension shall be subject to all Municipal Code requirements and applicable guidelines in effect at the time the extension is considered.

21. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

22. After establishment of the project, the property shall not be used for any other purposes unless:

- a. Authorized by the Planning Director; or
- b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or
- c. The permit has been revoked by the City.

23. This Planned Commercial Development Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

24. This Planned Commercial Development Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

25. Planned Commercial Development Permit Amendment No. 87-0599 shall supersede PCD No. 82-0691.1 for Phase I&I and Phase IV (Lots 8-11, Penasquitos Towne Center Unit 2, Map No. 11091) only.

✓ 26. Approval of the PCD is contingent on the approval of CUP No. 87-0599 for the day-care center, ~~overflow parking lot for the YMCA and the linear community park.~~ Should CUP No. 87-0599 be denied, PCD No. 87-0599 shall be deemed denied and PCD No. 82-0691.1 shall control the property.

Passed and Adopted by the Planning Commission on November 5, 1987.

AUTHENTICATED BY:

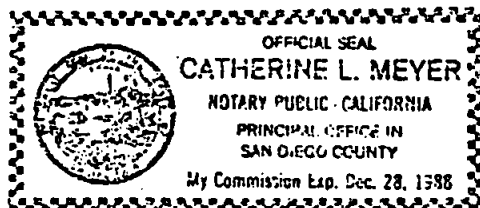
Janet MacFarlane
 Janet MacFarlane, Secretary to
 the Planning Commission

Robert W. Didion
 Robert W. Didion, Senior Planner
 Planning Department

STATE OF CALIFORNIA)
 COUNTY OF SAN DIEGO) SS.

On this 20th day of January, in the year
 19 88, before me, Catherine L. Meyer, a notary public in and for said
 County and State, personally appeared Janet MacFarlane, personally
 known to me (~~or-proved-to-me-on-the-basis-of-satisfactory-evidence~~) to be
 the person who executed this instrument as Secretary to the Planning
Commission of The City of San Diego, and Robert W. Didion, personally
 known to me (~~or-proved-to-me-on-the-basis-of-satisfactory-evidence~~) to be
 the person who executed this instrument as Senior Planner of the Planning
 Department of The City of San Diego, and acknowledged to me that the
 municipal corporation executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in the
 County of San Diego, State of California, the day and year in this certifi-
 cate first above written.



Catherine L. Meyer

Catherine L. Meyer
 (Signed)

Notary Public in and for the County
 of San Diego, State of California

The undersigned Permittee, by execution hereof, agrees to each and every
 condition of this permit and promises to perform each and every obligation
 of Permittee hereunder.

BY: AMERICAN NEWLAND ASSOCIATES, a California General Partnership

BY: THE NEWLAND GROUP, INC., a California
 corporation, General Partner
 Owner/Permittee

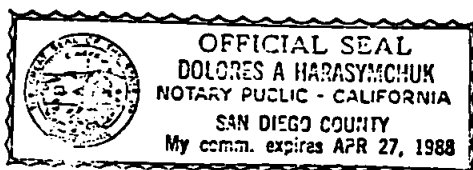
Permittee
 By Ladonna K. Monsees
 Ladonna K. Monsees
 By M. R. Scott
 M. R. Scott

NOTE: NOTARY ACKNOWLEDGMENTS MUST BE
 ATTACHED, PER CIVIL CODE SEC. 1180, et seq.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On January 25, 1988 before me, the undersigned, a Notary Public in and for said State, personally appeared M.R. SCOTT, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Sr. Vice President, and LADONNA K. MONSEES personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Vice Pres & Secretary of THE NEWLAND GROUP, INC., the corporation that executed the within instrument on behalf of AMERICAN NEWLAND ASSOCIATES, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.



Dolores A. Harasymchuk
Notary Public in and for
said County and State

ALAN

CONDITIONAL USE PERMIT NO. 90-0665
PLANNING DIRECTOR
AMENDMENT TO CUP NO. 87-0599

city/06

This Conditional Use Permit Amendment is granted by the Planning Director of the City of San Diego to YOUNG MENS' CHRISTIAN ASSOCIATION (YMCA) OF SAN DIEGO, a California corporation, Owner/Permittee, pursuant to Section 101.0510 of the Municipal Code of the City of San Diego.

1. Permission is granted to Owner/Permittee to establish a daycare center, overflow parking for the YMCA and a private park, located on a 4.58-acre site located on the east side of Salmon River Road between Paseo Montalban and Vervain Street, described as a Portion of the east half of Section 13, T14S, R3W, SBM, in the R1-5000 Zone.
2. The facility shall consist of the following:
 - a. A 7,000-square-foot child daycare center;
 - b. Overflow parking for the YMCA (authorized by Planned Commercial Development Permit Amendment No. 87-0599);
 - c. Linear public park with two picnic areas and a tot lot and adolescent lot;
 - d. Accessory uses as may be determined incidental and approved by the Planning director.
3. No fewer than 116 off-street parking spaces shall be maintained on the property in the approximate location shown on Exhibit "A," dated March 18, 1992, on file in the office of the Planning Department. Parking spaces shall be consistent with Division 8 of the Zoning Regulations of the Municipal Code and shall be permanently maintained and not converted for any other use.
4. All necessary encroachment permits shall be obtained from the San Diego County Water Authority prior to the issuance of any grading or building permits for development of the subject property.
5. Plans for the linear park shall be reviewed and approved by the City Park and Recreation Department prior to the issuance of grading permits.
6. The park shall be privately developed and maintained. However, if the City acquires ownership of the Linear park, the maintenance responsibility will transfer to the City.

YOUR COPY

7. The applicant shall grant a maintenance easement to the adjacent Home Owners Association to the toe of the adjacent slope at the easterly boundary of this Conditional Use Permit. Refusal of this easement by the Home Owners Association will eliminate this requirement.

8. No permit for grading or construction of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the permit to the Planning Department;
- b. The Conditional Use Permit is recorded in the office of the County Recorder.

9. Before issuance of any building permits, complete grading and building plans shall be submitted to the Planning Director for approval. Plans shall be in substantial conformity to Exhibit "A," dated March 18, 1992, on file in the office of the Planning Department. No change, modifications or alterations shall be made unless appropriate applications for amendment of this permit shall have been granted.

10. Before issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Planning Director for approval. The plans shall be in substantial conformity to Exhibit "A," dated March 18, 1992, on file in the office of the Planning Department. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended. [The applicant will provide street trees and parking lot trees in compliance with the Landscape Ordinance along Salmon River Road.]

11. All outdoor lighting shall be shaded and adjusted that the light is directed to fall only on the same premises as light sources are located.

12. This Conditional Use Permit must be used within 36 months after the date of City approval or the permit shall be void. An Extension of Time may be granted as set forth in Section 101.0510K of the Municipal Code. Any extension of time shall be subject to all standards and criteria in effect at the time the extension is applied for.

13. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

YOUR COPY

14. After establishment of the project, the property shall not be used for any other purposes unless:

- a. Authorized by the Planning Director; or
- b. The proposed use meets every requirement of the zone existing for the property at the time of conversion; or
- c. The permit has been revoked by the City.

15. This Conditional Use Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit.

16. This Conditional Use Permit is a covenant running with the lands and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

17. The hours of operation for this use shall be as follows:

- a. Childcare center and parking: weekdays only from 6:00 a.m. to 7:00 p.m.;
- b. YMCA overflow parking: weekdays and Saturdays from 6:30 a.m. to 12:30 a.m.; and
- c. Linear Park: no time limit.

18. In the event that any condition of this Permit, on a legal challenge by the Owner/permittee of this Permit, is found or held by court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void.

Passed and adopted by the Planning Director on March 18, 1992.

YOUR COPY

PLANNING RESOLUTION NO. 9367
GRANTING CONDITIONAL USE PERMIT NO. 90-0665
AMENDMENT TO CONDITIONAL USE PERMIT NO. 87-0599

WHEREAS, on March 18, 1992, YOUNG MENS' CHRISTIAN ASSOCIATION (YMCA) OF SAN DIEGO COUNTY, a California Corporation, Owner/Permittee, filed an application to amend a Conditional Use Permit to construct a child-care center, overflow parking for the YMCA and a private park, located on a 4.58-acre site located on the east side of Salmon River Road between Paseo Montalban and Vervain Street, described as a portion of the east half of Section 13, T14S, R3W, San Bernardino Meridian, in the R1-5000 Zone; and

WHEREAS, on March 18, 1992, the Planning Director of the City of San Diego considered an amendment to Conditional Use Permit No. 87-0599, pursuant to Section 101.0510 of the Municipal Code of the City of San Diego; and NOW, THEREFORE,

BE IT RESOLVED by the Planning Director of the City of San Diego as follows:

1. That the Planning Director adopted the following written Findings, dated March 18, 1992:

- a. The proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or the community plan. The proposed uses, which include a childcare center, an overflow parking area for the YMCA, as well as a neighborhood park, comply with the Penasquitos East Community Plan which designates the property for a community town center.
- b. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity. The Conditional Use Permit will assure that the proposed development will satisfy all of the development standards to provide the safety and accessibility of the users and the public.
- c. The proposed use will comply with the relevant regulations in the Municipal Code. The applicant will satisfy the development standards of the Park and Recreation Department for the proposed park. In addition, the applicant will obtain and comply with the conditions of the encroachment permits from the San Diego County Water Authority, prior to the issuance of any grading or building permits for the project.

YOUR COPY

2. That said Findings are supported by maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED that, based on the Findings hereinbefore adopted by the Planning Director, Conditional Use Permit Amendment No. 90-0665 is hereby GRANTED to Owner/Permittee in the form and with the terms and conditions set forth in Conditional Use Permit No. 90-0665, a copy of which is attached hereto and made a part hereof.

Karen Lynch-Ashcraft
Karen Lynch-Ashcraft
Senior Planner

Adopted on: March 18, 1992

YOUR COPY

RESOLUTION NUMBER R- 9368ADOPTED ON MARCH 18, 1992

WHEREAS, on July 7, 1990, YMCA OF SAN DIEGO COUNTY submitted an application to the Planning Department for a Conditional Use Permit/Amendment; and

WHEREAS, the permit was set for a public hearing to be conducted by the Planning Director of the City of San Diego; and

WHEREAS, the issue was heard by the Planning Director on March 18, 1992; and

WHEREAS, the Planning Director of the City of San Diego considered the issues discussed in Negative Declaration No. 87-0599 and Addendum No. 90-0665;
NOW THEREFORE,

BE IT RESOLVED, by the Planning Director of the City of San Diego, that it is hereby certified that Negative Declaration No. 87-0599 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administrative Code Section 15000 et seq.), and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the Planning Director.

BE IT FURTHER RESOLVED that the Planning Director finds, based upon the Initial Study and any comments received, that there is no substantial evidence that the project will have a significant effect on the environment and therefore, that said Negative Declaration is hereby approved.

By

Karen Lynch-Ashcraft
Karen Lynch-Ashcraft
Senior Planner

YOUR COPY

ALL-PURPOSE CERTIFICATE

Type/Number Document CUP(AM) 90-0665

Date of Approval March 18, 1992

Number of Pages 7 of 7

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

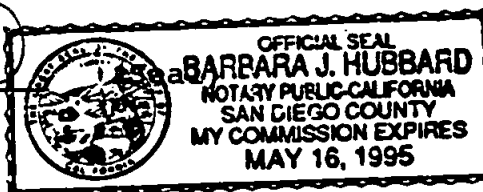
Karen Lynch-Ashcraft
 KAREN LYNCH-ASHCRAFT, Senior Planner

On April 28, 1992 before me, BARBARA J. HUBBARD (Notary Public), personally appeared KAREN LYNCH-ASHCRAFT, Senior Planner of the Planning Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Barbara J. Hubbard
 Barbara J. Hubbard



PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF PERMITTEE(S) THEREUNDER.

Signed

Richard A. Collato, President

Typed Name

YMCA OF S.D.

RICHARD A. COLLATO, PRESIDENT

Typed Name

THE ORIGINAL OF THIS DOCUMENT
 WAS RECORDED ON 27-MAY-1992.
 DOCUMENT NUMBER 1992-0720619.
 ANNETTE EVANG, COUNTY RECORDER
 SAN DIEGO COUNTY RECORDER'S OFFICE.

STATE OF

California

COUNTY OF

San Diego

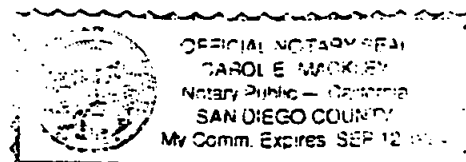
On May 19, 1992 before me, Carol Mackley (Name of Notary Public) personally appeared RICHARD A. COLLATO, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Carol E. Mackley

(Seal)



ORIGINAL

**PENASQUITOS YMCA
(RANCHO FAMILY YMCA)
9440 FAIRGROVE LANE**

BACKGROUND:

YMCA owns underlying land (deeded to Y by American Newland 9/5/89, grant deed attached)

A 1472 dated October 21, 1993 authorized the following transactions which have a 50 year original term plus a 49 year option:

- Lease of YMCA land to City (Attached, dated 1/31/94)
- Operating Agreement from City to YMCA (Attached, dated 1/31/94)

On January 10, 1994, YMCA deeded the improvements to the City in order to avoid FBA fees. (Attached)

CURRENT SITUATION:

City owns the improvements, and has a 50+49 year lease on the land. YMCA has a 50+49 year Operating Agreement covering the land and the improvements. It must be operated as a recreational facility. The original term expires 2044. Rent is nominal.

AT ISSUE:

On December 30, 1996, YMCA entered into a Sublease with Cox PCS. Paragraph 4.2 of the Operating Agreement requires City consent. No City consent was given.

- Sublease rent is an initial \$12,000 per year, adjusted annually via CPI. Lease has been in effect since 1/1/97, approximately 7 years. Rent collected by YMCA is believed to be in excess of \$84,000. City generally requires a 50% share of sublease revenue.

DUPLICATE

THE CITY OF SAN DIEGO
and
YOUNG MEN'S CHRISTIAN ASSOCIATION
Operating Agreement
Rancho Penasquitos Branch YMCA

DOCUMENT NO. 00-18031-2
FILED JAN 31 1994
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO
OPERATING AGREEMENT

THIS AGREEMENT made by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California non-profit public benefit corporation, herein called "OPERATOR,"

- A. OPERATOR is the owner of land described in Exhibit A attached hereto (the "Land").
- B. Concurrently with the execution and delivery hereof, CITY and OPERATOR shall execute and deliver a written lease whereby OPERATOR leases to CITY the Land for a term (and renewal rights) equal to the term (and renewal rights) set forth herein and a written deed whereby OPERATOR transfers to CITY the ownership of all improvements (including without limitation trade fixtures, structures, installations and additions, but excepting OPERATOR-owned machines, appliances, equipment [other than trade fixtures] and other items of personal property), whether now on the Land or hereafter placed on the Land.
- C. The parties intend to provide hereby for the terms and conditions upon which OPERATOR shall, without cost to the CITY except as may be specifically set forth herein, improve and maintain the Land and operate and manage thereon a recreational facility and community center.

In Consideration of the mutual promises and obligations of the parties as herein expressed, CITY and OPERATOR agree as follows:

SECTION 1: USES

1.1 DEFINITION. The terms defined in this section shall have the following meanings unless the context otherwise requires:

- a. "City Manager" shall mean the City Manager of the City of San Diego or his designated representative.
- b. "Facility" shall mean the Penasquitos Branch YMCA situated on the Land and shall include both the Land and CITY'S improvements referred to in Recital B above.

1.2 Uses. It is expressly agreed that the CITY and OPERATOR hereby contract solely and exclusively for the purposes of construction, operation, maintenance and management of a Recreational Facility and community center including but not limited to the following services: Teen center, child care center and social services programs, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. The actual uses authorized are more particularly described in the attached General Development Plan (Exhibit C).

OPERATOR covenants and agrees to use the Facility for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the Facility for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

The use of the Facility for any unauthorized purpose shall constitute a substantial default and subject this agreement to termination at the sole option of the CITY.

1.3 Related Council Actions. By the granting of this agreement, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Facility. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Facility.

1.4 Quiet Possession. OPERATOR, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the facility.

- 1.5 Competent Management. Throughout the term of this agreement, OPERATOR shall provide competent management of the facility to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a Recreational Facility and community center and related activities in a fiscally responsible manner.
- 1.6 Operation of Facilities. OPERATOR shall operate the Facility on such days and during such hours as set forth in Exhibit E hereof. Any change to said schedule shall be approved by the City Manager or his authorized representatives. OPERATOR shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.7 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 8.4, Schedule of Rates & Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.
- 1.8 CITY Use. The Facility shall be available to CITY for civic events and special programs, free of charge, except where OPERATOR has scheduled events or programs. After every CITY use, the Facility shall be left by CITY in the same condition found, and OPERATOR shall not be required to incur any additional costs by reason of CITY use.
- 1.9 Political Activities. The Facility shall be used exclusively for the purposes specified in Section 1, Uses, hereof. The Facility shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that OPERATOR shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the Facility with the exception of Operator's administrative offices and any portion(s) of the Facility under construction during the period of such construction. OPERATOR may develop reasonable restrictions and fees for the Facility use provided they are consistent with the rights of the general public, and are designed to allow OPERATOR to use the Facility for the purposes specified herein. OPERATOR agrees that all activities conducted at the Facility will be as stated in Section 1.2, Uses, hereof.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be fifty (50) years commencing on the first day of the calendar month following execution by the City Manager. "Agreement year" as used in this agreement shall mean the 12-month period commencing on the first day of the calendar month following the execution of this agreement by the City Manager and each subsequent 12-month period.
- 2.2 Right to Extend. Provided that OPERATOR is not in default of this agreement at the end of said fifty (50) years, this agreement shall be automatically extended for an additional forty-nine years unless OPERATOR delivers to CITY, at least six (6) months prior to the end of said fifty (50) years, written notice that OPERATOR will not extend this agreement. The extension shall be on the same agreements, considerations, covenants and conditions as are set forth herein, except as to right or further renewal and except as to rent, which shall be any amount CITY reasonably determines.

To exercise this right, OPERATOR must give CITY six (6) months advance written notice before the date on which this agreement expires.

- 2.3 Surrender of Premises. At termination of this agreement for any reason, OPERATOR shall execute, acknowledge and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the improvements as described in Recital B. The Facility shall be delivered free and clear of all liens and encumbrances, and in a decent, safe and sanitary condition. 2-10-
FAC
AR

If OPERATOR fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting OPERATOR'S failure to execute this agreement provision and the notice will be conclusive evidence of the termination of this agreement and all OPERATOR'S rights to the Facility.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Rent is due annually in advance on or before the first day of each agreement year. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to OPERATOR. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible.

the payment shall be deemed paid upon actual receipt by the City Treasurer. OPERATOR assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.2 Rent Amount. The rent is One Dollar (\$1.00) per year, receipt of which is hereby acknowledged.
- 3.3 Inspection of Records. OPERATOR agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine OPERATOR'S compliance with this agreement. These records and accounts will be made available by OPERATOR at the Facility and will be complete and accurate showing all income and receipts from use of the Facility. OPERATOR'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this agreement and cause for termination. OPERATOR shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this agreement and, except as otherwise provided herein, all of the terms, covenants and conditions of this agreement shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. A part of the consideration for granting this agreement are qualifications and abilities of the OPERATOR. Therefore, OPERATOR shall not assign this agreement, or any interest therein, and shall not sublet the Facility or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of OPERATOR, to use or occupy the Facility or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this agreement. This agreement shall not, nor shall any interest therein, be assignable, as to the interest of OPERATOR, by operation of law, without the written consent of the City Manager.
- 4.3 MBE/WBE Assignment. OPERATOR acknowledges that it is CITY policy to encourage Minority Business Enterprise/Women Business Enterprise (MBE/WBE) involvement in CITY contracts and agreement and that a public purpose is served thereby. If OPERATOR proposes to assign this agreement to a non-MBE/WBE buyer, OPERATOR agrees to first use due diligence in finding a qualified MBE/WBE assignee. OPERATOR

shall fulfill this requirement to use due diligence by doing all of the following:

- a. OPERATOR, at its expense, shall advertise the proposed assignment of the agreement in at least one issue each of three different minority/women-focus publications of general circulation. The publications shall be approved by the City Manager, and City Manager shall provide a list of such publications to OPERATOR upon request. The ads may be either display or classified and shall state that OPERATOR desires to locate a qualified MBE/WBE buyer. The ads shall also request respondents to register their interest with a designated employee of CITY. Affidavits of publication shall be furnished to the City Manager.
- b. OPERATOR shall allow no fewer than 20 calendar days from the date of publication for interested parties to respond. Any offers from prospective MBE/WBE buyers shall be presented in writing to CITY for review, together with OPERATOR'S reason(s) for accepting or rejecting the proposal.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. OPERATOR shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the Facility, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the Facility premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the Facility;
- b. any operation, use, or occupation conducted at the Facility;
- c. any act, omission, or negligence on the part of OPERATOR, its employees, agents, subtenants, invitees, licensees; or
- d. any failure by OPERATOR to comply or secure compliance with any of the agreement terms or conditions.

5.2 Insurance.

- a. OPERATOR shall take out and maintain at all times during the term of this agreement the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or OPERATOR or by authorized representatives of CITY or OPERATOR on or in connection with the use or operation of the Facility.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Facility in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and OPERATOR. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- b. OPERATOR'S responsibility to maintain said insurance also includes the following:
- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the agreement, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Facility, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the agreement. At least thirty (30) days prior to the expiration of each policy, OPERATOR shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this agreement.
 - (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving OPERATOR sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Facility. OPERATOR also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this agreement.
 - (3) Accident Reports. OPERATOR shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Facility. This report shall contain the names and addresses of the parties involved, a statement of the

circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

- (4) Failure to Comply.~ If OPERATOR fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. OPERATOR shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by OPERATOR on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if OPERATOR fails or refuses to take out or maintain insurance as required in this agreement, or fails to provide the proof of insurance, CITY has the right to declare this agreement in default without further notice to OPERATOR and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. OPERATOR agrees to give notice to CITY of any fire or other damage that may occur at the Recreational Facility within ten (10) days of such fire or damage. OPERATOR agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Facility clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Facility shall be damaged by any cause which puts the Facility into a condition which is not decent, safe, healthy and sanitary, OPERATOR agrees to make or cause to be made full repair of said damage and to restore the Facility to the condition which existed prior to said damage; or, at CITY'S option, OPERATOR agrees to clear and remove from the Facility all debris resulting from said damage and rebuild the Facility in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2. Insurance, hereof.

OPERATOR agrees that preliminary steps toward performing repairs, restoration, or replacement of the Facility shall be commenced by OPERATOR within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said Facility are untenable by reason of such damage.

- 5.4 Entry and Inspection. CITY reserves and shall always have the right to enter said Facility for the purpose of viewing and ascertaining

the condition of the same, or to protect its interests in the Facility premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said Facility premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to OPERATOR, to have any necessary maintenance work done at the expense of OPERATOR, and OPERATOR hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said Facility premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require OPERATOR to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. OPERATOR shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this agreement imposed on CITY.

- 5.5 Maintenance. OPERATOR agrees to assume full responsibility and cost for the construction, operation and maintenance of the Facility throughout the term. OPERATOR will make all repairs and replacements necessary to maintain and preserve the Facility in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 5.14, Development Plan, hereof, and with all applicable laws.
- 5.6 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Facility, and the Facility may not be altered by OPERATOR without prior written approval by the City Manager. Further, OPERATOR agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made at the Facility without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve OPERATOR of any obligation under this agreement to maintain the Facility in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this agreement to make or assume any expense for any improvements or alterations.
- 5.7 Utilities. OPERATOR agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Facility. All utilities will be installed underground.
- 5.8 Construction Bond. Whenever there is any construction to be performed at the Facility reasonably costing more than \$100,000, OPERATOR shall deposit with CITY, prior to commencement of said

construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by OPERATOR shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Facility restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

- 5.9 Liens. OPERATOR shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Facility and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the Facility by OPERATOR or by any party other than CITY, and a lien or notice of lien is filed, OPERATOR shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

- 5.10 Taxes. OPERATOR agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon OPERATOR or the Recreational Facility, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by OPERATOR or levied by reason of the business or other OPERATOR activities related to the Facility, including any licenses or permits. OPERATOR recognizes and agrees that this agreement may create a possessory interest subject to property taxation, and that OPERATOR may be subject to the payment of taxes levied on such interest, and that OPERATOR shall pay all such possessory interest taxes. OPERATOR further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

- 5.11 Signs. OPERATOR agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found at the Facility, OPERATOR agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at OPERATOR'S cost.

- 5.12 Unavoidable Delay. If the performance of any act required of CITY or OPERATOR is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this agreement. In the event OPERATOR or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 5.13 Development Plan. OPERATOR agrees to develop the Facility premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk, which plan is hereby incorporated by this reference and described in Exhibit C. The General Development Plan for the Facilities shows in reasonable detail all structures, improvements and landscaping OPERATOR proposes to construct on the Land as part of the Facility. It is understood that said construction will be done in several phases, the timing which cannot, at present, be established. The general contents and provisions of the Development Plan are described in Exhibit C hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by OPERATOR to comply with the General Development Plan shall constitute a major default and subject this agreement to termination by CITY.
- 5.14 Hazardous/Toxic Waste. OPERATOR will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, or under or from the Recreational Facility. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704.

In the event of any release of a hazardous substance, OPERATOR shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

OPERATOR agrees to assume the defense of, indemnify and hold the CITY harmless from any and all claims, costs and expenses related to

environmental liabilities resulting from OPERATOR'S operations on the Facility, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If OPERATOR knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the Facility premises, OPERATOR shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if OPERATOR knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, OPERATOR shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. OPERATOR will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Facility. In addition, OPERATOR and OPERATOR'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this agreement, OPERATOR at the CITY'S sole option shall cause an environmental assessment of the Facility premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of OPERATOR and shall establish what, if any, hazardous substances exist on, in or under the Facility, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, County, State, or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. OPERATOR shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all cost and expense incurred.

SECTION 6: GENERAL PROVISIONS

6.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to OPERATOR at the Facility or at such other address designated in writing by OPERATOR; and to CITY as follows:

City Manager
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this agreement may by like notice designate a different address to which notices shall be sent.

- 6.2 Compliance with Law. OPERATOR shall at all times in the construction, maintenance, occupancy, and operation of the Facility premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at OPERATOR'S sole cost and expense. In addition, OPERATOR shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 6.3 CITY Approval. The approval or consent of CITY, wherever required in this agreement, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 6.4 Nondiscrimination. OPERATOR agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in OPERATOR'S use of the Facility, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 6.5 Equal Opportunity. OPERATOR shall comply with the CITY'S Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document RR-262633. OPERATOR shall submit a Workforce Analysis Report and a Certificate of Compliance with Title VII of

the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. OPERATOR understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this agreement.

- 6.6 Partial Invalidity. If any term, covenant, condition, or provision of this agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 6.7 Legal Fees. In the event of any litigation regarding this agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 6.8 Number and Gender. Words of any gender used in this agreement shall include any other gender, and words in the singular number shall include the plural, when the text requires.
- 6.9 Captions. The Agreement Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this agreement. The numbers of the paragraphs and pages of this agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this agreement.
- 6.10 Entire Understanding. This agreement and the lease agreement and Grant Deed referred to in Recital B contains the entire understanding of the parties. OPERATOR, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the Recreational Facility. Each party has relied on its own examination of the Facility, advice from its own attorneys, and the warranties, representations, and covenants of the agreement itself. Each of the parties in this agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this agreement.

The failure or refusal of any party to read the agreement or other documents, inspect the Facility, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this agreement will be valid unless it is in writing and signed by all parties.

- 6.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or OPERATORS shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or OPERATOR employs an individual who within the

twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or OPERATOR. It is not the intent of this policy that these provisions apply to members of the City Council.

- 6.12 Drug-free Workplace. OPERATOR shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988 by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The OPERATOR'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
 - c. OPERATOR shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. OPERATOR and sublessees shall be individually responsible for their own drug-free workplace programs.
- 6.13 Standard of Employees. OPERATOR and its employees shall at all times conduct themselves and the operations at the Facility in a creditable manner.

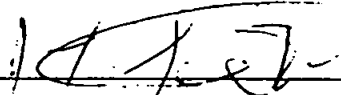
SECTION 7: SIGNATURES

7.1 Signature Page.

IN WITNESS WHEREOF, this Agreement is executed by CITY, acting by and through its City Manager, and by OPERATOR, acting by and through its lawfully authorized officers.

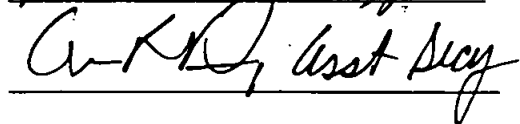
THE CITY OF SAN DIEGO

Date JAN 31 1994

By 
Property Director

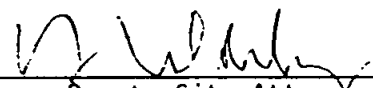
OPERATOR: YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO COUNTY

Date _____

By 
By 

APPROVED as to form and legality this 8 day of February, 1994.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

CEBK:rc(7)
9-24-93

SECTION 8: EXHIBITS

8.1 Exhibit A - Location.

8.1 LOCATION

Parcel 1:

Lots 9 and 10 of Penasquitos Towne Centre Unit 2, in the City of San Diego County of San Diego, State of California, according to Map thereof No 11092, filed in the Office of the Recorder of said County November 29 1984.

Parcel 2:

Parcel 1 of Parcel Map No. 15351, in the City of San Diego, County of Sa Diego, State of California, recorded August 26, 1988, File/Page No. 88 428624, Official Records of San Diego County, California, EXCEPTIN THEREFROM any portion of said Parcel 1 of Parcel Map No. 15351 hereafte conveyed to the City of San Diego, a municipal corporation.

8.2 Exhibit B - General Development Plan.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Financial Plan
- d. Schematic Elevations
- e. Landscape Plan
- f. Others as applicable

and is filed in the Office of the City Clerk referenced to this agreement.

8.2 GENERAL DEVELOPMENT PLAN

GENERAL DEVELOPMENT PLAN PENASQUITOS FAMILY BRANCH YMCA

Exhibit 1 shows the two parcels to be developed as the Penasquitos Family Branch YMCA: Parcel 1 of Parcel Map No. 15351 (sometimes call the "linear park site") and Lots 9 and 10 of Map No. 11092.

Development of the linear park site is governed by CUP No. 90-0665; development of Lots 9 and 10 is governed by PCD Permit No. 87-0599.

Exhibits 2 through 6 show the development of Lots 9 and 10 with the main branch facilities. That development will occur in Phases I, II and IV as described in Attachment A. Phase I construction is currently planned to commence in late summer, 1993 and be completed in early spring, 1994. No time table presently exists for construction of Phases II through V; construction timing will depend on financing. The YMCA funds branch construction with donations and grants the timing of which cannot, at this time, be estimated with accuracy.

While Phase I can be developed under PCD Permit No. 87-0599, subsequent phases cannot be developed without an amendment of PCD Permit No. 87-0599. The amendment process may result in changes in Exhibits 2 through 6. It is anticipated that application for the amendment will be filed in 1994. The approval, by the City Manager, of this General Development Plan does not constitute City approval of the PCD Permit amendment.

The linear park site will be developed with three facilities. Development will probably not proceed until the San Diego County Water Authority installs a large water main through the site. The three facilities are:

1. Neighborhood park (Exhibit 7), Phase III, presently planned to be constructed by American Newland Associates. Newland, YMCA and City Park and Recreation Department have orally agreed that, upon completion of the park, YMCA will, without cost, convey the park to the City. However, the City Council must approve any such conveyance.

2. Parking for the YMCA facilities on Lots 9 and 10 (Exhibit 8, Sheet A-2). The construction is a part of Phase II. (Phase II facilities on Lots 9 and 10 cannot be used until the parking is in place.)

EXHIBIT B

3. Child care center (Exhibit 8, Sheets A-1 and A-3 through - 5). The construction is Phase V. Date of construction is not presently known.

Upon completion of Phases I through V construction the branch YMCA will provide to the Penasquitos community all of the services described in Attachment B. Some of the programs are now in place despite the lack of any facilities. Others will be implemented as various phases are completed. For instance, upon completion of Phase I, the multi-purpose room (I.A.3) will be, on some Friday and Saturday nights, a "teen center" for dancing, as well as the location for other YMCA programs.

It is presently contemplated that, when Phases I and II are completed, the facilities on Lots 9 and 10 will be open and operating during the following days and hours:

Monday through Friday: 6:00 a.m. - 11:00 p.m.
Saturday, Sunday: 7:00 a.m. - 10:00 p.m.
(The teen center will be open until midnight)

July 13, 1993

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO
COUNTY, a California non-
profit public benefit
corporation

By _____
Title _____

APPROVED this _____ day of _____, 1993

CITY OF SAN DIEGO, a
municipal corporation

By _____
City Manager

7-5-93

YMCA OF SAN DIEGO COUNTY
PENASQUITOS GENERAL DEVELOPMENT PLAN
PHASING

Phase I. Development of Lot 10 Assessors Parcel #315-530-6
YMCA Community Center - 4690 Sq. Ft. Building & Parking Lot
(Exhibit 2) (Exhibit 3) (Exhibit 6)

- A. 4690 Sq. Ft. Building**
 - 1. Administrative Office**
 - 2. Reception Station**
 - 3. Multi-Purpose Room / Teen Center**
 - 4. Administrative Kitchen and Store Room**
 - 5. Administrative Office Work Room**
 - 6. Mens Toilet**
 - 7. Womens Toilet**
- B. Parking Lot (lighted)**
 - 1. 39 Standard Parking Spaces**
 - 2. 2 Handicap Parking Spaces**
- C. Concrete Patio, Concrete Pathways**
- D. Landscaping**

Phase II. Development of Lot 9 (south side) Assessors Parcel #315-530-5
Parcel 1-PM15351 (west side) and Assessors Parcel #315-490-33
Pool, Locker Rooms and Temporary Parking Lot
(Exhibit 2) (Exhibit 3) (Exhibit 6)

- A. 26,585 Sq. Ft. Building**
 - 1. Lobby (temporary)**

Attachment A

2. Reception Area (temporary)
 3. Administration Offices (temporary)
 4. Natatorium (swimming pool)
 - a. 5544 Sq Ft Pool (25 yd, 5 lane) (25 mtr 5 lane) (25 yd, 8 lane)
 - b. Jacuzzi
 - c. Sauna
 - d. Instruction Bleacher Area
 - e. Aquatic Office
 - f. Pool Patio Area
 5. Women's Locker Rooms/Toilet/Showers
 6. Mens Locker Rooms/Toilet/Showers
 7. Juice Bar
 8. Pool Mechanical Room
 9. Mechanical Storage Areas
 10. Fitness Training Area
 11. Aerobics/Exercise Area
- B. Site: Temporary Parking Area
1. 17 Spaces
 2. Dumpster Area
 3. Delivery Area
- C. Landscaping
- D. Offsite Parking Area - 138 Parking Spaces (east side)
3 Handicap Spaces
Parcel I PM-15351 (east side)
Assessors Parcel #315-490-33
Penasquitos Town Center Parcel I
(Exhibit 8, Sheet A-2)

Attachment A

Phase III. Add'l Development (center part) Assessors Parcel #315-490-33
Parcel I PM 15351
Penasquitos Town Center Park
(Exhibit 7 - LC-1, LC-2, LC-3)

A. Park

1. Pedestrian Sidewalk
2. Picnic Area (tables) and Covers
3. Playground Area
4. Rest Area (benches)

Phase IV. Add'l Development of Lot 9 (north side)
Assessors Parcel #315-530-5
(Exhibit 4) (Exhibit 5) (Exhibit 6)

A. 14,010 Sq. Ft. Building

1. Administration Wing
2. Aerobics/Exercise Room
3. Lobby
4. Mens Public Toilet
5. Womens Public Toilet
6. Babysitting Area
7. Deck
8. Weight Training Areas
9. Nursery
10. PE Directors Office
11. Store Room

B. Outside Babysitting Play Area

Attachment A

C. Landscaping

D. Main Entrance Patio/Staircase and Walkway

Phase V. Add'l Development Child Care Ctr Assessors Parcel #315-490-33
Parcel 1 PM15351 (west side)
(Exhibit 8, Sheets A-1, A-3, A-4, A-5)

A. 6,994 Sq. Ft. Building

1. 7 Child Care Rooms
2. Staff Toilets
3. Kitchen
4. Teachers Room
5. Administrative Office
6. Reception Area
7. Lobby Area
8. Storage Rooms
9. Janitorial Closets

B. Parking Lot

1. 16 Spaces
2. 2 Handicap Spaces
3. Pedestrian Walkways
4. Dumpster Area

C. Outside Play Areas (2)

Attachment A

PENASQUITOS FAMILY YMCA

As an integral part of the Mater Plan design process, an in depth "Program Needs and Priorities Study" was completed. The study shows the kinds of programs which will be offered when the facility reaches total build out. The YMCA will focus on eight major program thrusts. They are as follows:

AQUATICS

Programs designed for children 3 months of age to senior citizens to provide instruction, recreation and an opportunity to maintain a healthy lifestyle. Private pools will also be secured throughout the service area to offer backyard swim lessons in neighborhoods where no YMCA pools exist. Programs include:

- *Youth Swim Lessons
- *Youth Swim Team
- *Lap Swimming
- *Adult Swim Lessons
- *Water Aerobics
- *Private Swim Lessons
- *Recreational Swim
- *Handicapped Swim

CAMPING

Having pioneered the concept of organized group camps, the Penasquitos Family YMCA is committed to traditional values oriented camping programs, in addition to specialty camps which focus on learning a specific skill. These programs offer children the opportunity to develop their interpersonal skills in a fun and safe supervised environment. A special effort by the YMCA will be made to provide these enriching experiences to children from financially less fortunate homes. Some of the wide variety of programs which will be offered include:

- *Traditional Day Camp
- *Holiday Camp
- *Family Camp
- *Surf Camp
- *Equestrian Camp
- *Gymnastics Camp
- *Rock Climbing Camp
- *Baseball Camp
- *Golf Camp
- *Soccer Camp
- *Cheerleading Camp
- *InLine Hockey Camp
- *Art and Photography Camp
- *Ice Skating Camp
- *Cooking Camp
- *Basketball Camp

CHILD CARE

The YMCA is the largest provider of afterschool childcare in San Diego County with 67 licensed sites serving nearly 3,000 children per day. When completed, the Penasquitos Family YMCA will operate a 5,000 square foot Childcare Center which will be licensed for one hundred children. The facility will include both a preschool and afterschool component. The child care facility will meet or exceed all licensing requirements as listed by the California State Department of Social Services.

HEALTH ENHANCEMENT

Health Enhancement includes a wide variety of programs and activities which will help people develop behavioral and attitudinal changes regarding health and fitness. A renewed focus on youth fitness is making gains in helping young people develop and maintain a healthy lifestyle. Exercise, health education, testing and evaluation, opportunities to meet others and rehabilitation from injury and disease are all components to Health and Enhancement. Programs will include:

- *Pre & Post Natal Fitness
- *Weight & Circuit Training
- *Aerobics Classes
- *Traditional Exercise Classes
- *Striding Classes
- *Fitness Assessments
- *Yoga
- *Risk Factor Clinics
- *Senior Fitness Classes
- *Healthy Back

SOCIAL SERVICES

These programs will be offered as an extension of the YMCA's Human Development Services. Programs/projects are designed to help solve some of the more pressing social issues confronting young people and families in our services area. Qualified staff will deliver services which include counseling for individual couples and families, child abuse prevention and treatment, shelter and counseling for teenagers in crisis, gang and substance abuse prevention and youth literacy and tutoring programs.

FAMILY LIFE

Programs have been designed to strengthen the family unit and provide experience for both the parent and child to enhance communication and relationships. Programs offered will include:

- *Y-Indian Parent Child Program
- *Playcare for Young Children
- *Family Camp at a YMCA Resident Camp
- *Cultural Event Days at the YMCA
- *You and Me Baby Support Classes

LEADERSHIP DEVELOPMENT

Leadership development is woven into most YMCA programs to equip children (and adults) with leadership qualities to be winners and to share their skills in service to others. Adults learn to become leaders as participants on the Board of Management, YMCA Branch Committees and "Chiefs" in the Y-Indian Program. Teens who participate in the YMCA Youth and Government Model Legislature Program and in the Junior Counselor and Counselor in Training programs develop leadership skills and an appreciation of the Democratic process.

SPORTS AND SKILL DEVELOPMENT

Sports and Skill Development programs can become the back drop for learning life values, learning to win and learning to lose. The Penasquitos Family YMCA will use sports leagues and skill development as an attractive tool for involving youngsters in developing self esteem, physical discipline and mental strength. These important programs will include:

- | | |
|-------------------------------|---------------|
| *Swim lessons | *Cycling |
| *Gymnastics | *Volleyball |
| *Competitive Surfing | *Swim Team |
| *Martial Arts | *Cheerleading |
| *Preschool Movement Education | *Soccer |
| *You and Me Baby | |

TEEN CENTER

The focal point of the initial phase of the Penasquitos Family YMCA will be Teen programming. The Teen Center will offer a wide variety of activities for local area teens. Program curriculum will be designed to include educational, physical and social activities. Examples of some of the exciting activities planned are:

- | | |
|----------------------------------|------------------------|
| *Teen Dances | *Wrestling |
| *Youth and Government | *"Funk Aerobics" |
| *Afterschool Recreation Programs | *Dance Classes |
| *Leaders Club | *Street Hockey Clubs |
| *Teen Caravans | *Saferides |
| *Speciality Camps | *Counselor in Training |

The program plans presented here are a result of extensive study by the staff, volunteers and community leaders. As needs change and new issues arise this YMCA will adapt to meet the challenges which are created.

NOTE

The General Development Plan includes Conceptual Drawings of the improvements to be constructed on the Land. For convenience, the Conceptual Drawings are not attached to this exhibit. The Conceptual Drawings, as well as the remainder of the General Development Plan, are on file in the office of the City Clerk.

8.3 Exhibit C - Schedule of Rates & Charges.

The rates and charges of the Penasquitos Family Branch YMCA for its activities and programs and for the use of its facilities shall be, as to both YMCA members and the public, similar to and consistent with the rates and charges of branch YMCA's in San Diego County for comparable activities, programs and facilities.

The rates and charges, and any changes thereof, shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld.

8.4 Exhibit D - Schedule of Days & Hours of Operation.

When Phases I and II are completed, the facilities on Lots 9 and 10 will be open and operating during the following days and hours (except legal holidays):

Monday through Friday: 6 a.m. - 11 p.m.

Saturday & Sunday: 7 a.m. - 10 p.m.

The teen center will be open until midnight on some Friday and/or Saturday nights.

When Phase V (child care center) is completed, that facility will be open Monday through Friday (except legal holidays) 6 a.m. - 6 p.m.

Any changes in the days and hours of operation shall be subject to the approval of the City Manager, which approval shall not be unreasonably withheld.

(O-94-58)

ORDINANCE NUMBER O- 18031 (NEW SERIES)

ADOPTED ON JAN 31 1994

AN ORDINANCE AUTHORIZING A FIFTY-YEAR LEASE AGREEMENT WITH THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY ("YMCA") FOR THE RANCHO PENASQUITOS BRANCH YMCA, AND AUTHORIZING A FIFTY-YEAR OPERATING AGREEMENT WITH THE YMCA FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF THE RANCHO PENASQUITOS BRANCH YMCA

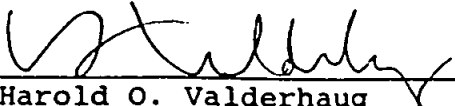
BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a fifty-year lease agreement with the YMCA, whereby the City will lease the the Rancho Penasquitos YMCA branch property located at Fairgrove Drive and Salmon River Road, off Black Mountain Road, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. OO- 18031-1.

Section 2. That the City Manager is hereby authorized to execute a fifty-year Operating Agreement with the YMCA for the YMCA to construct, operate and maintain the Rancho Penasquitos YMCA facilities, under the terms and conditions set forth in that Operating Agreement on file in the office of the City Clerk as Document No. OO- 18031-2.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
12/14/93
Or.Dept:Prop.
Job:221347
O-94-58
Form=o+t

Passed and adopted by the Council of The City of San Diego on
JAN 31 1994 by the following vote:

YEAS: Mathis, Roberts, Kehoe, Stevens, Warden, Stallings, McCarry, Vargas,
Mayor Golding.

NAYS: None

NOT PRESENT: None

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: Pat Inglett, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18031 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JAN 10 1994 and on JAN 31 1994.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: Pat Inglett, Deputy

DUPLICATE

LEASE

THIS LEASE, made by and between YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation, hereinafter called "Landlord," and THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "Tenant," is entered into with respect to the following facts:

A. The Premises. Landlord is the owner of the land described in Exhibit A attached hereto (the "Premises").

B. Concurrent Documents. Concurrently with the execution and delivery hereof, the parties shall execute and deliver (i) "Operating Agreement Rancho Penasquitos Branch YMCA" (the "Operating Agreement") and (ii) "Deed of Conveyance and Transfer of Improvements" (the "Improvement Deed").

AGREEMENTS

IN CONSIDERATION of the mutual promises and obligations of the parties as herein expressed, Landlord and Tenant agree as follows:

1. Lease. Landlord hereby leases, and Tenant hereby takes and hires, the Premises for the term and upon the covenants and conditions herein set forth.

2. Term. The term of this Lease shall be fifty (50) years commencing on the first day of the calendar month following execution by the City Manager. "Agreement year" as used in this agreement shall mean the 12-month period commencing on the first day of the calendar month following the execution of this Lease by the City Manager and each subsequent 12-month period.

3. Right to Extend or Terminate. Provided that Landlord, as OPERATOR, is not in default of the Operating Agreement at the end of said fifty (50) years, this Lease shall be automatically extended for an additional forty-nine years unless Landlord delivers to CITY, at least six (6) months prior to the end of said fifty (50) years, written notice that Landlord will not so extend this Lease. The extension shall be on the same agreements, considerations, covenants and conditions as are set forth herein, except as to right or further renewal and except as to rent, which shall be the same amount that Tenant, as CITY, reasonably determines to be the rent for the same extension of the Operating Agreement. Tenant shall have the sole and absolute right to terminate this Lease at any time by giving Landlord at least 270 days prior written notice of termination. In the event of such early termination by Tenant, upon the date of termination (i) the Operating Agreement shall automatically terminate and

DOCUMENT NO. 00-18031-1

FILED JAN 31 1994

CLERK OF THE CITY CLERK 09/22/93
SAN DIEGO, CALIFORNIA

U0021771

DUPLICATE ORIGINAL

(ii) Tenant shall execute, acknowledge and deliver to Landlord a deed conveying and transferring to Landlord all improvements now or hereafter on the Premises, the intent of the parties being to reverse, by said deed, the Improvement Deed. In the event of termination by Tenant for cause, or in the event of expiration of the Lease, all improvements on the premises shall continue to be owned by Tenant pursuant to the Improvement Deed.

210-1
/LFT
1.12

4. Rent. Rent is due in advance. Landlord hereby acknowledges receipt of the rents due under this Lease.

4.1. Rent Amount. The rent is One Dollar (\$1.00) per year.

5. Use. Tenant shall use the Premises solely and exclusively for a recreational facility and community center.

6. The Operating Agreement. Nothing contained herein or omitted herefrom shall alter or affect the rights and obligations of Landlord as OPERATOR, or Tenant as CITY, set forth in the Operating Agreement. In the event of any conflict between this Lease and the Operating Agreement, the Operating Agreement shall, except as to last two sentences of Paragraph 3 above, prevail.

7. Notices

7.1 Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

To Landlord:

YMCA of San Diego County
4715 Viewridge Avenue, Suite 100
San Diego, California 92123

To Tenant:

City Manager, City of San Diego
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, California 92101-4155

or to any mortgages, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

7.2 Any party entitled or required to receive notice under this Lease may be like notice designate a different address to which notices shall be sent.

8. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

9. Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

10. Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

11. Captions. The section headings and captions for various paragraphs herein shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

12. Reversionary Provision. By the delivery and acceptance hereof, the parties agree that Landlord has not, by this instrument, voluntarily or involuntarily conveyed the subject property in the sense that the phrase "voluntary or involuntarily conveyed" is used in that portion of the Grant Deed (described below) which commences "The 'Reversion of Title' will read as follows:" and ends "Said Property is: (Legal Description)." Said Grant Deed is that which was executed by American Newland Associates to Operator dated April 21, 1989, recorded September 5, 1989, File No. 89-476856, Official Records of San Diego County, California.

13. Entire Understanding. This Lease, together with the Operating Agreement and the Deed contain the entire understanding of the parties. Landlord, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease, the Operating Agreement or the Deed.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any

Parcel 1:

Lots 9 and 10 of Penasquitos Towne Centre Unit 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11092, filed in the Office of the Recorder of said County November 29, 1984.

Parcel 2:

Parcel 1 of Parcel Map No. 15351, in the City of San Diego, County of San Diego, State of California, recorded August 26, 1988, File/Page No. 88-428624, Official Records of San Diego County, California, EXCEPTING THEREFROM any portion of said Parcel 1 of Parcel Map No. 15351 hereafter conveyed to the City of San Diego, a municipal corporation.

EXHIBIT A

objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

IN WITNESS WHEREOF, this Lease is executed by Landlord, acting by and through its lawfully authorized officers, and by Tenant, acting by and through its City Manager.

Date: JAN 31 1994

THE CITY OF SAN DIEGO

By [Signature]
Property Director

Date: _____

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SAN DIEGO
COUNTY

By [Signature], President

By [Signature], Asst Secy

[Signature] APPROVED as to form and legality this 8 day of February, 1994.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

0-18031

TERMS OF YMCA/CITY LEASE

1. Term:
 - Preferable: 50 years.
 - Acceptable: 25 years with option to extend for another 25 years.
2. Rent:
 - Nominal (example: \$1.00 per year).
3. Use:
 - Preferable: Any YMCA use and program.
 - Acceptable: Specified YMCA uses and programs plus those additional uses and programs approved by City Manager (not Park & Rec). If aquatics are necessary to the facility's success, a specified use should include aquatics; pool(s) size(s): _____ ft. by _____ ft. and _____ ft. by _____ ft. Arguably, those pools will not compete with Park & Rec's Carmel Valley aquatic facility.
4. CUP:
 - Preferable: Since the site is park land, no CUP is required; City Manager must approve all plans (and programs?). City Manager may want to delegate his approval power; if so, the delegation should be to the Real Estate Assets Department, not Park & Rec.
5. Fees:
 - Preferable: All YMCA program fees for subject branch will be comparable to the fees of other YMCA branches.
 - Acceptable: All YMCA program fees for subject branch must be approved by City Manager.

89 42856

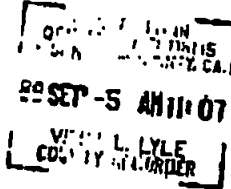
421

RECORDING REQUESTED BY
TICOR TITLE INSURANCE COMPANY OF CALIFORNIA
Recording Requested By:

Grantee:

When Recorded Mail To:

YMCA of San Diego County
Suite 204
7510 Clairemont Mesa Blvd.
San Diego, CA 92111



AFNP

RF	15
AR	13
MO	1
UF	—
OC	20
TXPD	—

Space Above For Recorder's Use

GRANT DEED

LAND TO YMCA

THE UNDERSIGNED GRANTOR DECLARES:

Documentary Transfer Tax is Nil, No consideration City
San Diego APN 315-530-05, 06; 315-490-33

FOR VALUABLE CONSIDERATION, receipt of which is hereby
acknowledged, AMERICAN NEWLAND ASSOCIATES, a California general
partnership, hereby grants to YOUNG MEN'S CHRISTIAN ASSOCIATION
OF SAN DIEGO COUNTY, a California nonprofit public benefit
corporation,

Parcel 1:

Lots 9 and 10 of Penasquitos Towne Centre
Unit 2, in the City of San Diego, County of
San Diego, State of California, according to
Map thereof No. 11092, filed in the Office
of the Recorder of said County November 29,
1986.

Parcel 2:

Parcel 1 of Parcel Map No. 15351, in the
City of San Diego, County of San Diego,
State of California, recorded August 26,
1988, File/Page No. 88-428624, Official
Records of San Diego County, California.

This instrument filed for record by Ticor Title
Insurance Company of California is an accommodation only. It
has not been examined as to its accuracy or as
to its effect upon the title.

10048.24-02/219/T02

-1-

04/18/89

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

2

This conveyance is subject to (i) general and special city and county real estate taxes and assessments for the fiscal year 1989-90, now a lien but not yet due or payable, (ii) covenants, conditions, restrictions, reservations, and easements of record, (iii) City of San Diego Planned Commercial Development Permit No. 87-0599 dated November 5, 1987, (iv) City of San Diego Conditional Use Permit No. 87-0599 dated November 5, 1987, and (v) that certain Option Agreement, a copy of which is Exhibit A attached hereto and made a part hereof.

This conveyance is made and accepted on the express condition subsequent that, if at any time after the date of recording hereof, Grantor causes to be recorded in the Office of the Recorder of San Diego County, California, Grantor's written and acknowledged "Reversion of Title" (described below), then, in such event the fee title to the above described property will automatically revert to Grantor, without necessity of further documentation of any kind, and free of any claim of Grantee and of any person(s) claiming rights or interests from Grantee. Grantor hereby covenants with Grantee that the "Reversion of Title" will not be executed, acknowledged or recorded unless the fact(s) stated in the "Reversion of Title" are true.

The "Reversion of Title" will read as follows:

The undersigned hereby states that:
 (i) the YOUNG MENS' CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit benefit corporation ("YMCA"), has (a) voluntarily or involuntarily conveyed the property described below or (b) not commenced construction of YMCA facilities (heretofore approved by the undersigned) on said property on or before the fifth anniversary of the date of recording of the deed of conveyance to the YMCA, or (c) after completion of the initial improvements, the whole of the property has ceased for a continuous period of six (6) months, to be used for any "YMCA activity"; and (ii) the fee title to said property hereby automatically reverts to the undersigned without necessity of further

*

documentation of any kind. Said Property
is: (Legal Description).

Dated: April 21, 1989.

AMERICAN NEWLAND ASSOCIATES,
a California general
partnership

By THE NEWLAND GROUP, INC., a
California corporation,
General Partner

By [Signature]
Sr. Vice President

By [Signature]
Secretary

By AMERICAN GENERAL REALTY
INVESTMENT CORPORATION, a
Texas corporation, General
Partner

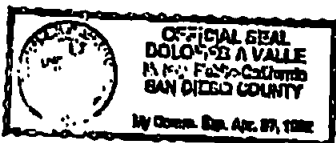
By [Signature]
W.E. Orr President
Sr. Vice President

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

STATE OF California)
COUNTY OF San Diego) SS

On April 21, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared John A. Diller, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President, and Juliana L. Hansen, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Secretary, of THE NEWLAND GROUP, INC., the corporation that executed the within instrument on behalf of AMERICAN NEWLAND ASSOCIATES, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

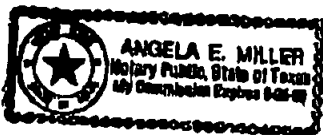


Dolores A. Valle
Notary Public in and for said
County and State

STATE OF Texas)
COUNTY OF Harris) SS

On April 25, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared W.G. Orr, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the President, of AMERICAN GENERAL REALTY INVESTMENT CORPORATION, the corporation that executed the within instrument on behalf of AMERICAN NEWLAND ASSOCIATES, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.



Angela E. Miller
Notary Public in and for said
County and State

OPTION AGREEMENT

THIS OPTION AGREEMENT ("this Agreement"), entered into as of the _____ day of _____, 1989, between AMERICAN NEWLAND ASSOCIATES, a California general partnership and the CITY OF SAN DIEGO, a municipal corporation ("City"), is entered into with reference to the recitals set forth below.

R E C I T A L S

A. Newland Ownership. Newland is the owner of land described in Exhibit A. Parcel 1 of said land is herein called "Lots 9/10"; Parcel 2 of said land is herein called "Lot 11"; Parcel 3 of said land is herein called "the Linear Park Site."

B. YMCA Donation. Newland contemplates donating, by grant deed, to the Young Mens' Christian Association of San Diego County, a California nonprofit public benefit corporation ("YMCA"), either (i) Lots 9/10 and the Linear Park Site or, alternatively, (ii) Lots 9/10 and Lot 11. As between said alternatives, Newland's determination will be made pursuant to Paragraph 1 below. The land so donated, whichever alternative is determined upon, is herein called "the YMCA Land."

C. Restrictions Applicable to YMCA Land. The City desires that the grant deed conveying the YMCA Land to the YMCA contain certain conditions subsequent restricting the use and ownership of the YMCA Land such that violations of those restrictions will cause a reversion of the title to the YMCA Land to Newland.

D. Intention, Option. The parties intend that Newland grant, and City accept, an option for City to acquire the YMCA Land and any improvements thereon in the event title to the YMCA Land reverts to Newland, all upon the terms and conditions set forth below.

E. Intention, Donation. The parties intend that Newland donate, by grant deed, to City either (i) Lot 11 or (ii) the Linear Park Site, all as set forth in the development agreement described below.

A G R E E M E N T S

NOW THEREFORE, the parties agree as follows:

10048.32/172/T05

-1-

EXHIBIT A

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

1. Determination. No later than April 1, 1989, City will deliver to Newland City's written statement whether City will use Lot 11 as a public library site. Absent such delivery, it will be deemed City will not use Lot 11 as a public library site. If City so states, or is deemed to have so stated, that Lot 11 will not be used as a public library site, the YMCA Land will be Lots 9/10 and Lot 11; otherwise, the YMCA Land will be Lots 9/10 and Linear Park Site.

2. Option. Newland hereby grants to City the option ("the Option") to acquire the YMCA Land and the improvements thereon ("the Improvements"). "Improvements" means building(s) and appurtenances affixed to land and does not mean furniture, unattached equipment or other moveable personal property. The YMCA Land and the Improvements are not severable and City may not exercise the Option with respect to the YMCA Land without exercising the Option as to the Improvements.

3. Price. The purchase price of the YMCA Land will be Nil. The purchase price of the Improvements will be the cash fair market value thereof at the date City exercises the Option. Such consideration will be paid in cash to the person(s) who or which own the YMCA Land and the Improvements at the date City exercises the Option.

4. Conditions to the Exercise of the Option. The exercise of the Option shall be conditioned upon and subject to the prior recordation of the Reversion of Title against the YMCA Land in accordance with Paragraph 5. Newland covenants and agrees to enforce the terms of the Reversion of Title in accordance with Paragraph 5, in a timely manner.

5. Conveyance to YMCA: Newland shall convey the YMCA Land to YMCA no later than June 1, 1989; the deed of conveyance will contain the following:

This conveyance is made and accepted on the express condition subsequent that, if at any time after the date of recording hereof, Grantor causes to be recorded in the Office of the Recorder of San Diego County, California, Grantor's written and acknowledged "Reversion of Title" (described below), then, in such event the fee title to the above described property will automatically revert to Grantor, without necessity of further documentation of any kind, and free of any claim of Grantee and of any person(s) claiming rights or interests from Grantee. Grantor hereby covenants with Grantee that the "Reversion of Title" will not be executed, acknowledged or recorded unless the fact(s) stated in the "Reversion of Title" are true.

The "Reversion of Title" will read as follows:

The undersigned hereby states that: (1) the YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit benefit corporation ("YMCA"), has (a) voluntarily or involuntarily conveyed the property described below or (b) not commenced construction of YMCA facilities (heretofore approved by the undersigned) on said property on or before the fifth anniversary of the date of recording of the deed of conveyance to the YMCA, or (c) after completion of the initial improvements, the whole of the property has ceased for a continuous period of six (6) months, to be used for any "YMCA activity"; and (ii) the fee title to said property hereby automatically reverts to the undersigned, or its assigns, without necessity of further documentation of any kind. Said Property is: (Legal Description).

For the purposes of the Reversion of Title, "YMCA activity" means the administering or conducting of any physical, recreational, counseling, education, transient housing and/or dining, custodial, spiritual or other program YMCA may from time to time determine to sponsor as a benefit to residents of the Panasquitos East Community or elsewhere. The cessation of YMCA activities on the YMCA Land for a reasonable time(s) for, from time to time, demolition, remodeling, renovation or building anew the YMCA Land and/or the improvements will not satisfy said condition. Said six (6) month period will commence on the date of the earlier of (i) delivery to City of a written statement of the then-current owner(s) of the YMCA Land that said YMCA activities have ceased or will cease or (ii) a final judgment of a court of competent jurisdiction, in an action to which such owner(s) and City are parties, finding that said YMCA activities have ceased.

6. Exercise of the Option. The Option, if exercised, can be exercised only by the delivery to such owner(s), at its or their last known address, of City's unequivocal written statement that it exercises the Option ("the Exercise Statement"). Said delivery, to be effective, must be made within three (3) months after the execution, acknowledgement and recordation of the Reversion of Title in accordance with Paragraph 5, above.

6.1 Consummation. The consummation of said exercise (i.e., the conveyance to City of the YMCA Land and the

Improvements, and the payment by City of the consideration described in Paragraph J above) will occur ninety (90) days after the date of delivery of the Exercise Statement. Such consummation will be through an escrow with an escrow agent selected by City, or through such other procedure as may from time to time be customary for the closing of real property acquisitions.

6.2 Extension. The ninety (90) day period described in Paragraph 6.1 above will be reasonably extended to permit the determination of the consideration to be paid for the improvements.

6.3 Other Terms. The consummation of said exercise will be upon the following additional provisions:

6.3.1 Title. Title to the YMCA Land and improvements will be conveyed to City clear of all encumbrances except:

(a) Nondelinquent real property ad valorem taxes, if any.

(b) Nondelinquent bonds or other assessment of any district (in which the YMCA Land is situated) which City hereafter creates or administers.

(c) Covenants, conditions, restrictions, reservations and easements presently of record or hereafter imposed with City's written consent (which consent will not be unreasonably withheld).

(d) Statutes, ordinances and permits affecting the division or use of land, including but not limited to, present and future San Diego PCD Permits.

6.3.2 Prorations. Only real property ad valorem taxes, if any, and bond (or other assessment) interest, if any, will be prorated between such owner(s) and City to the date of consummation of the exercise of the Option.

6.3.3 Closing Costs. City will pay all costs from time to time customarily considered "closing costs" (e.g., escrow fees, title policy premium, county documentary transfer tax, recording charges).

7. Binding Effect. This Agreement and each and every provision hereof will be binding upon Newland and every voluntary and involuntary successor thereof in ownership of the YMCA Land (including, but not limited to, YMCA).

8. Assignment. City's rights, privileges and entitlements hereunder may not be voluntarily or involuntarily assigned or otherwise transferred by City, and any purported such assignment or transfer will automatically result in the termination of this Agreement.

9. Term. Unless the Option is earlier exercised pursuant to this Agreement or this Agreement is terminated pursuant to Paragraph 8 above, this Agreement will automatically terminate on the ninety-ninth (99th) anniversary of the date hereof.

10. Assignment of Reversion Rights to City. On the fifth anniversary of the date of recording of the deed of conveyance to the YMCA, Newland shall assign to City all of its Rights under the Reversion of Title described in Paragraph 5 of this Agreement.

11. Effectiveness. This Agreement will be valid, effective and enforceable only if, no later than November 7, 1988, there becomes effective a development agreement (i) authorized by California Government Code section 65864, et seq., (ii) between City, Newland, The Fieldstone Company, J.M. Peters Company, Inc., and Penasquitos Park View Estates, (iii) affecting lands owned by said parties (other than City) in the Penasquitos East Community and (iv) satisfactory to all of said parties.

12. Notices. Unless otherwise specifically provided in this Agreement, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing (by United States registered or certified mail, return receipt requested), postage prepaid and addressed as follows:

If to Newland, to,

American Newland Associates
c/o Newland California
Suite 340
9404 Genesee Avenue
San Diego, California 92037
Attention: M.R. Scott

If to City, to:

City of San Diego
202 "C" Street
San Diego, California 92101
Attention: City Manager

or to such other address as any party may designate to the others for such purpose in the manner set forth above.

13. General Provisions.

13.1 Gender, Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.

13.2 Business Days. If the (i) stated Closing Date or (ii) last day for performance of an act falls upon a day during which Escrow Agent is not open for business, the Closing Date or such last day, as the case may be, will be the next following regular business day of Escrow Agent.

13.3 Captions. Captions in this Agreement are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.

13.4 References, Exhibits. Each reference in this Agreement to a section or paragraph refers, unless otherwise stated, to a section or paragraph in this Agreement. All exhibits referred to in this Agreement are attached to, and are a part of, this Agreement.

13.5 Modification. No modification, waiver or discharge of this Agreement will be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver or discharge is or may be sought.

13.6 Attorneys' Fees and Costs. If either party commences an action for the interpretation, reformation, enforcement or rescission of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees and court and other costs incurred.

13.7 Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of California.

This Agreement has been signed at San Diego, California, as of the date set forth at the beginning of this Agreement.

AMERICAN NEWLAND ASSOCIATES,
a California general partnership

By THE NEWLAND GROUP, INC.,
a California corporation,
General Partner

By _____
____ President

By _____
____ Secretary

By AMERICAN GENERAL REALTY
INVESTMENT CORPORATION (form-
erly ATLAS REALTY COMPANY),
a Texas corporation, General
Partner

By _____
____ President

CITY OF SAN DIEGO,
a municipal corporation

By _____
____ City Manager

EXHIBIT A

Parcel 1: Lot 9 and 10 of Penasquitos Towne Centre Unit No. 2, according to Map thereof No. 11092, filed in the Office of the County Recorder of San Diego County, California, November 29, 1984.

Parcel 2: Lot 11 of Penasquitos Towne Centre Unit No. 2, according to Map thereof No. 11092, filed in the Office of the County Recorder of San Diego County, California, November 29, 1984.

Parcel 3: All that portion of Rancho de los Penasquitos per Book 2, page 385 of patents and Record of Survey 6204, described as follows:

Beginning at the Northwest corner of Lot 4 of Skyline Penasquitos Unit No. 1, Map No. 9600; thence South $11^{\circ}54'43''$ East, 986.33 feet along the Westerly boundary of said Skyline Penasquitos Unit No. 1 and Skyline Penasquitos Unit No. 4, Map No. 9856, to a tangent 2015.00 foot radius curve concave Westerly; thence along said curve through a central angle of $03^{\circ}40'06''$ a distance of 129.01 feet; thence continuing along said Skyline Penasquitos Unit No. 4 boundary and tangent to said curve South $08^{\circ}14'37''$ East 319.52 feet to the Southwest corner of said Skyline Penasquitos Unit No. 4, thence leaving said boundary South $74^{\circ}59'28''$ West 136 feet more or less to the Easterly right-of-way line of Salmon River Road; thence along said Easterly right-of-way line as follows: North $03^{\circ}25'10''$ West, 38 feet more or less to the beginning of a tangent 630.00 radius curve concave Westerly; thence along said curve through a central angle of $04^{\circ}49'27''$ a distance of 53.04 feet, thence tangent to said curve North $08^{\circ}14'37''$ West 272.05 feet to a tangent 1030.00 foot radius curve concave Westerly, thence along said curve through a central angle of $03^{\circ}40'06''$ a distance of 65.95 feet; thence tangent to said curve North $11^{\circ}54'53''$ West 322.29 feet to the South corner of Lot 103 of said Skyline Penasquitos Unit No. 1; thence continuing along the Easterly line of said Lot 103 North $11^{\circ}54'43''$ West 376.41 feet, thence North $39^{\circ}30'00''$ West 218.93' to the Southerly right-of-way line of Paseo Montalban; thence along said Southerly

right-of-way line North 50°30'00" East
261.08 feet to the point of beginning, also
more particularly described as:

Parcel 1 of Parcel Map No. 15351, in
the City of San Diego, County of San
Diego, State of California, recorded
August 26, 1988, File/Page No.
88-428624, Official Records of San
Diego County, California.

10048.J2

EXHIBIT . A

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

2