

ORIGINAL

SITE IMPROVEMENT ASSISTANCE AGREEMENT

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

and

THE YMCA OF SAN DIEGO COUNTY

(PENINSULA BRANCH)

DOCUMENT NO. D-03441/P-03441

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SITE IMPROVEMENT ASSISTANCE AGREEMENT

This Agreement [the Agreement] is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO [the Agency] and the YMCA OF SAN DIEGO COUNTY, a non-profit public benefit corporation [the YMCA]. The Agency and YMCA agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT

A. [§ 101] Purpose of This Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the North Bay Redevelopment Project by providing part of the financing for the development and improvements to the Site (as defined below). The development and use of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of San Diego and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

B. [§ 102] The Redevelopment Plan

This Agreement is subject to and in furtherance of the Redevelopment Plan for the North Bay Redevelopment Project, which was approved and adopted on May 18, 1998, by the Council of the City of San Diego by Ordinance No. O-18516. The Redevelopment Plan is incorporated herein by this reference and made a part hereto as though fully set forth herein.

C. [§ 103] The Redevelopment Project Area

The North Bay Redevelopment Project Area is located in the City of San Diego, California [the City]. The exact boundaries of the Redevelopment Project area are specifically and legally described in the Redevelopment Plan for such Redevelopment Project.

D. [§ 104] The Site

The "Site" is that real property within the North Bay Redevelopment Project area illustrated and designated as such on the "Site Map" (which is attached hereto and incorporated herein as Attachment 1), located at 4300 Valeta Street, within the City of San Diego, State of California.

The Site is leased by the YMCA from the City [Lease]. YMCA represents that it is negotiating a new lease with the City, and will, prior to construction, have the right and ability to construct improvements on the Site.

E. [§ 105] The Project

The Project includes improvements to the Site which are set forth in the Scope of Development (which is attached hereto and incorporated herein as Attachment 6).

F. [§ 106] Parties to the Agreement

1. [§ 107] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

The principal office of the Agency is located at 600 B Street, San Diego, California 92101.

"Agency" as used in this Agreement, includes the Redevelopment Agency of the City of San Diego, and any assignee of or successor to its rights, powers, and responsibilities.

2. [§ 108] The YMCA

The YMCA is the YMCA of San Diego County, Peninsula Branch, a California non-profit organization.

The address of the YMCA for purposes of receiving notices is 4300 Valeta Street, San Diego, California 92107.

Wherever the term "YMCA" is used herein, such term shall also include any permitted nominee, assignee, or successor in interest as herein provided.

3. [§ 109] Assignments and Transfers

The YMCA represents and agrees that its acceptance of monies from the Agency and its undertakings pursuant to this Agreement, are, and will be, used for the purpose of redevelopment of the Site and the structures thereon, and not for speculation in land holding, or for any other prohibited purpose. The YMCA further recognizes:

a. The importance of the redevelopment of the Site to the general welfare of the community; and

b. The substantial financing and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible.

The YMCA shall not assign all or any part of this Agreement without the prior written approval of the Agency. Any assignment in violation of this Agreement shall constitute a default.

II. [§ 200] FINANCIAL PROVISIONS

A. [§ 201] Method of Financing

The improvements and expansion outlined in the Scope of Development (Attachment 6), shall be financed with a combination of sources of financing as provided in the Method of Financing and Fundraising Schedule, which is attached hereto and incorporated herein as Attachment 4.

After the execution of this Agreement, the YMCA shall promptly begin and thereafter diligently pursue fundraising efforts to fund the Project. In addition to any other requirements under this Agreement, within fifteen (15) days of the Agency's request, the YMCA shall provide written reports concerning the progress of its fundraising efforts.

B. [§ 202] Total Amount of Agreement

The Agency agrees to provide to the YMCA an amount not exceeding \$575,000 (five hundred seventy-five thousand dollars) [Funds], under the terms and conditions of this Agreement. The total amount of money provided to YMCA will be given by Agency in six separate disbursements.

C. [§ 203] Use of Funds

The YMCA agrees to only use the Funds for the construction of the "multipurpose/exercise" room as described in the Scope of Development (Attachment 6). Any other use, including operations and maintenance expenses, is prohibited, and will constitute a default by YMCA.

D. [§ 204] Disbursement of Funds

E. [§ 205] Conditions Precedent to Disbursement of Funds

Prior to the Agency providing any Funds to the YMCA under this Agreement, the following must occur to the Agency's satisfaction:

1. YMCA must enter into, and deliver a copy of, a valid lease agreement with the City for the Site. The lease must include the following provisions:

a. YMCA is permitted to build the improvements provided in the Scope of Development (Attachment 6); and

b. YMCA agrees to allow the general public and community organizations to use the Site and facilities without regard to YMCA membership; and

c. YMCA agrees that the "fitness training center" as shown in the Proposed Development Plans (which is attached hereto and incorporated herein as Attachment 2) will be no larger than 3,877 square feet, and that the "multipurpose and exercise" room (as shown in Attachment 2) will not include free weights, strength training equipment or machines, or cardiovascular equipment or machines such as lifecycles, exercise bikes, treadmills, stepping machines, or boxing equipment, without the written consent of the Agency.

2. YMCA must obtain all (100%) of the financing for the Project as provided in the Method of Financing and Fundraising Schedule (Attachment 4) and in accordance with the Schedule of Performance (which is attached hereto and incorporated herein as Attachment 5), and shall submit evidence of such financing as provided in Section 207.

F. [§ 206] Failure of Conditions

In the event any of the conditions precedent are not timely satisfied or waived, for a reason other than the default of the Agency or YMCA, the following shall apply:

1. Either party shall have the right to terminate this Agreement; and
2. Neither party shall have any further rights or obligations under this Agreement except as otherwise provided.

G. [§ 207] Submission of Evidence of Financing

Within the times established therefor in the Schedule of Performance (Attachment No. 5), the YMCA shall submit to the Agency evidence satisfactory to the Agency that the YMCA has obtained the financing necessary for the Project in accordance with this Agreement.

Such evidence of financing shall include the following:

1. A copy of the commitment or commitments, if any, obtained by the YMCA as part of its fundraising efforts, specifically for the construction of the improvements (as described in the Scope of Development), or if obtained as an alternative, a letter of intent or serious interest containing the essential terms and conditions of the proposed donation, certified by the YMCA to be a true and correct copy or copies thereof. The commitment for financing shall be in such form and content as reasonably evidences a firm commitment, or letter of intent or serious interest; and
2. The form of YMCA's proposed contract for the development and construction of all the improvements on the Site; and

3. A copy of the contract between the YMCA and the general contractor for the development and construction of all improvements on the Site, certified by the YMCA to be a true and correct copy thereof; and

4. A Project Budget illustrating the planned usage of Agency and other funding, which must include projected dates for construction and specific amounts to be spent on the various components of the Project (a Proposed Project Budget is attached hereto and incorporated herein as Attachment 3); and

5. Reasonable evidence of sources of additional cash sufficient to demonstrate that the YMCA has adequate funds legally committed to cover the difference, if any, between the anticipated construction cost for the development on the Site and the financing authorized by this Agreement.

The Agency shall approve or disapprove such evidence of financing within the times established in the Schedule of Performance. Such approval shall not be unreasonably withheld. Failure of the Agency to approve or disapprove any such evidence of financing within such time shall be deemed an approval. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to the YMCA stating the reasons for such disapproval.

H. [§ 208] Schedule of Disbursements

After the YMCA submits proof that conditions precedent have been satisfied, and upon written request from YMCA, the Agency shall, within thirty (30) days from the written request of YMCA, provide the first disbursement to YMCA. All disbursements will be made in accordance with this Agreement and the Schedule of Performance (Attachment 5) and shall be in the following amounts:

First disbursement:	\$ 100,000
Second disbursement:	100,000
Third disbursement:	100,000
Fourth disbursement:	100,000
Fifth disbursement:	100,000
Sixth/final disbursement:	<u>75,000</u>
Total:	\$ 575,000

I. [§ 209] Proof of Use of Funds

After each separate disbursement is made by the Agency (including the final disbursement) and before any subsequent disbursement is made, YMCA must submit to the Agency appropriate documentation and receipts accounting for the expenditure of the disbursements, consistent with the Use of Funds, Section 203. Subsequent disbursements are

contingent upon the Agency's satisfaction of such proof. The Agency shall approve or disapprove such Proof of Use of Funds within the times established in the Schedule of Performance (Attachment 5). If the YMCA fails to submit Proof of Use of Funds according to the Schedule of Performance, for any of the disbursements, the YMCA will be in default of this Agreement.

III. [§ 300] DEVELOPMENT OF THE SITE

A. [§ 301] Development of the Site

1. [§ 302] Scope of Development

The Site shall be developed in accordance with and within the limitations established in the Scope of Development (Attachment 6).

2. [§ 303] Cost of Construction

The cost of developing and expanding the Site and constructing all improvements thereon shall be borne solely by the YMCA, without any cost to Agency.

3. [§ 304] Schedule of Performance

Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Agency and YMCA.

After receiving the first disbursement of funds from the Agency, the YMCA shall promptly begin and thereafter diligently complete the construction of the improvements as provided in the Scope of Development. The YMCA shall begin and complete all construction and development within the times specified in the Schedule of Performance with such reasonable extensions of said dates as may be granted by the Agency.

During periods of construction, the YMCA shall submit to the Agency written reports of the progress of the construction when and as reasonably requested by the Agency. The reports shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by the YMCA.

4. [§ 305] Indemnification and Insurance

a. Indemnity. The YMCA agrees to and shall defend, indemnify, and hold the Agency, the City, and their officers and employees harmless from and against all claims,

liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the Site of any person which shall occur on or adjacent to the Site, or otherwise in connection with this Agreement, and which shall be directly or indirectly caused by any acts done or any errors or omissions of the YMCA or its agents, servants, employees, or contractors. The YMCA shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of the Agency, the City, or their respective officers, employees, contractors, and agents.

b. Insurance Policies

(1) At all times prior to completion of development, YMCA shall maintain in effect and deliver to Agency duplicate originals or appropriate certificates of the following insurance policies:

(a) Commercial General Liability. YMCA shall keep in full force and effect, all applicable insurance to cover personal injury, bodily injury and Site damage, providing coverage to a combined single limit of \$5 million per occurrence, subject to an annual aggregate of \$5 million for general liability, completed operations and personal injury other than bodily injury, naming the Agency, the City, and their officers and employees, as additional insureds. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or Site damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

(b) Comprehensive Automobile Liability. For all of the YMCA's automobiles including owned, hired and non-owned automobiles, the YMCA shall keep in full force and effect, automobile insurance for bodily injury and Site damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile ("any auto").

(c) Worker's Compensation. For all of the YMCA's employees who are subject to this provision and to the extent required by the State of California, the YMCA shall keep in full force and effect, a worker's compensation policy. That policy shall provide a minimum of \$1 million of employers liability coverage, and YMCA shall provide an endorsement that the insurer waives the right of subrogation against the City, the Agency, and their respective elected officials, officers, employees, agents and representatives.

(d) Course of Construction. YMCA shall keep in full force and effect, during the entire period of construction, a course of construction policy, which shall include coverage for any loss due to fire, with Agency named as a "lost payee."

(2) Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have

been given at least an "AV" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the Agency.

(3) All deductibles on any policy shall be the responsibility of the YMCA.

(4) Specific Provisions Required. Each required insurance policy shall expressly provide, and an endorsement shall be submitted to the Agency, that:

(a) Except as to worker's compensation, the City, the Agency and their respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City and Agency's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to Agency.

(b) The policies are primary and contributing to any insurance that may be carried by the Agency, as reflected in an endorsement which shall be submitted to the Agency.

(c) The policies cannot be canceled, non renewed or materially changed except after thirty (30) calendar days prior written notice by the insurer to the Agency by certified mail, as reflected in an endorsement which shall be submitted to the Agency.

(d) Before performing under this Agreement, the YMCA shall provide the Agency with copies of all Certificates of Insurance accompanied with all endorsements.

(e) The YMCA may obtain for its own purposes insurance not required by this Contract.

5. [§ 306] City and Other Governmental Permits

Before commencement of construction or development of any building, structure or other work of improvement upon the Site, the YMCA shall (at its own expense) secure, or cause to be secured, any and all permits which may be required by the City or any other governmental Agency having jurisdiction over such construction, development, or work. The Agency shall provide all proper assistance to the YMCA in securing these permits.

6. [§ 307] Rights of Access

Representatives of the Agency and the City shall have the reasonable right of access to the Site, subject to reasonable rules of the YMCA, without charges or fees, at normal operating or construction hours during the period of construction for the purposes of this Agreement,

including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency.

7. [§ 308] Local, State, and Federal Laws

The YMCA shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards.

8. [§ 309] Nondiscrimination During Construction

The YMCA, for itself and its successors and assigns, agrees that in the construction of the improvements on the Site provided for in this Agreement, the YMCA will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, religion, national origin, sexual orientation, ancestry, or on any other basis prohibited by law.

B. [§ 310] Americans With Disabilities Act

The YMCA acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, incorporated herein by this reference, adopted by Resolution No. R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. The YMCA is solely responsible for administering its own ADA program and for ensuring that any development done under this Agreement is in compliance with ADA.

C. [§ 311] Responsibilities of the Agency

Except as provided in this Agreement, the Agency neither undertakes nor assumes nor will have any responsibility or duty to the YMCA or to any third party to review, inspect, supervise, pass judgment upon or inform the YMCA or any third party of any matter in connection with the development or construction of the Site, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the YMCA, any person furnishing the same, or otherwise. The YMCA and all third parties shall rely upon its or their own judgment regarding such matters and any review, inspection, supervision, exercise of judgment or information supplied to the YMCA or to any third party by the Agency in connection with such matter is for the public purpose of implementing the Redevelopment Plan, and neither the YMCA (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

D. [§ 312] Agency Recognition

YMCA agrees, at its own expense, to construct or cause to be constructed, a plaque, of a minimum size of ten (10) inches by fourteen (14) inches, with the following phrase: "The YMCA

facilities expansion was made possible, in part, with funds from the Redevelopment Agency of the City of San Diego." The plaque shall be permanently affixed in a visible and conspicuous place at the entrance of the YMCA facilities.

IV. [§ 400] USE OF THE SITE

A. [§ 401] Uses

The YMCA covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site and the improvements thereon, or any part thereof, that during construction and thereafter, the Site, and the improvements thereon shall be devoted to the uses specified in the Scope of Development (Attachment 6).

B. [§ 402] Maintenance of the Site

The YMCA shall maintain the improvements on the Site and shall keep the Site free from any accumulation of debris or waste materials, allowing for such debris and waste materials during construction as may occur on a well-kept construction Site.

C. [§ 403] Obligation to Refrain from Discrimination

The YMCA covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, sexual orientation, national origin, or ancestry in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site nor shall the YMCA itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site.

D. [§ 404] Form of Nondiscrimination and Non-Segregation Clauses

The YMCA shall refrain from restricting the use of the Site improvements thereon, or any portion thereof, on the basis of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin of any person. All leases, or contracts for the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site or improvements thereon, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

1. In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

2. In contracts: "There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees in the land."

E. [§ 405] Effect and Duration of Covenants

The covenants of the YMCA established in this Agreement shall, without regard to technical classification and designation, be binding on the YMCA for the benefit and in favor of the Agency, its successors and assigns, and the City.

V. [§ 500] DEFAULTS, REMEDIES AND TERMINATION

A. [§ 501] Defaults - General

Subject to the extensions of time set forth in Section 604, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately, upon receipt of written notice as specified below, commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence, and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§ 502] Legal Actions

1. [§ 503] Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of San Diego County, State of California, in any other appropriate court in that county, or in the Federal District Court in the Southern District of California.

2. [§ 504] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§ 505] Acceptance of Service of Process

In the event that any legal action is commenced by the YMCA against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director or Chair of the Agency, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the YMCA, service of process on the YMCA shall be made by personal service upon an officer of the YMCA, and shall be valid whether made within or without the State of California, or in such other manner as may be provided by law.

C. [§ 506] Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§ 507] Damages

If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within ten (10) days after receipt of the notice of default if an obligation to pay money, or within thirty (30) days after receipt of the notice of default otherwise, or if such default (other than the payment of money) is of a type which is not capable of being cured within thirty (30) days, then if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner

within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

E. [§ 508] Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within ten (10) days after receipt of the notice of default if an obligation to pay money, or within thirty (30) days after receipt of the notice of default otherwise, or if such default (other than the payment of money) is of a type which is not capable of being cured within thirty (30) days, then if the default is not commenced to be cured within thirty (30) days after service of the notice of default and not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the non-defaulting party, at its option, may thereafter (but not before, unless necessary to prevent immediate harm) commence an action for specific performance of the terms of this Agreement pertaining to such default.

F. [§ 509] Remedies and Rights of Termination

1. [§ 510] Termination by the YMCA

In addition to the YMCA's other rights and remedies at law or in equity (or elsewhere in the Agreement), and subject to YMCA reimbursing Agency for any and all costs incurred by the Agency in connection with this Agreement, the YMCA may terminate this Agreement if:

a. The Agency, despite all conditions precedent thereto having occurred, fails to provide funds, to the YMCA in the manner and condition, and within the time periods provided in this Agreement; or

b. If any default or failure referred to in this Section 510 shall not be cured within thirty (30) days after the date of written demand by the YMCA, or if the Agency has commenced to cure any such default or failure within such thirty (30) days and diligently pursues cure thereof, then if any such default or failure shall not be cured within sixty (60) days after the date of such written demand by the YMCA, then this Agreement shall, at the option of the YMCA, be terminated, by written notice thereof to the Agency, and except to the extent provided in Section 512, neither the Agency nor the YMCA shall have any further rights against or liability to the other under this Agreement with respect to the Site.

2. [§ 511] Termination by Agency

In addition to the Agency's other rights and remedies at law or in equity (or elsewhere in the Agreement), the Agency may terminate this Agreement, and may reallocate any funds to other

Agency projects, subject to the right to cure contained in Section 511(f), and the YMCA shall reimburse the Agency for any and all costs incurred by the Agency in connection with this Agreement if:

- a. The YMCA shall fail to submit to the Agency any submission of evidence of financing commitments referred to in Section 207 of this Agreement with respect to the Site within the time established therefor in the Schedule of Performance (Attachment 5); or
- b. The YMCA (or any successor in interest) assigns or attempts to assign this Agreement or any right herein, or in the Site (or any portion thereof), in violation of the terms of this Agreement; or
- c. The YMCA fails to provide satisfactory Proof of Use of any of the disbursements from the Agency, as provided in Section 209; or
- d. The YMCA uses the funds from the Agency for prohibited purposes, as provided in Section 203; or
- e. The YMCA fails to meet any timeline or deadline under this Agreement or as provided in the Schedule of Performance; or
- f. If any default or failure referred to in subdivisions a., b., c., d., or e. of this Section 511 shall not be cured within thirty (30) days after the date of written demand by the Agency, or (with respect to other than an obligation to pay money) if the YMCA has commenced to cure any such default or failure within such thirty (30) days and diligently pursues the cure thereof, then if any such default or failure shall not be cured within sixty (60) days after the date of such written demand by the Agency, then this Agreement and any rights of the YMCA, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the Agency, shall at the option of the Agency, be terminated with respect to the Site, by written notice to the YMCA, and except to the extent provided in Section 512, neither the Agency nor the YMCA shall have any further rights against or liability to the other under the Agreement with respect to the Site.

G. [§ 512] Right of Reimbursement

The Agency shall have the right, at its option, to demand and receive from the YMCA, reimbursement of any funds provided to the YMCA under this Agreement under any of the following circumstances:

1. The YMCA fails to commence construction of the improvements on the Site as required by this Agreement for a period of three (3) consecutive months after receiving the first disbursement from the Agency (referring to Section 208), provided that the YMCA shall not have obtained an extension or postponement to which the YMCA may be entitled pursuant to Section 604 hereof; or

2. The YMCA abandons or substantially suspends construction of the improvements on the Site for a period of three (3) consecutive months after written notice of such abandonment or suspension from the Agency, provided that the YMCA shall not have obtained an extension or postponement to which the YMCA may be entitled to pursuant to Section 604 hereof; or

3. The YMCA Assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of its interest in the Site, or any part thereof, in violation of this Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by the Agency to the YMCA; or

4. The Project is not completed within twenty-four (24) months of the date of this Agreement; or

5. Any other action or inaction by the YMCA that constitutes a default of this Agreement; or

6. Termination of the Agreement by either the Agency or the YMCA, under Sections 510 or 511.

VI. [§ 600] GENERAL PROVISIONS

A. [§ 601] Notices, Demands, and Communications between the Parties

Formal notices, demands, and communications between the Agency and the YMCA shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by courier or overnight delivery service not affiliated with the sender at the cost of the sender with written evidence of receipt, to the principal offices of the Agency or of the YMCA as designated in Section 107 and Section 108 hereof. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate, by mail as provided in this Section 601.

B. [§ 602] Conflict of Interest

No member, official, or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

The YMCA warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

C. [§ 603] Non-Liability of the Agency Officials and Employees

No member, official, or employee of the Agency shall be personally liable to the YMCA, or any successor in interest, as a result of any default or breach by the Agency or for any amount which may become due to the YMCA or successor or on any obligations under the terms of this Agreement.

D. [§ 604] Enforced Delay in Performance for Causes
Beyond Control of Part

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are as a result of insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor or supplier, acts of the other party, acts or failure to act of the City or any other public or governmental Agency or entity (other than any act or failure to act of the Agency, which shall not excuse performance by the Agency) or any other causes beyond the control or without the fault of the party claiming an extension of the time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the YMCA.

E. [§ 605] Inspection of Books and Records

The Agency has the right at all reasonable times to inspect the books and records of the YMCA pertaining to the Site and the Project as pertinent to the purposes of this Agreement. The YMCA also has the right at all reasonable times (during normal business hours) to inspect the books and records of the Agency pertaining to the Site and the Project as pertinent to the purposes of this Agreement.

F. [§ 606] Approvals

Except where this Agreement expressly provides for the approval by a party of any matter in its discretion, approvals required of the Agency or the YMCA shall not be unreasonably withheld.

G. [§ 607] No Third Party Beneficiary

The parties agree that this Agreement is made solely for the benefit of the Agency and the YMCA, and no third person or entity shall be deemed to have any rights or remedies hereunder.

VII. [§ 700] SPECIAL PROVISIONS

A. [§ 701] Prevailing Wages

The YMCA shall ensure that prevailing wages are paid on the entire Project as required by law.

B. [§ 702] Conflict With Lease

To the extent that any provisions of this Agreement conflict with any provisions of the Lease, the provisions of the Lease shall prevail.

C. [§ 703] Equal Opportunity Program

YMCA shall not discriminate against any employee or applicant for employment on any basis prohibited by law. YMCA shall provide equal opportunity in all employment practices. YMCA shall ensure that their contractors and subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

VIII. [§ 800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original. This Agreement includes eighteen (18) pages and six (6) attachments which constitute the entire understanding and agreement of the parties. All attachments to the Agreement are incorporated fully into the Agreement.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency or the YMCA, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the YMCA.

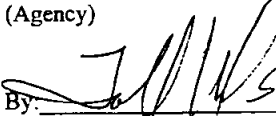
IX. [§ 900] TIME FOR ACCEPTANCE AND DATE OF THE AGREEMENT

This Agreement, when executed by the YMCA and delivered to the Agency, must be authorized, executed and delivered by the Agency within ninety (90) days after the date of

signature by the YMCA, or this signed Agreement may be withdrawn by the YMCA upon delivery of notice in writing to the Agency. The date of this Agreement shall be the date when the Agreement shall have been signed by the Agency.

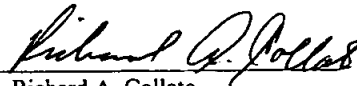
**REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO**
(Agency)

Date: 3/28/02

By: 
Todd Hooks
Deputy Executive Director

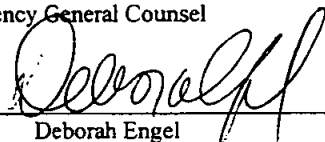
YMCA OF SAN DIEGO COUNTY
(YMCA)

Date: 3/7/02

By: 
Richard A. Collato
President

APPROVED AS TO FORM AND LEGALITY:

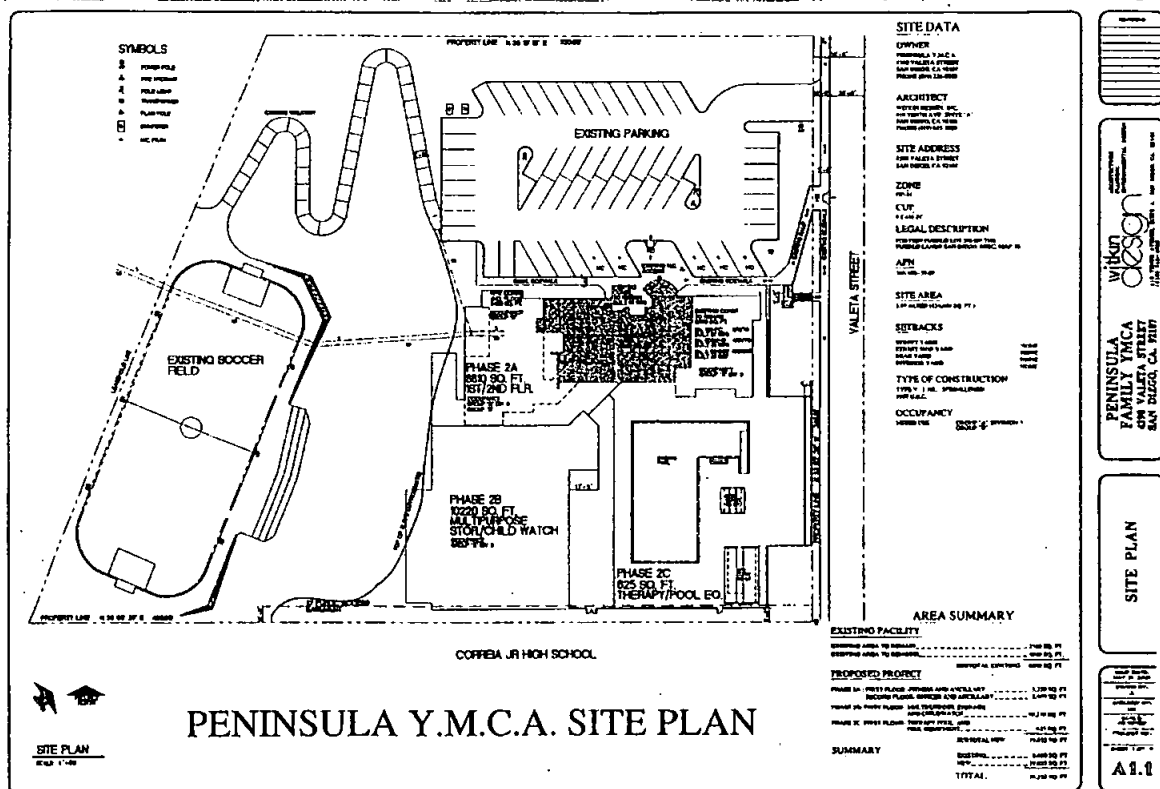
CASEY GWINN
Agency General Counsel

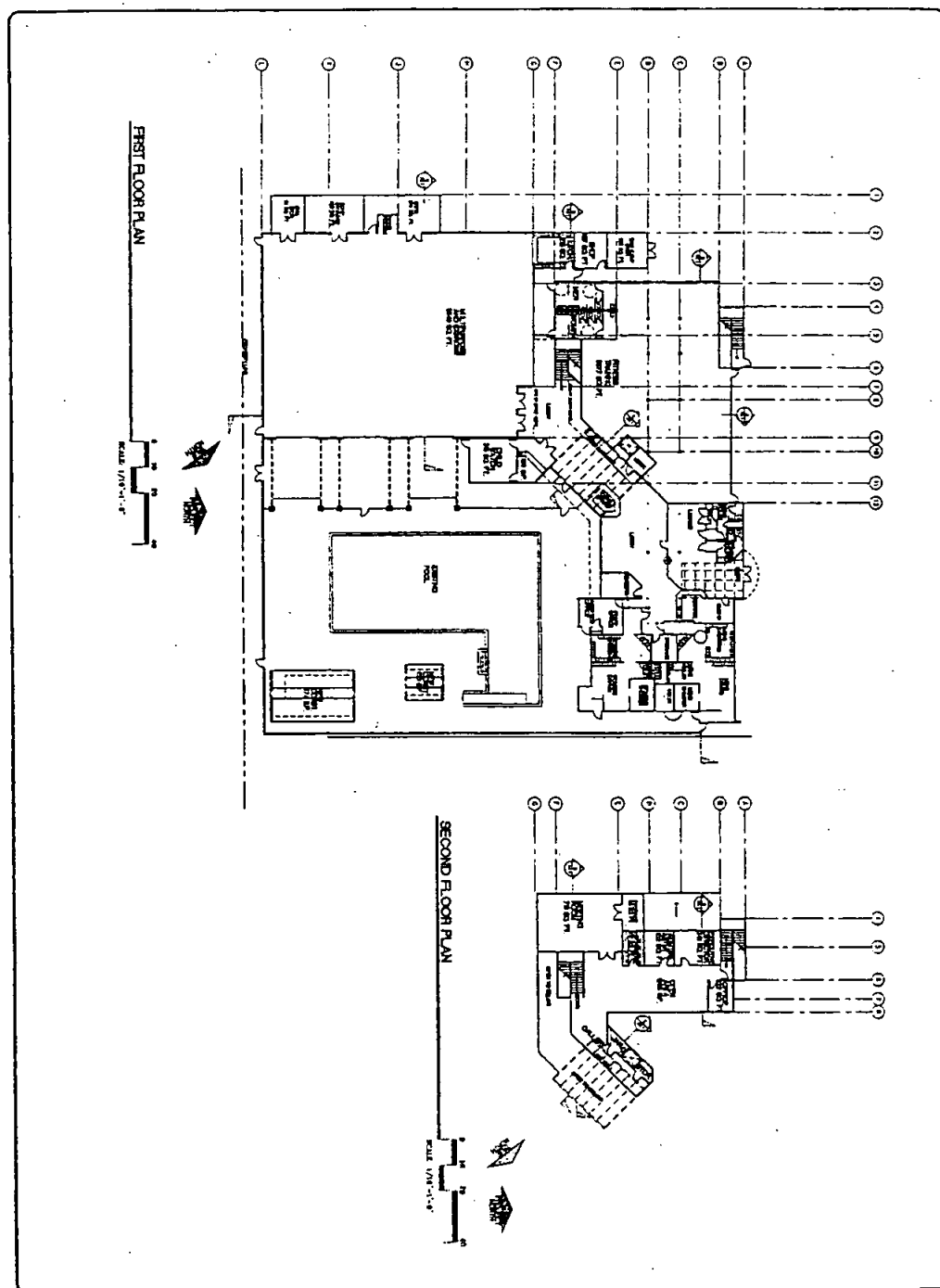
By: 
Deborah Engel
Deputy General Counsel

02/19/2
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ATTACHMENT 1

SITE MAP





A2.1

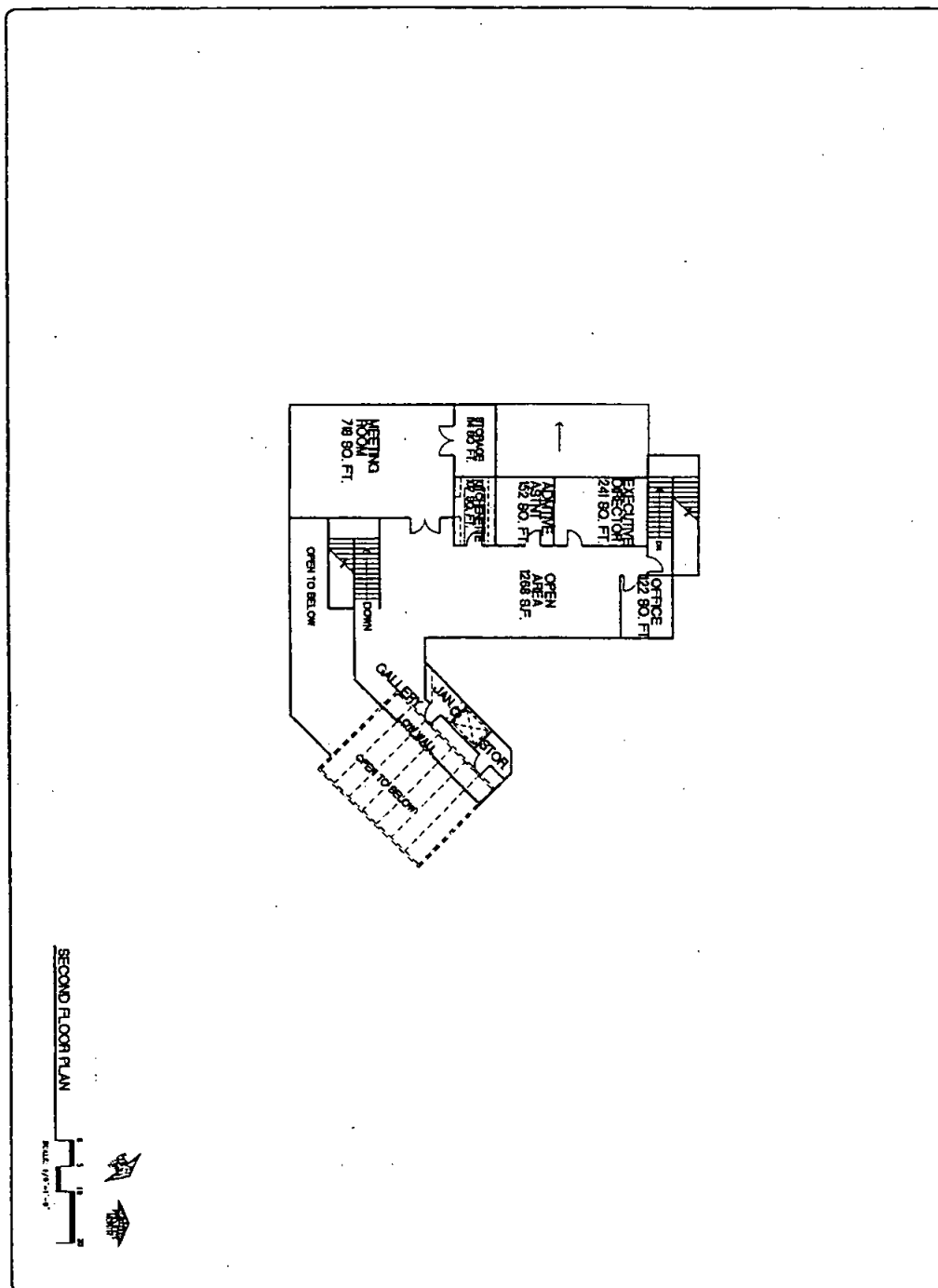
FIRST AND SECOND
FLOOR PLAN 1/16"

PENINSULA
FAMILY YMCA
4396 VALETA STREET
SAN DIEGO, CA 92107

with
design

ARCHITECTURE
PLANNING
INTERIOR DESIGN





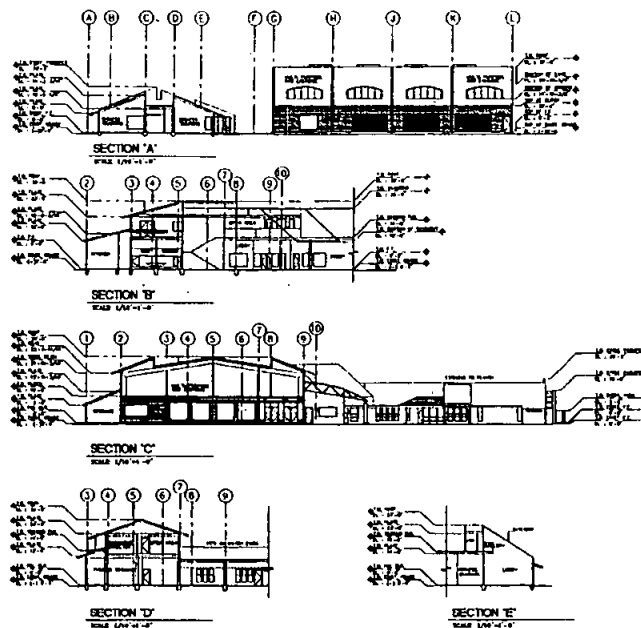
DATE: 10/1/01
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]
 A.9.5

SECOND FLOOR PLAN

PENINSULA
 FAMILY YMCA
 4396 VALETA STREET
 SAN DIEGO, CA. 92107

with
 design
 1115 NORTH AVENUE SUITE A • SAN DIEGO, CA. 92101
 (619) 551-1200





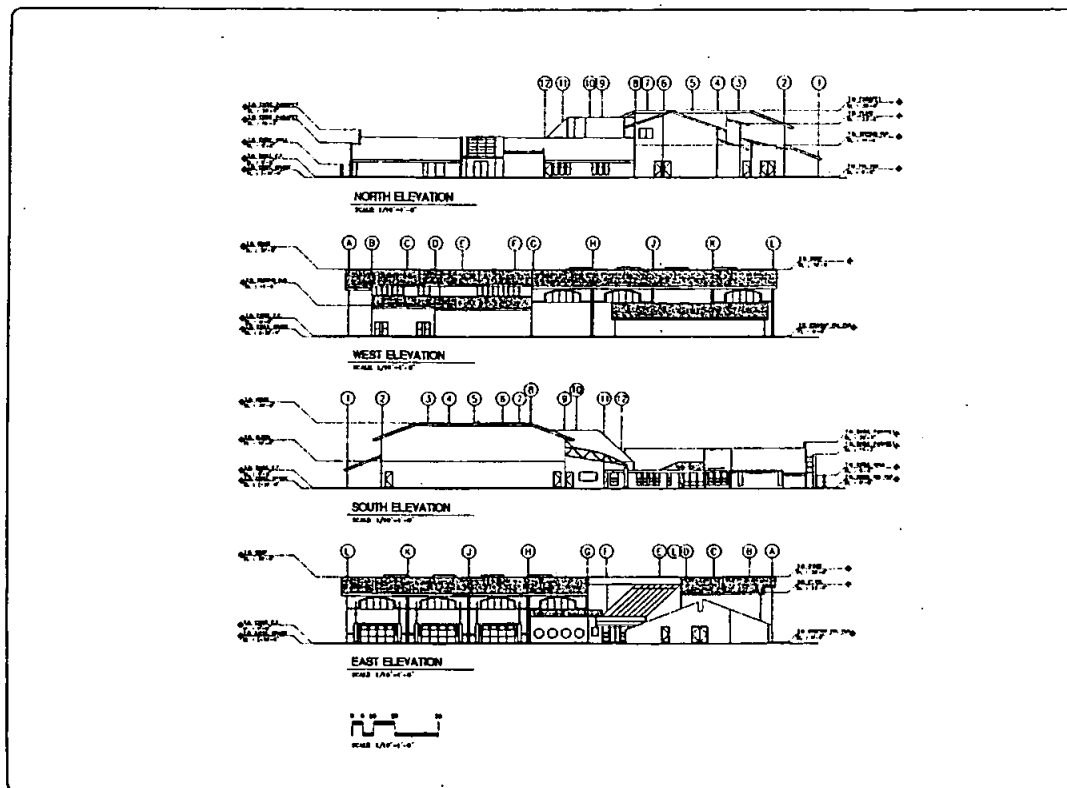
DATE	
BY	
CHECKED	
APPROVED	

with design
PENINSULA
FAMILY YMCA
400 VALLEY STREET
SAN DIEGO, CA 92101
TEL: 619.594.1111 FAX: 619.594.1112

BUILDING
SECTIONS

DATE	
BY	
CHECKED	
APPROVED	

A6.1



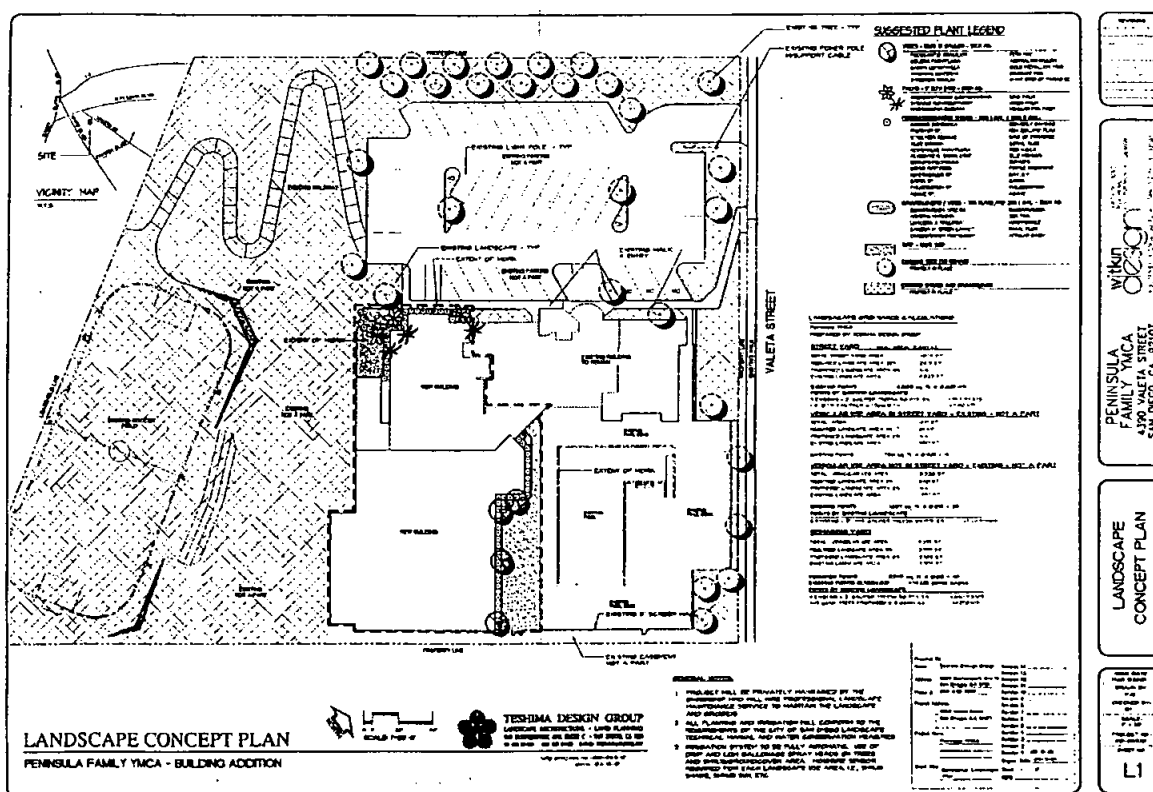
REVISIONS

WILKIN design
PENINSULA FAMILY YMCA
400 VALLETA STREET
SAN DIEGO, CA 92101

EXTERIOR ELEVATIONS

DATE

A7.1



ATTACHMENT 2

PROPOSED DEVELOPMENT PLANS

**Peninsula Family YMCA: Capital Development Program
NEW CENTURY CAMPAIGN
Goal: \$3.5 million**

CALENDAR

Prospects Research Task Force (January – July, 2002)

- April, 2002 - Complete Work for Pacesetter and Leadership Gifts Committee
 - > 24 Contributor prospects for the Pacesetter Gifts Committee
(Each with the capacity to give \$100,000 - \$1,000,000 over five years)
- May, 2002 - Complete work related to the Advanced Gifts Committee
 - > 52 Contributor prospects for the Advanced gifts Committee
(Each with the capacity to give \$25,000 - \$99,999 over five years)
- July, 2002 - Complete work related to the Major Gifts Committee
 - > 135 Contributor prospects for the Major Gifts Committee
(Each with the capacity to give \$5,000 - \$25,000 over five years)

Marketing & Communications Committee (January, 2002 – July, 2003)

Building & Property Committee (January 2002 – Completion)

Leadership Gifts Committee (March – July, 2002)

- To secure *100% participation* by the YMCA's "inner-family" including:
 - * YMCA board members and staff
 - * Key campaign leaders beyond the board -- primarily those who serve on the Campaign Steering Committee
- To produce *approximately 20%* (\$1,000,000) of the YMCA's \$3,500,000 goal in outright gifts and commitments (payable over three - five years).

Pacesetter Gifts Committee (April, 2002 – January 2003)

- To provide strong, motivational leadership for three volunteers organized to raise \$2,700,000 in contributed funds toward construction of the major additions to the YMCA facilities and to serve as a key public spokesman in behalf of the project.
 - > Enlist and work with three individuals organized to focus on prospective contributors in the range of \$100,000 to \$1,000,000+ (payable over three to five years).

Advanced Gifts Committee (July, 2002 – April, 2003)

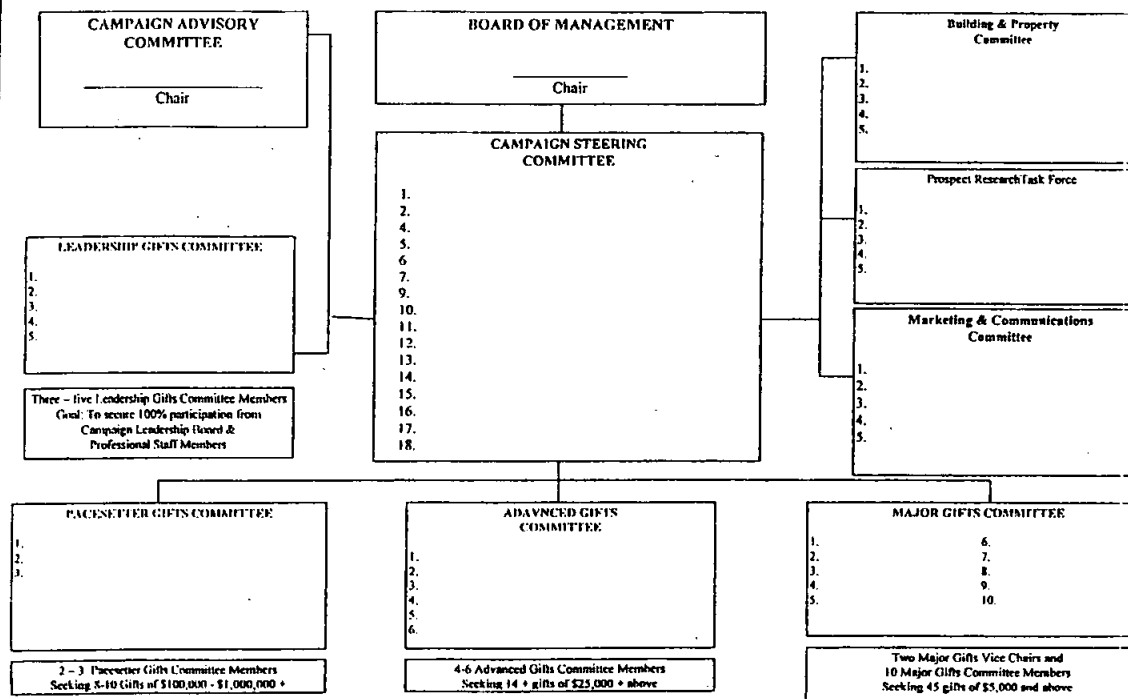
- To provide strong, motivational leadership to four to six volunteers organized to raise \$500,000 in contributed funds toward construction of the major additions to the Peninsula Family YMCA facilities and to serve as a key public spokesman in behalf of the project.
 - > Enlist and work with four - six individuals organized to focus on prospective contributors in the range of \$25,000 - \$100,000 (payable over three to five years).

Major Gifts Committee (September, 2002 – July 2003)

- To provide strong, motivational leadership to eight volunteers organized to raise \$300,000 in contributed funds toward construction of the major additions to the Peninsula Family YMCA facilities and to serve as a key public spokesman in behalf of the project.
 - > Enlist and work with eight individuals organized to focus on prospective contributors in the range of \$5,000 and above (payable over three to five years).

Peninsula Family YMCA: Capital Development Program
NEW CENTURY CAMPAIGN
Goal: \$3.5 million
CHART OF ORGANIZATION

Draft



ATTACHMENT 3

PROJECTED PROJECT BUDGET

1-29-02

**PENINSULA FAMILY YMCA
CAPITAL EXPANSION
PROJECT COST**

Hard Cost

Hard Construction Cost Estimate (Kvaas Construction, submitted 12-13-00)	\$2,428,440
(Inclusive of Bonds, Insurance Testing)	
>Prevailing Wages (11% above original labor cost)	\$83,635
>Escalation Fees (Two years from 5/01)	\$152,587
Fire Sprinkler System (Estimate, M. Witkin)	\$35,000
Equipment & Furnishings (Estimate, M. Witkin)	\$200,000

Soft Cost

Permits & Fees	\$150,000
Architectural Fees (signed 4-24-00)	\$104,300
Estimated 12 Month Capital Fundraising Council Fees (submitted August, 2000)	\$120,800
Pledge Financing Fees	\$200,000
Contingency (around 7%)	\$230,145

TOTAL	\$3,704,907
--------------	--------------------

*We had been using 3.5 Million internally.

YMCA of San Diego County

Peninsula Branch YMCA Annual Operating Expenses

<i>Costs</i>	<i>FY 1999-2000</i>	<i>Estimated, First FY After Phase 1 Completed</i>
Salaries	306,640	554,548
Employee Benefits	41,118	72,091
Payroll Taxes	37,113	67,258
Contract Services	8,489	32,523
Supplies	46,729	74,216
Telephone	6,152	12,896
Postage & Shipping	14,870	36,271
Rent/Care of Bldg/Insurance	43,922	76,256
Utilities	36,388	94,293
Printing	13,294	27,151
Transportation	18,847	31,283
Conferences & Training	4,739	16,240
Subscriptions & Ref. Matl.	70	240
Advertising & Promotion	12,422	34,186
National Dues	10,794	21,609
Program Expense	426,281	782,281
Equipment	26,967	42,657
Miscellaneous	14,047	28,556
General Office Support	96,376	178,440
Total Costs:	1,165,225	2,182,995

ATTACHMENT 4

METHOD OF FINANCING AND FUNDRAISING SCHEDULE

The Project and development under this Agreement will cost approximately \$3.70 million.

The YMCA's Board of Management completed a four-month internal capital readiness assessment process through a committee of seventeen volunteers from the community. This was followed by a "Feasibility and Planning" study through the professional fundraising firm, Development Management Associates [DMA].

DMA tested and validated the feasibility of a \$3.70 million capital fundraising campaign. \$3.13 million will be raised through private contributions from individuals, corporations and foundations. In addition, the YMCA may receive matching funds from various donors. The remaining \$575,000 would be provided by the Agency under the terms of this Agreement.

The YMCA has tentative plans to publicly kick-off the year-long fundraising effort in the Spring of 2002.

L:\ENGEL\Agmt\Misc\Peninsula YMCA\A14-MethodFinancing

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCEI. GENERAL PROVISIONS

1. Execution of Agreement by the Agency. Within sixty (60) days after this Agreement is executed by the YMCA and submitted to the Agency.
The Agency shall hold a public hearing on this Agreement, and subject to making the requisite findings, shall authorize execution and execute this Agreement, and shall deliver this Agreement to the YMCA.
2. Lease with City. The YMCA shall deliver Not later than ninety (90) days after execution of this Agreement by the Agency.
to the Agency a copy of a valid lease agreement with the City for the Site, with provisions as outlined in Section 205 of the Agreement.

II. FINANCING COMMITMENTS

1. Initial Fundraising. The YMCA shall submit to the Agency evidence that the YMCA has a feasible fundraising plan approved by YMCA's board of management. Not later than sixty (60) days after execution of this Agreement by the Agency.
2. Fundraising Efforts. The YMCA shall submit to the Agency evidence that the YMCA has begun fundraising efforts according to its fundraising plan. Not later than ninety (90) days after the execution of this Agreement by the Agency.
3. Report to Agency. The YMCA shall provide a written report to the Agency concerning the progress of its fundraising efforts. Within fifteen (15) days of the Agency's request of such report.

- | | |
|--|--|
| 4. <u>Evidence of Financing-Phase 1.</u> The YMCA shall submit to the Agency that the YMCA has received cash or verifiable pledges for \$1.0 million, specifically for the development described under this Agreement. | Not later than one (1) year after the execution of this Agreement by the Agency. |
| 5. <u>Evidence of Financing-Phase 2.</u> The YMCA shall submit to the Agency that the YMCA has received cash, verifiable pledges, or other financial commitments for the remainder of the \$2.13 million, specifically for the development under this Agreement. | Not later than two (2) years after the execution of this Agreement by the Agency. |
| 6. <u>Approval of Financing.</u> The Agency shall approve or disapprove the Evidence of Financing. | Within fifteen (15) days after the Agency receives each submission of Evidence of Financing. |

III. AGENCY FUNDING

- | | |
|---|--|
| 1. <u>Written Notification.</u> The YMCA shall submit written request to the Agency that the Agency disbursement is due. | Not later than thirty (30) days after Agency approval of the Evidence of Financing-Phase II.2 (above). |
| 2. <u>First Disbursement.</u> The Agency shall make First Disbursement to YMCA. | Within thirty (30) days after Written Notification from YMCA is received by the Agency. |
| 3. <u>Subsequent Disbursements.</u> The Agency shall make subsequent disbursements to YMCA. | Within thirty (30) days after Approval of Use of Funds. |
| 4. <u>Submission of Proof of Use of Funds.</u> The YMCA shall submit to Agency evidence that a disbursement was used consistently with the terms of this Agreement. | Within ninety (90) days after each disbursement by Agency. |
| 5. <u>Approval of Use of Funds.</u> The Agency shall approve or disapprove the evidence submitted by YMCA of Use of Funds. | Within fifteen (15) days after Agency receives each submission of Proof of Use of Funds. |

IV. PROJECT

- | | |
|---|---|
| 1. YMCA shall commence construction of the Project. | Within three (3) months of receiving the first disbursement. |
| 2. YMCA shall complete construction of the Project | Within twenty-four (24) months after the First Disbursement of funds by the Agency. |

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ATTACHMENT 6

SCOPE OF DEVELOPMENT*Existing Structure*

Existing improvements on the Site generally consist of the following: Paved parking; a 6,660 square foot single story structure which includes administrative offices, an 800 square foot fitness training center, and a small kitchen. The Site also has on it a 6-lane, 25-meter swimming pool, and an outdoor soccer arena with spectator bleacher seating.

Proposed Development

The proposed expansion consists of a second-story addition to the existing structure. As part of the development, the administrative offices would be moved to the second floor. The existing fitness training center would be enlarged to 3,877 square feet, and a large multi-purpose/exercise room would be added. In addition, a covered therapy pool would be added as well as an additional structure for the swimming pool water heating and filtering equipment. Proposed development plans are attached as Exhibit A.

Benefit of Development

The proposed expansion will allow the YMCA to almost double its services and reach approximately 7,000 additional children, adults, and families. The new multi-purpose/exercise room would allow the YMCA to develop new programs such as basketball, gymnastics, teen programming, dance and movement classes, as well as expand current programs such as martial arts, pee wee sports, fitness classes, and outreach programs.

The multi-purpose/exercise room will also serve as a venue for special events assemblies for the community's benefit. Other public groups and community organizations will also be allowed to utilize the facilities. Moreover, the expanded fitness training center will allow the YMCA to broaden individual workout and senior fitness programs.

Agreements

The YMCA agrees to allow the general public and community organizations to use the Site and facilities without regard to YMCA membership.

The YMCA further agrees that the "fitness training center," as shown in Exhibit A, will be no larger than 3,877 square feet, and that the "multipurpose/exercise room," as shown in Exhibit A, will not house free weights, strength training equipment or machines, or cardiovascular equipment or machines such as lifecycles, exercise bikes, treadmills, stepping machines, or boxing equipment, without the written consent of the Agency.

Any violation of these conditions constitutes a default.

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Attachment No. 6

Page 2 of 2

PENINSULA FAMILY YMCA Proposed Construction

PHASE 2A (First and Second Floor, existing, remodel and new)

- Existing to remain includes Mens & Womens dressing rooms, showers, toilets and restrooms. (2,560 sq ft.)
- Renovation to existing breezeway, offices, fitness facility, hallway and kitchen to be converted to the first floor facility that will include: A new entry way, lounge, lobby area, membership office, concession stand enlarged hallway, elevator, additional men's and women's restrooms, day camp storage, maintenance storage, kitchen, stairwell, rear exit and a (3,877 sq ft.) fitness training center.
- Second story to include a community conference room storage, kitchenette, three offices, an open area for cubicles and a gallery area to view downstairs (3,460 sq ft.).

Existing to Remain – 2,560 sq ft.

New & Remodel Phase 2A – 12,850 sq ft.

Total Phase 2A – 15,410 sq ft.

PHASE 2B (Multi-Purpose gymnasium)

- Multi-Purpose and exercise gymnasium (8,549 sq. ft.), center divider, gym storage (191 sq. ft.), equip storage (705 sq. ft.), and childwatch (501 sq. ft.).

Total Phase 2B – 10,220 sq ft.

PHASE 2C (Therapy Spa)

- Therapy spa (18 person capacity) and new filter room facility.

Total Phase 2C – 625 sq. ft.

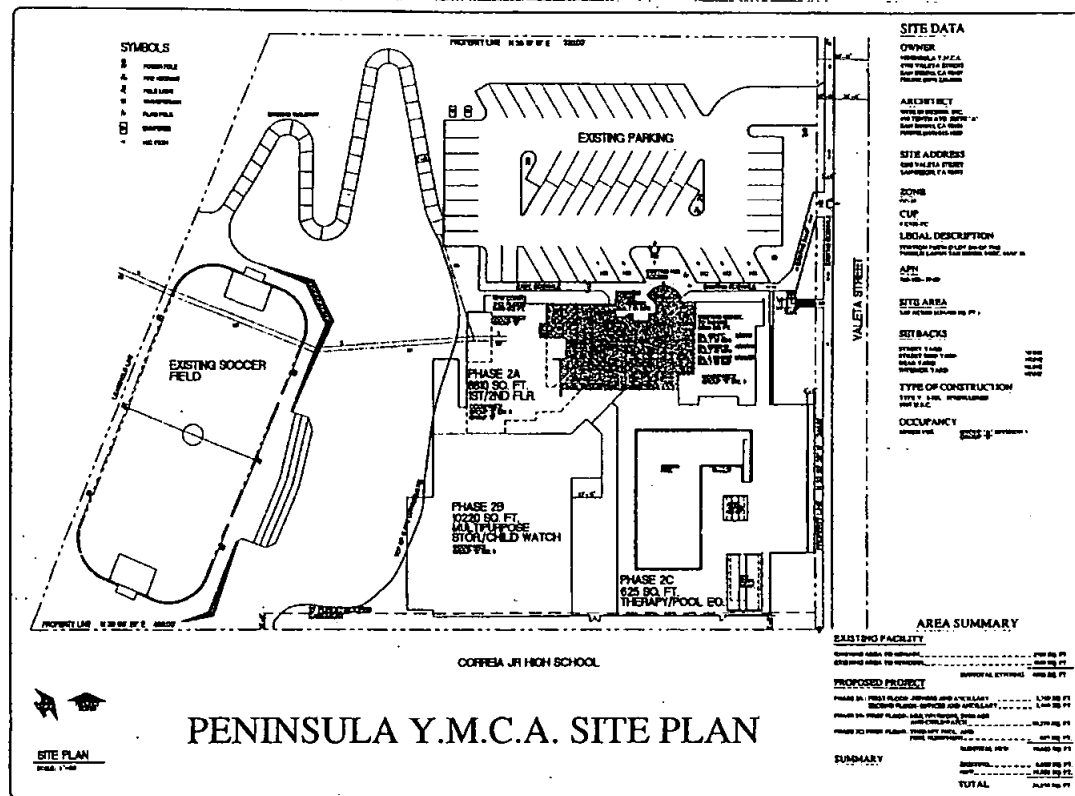
Other Cost & Contingency

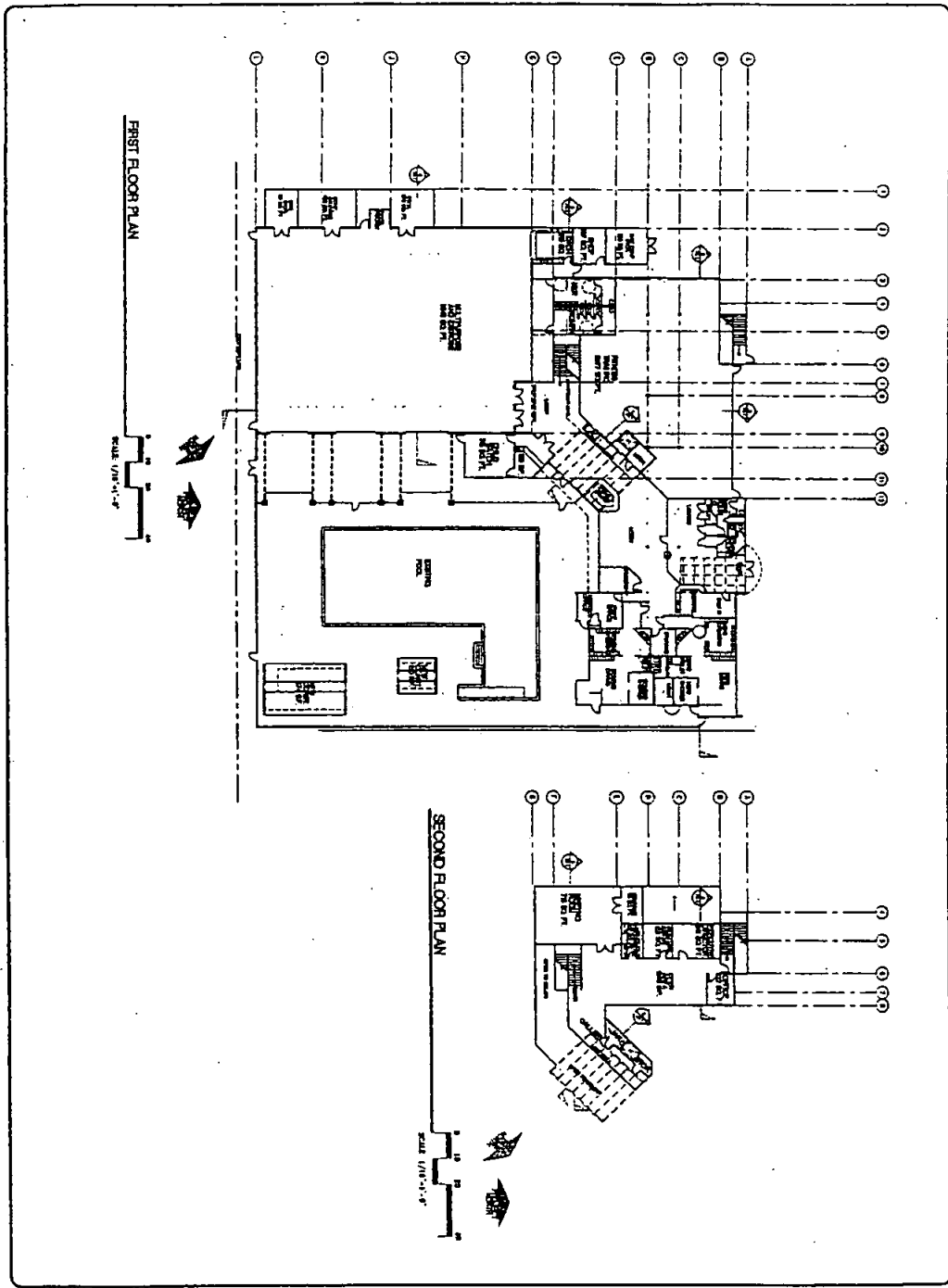
Architect Fees , Permits & Fees, General Conditions, Liability Insurance,
Contractor's Fees, Loss of Revenue, Development/Planning Studies,
Fundraising Cost and Pledge Financing Cost.

SUMMARY – TOTAL FACILITY 26,255 SQ FT.

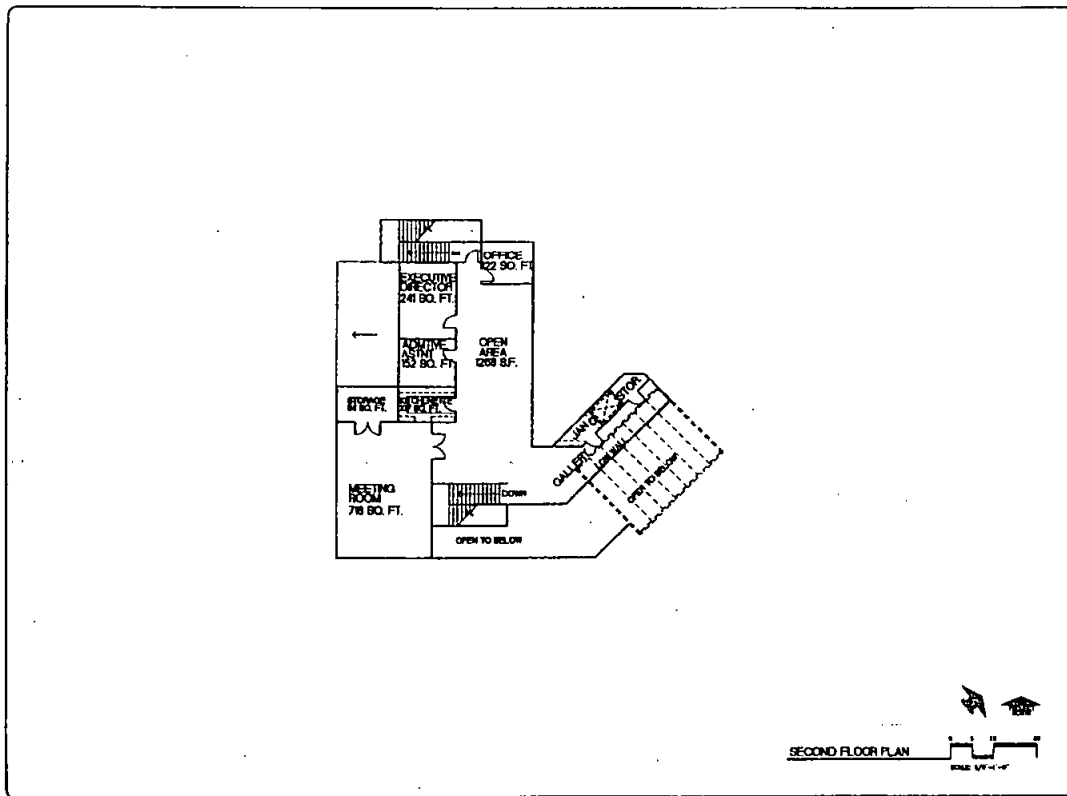
**** Phases do not denote chronology, construction timing has yet to be determined.**

EXHIBIT A





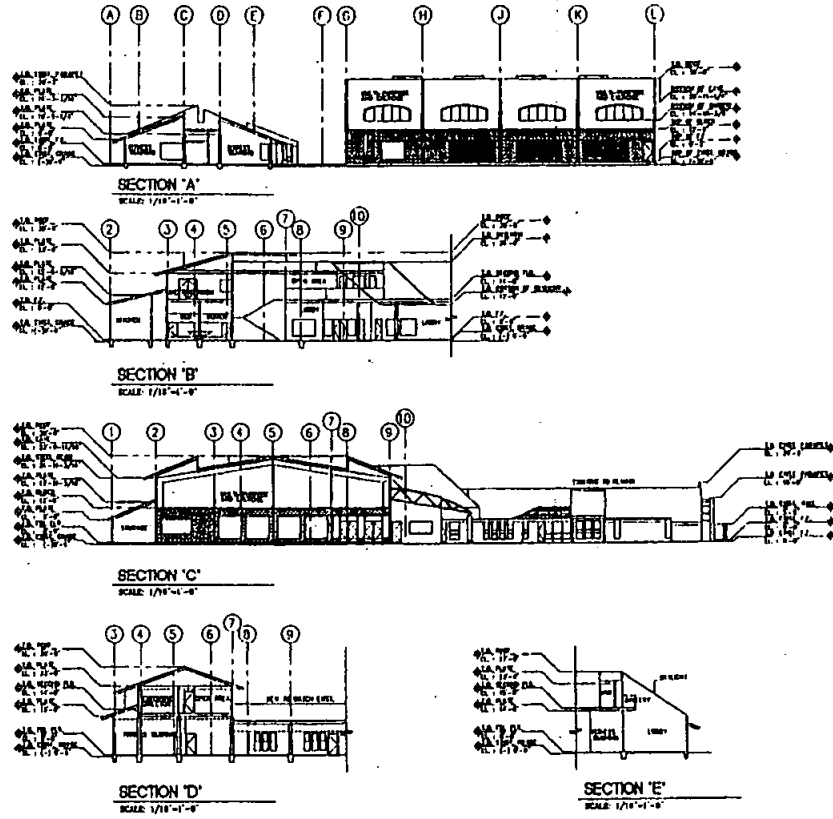
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NO.	DESCRIPTION	DATE													



WITHIN design
 1000 S. GARDEN ST., SUITE 100
 SAN ANTONIO, TX 78205
 TEL: 214.591.1111
 FAX: 214.591.1112
 WWW.WITHINDSIGN.COM

PENINSULA
 FAMILY YMCA
 1000 S. GARDEN ST.
 SAN ANTONIO, TX 78205

SECOND FLOOR PLAN
 A2.2



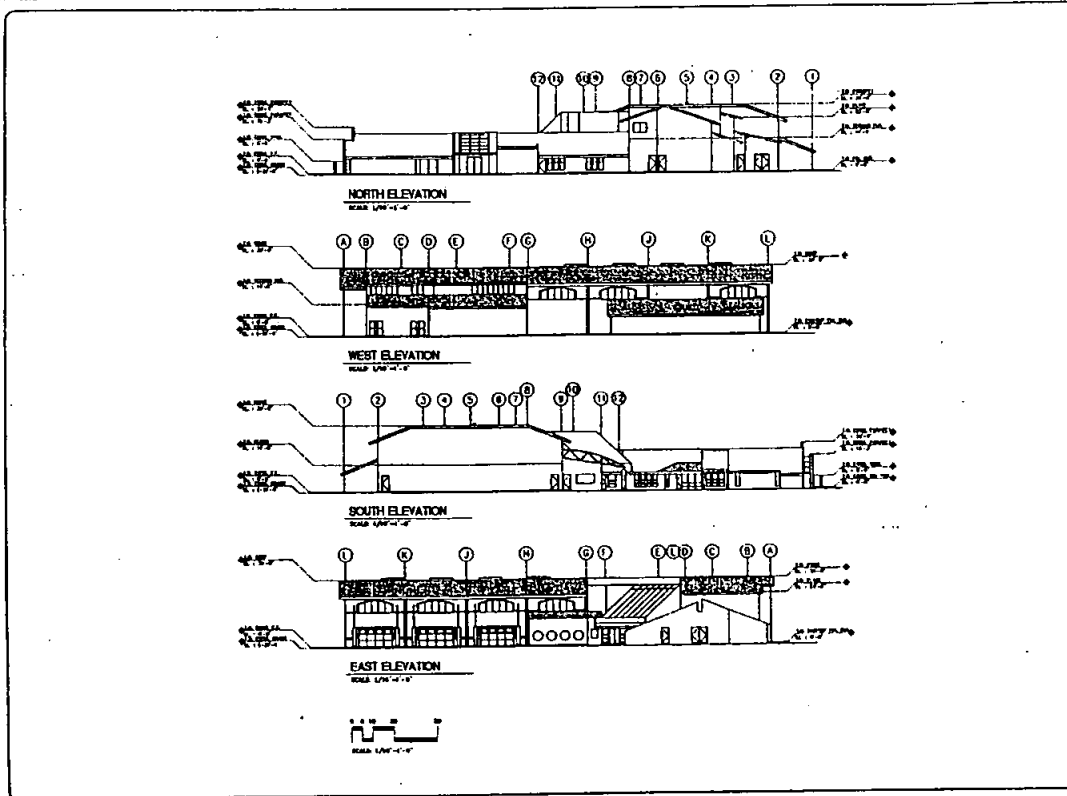
DATE:
BY:
FOR:
SCALE:
PROJECT NO:
SHEET # OF #

ARCHITECT
 PENINSULA
 FAMILY YMCA
 400 VALLEY STREET
 SAN DIEGO, CA 92101
 (619) 594-1234
 FAX: (619) 594-1235

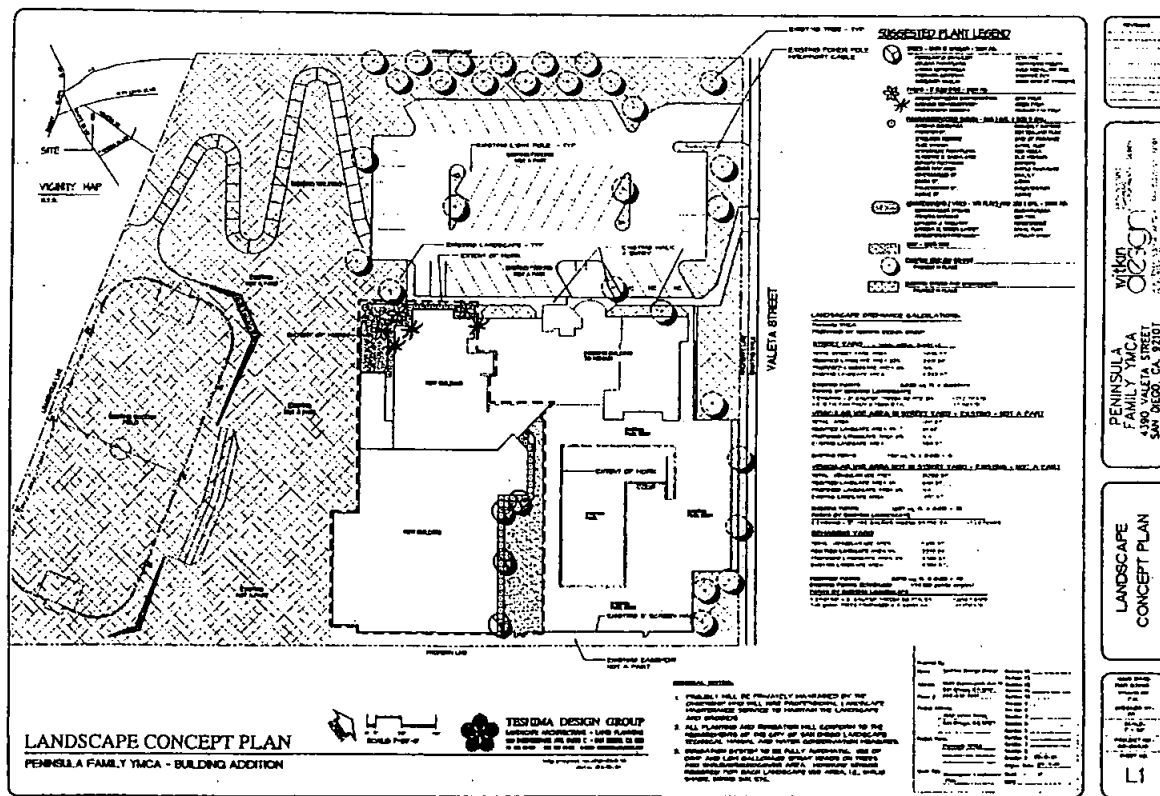
BUILDING
 SECTIONS

DATE:
BY:
FOR:
SCALE:
PROJECT NO:
SHEET # OF #

A6.1



WILKIN DESIGN ARCHITECTS 1111 14TH STREET, SUITE 100 SAN DIEGO, CA 92101 TEL: 619.594.1111 FAX: 619.594.1112 WWW.WILKINDSIGN.COM	
PENINSULA FAMILY YMCA 4300 VALETA STREET SAN DIEGO, CA 92121	
EXTERIOR ELEVATIONS	
SPR DATE: 01/11/11 BY: [Signature] CHECKED: [Signature] PROJECT: [Signature]	
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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA
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DESCRIPTION OF PREMISES WITH PLAT

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LEASE AGREEMENT

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO AND SAN DIEGO COUNTY, a California nonprofit corporation, hereinafter called "LESSEE".

(A) DEMISE. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described and delineated on EXHIBIT C attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises".

Said premises are leased to LESSEE for the purposes of construction, operation and maintenance of a Y.M.C.A. community center as shown on the approved Precise Plan of Development filed in the Office of the City Clerk as Document No.

754167 for recreational, educational and cultural uses by Y.M.C.A. members and the general public and for no other purpose.

(B) TERM. The term hereof shall be fifty (50) years commencing on the date of execution of this Lease Agreement by CITY.

(C) RENT. CITY acknowledges receipt of FIVE HUNDRED AND NO/HUNDREDTHS DOLLARS (\$500.00) heretofore paid by LESSEE as consideration for the option to lease said premises in accordance with the terms and conditions of this Lease Agreement. Said pre-paid \$500.00 and the construction, operation and maintenance by LESSEE of the development specified in said approved Precise Plan shall be the total consideration for the full term of this Lease Agreement, and no other rent shall be required by CITY therefor.

(D) COVENANTS AND CONDITIONS.

1. QUIET POSSESSION. LESSEE, performing the covenants and agreements hereof, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term aforesaid. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at commencement of said term as hereinabove specified, or if LESSEE is dispossessed through action of a title superior to CITY'S, then and in either of such events, this lease shall not be void or voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

2. TAXES. LESSEE shall pay and discharge before delinquency all taxes and assessments which may be levied upon or against the leased premises during the term of this lease.

3. MECHANIC'S LIEN BOND. LESSEE shall save CITY free and harmless and indemnify CITY against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises and the cost of defending against such claims, including reasonable attorney's fees, excluding any such claims resulting from work performed by CITY or by CITY'S contractors.

In the event that improvements, repairs or alterations are constructed on the leased premises by other than CITY or CITY'S contractors, the LESSEE shall either (a) file with the CITY a bond conditioned for the payment in full of the claims of all persons performing labor or furnishing materials therefor, in the amount of the claim plus estimated costs of attorney's fees in defending said claims as determined by the City Manager, which bond shall be acknowledged by the LESSEE as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety

insurance company as surety, or (b) provide CITY with such other security or assurance against liens as may be approved in writing by CITY.

In the event that a lien is recorded under Chapter II of Title 4 of Part 3 of the California Code of Civil Procedure against the leased premises and the lien-holder attempts to perfect such lien by a lawsuit and the LESSEE has failed to comply with the requirements of this paragraph, this lease may be terminated at the option of CITY at the expiration of thirty (30) days after notice of such lawsuit is given in writing to LESSEE by CITY and the LESSEE fails to cure said lien or to provide CITY with other adequate assurance against said lien to CITY'S satisfaction within said thirty (30) day period; provided, however, that the City Manager shall have the right to continue this lease in full force and effect by notifying the LESSEE in writing of his election to do so. Provided, further, that in the event LESSEE fails to file said bond and a mechanic's lien is recorded and action is commenced to foreclose such lien, then any lender or lending agency or person who is a beneficiary under a trust deed or other instrument securing any loan on or in connection with the leased premises which was recorded with the prior written consent of the City Manager of CITY, shall be notified of the failure of the LESSEE to give the aforesaid bond and said beneficiary shall have thirty (30) days to remove any such mechanic's lien and foreclosure action from the records and if said beneficiary does so remove such lien and action from the records, then this lease shall continue in force.

4. ENTRY AND INSPECTION. CITY reserves, and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition thereof, or to protect its interest in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses,

in the opinion of the City Manager, that the condition of said premises is not safe, healthy or satisfactory, or is in violation of any municipal, county, state or federal ordinance, statute or law, or is in breach of any condition of this lease, CITY shall have the right to cause any such condition to be rectified at the expense of the LESSEE upon ten (10) days written notice to LESSEE. LESSEE agrees to pay promptly any and all costs incurred by CITY in having such necessary work done. Further, after the determination of the City Manager as hereinabove provided, CITY may at its option, without additional notice, demand that LESSEE file a faithful performance bond in an amount sufficient to pay the costs to correct said condition and/or violation. The rights reserved in this and the following section shall not create any obligations on CITY nor increase obligations elsewhere in this lease imposed on CITY.

5. RESERVATION OF CITY RIGHTS. CITY hereby reserves all rights, title and interest in any and all gas, oil, mineral and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing the municipal services of the CITY. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises as may be necessary for municipal services. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages to the permanent improvements of LESSEE, if any, located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph.

6. COMPLIANCE WITH LAW. The LESSEE shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining

in any manner to the said premises, or the operations conducted thereon, and shall faithfully observe and secure observance with, in the use of the premises, all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments and fees assessed or levied upon the LESSEE or the leased premises by reason of any buildings, structures, machines, appliances or other improvements or property of any nature, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the said demised premises. The final judgment of any court of competent jurisdiction, including the appellate courts of the State, should recourse be had thereto, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them or any of them, whether the CITY be a party thereto or not, that the LESSEE, sublessee or permittee has violated any such ordinances or statutes in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

7. ASSIGNS. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements to this lease shall extend to and bind any assigns or sublessees of LESSEE.

8. WAIVER. The waiver by CITY of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of any subsequent breach of the same or of any other term, covenant or condition of this lease. Any failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as changing in any manner the terms hereof or to prevent CITY from enforcing the full provisions hereof.

9. MERGER. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies, or may, at the option of CITY, operate as an assignment to CITY of any or all such subleases or subtenancies.

10. ADMINISTRATION OF LEASE; NOTICES. Control and administration of this lease shall be vested in the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, attention Property Director, City Administration Building, Community Concourse, San Diego, California, 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE may be given or served by registered letter deposited in the United States mails, postage prepaid, addressed to LESSEE at such address designated in writing by LESSEE, or may be personally served upon LESSEE or upon any person hereafter authorized by LESSEE to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

11. REMEDIES OF CITY. In the event that (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty (30) days following the service on LESSEE of a written notice from CITY specifying the default complained of, or (2) LESSEE shall file a voluntary petition in bankruptcy, or (3) LESSEE shall be adjudicated a bankrupt, or

(4) LESSEE shall make a general assignment for the benefit of creditors; then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE or by reason of LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto.

Provided, however, in the event that there is a deed of trust or mortgage on the leasehold interest given by LESSEE with the consent of CITY to secure a loan or loans as provided for herein, CITY shall not terminate this lease until it shall have, as a condition precedent, served upon the mortgagee or beneficiary written notice of the default or defaults complained of and, if said defaults are curable, the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty (30) day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure. Provided, further, that if the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

- (a) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable within thirty (30) days after presentation by CITY of a statement of all or part of said costs.

(b) CITY may correct or cause to be corrected said default or defaults and pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the funds of any faithful performance cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the cost of such correction performed by or at the direction of the CITY.

(c) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage theretofore approved by CITY, or CITY may substitute for said terminated LESSEE a new LESSEE satisfactory to the mortgagee or beneficiary.

Should said default or defaults be of a noncurable type or nature; then the mortgagee or beneficiary shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty (30) day period after service upon it of said written notice of default by the CITY. In the event of the election by the mortgagee or beneficiary to substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights and privileges of the original LESSEE hereunder, subject to cure of the default if both possible and feasible by mortgagee or beneficiary and LESSEE expressly assigns all its interest in and to its leasehold estate in that event.

12. INSURANCE COVERAGE. During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company licensed to do business in California which company must have an A+ excellent rating in the current issue of Best's Insurance Guide to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be

suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of LESSEE, CITY, LESSEE'S sublessees or any person acting for LESSEE or CITY, or under LESSEE'S control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of LESSEE, CITY, LESSEE'S sublessees or any person acting for LESSEE or under LESSEE'S control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY. LESSEE shall submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least 15 days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of the LESSEE'S sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE agrees to also procure and maintain during the entire term of this lease, a policy of fire and extended coverage insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name CITY as an additional insured and shall be written by an insurance company licensed to transact business in the State of California and in an amount sufficient to cover the replacement cost of said property. LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled

without prior written notice to CITY by the insurance company. LESSEE shall pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section (D)14, WASTE, DAMAGE OR DESTRUCTION, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by LESSEE with the prior consent of CITY securing a loan as provided for in Section (D)20, RIGHT TO ENCUMBER, hereof, then and for that period all policies of fire insurance and extended coverage shall be made payable jointly to the mortgagee or beneficiary, the named insured and CITY, and shall be disposed of jointly to the mortgagee or beneficiary, the named insured and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to pay for the reconstruction, repair or replacement of the damaged or destroyed improvements in progress payments as the work is performed. Any excess of said fund remaining after completion of said work is to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with any excess remaining after full payment of said debt to be paid to LESSEE; or
- b. In the event that this lease is terminated with the consent of both CITY and mortgagee or beneficiary and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first restore the premises to a neat and clean condition and then to discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance

thereto for CITY and LESSEE as their interest may appear.

Provided, further, however, if LESSEE agrees to reconstruct, repair or replace the said improvements, nothing herein shall prevent LESSEE at its option and with approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary. LESSEE shall increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits.

LESSEE agrees, at his sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

13. INDEMNITY. CITY, its agents, officers and employees, shall not be liable, nor held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE or any of the LESSEE'S representatives, agents, employees, guests, licensees, invitees, patrons or of any other persons whatsoever, nor for personal injuries to, or deaths of them, whether caused by or resulting from any acts or omission of LESSEE in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE further agrees to indemnify and save free and harmless CITY and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor. Provided, however, that this paragraph shall not apply to any injury, death or property damage caused by CITY, its officers, employees or authorized agents.

14. WASTE, DAMAGE OR DESTRUCTION. LESSEE shall give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE shall not commit or suffer to be committed any waste or injury, or any public or private nuisance, shall keep the premises clean and clear of refuse and obstructions and shall dispose of all garbage, trash and rubbish. If the leased

premises untenable, unsightly or unfit for the uses or purposes for which the same are leased and said damage is repairable within a reasonable time, LESSEE shall make or cause to be made full repair of said damage to restore the premises to the condition which existed prior to said damage, or LESSEE shall clear and remove from the said leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to City Manager and approved in writing by him in order to replace the operation in kind and scope which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section (D) 12, INSURANCE hereof.

Preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

In the event LESSEE fails to commence or complete said repairs, restoration or replacement within the time specified herein, CITY shall have the option to do any of the following:

(a) CITY may terminate this agreement by the giving of notice of such termination in writing to the mortgagee or trust deed beneficiary. The insurance proceeds shall be used to carry out the provisions of Section (D) 12, INSURANCE hereof; or

(b) CITY may make or cause to be made said repairs, restoration or replacement of improvements, or to restore the premises to a clean and neat condition and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, and LESSEE

authorizes CITY to use the insurance proceeds and any proceeds held in trust for said repairs, restoration or replacement, or to restore the premises to a clean and neat condition in accordance with Section (D) 12 INSURANCE hereof.

In the event CITY selects aforesaid option (b) CITY may have the additional options of either (1) continuing this lease in full force and effect, or (2) terminating this agreement with respect to the LESSEE by either assuming liability for any mortgage or deed of trust theretofore approved by CITY, or CITY may substitute for said terminated LESSEE a new lessee satisfactory with the mortgagee or beneficiary thereof.

15. CONSTRUCTION, ALTERATIONS. LESSEE shall not construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved in writing by said City Manager. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in good condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.

16. MAINTENANCE. LESSEE shall assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY. LESSEE shall perform all repairs and replacements necessary to maintain

and preserve said premises in clean, safe and substantial condition in a manner satisfactory to CITY and in compliance with all applicable laws. CITY shall not be required to perform any maintenance, repairs or services or to assume any expense whatever therefor in connection with said premises.

17. OWNERSHIP OF IMPROVEMENTS. All improvements except trade fixtures installed by LESSEE in accordance with the provisions hereof shall become the property of CITY at CITY'S option, upon expiration or sooner termination of this agreement. Trade fixtures installed or owned by LESSEE shall be and remain the property of LESSEE. LESSEE shall have the right to remove said trade fixtures prior to the termination of this agreement at LESSEE'S own expense, provided that any damage to the remaining improvements shall be repaired and the premises left in good order and condition. In the event LESSEE does not so remove said trade fixtures and improvements not owned by or reverting to CITY prior to the expiration of this agreement, CITY may remove, or sell, or destroy the same at the expense of LESSEE, and LESSEE shall pay to CITY the reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any property, real or personal, not so removed by LESSEE may be deemed abandoned, and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.

18. SIGNS. The type, size and design of all exterior signs to be installed on the leased premises shall be subject to prior written approval of the City Manager of CITY.

19. ASSIGNMENT AND SUBLETTING. LESSEE shall not assign this lease or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent

of the City Manager of CITY. A consent to one 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 lease. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager.

20. ENCUMBRANCE. LESSEE may encumber the leasehold estate by deed of trust, mortgage, or other security type instruments to assure the payment of a promissory note or notes of the LESSEE in accordance with a financial plan approved in writing by City Manager, upon the express condition that the net proceeds of such loan or loans received by the LESSEE be devoted exclusively to the purpose of developing the leased premises and for the primary purpose of constructing the facilities in accordance with Section (D) 21 DEVELOPMENT hereof; however, a reasonable portion of the loan proceeds may be disbursed for, or applied to payment of incidental costs of such construction, including but not limited to any one or more or all of the following: offsite improvements for service of the leased premises; onsite improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums and reasonable loan costs such as discounts, interest and commissions; also architectural, engineering and attorney's fees and such other normal expenses. Any subsequent encumbrances on the real property or to any permanent improvements thereon, must first have the approval in writing of City Manager. In the event said deed of trust, mortgage or other security type instrument should at any time have the beneficial interest thereto assigned; such assignment must be first approved by CITY, and CITY agrees not to unreasonably withhold such consent. The CITY further consents and agrees that in the event

said deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof as its new tenant under this lease with all the rights and privileges of the original LESSEE and, in the event that it is desired thereafter by said mortgagee or beneficiary to assign this lease to its nominee and said nominee is a reputable and financially responsible operator in the opinion of CITY, the CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto. In the event LESSEE is in default under any provision of this lease, CITY agrees to serve written notice thereof upon said mortgagee or beneficiary to cure said default if said default is curable, or to allow said mortgagee or beneficiary to substitute itself to LESSEE'S estate hereunder and to operate the lease premises if said default is noncurable, all as set forth in Section (D) 11 REMEDIES OF CITY hereof.

21. DEVELOPMENT. The development of the leased premises shall be in accordance with the Precise Plan of Development identified in Section A DEMISE, hereof. Said Precise Plan, among other things, shall show the design, materials of construction, elevations and colors of all structures; the plot plan of all structures and improvements; the uses of all facilities; the schedule of development; the financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. No changes shall be made to said approved Precise Plan without written approval of the City Manager.

22. NON-DISCRIMINATION. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, creed or national origin in LESSEE'S use of the premises including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

23. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written demand from CITY, a valid and recordable quitclaim deed of all of the said premises hereof, sufficient to remove all interest in this lease from the title to said premises.

24. UTILITIES. LESSEE shall order, obtain and pay for all utilities and service and installation charges in connection therewith. All water, sewer, power and communication lines installed within said premises by or for LESSEE shall be installed underground at LESSEE'S expense according to specifications of CITY. CITY shall have the right to connect to water, sewer, telephone, power, gas and other utility lines as are now or hereafter installed upon the leased premises, and shall have the right of access to make and maintain such connections. CITY agrees to pay the costs of such CITY connections and to provide such separate metering devices as may be necessary in order that CITY may pay for the services used by it. LESSEE shall install and maintain fire hydrants on said premises as recommended and approved by CITY.

25. CONSTRUCTION BOND. LESSEE shall file with CITY a Faithful Performance Bond in the amount of 100% of the construction costs in cash or proper corporate surety bond satisfactory to CITY or in a combination of cash and said surety bond payable to CITY for loss resulting from failure of LESSEE to complete development of said premises in accordance with the Precise Plan of Development as provided in Section (D) 21 DEVELOPMENT hereof, or payable to CITY for expenses incurred in performing itself said development or any portion thereof; or LESSEE may deposit in escrow or in a trust fund or in any other manner acceptable to CITY, the said 100% of the construction costs, to be available for construction, improvements and furnishings on the leased premises and for reimbursements to

CITY for damages in the event of failure of LESSEE to complete construction in accordance with the terms of this agreement. The escrow or trust or other deposit shall specify that such amount is to be used exclusively for the purpose of improving said leased premises in accordance with said Precise Plan. In the event LESSEE does not comply with the provisions of this section, this lease may, at the option of CITY, be declared terminated and of no further force and effect and, in the event of such termination, LESSEE shall forthwith vacate the leased premises and shall have no further right or claim thereto, and shall have no right or claim to damages or compensation for any loss suffered by reason of such termination. CITY agrees that any security previously submitted by LESSEE and accepted by CITY during the option period preceding this lease and which guarantees disbursement of construction funds, shall serve as compliance with this provision only to the extent of the construction costs previously secured thereby.

26. EMINENT DOMAIN. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE in the award and the effect of the taking upon this lease agreement shall be as follows:

- a) In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken.

- b) In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
- c) In the event the entire leased premises are so taken this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d) In the event of any taking under Subparagraphs a), b) or c) hereof, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon the leased premises by LESSEE which are taken, and any damages resulting from such taking.
- e) Notwithstanding the foregoing provisions of this Section (D) 26, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall be entitled to recover from the said authority for the fair market value of LESSEE'S interest in the improvements placed upon the leased premises by LESSEE in accordance with the provisions of this lease.

27. LEGAL PROCEEDINGS. Should it become necessary for CITY to commence legal proceedings to recover possession or enforce any provision of this lease, LESSEE agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights thereunder. At the option of either party, venue of any action involving this lease agreement may be in, or changed to the County of San Diego or the Southern District of California. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.

28. CITY APPROVAL AND CONSENT. The approval or consent of the CITY, the City Manager or any employee or agent of the CITY, where required by any provisions of this lease, shall not be unreasonably withheld.

29. PREVENTED PERFORMANCE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of nature, restrictive governmental laws or regulations, riots, strikes, lock-outs or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for the duration of such delay.

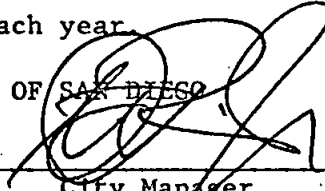
30. VERBAL REPRESENTATIONS. This lease contains the complete expression of the whole agreement between the parties hereto and there are no promises, representations, agreements, warranties or inducements either expressed verbally or implied except as are fully set forth herein. This contract cannot be enlarged, modified or changed in any respect except by written agreement between the said parties.

31. AFFIRMATIVE ACTION PROGRAM. LESSEE shall take affirmative action to improve employment opportunities of minorities and women by implementing the Affirmative Action Program for Lessees, a copy of which is on file in the Office of the City Clerk as Document No. 746205 and by this reference incorporated herein. Minorities are defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this Affirmative Action Program shall be the attainment of the employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.

Dated 2 Mar, 1976

THE CITY OF SAN DIEGO

By


City Manager

YOUNG MEN'S CHRISTIAN ASSOCIATION OF
SAN DIEGO AND SAN DIEGO COUNTY

By

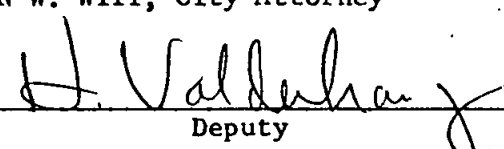
And

February 11, 1976

APPROVED as to form and legality this 5 day of March, 1976.

JOHN W. WITT, City Attorney

By


Deputy

DSB:ks
6-23-71

DESCRIPTION OF PREMISES

That portion of Pueblo Lot 206 of the Pueblo Lands of San Diego (formerly known as Collier Park) in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which said Map was filed in the office of the County Recorder of San Diego County, November 14, 1921, and is known as Miscellaneous Map No. 36, described as follows:

Commencing at the most Easterly corner of Valeta Knolls according to Map thereof No. 3716, filed in the office of the County Recorder of San Diego County, September 16, 1957; thence along the Southeasterly boundary of said Valeta Knolls South $36^{\circ}10'15''$ West, 320.00 feet to the TRUE POINT OF BEGINNING; thence retracing last above described course "North $36^{\circ}10'15''$ East, 320.00 feet" to said most Easterly corner, being a point on the Southwesterly line of Valeta Street; thence along the Southwesterly prolongation of the Northeasterly line of said Valeta Knolls and the Southwesterly line of said Valeta Street, South $53^{\circ}53'32''$ East, 345.81 feet to the most Northerly corner of the land described in Quitclaim Deed to San Diego Unified School District of San Diego County, recorded October 9, 1956, in Book 6290, Page 137 of Official Records; thence along the Northwesterly line of said San Diego Unified School District's land and its Westerly prolongation South $36^{\circ}06'28''$ West, 460.00 feet (Record South $36^{\circ}04'00''$ West, 460.00 feet); thence Northwesterly in a straight line 385.00 feet, more or less, to the TRUE POINT OF BEGINNING.

RESERVING THEREFROM, the Southeasterly 10.00 feet of the Northeasterly 320.21 feet thereof for pedestrian access.

(Said premises contain approximately 3.09 acres, more or less, as shown on Sheet 2 of this EXHIBIT C.)

EXHIBIT C

