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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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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 a 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 General Development Plan filed in the Office of the City Clerk as Document No. 764325 for recreational, educational and cultural uses by Y.M.C.A. members and the general public, as hereinafter set forth, 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. The rent is payable yearly in advance beginning on the effective date of this agreement at the Office of the City Treasurer and shall be ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per year.

In the event LESSEE fails to pay said rent when due, then LESSEE shall pay CITY in addition to the delinquent rent, a sum of money equal to FIVE PERCENT (5%) of said delinquent rent; provided, however, in the event said rent is still unpaid after

fifteen (15) days of becoming delinquent, then LESSEE shall pay CITY, instead of said Five Percent, a sum of money equal to TEN PERCENT (10%) of said delinquent rent. It is intended by this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY for servicing the delinquent account. The City Manager of CITY may for good cause waive any such delinquency compensation charge upon written application of LESSEE prior to the delinquent period.

Additional Consideration. As additional consideration for this Lease Agreement, LESSEE has executed a lease of its property at 8th and "C" in downtown San Diego to the CITY and has executed a sublease of said property from the CITY under the terms and conditions set forth in the forms of said lease and sublease on file in the Office of the City Clerk as Document Nos. _____ and _____, respectively.

(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 the 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 be and become terminated and the CITY shall not 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 the City Manager.

In the event that a lien is recorded under the provisions of the California Civil Code 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, such failure by LESSEE shall constitute a default hereunder. Provided, however, 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: 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, Community Concourse, San Diego, CA 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 - Default: 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 thereof (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 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.

Abandonment by Lessee: Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including the right to recover the rent as it becomes due under the lease.

For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (a) Acts of maintenance, or preservation, or efforts to relet the property.

- (b) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

Damages: Damages which CITY may recover in the event of default under this lease include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided.

The remedies provided by this Section (D) 11 are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

12. Insurance: LESSEE shall 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, LESSEE'S sublessees, or any person acting for LESSEE 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, 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 AND NO/100 DOLLARS (\$1,000,000.00) COMBINED SINGLE LIMIT LIABILITY. LESSEE shall submit a policy of said

insurance to the Property Department of 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 the Property Department.

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 LESSEE'S sub-lessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE shall also procure and maintain during the entire term of this agreement, a policy of fire and extended coverage insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall be written by an insurance company satisfactory to the City Manager and in an amount sufficient to cover at least 80% of the replacement cost of said property. LESSEE shall submit a certificate of said policy to 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 of Premises 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, Encumbrance hereof, then and for that period all policies of fire insurance and extended coverage shall be made payable jointly to the mortgagee or beneficiary and the named insured and surrendered to said mortgagee or beneficiary and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes:

- (a) As a trust fund to pay for the reconstruction, repair or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work 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 over 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 retained by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereto without liability for restoration of the premises to a neat and clean condition and then for CITY and LESSEE as their interests may appear; provided further, however, 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 any amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary.

LESSEE shall not use or permit the use of said premises for any purpose other than the purposes for which said premises are hereby leased. LESSEE shall at his sole cost and expense 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, LESSEE'S sublessees or any of the LESSEE'S representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other persons whatsoever, nor for personal injuries to, or deaths of them, or any of them whether caused by or resulting from any act or omission of LESSEE or of LESSEE'S sublessees 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 clause between LESSEE and CITY shall not apply to any injury, death or property damage caused by the negligent act or acts of CITY, its officers, employees or authorized agents. LESSEE further agrees to defend, indemnify and save harmless CITY, its agents and employees from any and all real or alleged liability claims, damages or injuries to any person, including injury to

LESSEE'S employees, and all expenses of investigating and defending against same:

- (a) Arising from the use of the leased premises or connected with the performance of or failure to perform any obligation of this lease.
- (b) Caused, claimed or alleged to be caused by the independent acts of LESSEE, its agents, licensees, sublessees or employees, or the concurrent acts of LESSEE and CITY, or its agents or employees.

It is understood by the parties that this indemnity agreement is not limited in any way by the extent of any policy of insurance currently in force and held by LESSEE.

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 shall be damaged by any cause which renders the 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 thereof (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, hereof.

In the event CITY selects aforesaid option (b) CITY may have the additional options of either:

- (a) Continuing this lease in full force and effect; or
- (b) 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 conditions 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. The parties hereto agree that the term "trade fixtures" shall not include the buildings or any other major improvements constructed on the leased premises in accordance with the General Development Plan referred to in Paragraph (D) 21, Development.

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 or 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. LESSEE agrees to pay all reasonable fees required by CITY for processing CITY consents to assignments and subleases.

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 General Development Plan identified in Section A, DEMISE hereof. Said 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 Development Plan without written approval of the City Manager.

22. Nondiscrimination: LESSEE shall not discriminate in any manner against any person or persons on account of race, color, sex, 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 General Development Plan 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 Development 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, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified.

29. 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 of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.

30. 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 causes 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.

31. 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.

32. OPERATING PROCEDURE AND PUBLIC ACCESS:

- a. Lessee shall make its meeting rooms available to the general public on a schedule basis. Lessee shall have the right to charge fees for the use of its meeting facilities to cover actual cost of maintenance services rendered and to recover from person(s) causing damage to the premises or lessee's personal property appropriate compensation therefor.
- b. Subject to such scheduled changes as the City Manager may approve, the swimming pool(s) shall be available to the public for at least 20 hours per week at rates comparable to the rates charged by the City Park and Recreation Department for public use of its indoor pool(s). Said 20 hours shall include, during the summer months, 2:00 to 3:00 p.m. each weekday, a minimum of three (3) evenings a week and a portion of Saturday and Sunday afternoons. During the period of September to May, said 20-hour period shall include the hours 12:30 p.m. to 1:30 p.m. on weekdays, three (3) evenings a week and a portion of Saturday and Sunday afternoons.
- c. Any youth unable to afford the membership fee will be given a scholarship based on financial need of the family.

① d. Schedule(s) of (i) open time for the use of the above-described facilities by the public and (ii) activity fees to be charged members of the public for each such facility will be submitted to the City Manager for his approval prior to the commencement of operations and prior to any change in such schedules.

② e. The above-described facilities shall be made available to the general public in accordance with the schedule(s) specified in subparagraph d above.

33. SERVICES TO DOWNTOWN COMMUNITY: Lessee shall, during the entire term of this lease, continue to provide appropriate YMCA programs and services to the City's reasonable satisfaction to the downtown community at the existing downtown branch YMCA at 8th and C Streets or, in the event use of said facilities is discontinued, at another suitable downtown location(s). Failure to so provide said programs and services shall constitute a default of this lease agreement which shall be subject to termination in accordance with Section (D) 11, Remedies of City-Default, hereof; or, at Lessee's option, Lessee shall commence payment to City of a fair market rental as determined by City for as long as this lease remains in effect. The rent for the initial three (3) year period, in the event Lessee opts to pay fair market rental rather than terminate the lease, shall be determined by multiplying a capitalization rate of nine percent (9%) by the fair market value of the demised premises as of the date of default regarding the provision of programs and services. The fair market value of the demised premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the City Council of City. In the event the parties cannot reach agreement upon selection of a mutually acceptable appraiser, then City and Lessee will each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, who will be employed to make the appraisal of the fair market value of the demised premises and which value

will be utilized to determine the adjusted rent described previously in this paragraph. In the event that the two selected appraisers fail to mutually select a third appraiser within sixty (60) days, then the selected appraisers will be discharged and the process repeated until mutuality is achieved and an appraiser is selected to complete the assignment. Each party shall pay the cost of its own selected appraiser and both City and Lessee agree to equally share the cost of the mutually appointed third appraiser and City and Lessee agree to accept and be bound by the valuation determined by the third selected appraiser.

In establishing the fair market value of the demised premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for its highest and best use.

The rent for the remaining term of this agreement shall be payable monthly in advance and shall be adjusted at the expiration of each three-year period, according to the following method of computation:

The rent for the three-year period following each adjustment shall be determined by multiplying the rent which is effective immediately prior to said adjustment by the "Adjustment Figure" established in the method outlined in the following paragraph:

The "Adjustment Figure" used to adjust the rent as specified above shall be established by dividing the "Current Index" by the "Base Figure".

The "Current Index" shall be a three month average of index figures published by the Bureau of Labor Statistics Consumer Price Index (CPI) for the Los Angeles/Long Beach area. The three months to be used to establish said average shall be the fourth, fifth and sixth calendar months preceding the adjustment date. When a similar CPI is available for the San Diego area, it may be substituted.

The "Base Figure" shall be a three month average of index figures from the same source as established above and using the fourth, fifth and sixth calendar months preceding the date of execution of this agreement.

Example:
$$\frac{\text{Current Index } 121}{\text{Base Figure } 110} = 1.10 \text{ (Adjustment Figure)}$$

Effective Rent x 1.10 = Adjusted Rent

In the event the CPI for the Los Angeles/Long Beach/or San Diego area, "All Items", is no longer published, the index for the adjustment date shall be the one reported in the U.S. Department of Labor's Comprehensive Official Index most nearly answering the foregoing description of an Index for the San Diego area. If an index is calculated from a base different from the base period 1967 = 100, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

If the above-described Department of Labor indexes are no

longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If the parties hereto are unable to agree within 60 days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

Notwithstanding the publication dates of the index, the effective date of the rent adjustment is at the expiration of each three year period. Until said rent adjustment can be reasonably determined by index publication, Lessee shall continue to make rental payments pursuant to this lease at the same rent in effect during the preceding rental period. Upon determination of the rental adjustment, overpayments of rent shall be credited to the Lessee's rental account and underpayments of rent shall be immediately paid to the City.

THE CITY OF SAN DIEGO

Dated 7/29/80

By [Signature]
City Manager

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

Dated 7-18-80

By [Signature]

By [Signature]

APPROVED as to form and legality this 29 day of July, 1980.

JOHN W. WITT, City Attorney

By [Signature]
Deputy

DESCRIPTION OF PREMISES

That portion of Pueblo Lot 1101 of the Pueblo Lands of San Diego, 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 on May 14, 1921, and is known as Miscellaneous Map No. 36, lying Southerly of the Southerly line of Friars Road as dedicated on January 16, 1969 by Resolution No. 195774 of the Council of the City of San Diego, recorded January 21, 1969 as File No. 12152.

