MASTER PROJECT AGREEMENT

THIS MASTER PROJECT AGREEMENT (this "Agreement") is made and entered into effective as of __________, 20__ (the "Effective Date") by and between THE CITY OF REDWOOD CITY, a charter city and California municipal corporation ("City") and THE YMCA OF SILICON VALLEY, a California non-profit corporation ("YMCA-SV") City and YMCA-SV are sometimes referred to herein, individually, as a "Party" and, collectively, as the "Parties"): 

RECITALS

A. City owns certain real property containing approximately 5.4 acres (the "Project Site") within Red Morton Park, located at 1455 Madison Avenue, Redwood City. The Project Site currently contains the Veterans Memorial Building Senior Center (the "Existing VMSC"), Senior Center Annex, Herkner Pool, Gift Shop/Administration Building, NFL Alumni Building, and surface parking. A Map of the Project Site (the "Project Site") is attached hereto as Exhibit "A" and incorporated herein by reference. The Project Site consists of Assessor Parcel Numbers [APN] 058-186-040, 058-196-040 and 058-184-040.

B. The improvements on the Project Site are heavily used but are outdated and in deteriorating condition. Over the last few years, the City has undertaken a master planning effort, including community meetings, and user studies to ascertain what types of replacement facilities would best meet the community’s changing needs.

C. Concurrently, the YMCA-SV has been undertaking its own planning efforts as it has become increasingly difficult to accommodate the growing demand for its programs at the existing facilities on Hudson Street in Redwood City.

D. The Parties entered into an Exclusive Negotiating Agreement ("ENA"), dated July 22, 2016 in order to negotiate the terms of a recreational and wellness complex on the Project Site to provide replacement City facilities for the VMSC (the "New VMB/SC"), new YMCA facilities, and common areas including parking, walkways and other pedestrian areas, landscaping and internal ingress/egress roads, and provide for the sharing of certain costs.

E. Pursuant to the ENA, the City commissioned the preparation of an Environmental Report ("EIR") for the Project, in compliance with the requirements of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.). The Draft EIR was circulated for public comment, and the Final EIR was certified by the City Council on __________, 2019. The City and YMCA-SV shared the costs of the preparation of the Draft and Final EIR equally.

F. The Parties desire to establish a long-term, collaborative relationship to develop and maintain recreational and wellness facilities to serve both of their constituencies and to achieve certain economies of scale by locating both of their facilities on the Project Site. The Parties further desire to memorialize their mutual goals, responsibilities and other components of the collaborative arrangement described herein.
G. In furtherance of the mutual goals described above, this Agreement sets forth the Parties’ rights and obligations regarding the following principal project elements and future collaborations, on the terms and conditions set forth herein: (1) as Phase I, development by the City of (i) a new two-story, approximately 45,000 square-foot Veterans Memorial Senior Center (“VMB/SC”) on a portion of the Project Site (the “VMB/SC Site”); (ii) construction of a pedestrian promenade (the “Promenade”), certain traffic calming measures (the “Traffic Improvements”), and parking lot on the east side of the Project Site (the “East Parking Lot”); and (2) as Phase 2, (i) development by the YMCA-SV of a two-story, approximately 35,000 square foot building (the “New YMCA”) on a portion of the Project Site to be ground-leased to the YMCA-SV by the City (the “YMCA Site”); (ii) parking lot expansion on the west side of the Project Site (the “West Parking Lot”); and (iii) Drop-off Area, all as described herein and as conceptually shown on the Conceptual Site Plan, attached hereto as Exhibit “B” and incorporated herein by reference. The improvements to be developed on the Project Site are more particularly described in Section 1 (“Definitions”), below.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Definitions.

1.1 Acceptable Financing means Loans or other sources of financing for YMCA-SV to fund performance of its obligations under this Agreement, including but not limited to: financing for YMCA-SV to fund development, construction and operation of the New YMCA, as set forth in this Agreement and the Ground Lease as provided herein.

1.2 Acceptable Title Exceptions means, with respect to the YMCA Site, matters affecting title (including but not limited to easements, restrictions, dedications and other matters of record, encroachments, prescriptive easements and rights) which YMCA-SV determines, in its reasonable discretion: (a) do not delay the timeline for completion of the New YMCA; or (b) do not materially increase pricing of or otherwise materially adversely affect the cost of construction of the New YMCA.

1.3 Applicable Law means any and all municipal, county, state, federal or other laws or regulations to the extent applicable to this Agreement or the Project.

1.4 Approval or Approved means approval in writing by the referenced Party of the referenced matter, with: (a) any request for an Approval to be in writing; (b) any response to such request to be in writing and delivered to the requesting Party within twenty (20) days of receipt of such request (or such shorter time as otherwise provided in this Agreement); and (c) any withholding of an Approval to be accompanied by a reasonably detailed written summary of the reason(s) therefore.

1.5 Bonds means the bonds to be issued by the City to provide the financing for the construction of the New VMB/SC, Common Area improvements and Traffic Improvements.
1.6 County means San Mateo County, California.

1.7 Claims means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

1.8 Common Area Construction Costs means the costs of designing and constructing the Common Area Improvements.

1.9 Common Area Construction Cost Allocation means the allocation of Common Area Construction Costs between the City and YMCA-SV as set forth in Exhibit "C" to this Agreement and incorporated herein by reference.

1.10 Common Area Improvements means those improvements shown on the Conceptual Site Plan, as may be amended by the Final Approved Plans for the Project, including the East Parking Lot, West Parking Lot, Drop-off Area, and Promenade.

1.11 Common Area Maintenance and Operating Agreements means the Agreements between the City and YMCA-SV described in Section 5. ("Ground Lease of the YMCA Site) of this Agreement.

1.12 Common Area Maintenance Costs means those costs to maintain the Common Area Improvements which shall be shared between the City and YMCA-SV as set forth in this Agreement and the Ground Lease.

1.13 Due Diligence means all due diligence required by YMCA-SV with respect to the YMCA Site as necessary in connection with potential development thereof as, and operation, financing and other activities with respect to, the New YMCA including but not limited to, environmental condition and compliances, soils and other physical condition, entitlement status and similar matters.

1.14 East Parking Lot has the meaning ascribed to it in the Recitals and as shown on the Conceptual Site Plan, Exhibit B, as may be modified by the Final Approved Plans for the Project.

1.15 Environmental Law means any federal, state or local law, statute, or density regulation pertaining to health, industrial hygiene or environmental conditions, including but not limited to those regulating or involving Hazardous Substances.

1.16 Existing VMSC shall have the meaning as set forth in the Recitals of this Agreement.

1.17 Final Approved Plans means the final building plans approved by the City for each component of the Project.
1.18 Final EIR means the Final Environmental Impact Report prepared on the Project in accordance with the requirements of the California Environmental Quality Act (Pub. Res. Code §21000 et seq. and certified by Resolution No. ______ on _____________ by the City Council of the City.

1.19 Force Majeure shall have the meaning set forth in Section 9.3 of this Agreement.

1.20 Force Majeure Delay means a time period equal to one day for each day a Party is prevented from performing pursuant to this Agreement as a result of a Force Majeure.

1.21 Governmental Authorities means those governmental authorities, including the City, the County or the State, having jurisdiction over the Project.

1.22 Governmental Permits means any and all permits, licenses, approvals and other consents and authorizations required from Governmental Authorities for the Project or any component thereof, as applicable.

1.23 Ground Lease shall mean the ground lease of the YMCA Site by City to YMCA-SV, in substantially the form attached hereto as Exhibit "D."

1.24 Hazardous Substance means any material, waste, substance, pollution or contaminant which may or could pose a risk of injury or threat to health or the environment, or as to which the manufacture, storage, release, processing, use or disposal is subject to regulation under Applicable Law.

1.25 Hudson Street Property means the property located at 1445 Hudson Street, Redwood City owned by the YMCA-SV which contains the facility to be replaced by the New YMCA, and to be purchased by the City under the Purchase Agreement.

1.26 Lender(s) means any lenders financing all or any portion of the New YMCA, including but not limited to lender(s) providing construction or permanent financing therefor.

1.27 Loan(s) means any loans by Lenders to provide financing with respect to all or any portion of the New YMCA.

1.28 New VMB/SC means the improvements to be developed as Phase 1 of the Project by the City to replace the Existing VMSC, as shown on the Conceptual Site Plan, as it may be modified by the Final Approved Plans for the Project. The New VMB/SC shall be a two-story building containing approximately 45,000 square feet, and include a lobby, multi-purpose rooms for meetings, dining room and kitchen, physical therapy and wellness rooms, lounge game room, outdoor roof terrace with running/walking track and gardens, office spaces for non-profit groups, multi-purpose theater with approximately 270 seats, and exhibit space honoring local United States veterans and National Football League alumni of northern California.

1.29 New YMCA shall have the meaning ascribed to it in the Recitals and as shown on the Conceptual Site Plan, Exhibit B, as may be amended by the Final Approved Plans for the Project. The New YMCA shall be a two-story building containing approximately 35,000 square feet and include a health and wellness center with exercise machines, weightlifting machines and
free weights, and space for exercise classes; aquatic center with indoor and outdoor pools; daycare facility containing approximately 2,700 square feet, and multi-purpose rooms\ for classes and meetings.

1.30 **Outside Conveyance Date** means the date by which all conditions for the conveyance of the leasehold interest to the YMCA Site have been satisfied and the Ground Lease is executed by the Parties, as set forth in Section 5 of this Agreement.

1.31 **Phase 1 Improvements** means the New VMB/SC, East Parking Lot, Promenade and Traffic Improvements as shown on the Conceptual Site Plan, Exhibit B, as it may be modified by the Final Approved Plans for the Project.

1.32 **Phase 2 Improvements** means the New YMCA, West Parking Lot and Drop-off Area as shown on the Conceptual Site Plan, Exhibit B, as it may be modified by the Final Approved Plans for the Project.

1.33 **Project** means the Phase 1 Improvements and the Phase 2 Improvements, collectively.

1.34 **Promenade** has the meaning ascribed to it in the Recitals and as depicted in the Conceptual Site Plan, Exhibit B, as may be amended by the Final Approved Plans for the Project. The Promenade shall be for pedestrians and include landscaping and pedestrian amenities and provide a link between the Phase 1 and Phase 2 development.

1.35 **Project Site** has the meaning ascribed to it in the Recitals to this Agreement.

1.36 **Purchase Agreement** shall mean the agreement between the Parties described in Section 4.2 of this Agreement.

1.37 **Related Parties** means, with respect to any Party, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such Party.

1.38 **Schedule of Performance** shall mean the Schedule of Performance, attached hereto as **Exhibit “F”** and incorporated herein by reference, listing certain obligations of the Parties and their time for performance.

1.39 **Traffic Improvements** means those improvements identified in **Exhibit “F”** attached hereto and incorporated herein by reference to be constructed and installed by the City in connection with the development of the Project.

1.40 **West Parking Lot** has the meaning ascribed to it in the Recitals and as shown on the Conceptual Site Plan, Exhibit B, as may be amended by the Final Approved Plans for the Project.

1.41 **YMCA Site** shall mean the portion of the Project Site to be leased by YMCA-SV from the City, as shown on the Conceptual Site Plan, as may be modified by the Final Approved Plans for the Project.
2. Recitals. The Parties acknowledge and agree the Recitals, which are by this reference incorporated into and made a part of this Agreement, are true and correct.

3. Project Schedule of Performance; Due Diligence. Subject to the terms of this Agreement, the Parties agree to use their best efforts to complete the Project within the times set forth in the Schedule of Performance. The Parties intend that the New VMSC and the associated Phase 1 Common Area Improvements shall be constructed as Phase 1 of the Project and that the New YMCA and the associated Phase 2 Common Area Improvements shall be constructed as Phase 2 of the Project.

4. Project Financing. The Project shall be implemented by the Parties as follows:

4.1 Phase 1 Improvements Financing. The City intends to issue bonds to finance, in whole or in part, the construction of the New VMSC, the Traffic Improvements, and the Phase 1 Common Area Improvements for the Project.

4.2 Phase 2 Improvements Financing. The YMCA-SV intends to finance the development and construction of the New YMCA and the YMCA-SV’s share of the Common Area Construction Costs using a combination of the following: (i) proceeds from the sale of the Hudson Street Property pursuant to the Purchase Agreement with the City (described below); (ii) contributions and/or grants from donors; and (iii) any other funds or resources available to the YMCA-SV.

The City has agreed to purchase the Hudson Street Property from the YMCA-SV, upon the terms and conditions set forth in the Purchase Agreement, attached hereto as Exhibit “G” and incorporated herein by reference. The Parties shall execute the Purchase Agreement immediately after the execution of this Agreement. The City’s purchase of the Hudson Street Property shall provide the YMCA-SV with a critical portion of the necessary funds to pay for the New YMCA and the YMCA-SV’s share of the Common Area Improvements. Notwithstanding the foregoing, however, the Parties understand and agree that close of escrow, and thus payment of the purchase price by the City, for the Hudson Street Property shall not occur until construction of the New YMCA has been completed, and the facility is in operation. In the event this Agreement is terminated at any time prior to the conveyance of the leasehold interest in the YMCA Site to the YMCA-SV, and as provided in the Purchase Agreement, the City shall have no obligation to purchase the Hudson Street Property.

4.3 Construction Cost Allocation of Common Area Improvements. The current total estimated costs for the design, development and construction of the Common Area Improvements is $6.472 million. The parties agree that the City shall be responsible for the installation of the Phase 1 Common Area Improvements and that YMCA shall be responsible for the installation of the Phase 2 Common Area Improvements, all in accordance with plans approved by the City. The Parties have agreed that the costs of the Common Area Improvements shall be allocated between the Parties as set forth in Exhibit C of this Agreement.

Each Party shall maintain and keep detailed records of the costs for the Common Area Improvements installed by it. Upon completion of the Phase 2 Improvements and the issuance of a certificate of occupancy for the New YMCA, each Party shall provide the other
with a detailed accounting of their respective costs for the installation of Common Area Improvements to determine what payments are owed in order to achieve the allocations set forth in Exhibit C.

5. **Ground Lease of YMCA Site.** The City hereby agrees to lease to YMCA-SV the YMCA Site, at the time and on the terms and conditions set forth herein. The form of the Ground Lease is attached hereto as Exhibit “D” and incorporated herein by reference. The Parties understand and agree that YMCA-SV shall continue its operations at the Hudson Street Property until such time as the New YMCA is completed as evidenced by the City’s issuance of a certificate of occupancy. In the interim, the YMCA-SV will diligently and good faith pursue its fundraising efforts to raise the amounts necessary that, in combination with the purchase price to be paid by the City under the Purchase Agreement for the Hudson Street Property, will be sufficient to pay for the development and construction of the New YMCA and for YMCA-SV’s share of the Common Area Improvements within the time set forth in the Schedule of Performance, subject to any extension of time as may be mutually agreed to by the parties. The Parties agree that the conditions for the execution (“Execution Conditions”) of the Ground Lease are as follows:

   (1) YMCA-SV shall not be in default of any of its obligations under this Agreement;

   (2) YMCA’s final construction plans and drawings for the New YMCA have been approved by the City, pursuant to Section 7.2 (Phase 2) of this Agreement;

   (3) YMCA-SV has received all City approvals required for the development of the New YMCA, including all required discretionary entitlements, design review, and all appeal periods for such approvals have expired;

   (4) YMCA-SV has an executed construction contract with a licensed and qualified general contractor for the New YMCA, and City has approved such contract to assure compliance with this Agreement, which approval shall not be unreasonably withheld;

   (5) YMCA-SV has delivered to the City payment and performance bonds pursuant to Section 7.4 (Payment and Performance Bonds) of this Agreement;

   (6) YMCA-SV has delivered to the City proof of insurance, in compliance with Section 7.5 (Insurance) hereof;

   (7) YMCA-SV has provided evidence, satisfactory to City, which evidence may include, but is not limited to, multi-year financial pledges, documentation of conventional financing, bank statements and/or proceeds from the sale of assets (including the purchase price to be paid by City for the Hudson Street Property under the Purchase Agreement) that YMCA-SV has sufficient and binding financing commitments to complete the New YMCA and for YMCA-SV’s share of the Common Area Construction Costs;

   (8) YMCA-SV and City have executed a (i) Common Area Maintenance Agreement and (ii) Operating Agreement consistent with the Basic Common Area Maintenance
and Operating Principles set forth in “Exhibit I” attached hereto and incorporated herein by reference; and

(9) All other conditions have been met that would allow the City to issue a building permit for the construction of the New YMCA.

The Ground Lease shall include the terms and conditions for the maintenance of the Common Improvements, the allocable costs of such maintenance between the City and YMCA-SV, and an agreement regarding the ongoing operations of each party’s facilities, including opportunities to maximize community participation in programs and minimize overlap.

The Parties agree that the Outside Conveyance Date shall be July 1, 2024, unless an extension is mutually agreed to by the Parties in writing. If the Ground Lease has not been executed by the Outside Conveyance Date, as it may be extended, this Agreement shall terminate and the Parties shall have no further rights against or obligations to each other, other than the provisions of Section 8.8 (“Liquidated Damages”).

Upon satisfaction of the Execution Conditions and execution of the Ground Lease, a memorandum of Ground Lease shall be recorded in the Office of the County Recorder for San Mateo County.

6. Right of Entry. Prior to the execution of the Ground Lease, City agrees to enter into its standard form of right-of-entry agreement with YMCA-SV, upon its request, to enter onto the Project Site to conduct such studies related to the New YMCA and/or the YMCA Site as YMCA-SV deems necessary or desirable. Any such right of entry shall be at the sole expense of the YMCA-SV. Any such entry shall not unreasonably disrupt any then-existing use or occupancy on the YMCA Site or the operations of the City.

7. Project Development. The Parties have worked cooperatively to develop the Conceptual Site Plan so that the Project, although constructed in two phases, will be harmonious in design and function. Each Party shall be responsible for preparing schematic design, design development and construction documents for its portion of the Project for approval by the City in accordance with normal City procedures for the processing of such documents.

7.1 Phase 1. Prior to the installation and construction of the Phase 1 Improvements, the City shall demolish the Senior Center Annex, Herkner Pool and the NFL Alumni Building. The City intends to issue bonds to finance the Phase 1 Improvements and shall submit its final plans for the Phase 1 Improvements for approval within the time set forth in the Schedule of Performance. Upon completion of the Phase 1 Improvements, as evidenced by the issuance of a certificate of occupancy for the New VMSC, the City shall demolish the Existing VMSC and Gift Shop/Administration Building in accordance with the Conceptual Site Plan, including landscaping and parking. City shall provide YMCA-SV Ninety (90) days’ advance written notice of the demolition of the Existing VMSC.

7.2 Phase 2. Prior to and during the Phase 2 process, the Parties shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the City by YMCA-SV for the Phase 2 Improvements can receive prompt and speedy consideration. The City shall approve or disapprove the plans, drawings and related
documents submitted by YMCA-SV within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes that the City requests be made. Such reasons and such changes must be consistent with the Conceptual Site Plan, this Agreement, and any items previously approved or deemed approved hereunder by the City. The YMCA-SV upon receipt of a disapproval based upon powers reserved by the City hereunder, shall revise such plans, drawings and related documents and resubmit them to the City as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City be entitled to require changes inconsistent with the Conceptual Site Plan and any previously approved items. The City’s zoning, building and land use regulations (whether contained in ordinances, the City’s municipal code, conditions of approval or elsewhere), shall be applicable to the construction and installation of the Phase 2 Improvements pursuant to this Agreement.

In addition, City shall provide YMCA-SV with a right-of-entry agreement that will allow YMCA-SV to construct the West Parking Lot and Drop-Off Area improvements as part of the Phase 2 Improvements. The right-of-entry agreement will include the City’s standard provisions for the installation of public improvements, including, but not limited to, insurance requirements and the payment of prevailing wages.

7.3 Processing Costs and Fees. The YMCA-SV shall be responsible for paying for the costs of all design work, construction, labor, materials, fees, permits, applications, and other expenses associated with the Phase 2 Improvements, including any review or processing fees pertaining to the review and approval by the City and utility service providers. The YMCA-SV shall pay all lawfully required fees pertaining to the review and approval of the Phase 2 Improvements by the City and utility service providers.

7.4 Payment and Performance Bonds. Prior to commencement of construction of the Phase 2 Improvements, YMCA-SV shall deliver, or cause its contractor to deliver, to the City copies of payment bond(s) and performance bond(s) issued by a reputable bonding company licensed to do business in California, and reasonably acceptable to the City, providing for payment and performance bonds for one hundred percent (100%) of the scheduled work of construction of the Phase 2 Improvements, including labor, material and equipment used in the work of improvement of the individual construction trade element of the Phase 2 Improvements, and for the contractor’s timely completion of the work of improvement of the individual construction trade element of the Phase 2 Improvements. Each such bond shall be in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Phase 2 Improvements. The bonds shall name the City as co-obligee.

7.5 Compliance with Laws; Prevailing Wages. All work performed in connection with the construction or installation of the Project shall comply with all Applicable Laws and approvals for the Project. In addition, the YMCA-SV agrees that all laborers employed relative to the construction or installation of the Phase 2 Improvements must be paid the prevailing per diem wage rate for their labor classification, as determined by the state, pursuant to Labor Code sections 1720, et seq. as required under the provisions of section 1776 of the California Labor Code, YMCA-SV shall cause its contractor(s) to keep an accurate payroll record of each employee employed by it in connection with the Phase 2 Improvements. In the event of a claim that YMCA-SV or its contractor(s) have failed to comply with the provisions of this Section 7.4,
YMCA-SV shall cause its contractor(s) to make available certified payroll records for inspection at all reasonable hours at the office of the YMCA-SV and its contractor(s) for a minimum of 180 days after the filing of a notice of completion pursuant to Civil Code section 8182 or 9204, whichever is applicable.

7.6 Insurance. As more fully set forth in the Ground Lease, the YMCA-SV, to protect the City against any and all claims and liability for death, injury, loss and damage resulting from the YMCA-SV's actions in connection with this Agreement, the New YMCA and the YMCA Site, shall, at the YMCA-SV's sole cost and expense, maintain the following insurance (or its then reasonably available equivalent) during the period of construction of the Phase 2 Improvements: (a) Liability Insurance; (b) Builder's Risk Insurance; and (c) Worker's Compensation Insurance. Additionally, the YMCA-SV, to protect the City Parties, shall cause its contractors and subcontractors, at their sole cost and expense, to maintain Contractor's Insurance until issuance of a certificate of occupancy for the Phase 2 Improvements. Upon the issuance of a certificate of occupancy for the New YMCA, YMCA-SV shall maintain the types and amounts of insurance as set forth in the Ground Lease.

7.7 Anti-Discrimination. The YMCA-SV, for itself and its successors and assigns, agrees that in the construction and development of the Phase 2 Improvements as provided for in this Agreement, the YMCA-SV will not discriminate against any employee or applicant for employment on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

8. Defaults and Remedies

8.1 Default. Subject to extensions of time set forth herein, or any other extension of time that may be agreed to by the parties, and the specific remedies set forth in Section 8.5 ("Rights and Remedies are Cumulative") through Section 8.8 ("Liquidated Damages"), below, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure or commence to cure and diligently prosecute to completion any such default within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately 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. 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 non-defaulting party for damages caused by such default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.
8.2 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 (including specific performance) consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Mateo, State of California.

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

8.4 Interpretation of Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to accomplish the purposes of the parties and this Agreement.

8.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated 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 time or different times, of any other rights or remedies for the same default or any other default by the other party.

8.6 Termination by the YMCA-SV Prior to Conveyance of Leasehold. In the event that prior to conveyance of the leasehold interest to the YMCA Site from the City to the YMCA-SV:

(a) All conditions precedent to conveyance are satisfied or waived by the party benefiting from such condition and the City, despite City's good faith efforts, is unable to tender conveyance of the leasehold interest in the YMCA Site or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within Thirty (30) days after written demand by the YMCA-SV or, if such failure cannot be reasonably cured within such Thirty (15) day period, the City is not diligently acting to cure such tenure in a timely manner; or

(b) The YMCA-SV is unable to provide evidence of financing, as set forth in Section 5 ("Ground Lease") of this Agreement, necessary for development of the YMCA Site and its allocable share of Common Area Improvement Costs, and the City and YMCA-SV are unable to mutually agree upon an alternative approach, which may include, but is not limited to, modifications or amendments to this Agreement which may alter the size and/or scope of the Phase 2 Improvements or the Schedule of Performance; or
The Ground Lease has not been executed by the Outside Conveyance Date; or

The then-existing City zoning, building and/or land use regulations (whether contained in ordinances, policies, the City's municipal code or elsewhere) do not allow for the development of the Phase 2 Improvements substantially in accordance with the Conceptual Site Plan; or

The City does not approve of the results of its Due Diligence Investigation by the expiration of the Due Diligence Period and/or elects to terminate the Purchase Agreement, all as more particularly set forth in the Purchase Agreement, Exhibit G; or

The City is in default under any other provision of this Agreement and such default is not cured within the applicable time periods;

Then, subject to Force Majeure, this Agreement and any rights of the City in this Agreement pertaining thereto or arising therefrom with respect to the YMCA-SV may, at the option of the YMCA-SV be terminated by written notice thereof to the City, as the YMCA-SV's sole and exclusive remedies for the matters described in this subsection, subject to the provisions of Section 8.8 (Liquidated Damages), below. Upon such termination, and except for those provisions which are specifically intended to survive any termination of this Agreement, the parties shall have no further obligations to or rights against each other.

8.7 Termination by the City Prior to Conveyance of Leasehold. In the event that prior to the conveyance of the leasehold interest to the YMCA Site from the City to the YMCA-SV:

(a) The YMCA-SV transfers or assigns this Agreement or any rights herein in violation of this Agreement; or

(b) The YMCA-SV is unable to provide evidence of financing, as set forth in Section 5 ("Ground Lease") of this Agreement, necessary for development of the YMCA Site and its allocable share of Common Area Improvement Costs by the date provided in this Agreement, and the City and YMCA-SV are unable to mutually agree upon an alternative approach, which may include, but is not limited to, modifications or amendments to this Agreement which may alter the size and/or scope of the Phase 2 Improvements or the Schedule of Performance; and such failure is not cured within thirty (30) days after written notice from City or, if such failure cannot be reasonably cured within such thirty (30) day period, the YMCA-SV is not diligently acting to cure such failure in a timely manner; or

(c) The YMCA-SV does not satisfy all its conditions precedent to date set forth in the Schedule of Performance for conveyance of the leasehold interest to the YMCA Site pursuant to this Agreement and such failure is not cured within thirty (30) days after written demand by the City or,
if such failure cannot be reasonably cured within such thirty (30) day period, the YMCA-SV is not diligently acting to cure such failure in a timely manner, or

(d) The YMCA-SV is in breach or default with respect to any other material obligation of the YMCA-SV under this Agreement prior to the conveyance of the leasehold interest to the YMCA Site; and if any default or failure referred to above shall not be cured within thirty (30) days after the date of written demand by the City or, if such default cannot be reasonably cured within such thirty (30) day period, the YMCA-SV is not reasonably acting to cure such default in a timely manner; or

(e) The Ground Lease has not been executed by the Outside Conveyance Date;

Then, subject to Force Majeure, this Agreement, and any rights of the YMCA-SV may, at the option of the City, be terminated by the City by written notice thereof to the YMCA-SV, and the City shall be entitled to liquidated damages as set forth in Section 8.8 (“Liquidated Damages”), and such liquidated damages and termination of this Agreement shall constitute the City’s sole and exclusive remedies for the matters described in this subsection. Upon such termination, and except for those provisions which are specifically intended to survive any termination of this Agreement, the parties shall have no further obligations to or rights against each other.

8.8 Liquidated Damages

IF THIS AGREEMENT IS TERMINATED BY THE YMCA-SV PURSUANT TO PARAGRAPHS (b) OR (c) OF SECTION 8.6 (“TERMINATION BY THE YMCA-SV PRIOR TO THE CONVEYANCE OF LEASEHOLD”) OR BY THE CITY PURSUANT TO SECTION 8.7 (“PRIOR TO CONVEYANCE OF LEASEHOLD”) PRIOR TO CONVEYANCE OF THE LEASEHOLD INTEREST TO THE YMCA SITE BY CITY TO THE YMCA-SV, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, AND PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL TO THE FOLLOWING AMOUNTS, DEPENDING UPON WHEN THIS AGREEMENT IS TERMINATED:

(a) IN THE EVENT THIS AGREEMENT IS TERMINATED PRIOR TO THE COMMENCEMENT BY THE CITY OF THE DEMOLITION OF THE EXISTING VMSC, THEN, PROVIDED THE CITY HAS DELIVERED NINETY (90) DAYS’ ADVANCE WRITTEN NOTICE TO THE YMCA-SV OF SUCH DEMOLITION, SIX HUNDRED THOUSAND DOLLARS ($600,000) SHALL BE PAID TO THE CITY BY YMCA-SV AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY.
(b) **IN THE EVENT THIS AGREEMENT IS TERMINATED AFTER THE COMMENCEMENT OF DEMOLITION BY THE CITY OF THE EXISTING VMSC, ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS ($1,250,000) SHALL BE PAID TO THE CITY BY YMCA-SV AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY.**

IN THE EVENT THAT THIS SECTION 8.8 (LIQUIDATED DAMAGES) SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE YMCA-SV AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

By: __________________

By: __________________

9. **General Provisions**

9.1 **Conflicts of Interest.** No member, official or employee of the City 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 this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. The YMCA-SV 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.

9.2 **Non-Liability of City Officials and Employees.** No member, official or employee of the City shall be personally liable to the YMCA-SV, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to the YMCA-SV or its successors, or on any obligations under the terms of this Agreement, except as may be caused by intentional torts or criminal activities of any such City member, official or employee. YMCA-SV hereby waives and releases any claim it may have against the members, officials or employees of the City with respect to any default or breach by City or for any amount which may become due to YMCA-SV or its successors, or on any obligations under the terms of this Agreement, except as may be caused by intentional torts or criminal activities.

9.3 **Force Majeure.** Subject to the limitations set forth below, performance by any party under this Agreement shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation initiated by third-parties regarding this Agreement or the Project ("Litigation"); unusually severe weather; acts or omissions of the other party; or other circumstances beyond the control of such party ("Force Majeure"). An extension of time for any such cause shall be for the period of the force majeure delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of
One Hundred Eighty (180) days), if notice by the party claiming such extension is sent to the other party within Sixty (60) days of the commencement of the cause. Notwithstanding the foregoing, if the force majeure event is Litigation, the extension shall be for the entire period of the Litigation, including any appeals, until such Litigation is finally resolved. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and YMCA-SV.

9.4 Inspection of Books and Records. The City has the right, upon not less than Seventy-Two (72) hours' notice, at all reasonable times, to inspect the books and records of the YMCA-SV pertaining to the Project Site or Phase 2 Improvements as pertinent to the purposes of this Agreement. The YMCA-SV also has the right, upon not less than Seventy-Two (72) hours' notice, at all reasonable times, to inspect the books and records of the City pertaining to the Project Site or Phase 1 Improvements as pertinent to the purposes of this Agreement.

9.5 Time is of the Essence. Time is of the essence in the performance of this Agreement.

9.6 No Assignment. Neither of the Parties shall not assign its rights under this Agreement. Any assignment in violation of this provision shall be null and void, and shall constitute a default hereunder.

9.7 Waiver. A waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise contained herein. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other act required to be performed at a later date.

9.8 Notices. All notices that are given pursuant to this Agreement shall be in writing. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card. Notices delivered by the United States Express Mail, Federal Express, Airborne Express or another overnight courier that provides next business day delivery (the “Express Courier”) shall be deemed given on the next business day after deposit of the same with the Express Courier. If any notice is transmitted by facsimile (fax) transmission or similar means, the same shall be deemed received or delivered upon the transmission thereof, provided a copy is also given via personal delivery or deposited with the Express Courier by no later than the next business day after such facsimile transmission. If notice is given or received on a Saturday, Sunday or legal holiday, or on a business day after 5:00 P.M., it shall be deemed given or received on the next business day. For purposes of notice, the addresses of the parties are as follows, which may be changed by five (5) days prior written notice:

If to City: City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: Melissa Stevenson Diaz, City Manager
Tel: (650) 780-7301
With a copy to:
  City of Redwood City
  1017 Middlefield Road
  Redwood City, CA 94063
  Attn: Chris Beth, Parks, Recreation & Community Services Director
  Tel: (650) 780-7253

and

City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: Veronica Ramirez, City Attorney
Tel: (650) 780-7200

If to YMCA-SV:
  Sandra Berlin Walker, President and CEO
  YMCA of Silicon Alley
  80 Saratoga Avenue
  Santa Clara, CA 95051
  Tel: (408) 351-6450
  E-Mail: Sandy.Walker@ymcavs.org

With copies to:
  David Fisch, Vice-President of Property
  YMCA of Silicon Valley
  80 Saratoga Avenue
  Santa Clara, CA 95051
  Tel: (408) 351-6450
  E-Mail: dfisch@ymcavs.org

Ira Holtzman, Chief Financial Officer
YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Tel: (408) 351-6450
E-Mail: ira.holtzman@ymcavs.org

Mindie S. Romanowsky
Jorgenson, Siegel, McClure & Flegel LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Tel: (650) 324-9300
9.9 ** Entire Agreement. ** This Agreement, including all attachments hereto, contains the entire agreement between the parties with regard to the Project and supersedes all prior written and/or oral representations and/or agreements, including, but not limited to, any letter of intent between the parties.

9.10 ** Attorneys’ Fees. ** If an action is filed by any of the parties hereto to enforce and/or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs.

9.11 ** Days. ** In computing any period of time by days as provided in this Agreement, the date of the act, event or default from which the designated period of time begins to run will not be included. If the date for performance or last day of any time period stated in this Agreement falls on a day that is not a business day, then the due date or the duration of such time period will be extended so that it ends on the next succeeding day that is a business day. A “business day” is a day of the week that is not a Saturday, Sunday, or legal holiday recognized by the banks, United States Postal Service or the Recorder of the County.

9.12 ** Relationship of the Parties. ** Nothing in this Agreement is intended to create a partnership or joint venture between the parties or make one party the agent of the other.

9.13 ** Headings. ** Any headings or captions used herein are inserted only as a matter of convenience and for reference only and in no way defines limit or describe the scope of this Agreement nor the intent of any of the provisions hereof.

9.14 ** Context. ** The words or phrases that are not proper nouns that begin with capital letters are defined terms that have the meanings that are assigned to them in this Agreement. The singular form shall include the plural and vice versa; adverbs such as “herein,” “hereto,” and “hereunder” shall refer to this Agreement in its entirety and not to any specific section or paragraph; and the terms “include,” “including,” and similar terms shall be construed as though followed immediately by the phrase “but not limited to”. “Recorded” means to be recorded in the Official Records of the County of San Mateo. Unless specified to the contrary, any reference to a section or paragraph shall be to a section or paragraph of this Agreement. All Attachments referred to in this Agreement are attached to it and incorporated herein and made a part of this Agreement by this reference.

9.15 ** Counterparts. ** This Agreement may be signed by the parties in different counterparts, and the signature pages combined shall create a document binding on all parties.

9.16 ** City Approvals and Actions. ** Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

9.17 ** Modifications; Amendments. ** The YMCA-SV and City agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of the parties hereto, subtenants of YMCA-SV, lending institutions or bond counsel or financial consultants to YMCA-SV or the City, provided such requests are generally consistent with this Agreement and would not materially alter the basic business terms included herein. Any waiver, alteration, change, modification or amendment of or to this Agreement, in order to become
effective, shall be made in writing and in each instance signed on behalf of each party. The City Manager shall be authorized to approve any modification or amendment to the Schedule of Performance or other minor modification to the Project, as defined below, or amendment hereto that does not alter the basic business terms included herein. Minor Modifications shall include, but are not limited to, minor reductions in the density or scope of the New YMCA development, relocation of uses on the YMCA Site, and/or minor variations in the configuration or location of structures and/or building heights that do not substantially alter the design concepts of the Conceptual Site Plan. Any substantive or significant alteration, change, modification or amendment of or to this Agreement shall require approval by the City Council.

9.18 Entire Agreement, Waivers and Amendments. This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement, which includes the following:

Exhibit A Map of the Project Site
Exhibit B Conceptual Site Plan
Exhibit C Common Area Construction Cost Allocation
Exhibit D Form of Ground Lease
Exhibit E Schedule of Performance
Exhibit F Traffic Improvements
Exhibit G Purchase Agreement
Exhibit H YMCA Community Benefits
Exhibit I Basic Common Area Maintenance and Operating Principles

constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by all Parties hereto.

9.19 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.

9.20 Time for Acceptance of Agreement by City. This Agreement, when executed by the YMCA-SV and delivered to the City, must be authorized, executed and delivered by the City within thirty (30) days after the date of signature by the YMCA-SV or this Agreement shall be void, except to the extent that the YMCA-SV may consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the City.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, this Agreement has been entered into effective as of the Effective Date first set forth above.

CITY OF REDWOOD CITY, a charter city and municipal corporation

By: __________________________
   Melissa Stevenson Diaz
   City Manager

Attest:

By: __________________________
   Pamela Aguilar
   City Clerk

THE YMCA OF SILICON VALLEY, a California non-profit corporation

By: __________________________
   Sandy Berlin Walker
   President and CEO
EXHIBIT A

Map of the Project Site
[on following page]
EXHIBIT B

Conceptual Site Plan

[on following pages]
CONSTRUCTION LIMITS – PHASE 2a and 2b

Veterans Memorial Building and YMCA
City of Redwood City
04.19.2018
EXHIBIT C

Common Area Construction Cost Allocation

The Project common area improvements will be constructed in 2 phases, with the City and YMCA-SV each paying for 50% of the construction costs for the common area parking lots, promenade and drop off area. The total cost of the improvements for both phases is estimated at $6.472 million. The City shall manage the design and construction process of Phase 1 common area improvements, and the YMCA-SV shall manage the design and construction of the Phase 2 common area improvements, with a reconciliation at the conclusion of the Project.

Phase 1 work shall be designed and constructed at the direction of the City with a total estimated cost of $2.908 million. Upon completion of the Phase 2 common area improvements and issuance of a certificate of occupancy for the New YMCA, the YMCA-SV shall be responsible for up to 50% of the Phase 1 common area improvement costs, provided, however, that such amount shall not exceed $1.45 million.

Phase 2 work shall be designed and constructed at the direction of the YMCA, with a total estimated cost, as of the date of this Agreement, of $3.563 million. The City shall be responsible for up to 50% of Phase 2 common area improvement costs, or an estimated $1.782 million.

Upon completion of the Phase 2 Improvements and issuance of a certificate of occupancy for the New YMCA, the City and YMCA-SV shall reconcile their respective costs to determine what payment is owed and by which party. Payment shall be made within 45 days of such reconciliation.

Each entity must maintain meticulous and complete records for the costs incurred for the common area improvements constructed by it. So long as each entity meets the design intent of the master plan, opportunities to reduce costs will also reduce each entity’s financial obligation.

Both parties will work together to address any significant design changes. Should any dispute arise concerning construction scope or costs where the Parks and Recreation Director and the YMCA VP of Property are not able to resolve those issues, the City Manager and YMCA-SV’s CEO shall meet to resolve any disagreements.
EXHIBIT D

Form of Ground Lease

[on following pages]
FORM OF GROUND LEASE

THIS GROUND LEASE ("Lease") is dated for reference purposes as of this _____ day of ____________, 2019, ("Effective Date") by and between THE CITY OF REDWOOD CITY, a charter city and California municipal corporation ("City" or "Landlord") and the YMCA OF SILICON VALLEY, a California non-profit corporation ("YMCA-SV" or "Tenant"), who, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

1. Background.

(a) Landlord is the owner of record of that certain real property containing approximately 5.4 acres within Red Morton Park, located at 1455 Madison Avenue, Redwood City consisting of Assessor Parcel Nos. 058-186-040, 058-196-040 and 058-184-040 and more particularly described and shown in Exhibit A, attached hereto ("Property" or "Project Site").

(b) Landlord and Tenant entered into that certain Master Project Agreement, effective __________________, which set forth certain rights and obligations regarding project elements and collaborations related to the development and operations of the Project Site which generally includes: (1) as Phase 1 Improvements, development by the City of (i) a new two-story, approximately 45,000 square-foot Veterans Memorial Senior Center ("New VMB/SC") on a portion of the Project Site (the "VMB/SC Site"); (ii) construction of a pedestrian promenade (the "Promenade"), certain traffic calming measures (the "Traffic Improvements"), and parking lot on the east side of the Project Site (the "East Parking Lot"); and (2) as Phase 2 Improvements, development by the YMCA-SV of (i) a two-story, approximately 35,000 square foot building (the "New YMCA") on a portion of the Project Site; (ii) parking lot on the west side of the Project Site (the "West Parking Lot"); and (iii) Drop-off Area (the "Drop-Off Area"), all as described herein and as conceptually shown on the Conceptual Site Plan, attached hereto as Exhibit B and incorporated herein by reference ("Site Plan").

(c) Tenant seeks to lease from Landlord a portion of the Property for the purpose of constructing and operating the New YMCA (the "YMCA Site").

(d) Unless expressly provided otherwise, all capitalized terms and phrases used in this Lease shall have the same meanings as set forth in the Master Project Agreement.

(e) Condition Precedent to Ground Lease. The parties acknowledge that the entering into the Master Project Agreement and the Purchase and Sale Agreement between City as Buyer and Tenant as Seller for the property used as the former YMCA facility located at 1445 Hudson Street are conditions precedent to the effectiveness of this Ground Lease.
2. Lease of YMCA Site. Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby exclusively leases and takes from Landlord, the YMCA Site. Tenant shall also have non-exclusive use of the Promenade, East Parking Lot, West Parking Lot and Drop Off Area ("Non-Exclusive Common Area") for the terms and upon the agreements, covenants and conditions set forth in this Lease.

3. Term; Options to Extend.

   (a) Initial Term. Provided all the Execution Conditions\(^1\) contained in the Master Project Agreement are satisfied, the initial term ("Term") of this Lease shall commence ("Commencement Date"), as of the date of Tenant’s completion of the New YMCA (as evidenced by the issuance by the City of a certificate of occupancy) and continue for a period of Forty-Nine (49) Lease Years, as defined below. All terms of this Lease shall be in effect from and after the execution of the Lease except the payment of Rent, and the parties shall record of the Memorandum of Lease described in Section 39 (Memorandum of Lease) below, in the form attached hereto as Exhibit C ("Memorandum") Should the Term commence on a date other than the first day of a calendar month, the Term shall be extended by this fractional month. Each period of Twelve (12) consecutive calendar months during the Term (following any adjustment for a fractional month as described in the preceding sentence) is referred to hereafter as a "Lease Year."

---

\(^1\) The Execution Conditions set forth in Section 5 (Ground Lease of YMCA Site) of the Master Project Agreement are as follows:

1) YMCA-SV shall not be in default of any of its obligations under this Agreement;
2) YMCA’s final construction plans and drawings for the New YMCA have been approved by the City, pursuant to Section 7.2 (Phase 2) of the Master Project Agreement;
3) YMCA-SV has received all City approvals required for the development of the New YMCA, including all required discretionary entitlements, design review, and all appeal periods for such approvals have expired;
4) YMCA-SV has an executed construction contract with a licensed and qualified general contractor for the New YMCA and City has approved such contract to assure compliance with the Master Project Agreement, which approval shall not be unreasonably withheld;
5) YMCA-SV has delivered to the City payment and performance bonds pursuant to Section 7.4 (Payment and Performance Bonds);
6) YMCA-SV has delivered to the City proof of insurance, in compliance with Section 7.6 (Insurance) of the Master Project Agreement;
7) YMCA-SV has provided evidence, satisfactory to City, which evidence may include, but is not limited to, multi-year financial pledges, documentation of conventional financing, bank statements and/or proceeds from the sale of assets (including the purchase price to be paid by City for the Hudson Street Property under the Purchase Agreement) that YMCA-SV has sufficient and binding financing commitments to complete the New YMCA and for YMCA-SV’s share of the Common Area Construction Costs;
8) YMCA-SV and City have executed a (i) Common Area Maintenance Agreement and (ii) Operating Agreement consistent with the Basic CAM/Operating Principles set forth in "Exhibit I" ("Basic Common Area Maintenance and Operating Principles") to the Master Project Agreement; and
9) All other reasonable conditions have been met that would allow the City to issue a building permit for the construction of the New YMCA.
(b) **Options to Extend.** Upon the terms and conditions described in the **Addendum** attached hereto, Tenant will have the right to extend the term of this Lease for up to one (1) period of Five (5) Lease Years (the "**Extension Period**"). Unless otherwise specifically stated herein, all provisions of this Lease will be applicable during the Term and the Extension Period, as the case may be.

(c) **Termination Date.** The date upon which the Term or the Extension Period(s) expire is referred to hereafter as the "**Termination Date**." Upon such event, Tenant shall provide to Landlord an appropriate release or quitclaim, sufficient to cause the Memorandum to be deleted as a title exception affecting the Property.

4. **Rent.** Tenant shall pay to Landlord as rental for the use and occupancy of the YMCA Site, at the times and in the manner described herein, the following sums of money:

   (a) **Rent.** Beginning as of the Commencement Date, and continuing until the Termination Date, Tenant shall pay to Landlord a yearly rent payment in the amount of One Dollar ($1.00) ("**Rent**"). Tenant may prepay the Rent for the entire Term, at its option.

   (b) **Location for Payment.** All Rent and all other moneys and charges payable by Tenant to Landlord hereunder shall be paid by Tenant to Landlord in lawful money of the United States of America at Landlord's address for notices hereunder, or to such other person or at such other place as Landlord may from time to time designate by notice in writing to Tenant.

5. **Community Benefits/Affirmative Covenant for Financial Statements and Reporting.** In addition to the payment of Rent, in an effort to maximize community participation in Tenant programs, Tenant will provide certain community benefits associated the New YMCA as more particularly set forth in **Exhibit D** ("**Community Benefits**"), which may be amended in writing from time to time as the Parties deem reasonably appropriate. During the Term, beginning on the First (1st) day of November after the Commencement Date and continuing annually thereafter during the Term and any extension thereof, Tenant shall provide an annual operating budget for the New YMCA facility and Tenant’s financial statement showing the balance sheet and income and expense statement for the most recent full year of operations and year to date financial statement through September 30 of each year. Such financial statements and operating budget shall demonstrate the ability to cover 100% of the operating expenses for the New YMCA facility for the following calendar year. Landlord understands and agrees that Tenant may provide a financial statement YMCA-SV’s operations. Tenant’s continuing financial strength shall be an ongoing covenant of the Lease, and Tenant’s failure to show same shall trigger a requirement to meet and confer with Landlord to discuss the plan to become financially self-sufficient.

6. **Taxes and Assessments.**

   (a) Tenant covenants and agrees to pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates
and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of
every kind and character which are or may during the Term be levied, charged, assessed or
imposed upon or against the YMCA Site, or against any of Tenant’s personal property located
thereon. As of the Termination Date, any such taxes, assessments and other charges to be
paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in
question so that, at the commencement and at the end of the Term, as to any such taxes,
assessments and other charges levied or assessed for a fiscal year preceding the
commencement or extending beyond the end of the Term, Tenant will pay only such
proportion of such taxes, assessments and other charges as the portion of such fiscal year
following the commencement and preceding the Termination Date, as it relates to the entire
fiscal year.

(b) Notwithstanding anything herein to the contrary, Tenant shall not be
required to pay any net income tax measured by the income of Landlord from all sources, or
any tax which may, at any time during the Term, be required to be paid on any gift, or demise,
deed, mortgage, descent or other alienation of any part or all of the estate of Landlord in and
to the YMCA Site or any buildings or improvements located thereon, except as hereinafter
provided. Any documentary transfer tax assessed upon the creation of a leasehold interest in
the YMCA Site under this Lease shall be paid by Tenant.

(c) Revenue & Taxation Code Section 107.6 Possessory Interest Tax.
Tenant recognizes and understands that this Lease may create a possessory interest subject
to property taxes and that, in the event that a possessory interest is created, Tenant shall be
responsible for payment of any taxes levied against such possessory interest. Tenant may
apply for any applicable exemption or reduction in possessory interest property taxes and
assessments.

(d) Landlord shall have the right, but not the obligation, at all times during
the Term to pay any taxes, assessments or other charges levied or assessed upon or against
the YMCA Site or any buildings or improvements located thereon, and to pay, cancel and clear
off all tax sales liens, charges and claims upon or against the YMCA Site or any buildings or
improvements located thereon, and to redeem the YMCA Site from the same, or any of them,
from time to time, without being obligated to inquire as to the validity of the same. Any sum
so paid by Landlord related to the YMCA Site and/or the obligations set forth in Sections 6a,
6(b) and 6(c), above, shall become due and payable by Tenant within Thirty (30) days after
any such payment by Landlord plus interest at 6% per annum.

7. Hours of Business/Covenant of Continuous Operation. Subject to the provisions of
Paragraph 15 (Damage or Destruction), Tenant covenants that it shall continuously during the
entire term hereof conduct and carry on Tenant’s business in the YMCA Site and shall keep the
New YMCA open for business and cause Tenant’s business to be conducted therein not less
than 5 days each week and not less than 30 hours per week; provided, however, that this
provision shall not apply if the New YMCA should be closed and the business of Tenant
temporarily discontinued therein on account of deep cleaning, repairs, renovations or other
reasonably necessary closures in the ordinary course of business and/or strikes, lockouts or similar causes beyond the reasonable control of Tenant. Tenant shall keep the New YMCA adequately staffed with sufficient sales personnel to conduct said business in accordance with sound business practice. In the event of breach by the Tenant of any of the covenants or conditions contained in this Paragraph 7, Landlord shall give notice, and if Tenant does not re-establish operations within Thirty (30) days of such notice, Landlord shall have, in addition to any and all remedies provided in law, the right, at Landlord’s option, to terminate the Lease and recapture the YMCA Site upon Sixty (60) days’ notice.

8. Quiet Enjoyment. Landlord covenants that upon payment by Tenant of the rent herein reserved and upon performance and observance by Tenant of all of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed, Tenant shall peaceably hold and quietly enjoy the YMCA Site during the entire Term without hindrance, molestation or interruption by Landlord or by anyone lawfully or equitably claiming by, through or under Landlord.

9. Allowed and Prohibited Uses. Tenant may use the YMCA Site for any lawful purpose; provided, however, that Tenant intends to construct the Phase 2 Improvements and operate the New YMCA at the YMCA Site. In addition, Tenant shall be afforded access to and use of the Non-Exclusive Common Area, provided however, that any such use shall comply with the use covenants for the tax-exempt bond financing issued by Landlord to finance the improvements constructed in the Non-Exclusive Common Area. Tenant will not use the YMCA Site for any purpose or use which in any manner causes, creates or results in a public or private nuisance or which unreasonably disturbs the public or any other users of the Non-Exclusive Common Area. Tenant shall comply with the Prohibited Uses described on Exhibit E.

10. Title to Buildings and Improvements.

(a) Title to all buildings, structures and improvements that now, or may from time to time constitute a part of the New YMCA shall be and remain in Tenant until the termination of this Lease. Upon the Termination Date, Tenant may remove from the YMCA Site all machinery, equipment and fixtures. Upon the Termination Date, the improvements and all alterations, additions, equipment, and fixtures shall be deemed to be and shall automatically become the property of Landlord, without cost or charge to Landlord. Landlord agrees that Tenant, at any time prior to the Termination Date, may remove from the YMCA Site any and all equipment which Tenant has furnished for maintenance purposes or for the use of its management or occupancy, provided that Tenant shall repair any physical damage to the YMCA Site caused by the removal of such equipment and property.

(b) Tenant, on termination of this Lease, shall execute and deliver any and all deeds, bills of sale, assignments, and other documents which in Landlord’s sole judgment may be necessary or appropriate to transfer, to evidence or to vest in Landlord clear title to any of the property described in the foregoing subsection (a) located on the YMCA Site at the time of such termination. Tenant agrees to execute, at the request of Landlord at the end of the Term, a quitclaim deed to Landlord for the improvements. The deed shall be recorded at
Landlord’s option and expense and Tenant shall provide any other documents that may be reasonably required by Landlord or Landlord’s title company to provide Landlord title to the YMCA Site and the improvements thereon free and clear of all monetary liens and monetary encumbrances not caused by or agreed to by Landlord.

(c) Upon the recording of the Memorandum of Lease, Tenant may elect to obtain a leasehold policy of title insurance, insuring Tenant’s leasehold interest in the YMCA Site.

11. Permits, Licenses, Etc. Landlord will from time to time during the Term execute and deliver all applications for permits, licenses or other authorizations required by any municipal, county, state, or Federal authorities, or required in connection with the construction, reconstruction, repair or alteration of any buildings or improvements which related to the improvements on the YMCA Site. Landlord will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, steam, and other facilities and utilities reasonably required for the construction, use and occupancy of the improvements on the YMCA Site. Tenant shall reimburse Landlord for any sum paid by Landlord specified in this Section 11 (Permits, Licenses, Etc.), only with respect to the New YMCA.

12. As-Is Condition of YMCA Site; Phase 2 Improvements; Future Alterations or Improvements to YMCA Site.

(a) Tenant acknowledges that prior to the Commencement Date, Tenant has had the opportunity to investigate the YMCA Site and the Non-Exclusive Common Area, enter the YMCA Site and conduct tests thereon and otherwise satisfy itself regarding the physical condition of the YMCA Site and the Non-Exclusive Common Area and their suitability for Tenant’s intended use and construction of the Phase 2 Improvements thereon. Tenant’s execution of this Lease constitutes Tenant’s acceptance of the YMCA Site in its “AS-IS” condition, with all faults. Tenant releases Landlord and any of its subsidiaries and affiliates and their respective officers, directors, shareholders, employees and attorneys from any and all liabilities and claims of any type concerning the condition of the YMCA Site.

(b) Following the Commencement Date, Tenant shall proceed with due diligence and dispatch to complete the construction of the Phase 2 Improvements on the YMCA Site and the Non-Exclusive Common Area in a timely manner, as set forth in the Master Project Agreement.

(c) All improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment or improvements, changes or alterations involving costs less than Ten Thousand Dollars ($10,000)) shall be undertaken in all cases subject to the following conditions which Tenant covenants to observe and perform:
(1) No improvement, change or alteration, shall be undertaken until:

(i) Landlord shall have reasonably approved the site plan and plans and specifications for such Phase 2 Improvements;

(ii) Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, and Landlord agrees to join in the application for such permits or authorizations whenever such action is necessary.

(2) All work done in connection with any improvement, change or alteration shall be done promptly and in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All work for the New YMCA shall be at the sole cost and expense of Tenant. All Non-Exclusive Common Area improvements for Phase 2 shall be shared, as more particularly set forth in the Master Project Agreement.

(3) In addition to the insurance coverage referred to in Section 19 (Insurance) below, Workers’ Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Landlord, Tenant or the Leased Area, and a general liability policy coverage, naming Landlord with limits of not less than Five Million Dollars ($5,000,000), shall be maintained by Tenant, at Tenant’s sole cost and expense, at all times when any work is in process in connection with any improvement, change or alteration. All such insurance shall be obtained and kept in force as otherwise provided in Section 19 (Insurance) below.

(d) The Common Area Maintenance Agreement referred to in Section 13. (b) below, shall set forth the protocol and payment structure for any future alterations or capital improvements desired by the Parties to the Non-Exclusive Common Area, outside the scope of the Phase 2 Improvements ("Future Common Area Improvements"). Tenant, as Tenant deems necessary and desirable, shall have the right during the Term to make voluntary alterations and/or capital improvements to the New YMCA at Tenant’s sole cost and expense, upon the written approval of the Landlord, not to be unreasonably withheld.

13. Ongoing Maintenance and Repair Obligations.

(a) YMCA Site,

(1) Tenant shall, during the Term, at its own cost and expense and without any cost or expense to Landlord:

(i) Keep and maintain the YMCA Site and New YMCA (including all appurtenances thereto) in good and neat order and repair and shall allow no
nuisances to exist or be maintained therein. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the New YMCA; and

(ii) Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the YMCA Site and the New YMCA, or any activity or condition related to the New YMCA.

(iii) Tenant agrees that it will not commit or permit waste upon the YMCA Site.

(2) Tenant will not cause or permit any hazardous substance (as defined by applicable federal, state and local statutes, rules and regulations) to be released in, on, under or about the YMCA Site (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant’s expense, comply with all statutory requirements with respect to any contamination of the YMCA Site that was caused, permitted or materially contributed to by Tenant or pertaining to or involving any hazardous substance brought onto the Leased Area during the term of this Lease by or for Tenant or any third party. Tenant will defend, indemnify and hold Landlord free and harmless from and against any and all claims, damages and liabilities with respect to any such contamination of the YMCA Site occurring following the Commencement Date. Tenant will immediately notify Landlord if Tenant becomes aware that any release of hazardous substances has come to be located in, on, under or about the YMCA Site at any time during the Term.

(b) Non-Exclusive Common Area. Landlord and Tenant shall maintain the Non-Exclusive Common Area and the improvements thereon pursuant to a future separate Common Area Maintenance Agreement which shall be consistent with the terms and conditions contained in the Common Area Maintenance and Operating Provisions, attached hereto as Exhibit F and incorporated herein by reference.

14. Facility Operations. Upon completion of the Phase 1 and Phase 2 Improvements at the Project Site, in order to minimize overlap in facility programming at the Property, Landlord and Tenant agree to follow those certain operating provisions set forth in the Common Area Maintenance and Operating Provisions, Exhibit F, and include such provisions in a future separate agreement (the “Operating Agreement of the New YMCA”), which may be amended in writing, from time to time, as the Parties deem reasonably appropriate.

15. Damage or Destruction.

(a) Restoration; Early in Term. The provisions of this Section 15 shall govern the rights of the parties in the event of any full or partial destruction of the New YMCA. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) with respect to any destruction of the New YMCA. If, during the first ten (10) years of the initial Term (i.e., before the tenth (10th) anniversary of the Commencement Date), the improvements located on the YMCA Site are totally or partially destroyed from any cause,
this Lease shall not terminate and Tenant shall have the option either (i) to construct a new facility consistent with the YMCA-SV’s then-current prototypical building or (ii) to restore the destroyed improvements to substantially the same condition as they were in immediately before destruction subject, in either case, to then applicable Governmental Requirements and Tenant retaining all insurance proceeds payable as a result of such damage or destruction. The work of repair and restoration shall be commenced by Tenant as soon as reasonably possible, but in no event later than One Hundred Eighty (180) days after the damage or destruction. Tenant shall diligently prosecute such work to completion no later than two (2) years from the date the work is commenced. If the work will constitute major construction (which means any work by which the major structural components of Tenant’s building or the exterior appearance or configuration of Tenant’s improvements will be altered), then Tenant shall comply with all then-applicable City, federal or state rules, standards and regulations (“Governmental Requirements”) for new construction. Rent shall not abate in case of damage or destruction which is to be repaired by Tenant.

(b) Later in Term. Nothing to the contrary in this Lease withstanding, if improvements within the New YMCA are damaged or destroyed at any time after the tenth (10th) anniversary of the Commencement Date to the extent of Thirty-Three percent (33%) or more of the full replacement cost of the improvements, then Tenant may elect, by written notice to Landlord within thirty (30) days from the occurrence of the damage, either: (i) to construct on the YMCA Site YMCA-SV’s then-current prototypical building; (ii) to restore the destroyed improvements to substantially the same condition as they were in immediately before destruction; or (iii) not to restore the improvements. If Tenant elects either clause (i) or (ii) then such construction or restoration shall be subject to then-applicable Governmental Requirements, and Landlord shall not be entitled to any insurance proceeds payable as the result of such damage or destruction. If Tenant elects clause (iii), then Landlord shall be entitled to receive and retain any and all insurance proceeds payable as a result of such damage or destruction, except that Tenant shall be entitled to retain that amount of any insurance proceeds which is attributable to Tenant’s personal property, fixtures and equipment and the unamortized value of the building on Tenant’s books; and except further, if, within Thirty (30) days of Landlord’s receiving the notice of Tenant’s election, Landlord so requires and notifies Tenant, Tenant shall remove any improvements remaining and restore the YMCA Site to grade, in which case the Lease will not terminate until Tenant returns the YMCA Site to Landlord in the condition required and Tenant may also retain from the insurance proceeds the reasonable cost of performing the removal work and restoring the YMCA Site to grade. If Tenant elects clause (iii) and Landlord does not elect to have Tenant remove improvements and grade the YMCA Site, the Lease shall terminate Thirty (30) days after Tenant gives Landlord notice that it will not restore the New YMCA.

16. Assignment; Sublet; Short-Term Rental.

(a) Except as provided in Section 17 (Mortgage of Leasehold) and Section 18(h) (Protection of Lender) hereof, Tenant shall not assign or sublet its interest in this Lease or sublet all or any portion of the YMCA Site without the prior written consent of
Landlord, which consent shall not be unreasonably withheld. It shall not be unreasonable for Landlord to withhold its consent where the proposed assignee or subtenant lacks sufficient financial strength or experience, in the exercise of Landlord's reasonable business judgment, to perform the Tenant's obligations to operate the New YMCA, operate a facility comparable to the YMCA or a similar health and wellness facility or is not a non-profit entity. It shall not be unreasonable for Landlord to withhold its consent where the proposed assignee or subtenant will engage in a business involving toxic and hazardous materials. Any proposed assignment or sublet shall be considered by Landlord only if no default exists in the performance or observance of any agreement, covenant or condition of this Lease on the part of Tenant to be performed or observed as of the date of such assignment. Tenant shall provide a full package of information Thirty (30) days in advance of any proposed transfer. Further, Landlord's consent to any assignment or sublet shall be conditioned on the following: (i) the assignment or sublet shall be in writing, duly executed and acknowledged by Tenant and the assignee or sublessee, as the case may be, in form satisfactory to Landlord, providing that the intended use by the assignee/sublessee is consistent with this Lease and assignee/sublessee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Lease on the part of Tenant to be performed and observed, and (ii) an executed original of such assignment shall be delivered to Landlord.

(b) Notwithstanding the foregoing Section 16(a), Tenant may rent out a portion of the New YMCA at its sole discretion to third parties without the consent of the Landlord; provided, such short-term rental is for no longer than 24-hours per rental and that the third party complies with Section 9 (Allowed and Prohibited Uses).

17. Mortgage of Leasehold. Tenant shall have the right to encumber the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the YMCA Site (the "Leasehold Mortgage") to secure repayment of any loan to Tenant, and associated obligations, from any lender (a "Lender").

18. Protection of Lender. During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

(a) Landlord shall not accept any surrender of this Lease, nor shall Landlord consent to any amendment or modification of this Lease, without the prior written consent of any Lender.

(b) Notwithstanding any default by Tenant in the performance or observance of any agreement, covenant or condition of this Lease on the part of Tenant to be performed or observed, Landlord shall have no right to terminate this Lease or interfere with the occupancy, use, and enjoyment of the YMCA Site unless (i) an event of default shall have occurred and is continuing, (ii) Landlord shall have given any Lender written notice of such event of default, and (iii) the Lender(s) shall have failed to remedy such default, acquire Tenant's leasehold estate created hereby, or commence foreclosure or other appropriate
proceedings, all as set forth in, and within the time specified by, this Section 18 (Protection of Lender).

(c) Any Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by a Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of by a Lender.

(d) Should any event of default under this Lease occur, any Lender shall have Sixty (60) days after receipt of written notice from Landlord setting forth the nature of such event of default, within which to remedy the default; provided that in the case of a default which cannot with due diligence be cured within such Sixty (60) day period, the Lender(s) shall have the additional time reasonably necessary to accomplish the cure, provided that (i) such Lender has commenced the curing within such Sixty (60) days and (ii) thereafter diligently prosecutes the cure to completion. If the default is such that possession of the YMCA Site may be reasonably necessary to remedy the default, the Lender(s) shall have a reasonable additional time after the expiration of such sixty-day period, within which to remedy such default, provided that (i) the Lender(s) shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within such Sixty (60) day period and shall continue to pay currently such monetary obligations as and when the same are due and (ii) the Lender(s) shall have acquired Tenant’s leasehold estate or commenced foreclosure or other appropriate proceedings seeking such acquisition within such period, or prior thereto, and is diligently prosecuting any such proceedings.

(e) Any event of default under this Lease which is not susceptible to remedy by a Lender shall be deemed to be remedied if (i) within Sixty (60) days after receiving written notice from Landlord setting forth the nature of such event of default, or prior thereto, a Lender shall have acquired Tenant’s leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) a Lender shall diligently prosecute any such proceedings to completion, and (iii) a Lender shall have fully cured any default in the payment and performance of any monetary or other obligations of Tenant hereunder which do not require possession of the YMCA Site within such Sixty (60) day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the YMCA Site, and (iv) after gaining possession of the YMCA Site, a Lender shall perform all other obligations of Tenant hereunder as and when the same are due.

(f) If a Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or
insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings the times specified in subsections (d) and (e) above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

(g) Landlord shall mail by certified or registered post, return receipt requested, or personally deliver to any Lender a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given or served by Landlord. No notice by Landlord to Tenant hereunder shall be deemed to have been given unless and until a copy thereof shall have been so mailed or delivered to any Lender. Upon the execution of any Leasehold Mortgage, Landlord shall be informed in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Notwithstanding any other provision of this Section 18 (Protection of Lender), any Lender shall be deemed to have waived any right to receive notice pursuant to this Section 18 (Protection of Lender) unless and until Landlord has received such information.

(h) Foreclosure of the Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any assignment or conveyance of the leasehold estate created by this Lease from Tenant to a Lender or other purchaser through, or in lieu of, foreclosure or other appropriate proceedings of a similar nature shall not constitute a breach of any provision or a default under this Lease. Upon such foreclosure, sale or conveyance Landlord shall recognize the Lender, or any other foreclosure sale purchaser, as Tenant hereunder. In the event a Lender becomes Tenant under this Lease, such Lender shall be liable for the obligations of Tenant under this Lease only for the period of time that such Lender remains Tenant. Such Lender shall have the right to assign this Lease at any time after becoming Tenant without any restriction otherwise imposed on Tenant hereunder and shall be fully released from liability under the Lease from and after the date of such assignment.

(i) Should Landlord terminate this Lease by reason of any default by Tenant hereunder, Landlord shall, upon written request by a Lender given within Thirty (30) days after such termination, immediately execute and deliver a new lease of the YMCA Site to such Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained herein and with priority equal to that hereof; provided, however, that such Lender shall promptly cure any defaults of Tenant susceptible to cure by such Lender and that such Lender’s right to possession of the YMCA Site under the new lease shall commence only upon Tenant’s vacating of the YMCA Site. Upon execution and delivery of such new lease Landlord, at the expense of the new lessee, which expenses shall be paid by the new Tenant as they are incurred, shall take such action as shall be
necessary to cancel and discharge this Lease and to remove Tenant named herein from the YMCA Site.

19. Insurance,

(a) During the period of the construction of the Phase 2 Improvements, Tenant shall require its contractor to comply with the insurance and indemnification provisions set forth in the Supplementary Conditions – Insurance and Indemnification, attached hereto as Exhibit G and incorporated herein by reference.

(b) Upon issuance of a certificate of occupancy for the New YMCA, Tenant shall, at its sole expense, obtain and keep in force during the Term, fire and extended coverage insurance (excluding earthquake insurance) for the New YMCA, naming Landlord, Lender, and such other parties as Tenant may designate, as additional insureds thereunder. Furthermore, Tenant shall, at its sole expense, obtain and keep in force during the Term general liability insurance with limits of not less than Five Million Dollars ($5,000,000) for injury to or death of any number of persons in one occurrence, and not less than One Million Dollars ($1,000,000) for damage to property, insuring against any and all liability of Tenant including, coverage for contractual liability, broad form property damage, host liquor liability, personal injury, and non-owned automobile liability, with respect to the New YMCA or arising out of the maintenance, use or occupancy thereof, and insurance on all boilers and other pressure vessels, whether fired or unfired, located in, on, or about the YMCA Site, without exclusion for explosion, collapse and underground damage, in an amount not less than One Million Dollars ($1,000,000). All such insurance shall insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and damage to property set forth in Section 21(b) (Indemnity). All of such insurance shall be noncontributing with any insurance which may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord, its agents and employees, or the property of such persons.

(c) Upon completion of the Phase 2 Improvements in the Non-Exclusive Common Area, Landlord shall, at its sole expense, obtain and keep in force during the Term, extended coverage insurance (excluding earthquake insurance) for the Non-Exclusive Common Area, naming Tenant, Lender, and such other parties as Tenant may designate, as additional insureds thereunder. Furthermore, Landlord shall, at its sole expense, obtain and keep in force during the Term general liability insurance with limits of not less than Five Million Dollars ($5,000,000) for injury to or death of any number of persons in one occurrence, and not less than One Million Dollars ($1,000,000) for damage to property, insuring against any and all liability of Landlord including, coverage for contractual liability, broad form property damage, host liquor law liability, personal injury, and non-owned automobile liability, with respect to the Non-Exclusive Common Area or arising out of the maintenance, use or occupancy thereof, and insurance on all boilers and other pressure vessels, whether fired or unfired, located in, on, or about the Non-Exclusive Common Area, without exclusion for explosion, collapse and underground damage, in an amount not less than One Million Dollars ($1,000,000). All of such
insurance shall insure the performance by Landlord of the indemnity agreement as to liability for injury to or death of persons and damage to property set forth in Section 21(b). All of such insurance shall be noncontributing with any insurance which may be carried by Tenant and shall contain a provision that Tenant, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Tenant, its agents and employees, or the property of such persons. As an alternative to the above, Landlord may insure the Non-Exclusive Common Area under a blanket insurance policy covering other properties owned by Landlord.

(d) The limits and coverage of all insurance set forth herein shall be adjusted on every Tenth (10th) anniversary of the Commencement Date during the Term by increasing the limits according to increases in CPI (San Francisco) rounded to the nearest $100,000. Upon the issuance thereof, each insurance policy or a duplicate or certificate thereof shall be delivered to Landlord, Tenant and Lender, as the case may be. Nothing herein shall be construed to limit the right of Lender to cause Tenant to carry or procure other insurance covering the same or other risks in addition to the insurance specified in this Lease.

(e) All amounts that shall be received under any insurance policy specified in subsections (a) – (c) above shall be first applied to the payment of the cost of repair, reconstruction or replacement of any buildings or improvements, or furniture, fixtures, equipment and machinery, that is damaged or destroyed.

20. Mechanics’ and Other Liens.

(a) Tenant shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof any and all mechanics’, materialmen’s and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the YMCA Site for or in connection with any construction of the New YMCA, which Tenant may make or permit or cause to be made, or any future work or construction by, for or permitted by Tenant on or about the New YMCA, and to indemnify, save and hold Landlord and all of the YMCA Site and all buildings and improvements thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto. Tenant covenants and agrees to give Landlord written notice not less than Twenty (20) days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of One Million Dollars ($1,000,000.00) in order that Landlord may post appropriate notices of Landlord’s non-responsibility.

(b) Tenant shall have the right to contest the amount or validity of any lien of the nature set forth in this Section 20 or the amount or validity of any tax, assessment, charge, or other item to be paid by Tenant under Section 6 (Taxes and Assessments) hereof by giving Landlord written notice of Tenant’s intention to do so within Twenty (20) days after the recording of such lien or at least Ten (10) days prior to the delinquency of such tax, assessment, charge, or other item, as the case may be. In any such case, Tenant shall not be in default hereunder, and Landlord shall not satisfy and discharge such lien nor pay such tax, assessment,
charge or other item, as the case may be, until Ten (10) days after the final determination of the amount or validity thereof, within which time Tenant shall satisfy and discharge such lien or pay such tax, assessment, charge or other item to the extent held valid and all penalties, interest, and costs in connection therewith; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had upon any judgment rendered thereon, nor shall the payment of any such tax, assessment, charge or other item, together with penalties interest, and costs, in any case be delayed until sale is made or threatened to be made of the whole or any part of the YMCA Site on account thereof, and any such delay shall be a default of Tenant hereunder. In the event of any such contest, Tenant shall protect and indemnify Landlord against all loss, cost, expense, and damage resulting therefrom, and upon notice from Landlord so to do, shall furnish Landlord a corporate surety bond payable to Landlord, in One Hundred and Twenty Percent (120%) of the amount of the lien, tax, assessment, charge, or item contested, as the case may be, conditioned upon the satisfaction and discharge of such lien or the payment of such tax, assessment, charge, or other item, and all penalties, interest, and costs in connection therewith.

21. Indemnity.

(a) Tenant hereby agrees to indemnify and hold harmless Landlord and its employees, agents and contractors (the “Indemnified Parties”) from and against any and all losses which (a) arise from any willful, negligent or tortious act or omission of Tenant or its employees, agents, contractors, vendors, guests or invitees on, about or concerning the YMCA Site; (b) result from any breach of or default under this Lease by the Indemnifying Party or its employees, agents or contractors; or (c) result from bodily injury (including death) to any person or damage to any property arising out of any testing, inspections, construction, reconstruction, restoration, maintenance or other work performed or required to be performed hereunder by Tenant or its employees, agents or contractors. In addition, Tenant shall indemnify and hold harmless Landlord from any losses arising from (i) any personal injury occurring in or at the New YMCA or the YMCA Site, or (ii) the failure of the New YMCA to comply with Laws (including, without limitation, the Americans with Disabilities Act). Tenant’s obligations under this Section 21(a) shall not apply to any losses caused solely by the gross negligence or willful misconduct of any of the Indemnified Parties. Notwithstanding the foregoing, in no event shall Tenant be required to indemnify or hold harmless Landlord, its employees, agents, and contractors from or against any losses resulting solely from conditions that existed on the YMCA Site prior to the Effective Date.

(b) Notwithstanding anything to the contrary in Section 21(a), the obligation of Tenant to indemnify and hold harmless the Indemnified Parties shall not extend to any matter against which the Indemnified Parties shall be effectively protected by insurance; provided, however, that if the liability related to any such matter shall exceed the amount of the effective and collectible insurance in question, the obligation of Tenant to indemnify and hold harmless the Indemnified Parties shall apply to such excess.
(c) In case any claim, demand, action, suit or proceeding is initiated or made against an Indemnified Party by reason of any losses specified in Section 21(a), Tenant, upon notice from the Indemnified Party, shall, at Tenant's sole cost, resist or defend such claim, demand, action, suit or proceeding, but Tenant may make or cause to be made such investigation and such settlement of the claim, demand, action, suit or proceeding as Tenant or its insurers shall deem expedient; provided, however, that Tenant shall not admit liability on behalf of the Indemnified Party and shall obtain the appropriate releases and settlement documents.

(d) Tenant's obligations under this Section 21 (Indemnity) shall survive the expiration of the Term or the earlier termination of this Lease

22. Eminent Domain.

(a) If the whole of the Project Site should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term, or if a portion of the YMCA Site or Non-Exclusive Common Area should be taken so as to materially impair the use of the YMCA Site and thereby frustrate Tenant's purpose in entering into this Lease, as reasonably determined in the sole discretion of Tenant, then, in either of such events, this Lease shall terminate at the time of such taking. In such event, of the compensation and damages payable for or on account of any or all of the YMCA Site, exclusive of the buildings and improvements thereon, Tenant and Lender, as their interests may appear, shall receive a sum equal to the worth at the time of the compensation award of the amount by which the fair rental value of the YMCA Site exceeds the rental payable pursuant to the terms of this Lease for the balance of the Term; the balance of such compensation and damages shall be payable to and be the sole property of Landlord. All compensation and damages payable for or on account of the buildings and improvements located on the YMCA Site shall be divided among Landlord, Tenant, and Lender as follows:

(1) All compensation and damages payable for or on account of the New YMCA having a remaining useful life less than the remaining Term as of the date of such taking shall be payable to and be the sole property of Tenant and Lender (as their interests may appear); and

(2) A proportionate share of all compensation and damages payable for or on account of any all Non-Exclusive Common Area Improvements having a remaining useful life greater than the remaining Term as of the date of such taking, determined by the ratio that the then remaining Term bears to the then remaining useful life of such improvements, shall be equally payable to Tenant and Lender (as their interests may appear) and the Landlord.

(b) No taking of any leasehold interest in the YMCA Site or any part thereof shall terminate or give Tenant the right to surrender this Lease, nor excuse Tenant from full performance of its covenants for the payment of rent and other charges or any other obligations hereunder capable of performance by Tenant after any such taking, but in such case
all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Tenant and Lender.

(c) If only a non-material portion of the YMCA Site shall be the subject of a taking, then this Lease shall continue in full force and effect, except that Rent and all other charges hereunder shall be reduced in the proportion that any area of the YMCA Site so taken or condemned shall bear to the total YMCA Site prior to the taking.

23. Landlord’s Right of Inspection. Landlord shall have the right to enter and inspect the New YMCA upon not less than Two (2) business days prior written notice to Tenant.

24. Default by Landlord: Remedies of Tenant.

(a) Events of Default. Landlord shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Landlord’s representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within Thirty (30) days after notice of the default has been given to Landlord. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default of this Lease if Landlord commences to cure the default within such Thirty (30)-day period and diligently and in good faith continues to cure the default until completion, but in no event longer than One Hundred Twenty (120) days from the date of notice of default.

(b) Right to Cure; Tenant’s Remedies. If Landlord fails to cure a default by Landlord after expiration of the applicable time for cure of a particular default, Tenant, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Landlord, after which Tenant shall retain, and may exercise and enforce, any and all rights that Tenant may have against Landlord as a result of such default; (ii) from time to time without releasing Landlord in whole or in part from the obligations to be performed by Landlord hereunder, may cure the default at Landlord’s cost; (iii) may terminate this Lease, and/or (iv) may exercise any other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable costs incurred by Tenant in order to cure such a default by Landlord shall be due immediately from Landlord, together with interest, and may be offset against any amounts due from Tenant to Landlord. Upon the occurrence of any Landlord Default and the expiration without cure of any applicable notice and cure periods, Tenant may, at its option and in addition to all of Tenant’s other rights and remedies at law or in equity, do any of the following: (a) terminate this Lease upon notice to Landlord; (b) incur, and deduct from succeeding Rent or any other sum or monetary obligations owed to Landlord, as prescribed by this Lease, the amount of any judgment obtained from a federal or state court resulting from Landlord’s failure to perform any obligation that Landlord has failed to perform; and (c) exercise any other remedy explicitly provided in this Lease for the breach of a specific term or condition. Tenant agrees that no officer, employee, director, manager, member, owner, agent, counsel or trustee of Landlord shall be liable for Landlord’s duties and obligations under this Lease and that any recovery of damages or any other sums due Tenant from Landlord may only be recovered from Landlord’s interest in the YMCA Site.
25. Default by Tenant; Remedies of Landlord.

(a) Each of the following occurrences shall be deemed an event of default hereunder by Tenant (each such occurrence, after the expiration of any applicable notice and cure period, being hereinafter referred to as a "Tenant Default"):

(1) Default in the payment of Rent or any other sum owing to Landlord or third parties continuing for a period of Ten (10) days from when such amount was due.

(2) Default in the performance of any other covenant or condition of Tenant pursuant to this Lease or material inaccuracy in any representation or warranty made by Tenant hereunder for a period of Thirty (30) days after notice from Landlord of the default or inaccuracy. If the default cannot reasonably be cured within Thirty (30) days, Tenant shall not be in default of this Lease is Tenant commences to cure the default within such Thirty (30) day period and diligently and in good faith continues to cure the default until completion, but in no event longer than One Hundred Twenty (120) days from the date of notice of default.

(3) Default beyond any notice and cure period under the Common Area Maintenance Agreement or the Operating Agreement of the New YMCA.

(4) Failure to continuously occupy or operate the YMCA Site in accordance with Section 7 (Hours of Business/Covenant of Continuous Operation), above. A vacation or a cessation of operations for Thirty (30) or more consecutive days (or Sixty (60) non-consecutive days in a Twelve (12) month period) shall be a Tenant Default.

(5) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or insolvent or of a petition for reorganization or arrangement under any federal or state bankruptcy or other insolvency law (unless, in the case of a petition filed against Tenant, the same is dismissed within Sixty (60) days after filing); the appointment of a trustee or receiver to take possession of all or substantially all of Tenant’s assets located at the YMCA Site or of Tenant’s interest in this Lease and possession is not restored to Tenant within Sixty (60) days thereafter; or the attachment, execution or other judicial seizure of substantially all of Tenant’s assets located at the YMCA Site or of Tenant’s interest in this Lease and possession is not restored to Tenant within Sixty (60) days thereafter.

(b) Upon the occurrence of any Tenant Default and the expiration without cure of any applicable notice and cure periods, Landlord shall have, in addition to Landlord’s other rights and remedies at law or in equity, all of the following rights:

(1) Landlord shall have the right at any time thereafter to give notice of termination to Tenant, and on the date specified in such notice (which shall not be less than Thirty (30) days after the giving of such notice) this Lease shall, subject to Section 25(c), terminate. If any such termination of this Lease occurs, Landlord may then or any time
thereafter re-enter the YMCA Site by summary proceedings or otherwise, remove therefrom all
property, and enjoy the YMCA Site, without prejudice to any other remedies that Landlord may
have by reason of Tenant’s Default

(2) Landlord shall have the right, without terminating this Lease, to
re-enter the YMCA Site by summary proceedings or otherwise if allowed by Laws and remove
all persons and property, and Tenant shall remain liable as hereinafter provided. No
commencement and prosecution of any action by Landlord in unlawful detainer, ejectment or
otherwise, or execution of any judgment or decree obtained in any action to recover possession
of the YMCA Site, nor any re-entry by Landlord, shall be construed as an election to terminate
this Lease, unless Landlord shall give notice to Tenant of such intention.

(c) Should Landlord terminate this Lease for default pursuant to
Section 25(b), Landlord shall be entitled, at Landlord’s election, to damages as provided by law.
Such damages shall include, subject to the limitations provided in said Section 1951.2 and in
Section 25(d), the worth at the time of award of the unpaid Rent and other sums then owing
by Tenant to Landlord under this Lease that had been earned and/or incurred at the time of
termination of this Lease. The “worth at the time of the award” of the amounts is computed by
allowing interest at the Index Rate (not to exceed the maximum legal rate).

(d) In the event of any termination of this Lease pursuant to this 25,
Landlord shall, to the extent, if any, required by applicable law, use commercially reasonable
and diligent efforts to, at a minimum, relet the YMCA Site as soon as practicable at the same or
substantially the same terms and conditions contained in this Lease. Landlord may execute any
lease made pursuant to the terms of this Section 25 in Landlord’s own name, and Tenant shall
have no right or authority whatsoever to collect any rent from such new tenant or subtenant.
The provisions of this Section 25(d) shall survive the expiration of the Term or the earlier
termination of this Lease.

26. Nonwaiver. If any action or proceeding is instituted or if any other steps are taken
by Landlord or Tenant, and a compromise part payment or settlement thereof shall be made,
either before or after judgment, the same shall not constitute or operate as a waiver by
Landlord or Tenant of any agreement, covenant or condition of this Lease or of any subsequent
breach thereof. No waiver of any default under this Lease shall constitute or operate as a
waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or
enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or
enforcement or exercise of any right, privilege, or option hereunder. No waiver of any
provision hereof by Landlord or Tenant shall be deemed to have been made unless and until
such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case
may be. The receipt by Landlord of rent with knowledge of any default under this Lease shall
not constitute or operate as a waiver of such default. Payment by Tenant or receipt by
Landlord of a lesser amount than the stipulated rent or other sums due Landlord shall operate
only as a payment on account of such rent or other sums. No endorsement or statement on
any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Tenant and pursue any remedy provided under this Lease or by law.

27. No Merger.

(a) There shall be no merger of the leasehold estate created by this Lease with any other estate in the YMCA Site, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Lease, or an interest in such leasehold estate, and such other estate in the YMCA Site, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until Landlord, Tenant and any Lender shall join in a written instrument effecting such merger and shall duly record the same.

(b) No termination of this Lease shall cause a merger of the estates of Landlord and Tenant, unless Landlord so elects and any such termination shall, at the option of Landlord, either work a termination of any sublease in effect or act as an assignment to Landlord of Tenant’s interest in any such sublease. Notwithstanding the foregoing, in the event of the termination of this Lease and the execution of a new lease with Lender or its nominee pursuant to Section 18(i) (Protection of Lender) above, the termination of this Lease shall neither work a merger of estates nor a termination of any subleases in effect unless Lender so elects.

28. No Partnership. It is expressly understood and agreed that Landlord does not, in any way or for any purpose by executing this Lease, become a partner of Tenant in the conduct of Tenant’s business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

29. Covenants Run with Land.

(a) The agreements, covenants and conditions in this Lease contained are and shall be deemed to be covenants running with the Property and the reversion and shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns and all subsequent Landlords and Tenants respectively hereunder.

(b) All references in this Lease to “Tenant” or “Landlord” shall be deemed to refer to and include successors and assigns of Tenant or Landlord, respectively, without specific mention of such successors or assigns.

30. Notices. Except as otherwise provided hereunder; any notice or communication to Landlord, Tenant or Lender shall be in writing and be mailed by certified mail, postage prepaid. Notices or communications shall be addressed to Landlord at:
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: Chris Beth, Parks, Recreation & Community Services Director
Tel: (650) 780-7253
E-mail: cbeth@redwoodcity.org

or such other address or addresses as Landlord shall from time to time designate, or to such agent of Landlord as it may from time to time designate, by notice in writing to Tenant. Notices or communications shall be addressed to Tenant at:

Sandra Berlin Walker, President and CEO
YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95951
Tel: (408) 351-6450
E-Mail: Sandy.Walker@ymcasv.org

With copies to:

David Fisch, Vice-President of Property
YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Tel: (408) 351-6450
Fax: (951) 780-3837
E-mail: dfisch@ymcasv.org

Ira Holtzman, Chief Financial Officer
YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Tel: (408) 351-6450
E-Mail: ira.holtzman@ymcasv.org

Mindie S. Romanowsky
Jorgenson, Siegel, McClure & Flegel LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Tel: (650) 324-9300
or such other address or addresses as Tenant shall from time to time designate, or to such agent of Tenant as it may from time to time designate, by notice in writing to Landlord. Notices or communications to Lender shall be addressed to Lender at such address as Lender shall from time to time designate by notice in writing to Landlord. Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office.

31. Limitation of Landlord's Liability. In the event of any transfer of Landlord's interest in this Lease, the Landlord herein named (and in case of any subsequent transfer, the then transferee) shall be automatically freed and relieved from and after the date of such transfer of all personal liability for the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided, however, that any funds in the hands of Landlord or the then transferee at the time of such transfer, in which Tenant has an interest shall be turned over to the transferee and any amount then due and payable to Tenant by Landlord or the then transferee under any provision of this Lease shall be paid to Tenant; and provided, further, that upon any such transfer, the transferee shall expressly assume, subject to the limitations of this Section 31 (Limitation of Landlord's Liability), all of the agreements, covenants and conditions in this Lease to be performed on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on each Landlord, its successors and assigns, only during its period of ownership.

32. Estoppel Certificates. Tenant or Landlord, as the case may be, will execute, acknowledge and deliver to the other and/or to Lender, within Twenty (20) days of request, its certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which the Rent, and other monetary obligations have been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by Landlord of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by Tenant in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed and whether any notice has been given to Tenant of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee under a deed of trust of the Leased Area or any part thereof.

33. Holding Over. This Lease shall terminate without further notice upon the Termination Date, and any holding over by Tenant after the Termination Date shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the YMCA Site, except as otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant.

34. Non-Waiver of Governmental Rights. Nothing in this Lease shall be construed to in any way to obligate Landlord or any other governmental authority to take any discretionary
action relating to the construction, development, or operation of the Project, including, but not
limited to, condemnation, rezoning, variances, subdivision, environmental clearances, or any
other governmental approvals which are or may be required pursuant to the legal
requirements. Nothing in this Lease shall be construed to restrict or impair in any manner
whatsoever any legal requirement or the exercise by Landlord of any governmental powers or
rights thereunder.

35. Severability. In case any one or more of the provisions contained in this Lease shall
for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity,
illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease
shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained
herein.

36. Time. Time is of the essence of each provision of this Lease. Wherever under this
Lease there is a day or time period established for performance and such day is or such time
period expires on a Saturday, Sunday or holiday, then such time for performance shall be
automatically extended to the next Business Day.

37. Force Majeure. If either Party shall be delayed or hindered in or prevented from
the performance of any act required hereunder by reason of strikes, lockouts, labor troubles,
inability to procure materials, unusually severe weather, terrorism, earthquake, failure of
power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of
a similar or dissimilar nature not the fault of such Party, then performance of any such act shall
be extended for a period equivalent to the period of such delay (not to exceed 30 days in the
aggregate). In each case, the Party delayed, hindered or prevented shall promptly notify the
other Party of the event causing the delay, hindrance or prevention. The foregoing, however,
shall not operate to excuse either Party from securing necessary financing to meet its
obligations or from making any Rent or other payments due under this Lease.

38. Consents. Whenever in this Lease the consent or approval of either Landlord or
Tenant is required or permitted, the party requested to give such consent or approval will act
promptly and will not unreasonably withhold its consent or approval.

39. Memorandum of Lease. Contemporaneously with the execution of this Lease,
Landlord and Tenant will execute and acknowledge for recordation in the Official Records of the
County of San Mateo a Memorandum of Lease in the form of Exhibit C hereto ("Memorandum
of Lease").

40. Attorney Fees. In the event of any action or proceeding at law or in equity between
Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right
or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the
prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by
such prevailing party, and if such prevailing party shall recover judgment in any such action or
proceeding, such costs, expenses and attorney fees shall be included in and as a part of such
judgment.
41. Integration. This instrument constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord, Tenant and, if required by any Lender, by Lender.

42. Amendments. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

43. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

44. Environmental Status. Except as set forth in this Lease, Landlord has received no notice of any release of Hazardous Materials that has come to be located upon or under the Project Site or that has been generated, handled, manufactured, stored, used, transported or discharged any Hazardous Materials on, in or under the Project Site, the groundwater or any adjacent property. Landlord, to its actual knowledge, is not aware of any underground storage tanks currently located on or under the YMCA Site. As used herein, the term, “Hazardous Materials” shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations promulgated thereto: (1) any “hazardous substance” within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”) 42 U.S.C. §9601, et seq. or the California Hazardous Substance Account Act, Cal. Health and Safety Code §25300 et seq. or the Porter-Cologne Water Quality Act, Cal. Water Code §13000 et seq. or the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; (2) any “hazardous waste” within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; or (3) any other substance, chemical, waste, toxicant, pollutant or contaminate regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment, including, without limitation, any petroleum products or fractions thereof.

45. Miscellaneous.

(a) Signs. Tenant shall have the right to install, maintain, replace and relocate one or more signs, monument sign structures(s), awnings and sign panels, in conformity with applicable municipal codes, affixed anywhere in or on the YMCA Site or on the New YMCA building. Tenant shall obtain and pay for all permits and licenses related to such signs or required in connection therewith. No signs may be installed by Tenant in the Non-Exclusive Common Area, provided however, that any monument and/or way-finding signs installed by Landlord shall include the YMCA-SV logo and directions to the New YMCA.
(b) **Parking.** Throughout the Term, Tenant, its customers, staff and invitees, shall have the right to the non-exclusive use of parking spaces available in the Non-Exclusive Common Area in common with the public. In the event Landlord make any material changes to the East or West parking lots on the Project Site, the parties shall meet and confer.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

[Signatures on following page]
LANDLORD:
City of Redwood City, a charter city and
California municipal corporation

By: ________________________________
    Melissa Stevenson Diaz, City Manager

TENANT:
YMCA-SV, a California non-profit corporation

By: ________________________________
    Sandy Berlin Walker
Its  President and CEO
ADDENDUM

I. General Provisions Regarding Option to Extend. The following provisions will apply to the option to extend the Term, as described in Section II (Option to Extend Termination Date), below. (The option to extend is hereafter referred to as the “Option”).

   (c) Tenant shall have no right to exercise an Option (i) during the period commencing with the giving of any notice of default and continuing until such default is cured; (ii) during any period during which rent is unpaid (without regard to whether notice thereof has been given to Tenant); (iii) during any time Tenant is materially in default under this Lease; (iv) in the event that Tenant has been given One (1) or more notices of separate defaults, whether or not such defaults have been cured, during the Twelve (12) month period immediately preceding the attempt to extend the Term.

   (d) An Option shall terminate and be of no further force or effect (notwithstanding Tenant’s due and timely exercise of such Option) if, after such exercise and prior to the commencement of an extended term, (i) Tenant fails to pay rent for a period of Thirty (30) days after such rent becomes due; or (ii) if Tenant commits a material breach of this Lease.

II. Option to Extend Termination Date. Tenant, at Tenant’s sole discretion, will have the option to extend the Termination Date for up to One (1) period of Five (5) years (“Extension Period”), upon the following terms and conditions:

   (a) Tenant shall give written notice to Landlord of its election to extend the Termination Date of this Lease not later than Six (6) months and no earlier than Twelve (12) months prior to the Termination Date.

   (b) Rent during any Extension Period will not change.

III. Upon the recording of the Memorandum of Lease, Tenant may elect to obtain a leasehold policy of title insurance, insuring Tenant’s leasehold interest in the YMCA Site.
Exhibit A

LEGAL DESCRIPTION OF PROPERTY AND MAP
Exhibit C

MEMORANDUM OF LEASE

[ATTACHED]
MEMORANDUM OF LEASE

This memorandum of lease ("Memorandum of Lease") is made as of ____________, 20__ between THE CITY OF REDWOOD CITY, a charter city and California municipal corporation, ("City" or "Landlord") and THE YMCA OF SILICON VALLEY, a California non-profit corporation ("YMCA-SV" or "Tenant"), collectively referred to as "Parties" and agree as follows:

1. **The Lease.** Landlord leases to Tenant, and Tenant leases from Landlord, a portion (as more particularly described as "Leased Area," in Section 2 (Leased Area), below) of that certain real property containing approximately 5.4 acres within Red Morton Park, located at 1455 Madison Avenue, Redwood City consisting of Assessor Parcel Nos. 058-186-040, 058-196-040 and 058-184-040 and more particularly described in Exhibit 1, attached hereto ("Property" or "Project Site"), on the terms and conditions of that certain unrecorderd Ground Lease dated as of ____________, 20__, between the Parties ("Lease"). (Unless expressly provided otherwise, all capitalized terms and phrases used in this Memorandum shall have the same meanings as set forth in the Lease.).

2. **Leased Area.** Tenant exclusively leases from Landlord the YMCA Site and non-exclusively leases the Non-Exclusive Common Area, both of which comprise a certain portion of the Property which are the subject of the Lease and which are collectively referred to as the "Leased Area," as more particularly shown in Exhibit 2, attached hereto.

3. **Term.** The initial term ("Term") of the Lease shall commence upon the Commencement Date and expire Forty Nine (49) years thereafter.

4. **Option to Extend Termination Date.** Tenant has One (1) option to extend the Termination Date of the Lease by Five (5) years, on all the terms and conditions of the Lease.

1
5. **Purpose of Memorandum.** This Memorandum of Lease is prepared for the purpose of notice and recordation. This Memorandum of Lease does not and is not intended to modify the provisions of the Lease.

**LANDLORD:**

____________________________

**TENANT:**

By: _________________________

Its: _________________________
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ____________________________

On __________________ before me, ____________________________, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF ____________________________

On __________________ before me, ____________________________, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________

(Seal)
Exhibit 1 to MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PROPERTY
Exhibit 2 to MEMORANDUM OF LEASE

MAP OF LEASED AREA
Over and above the creation of the community oriented facilities, the following community benefits are intended for the Project.

- Open community swim for City residents every first Sunday of each month (hours TBD).
- Free quarterly education seminars and workshops (i.e. Nutrition, Wellness, etc.) open to RWC residents
- Quarterly “YMCA Open House” days for City residents at the New YMCA.
- CPR/AED training open to RWC resident enrollment
- Senior Rates
- Veteran rates (preferred group rate - % reduction TBD)
- Scholarships and Financial Assistance for those who qualify
- Joint Redwood City and YMCA Community events (Holiday, Other annual traditions and ongoing events) to be held at the Senior Center, YMCA, common areas or in Red Morton Park.
- Quarterly “Togetherness” Family and Individual volunteer activities coordinated with Redwood City and other organizations’ to benefit the community.
- Community Health & Wellness Fairs
- Swim Team – Summer hours TBD, potentially blended into Y programming. Potential for a year-round program.
- Childcare subsidy/discount for those that qualify needing financial assistance
Exhibit E

Prohibited and Restricted Uses

The following uses are prohibited under this Lease. All terms under this Exhibit G shall have the meanings normally given to such terms.

1. No portion of the YMCA Site shall be used for any of the following purposes: an establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; off-track betting parlor; a warehouse; a discotheque, adult entertainment facility; bowling alley; skating rink; billiard or pool hall; massage parlor; a beauty school, barber college; industrial, residential or manufacturing uses; house of worship; a medical marijuana dispensary or other business or activity related to the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical marijuana or a medical marijuana product or device; bar, tavern or cocktail lounge, unless it is for individual or special events (i.e. annual fundraiser) in which no off site sales are made and only on-premises consumption is allowed.

2. No portion of the YMCA Site shall be used (i) for the maintenance of any nuisance or the conduct of any activity that violates public policy; (ii) for any activity that physically interferes with the business of any other owner or occupant of any other parcel or property on the Project Site; (iii) in violation of any law or governmental regulation; (iv) for the storage of any items or vehicles, other than the storage of items within the confines of any building located within the YMCA Site, which items are incidental to the business conducted thereon, and other than trash to be stored in appropriate containers within an enclosed trash area; (v) to permit advertising media which can be heard or experienced from the exterior of the YMCA Site, from which it emanates, such as flashing lights, searchlights, loudspeakers, phonographs, radios, televisions or any computer devices, in violation of the Redwood City Municipal Code. (vi) or for any other unreasonable use not compatible with the operation of the Project Site or in violation of the Redwood City Municipal Code.
EXHIBIT F

COMMON AREA MAINTENANCE AND OPERATING PRINCIPLES

Common Area Maintenance:

The City shall maintain or engage services to maintain the project common areas including the west parking lot, east parking lot, drop off area, promenade and landscaped areas. The maintenance effort shall meet or exceed the City’s standard maintenance practices. In support of the common area maintenance (“CAM”) costs borne by the City, once the YMCA-SV has received a certificate of occupancy for the New YMCA and the west parking lot and drop-off area construction is complete, the YMCA-SV shall contribute 50% of the common area maintenance costs on a monthly basis, as follows:

- A flat fee of $35,000 per year with an annual escalator of 3%. This includes landscaping, tree maintenance, irrigation, irrigation repairs, lighting maintenance, graffiti removal and common area refuse management.
- 50% of common area electricity and water costs
- 50% of asphalt maintenance costs for the west parking lot asphalt. To the extent possible, the City and YMCA-SV shall plan for such work, communicating the need in advance of annual budgeting processes through a common Operational Team (see below).
- Unanticipated damage in the west parking lot or drop off areas that is not covered by insurance or third parties shall be split 50% unless such incidents involve special circumstances such as third party vendors responsible for the occurrence. If the damage occurs due to events, vendors or programs managed by the City or by the YMCA-SV, the managing party shall be responsible for the repair costs. Damages over $10,000 shall be discussed by the Operational Team.

Examples of items not included as part of CAM include underground utility connections and repairs, public street & traffic mitigation measures, facility doors, walls, windows, roofs, skylights, building interiors, building painting, lights attached to each facility, fences, fenced in areas and refuse collection associated with each individual facility.

An Operational Team including the City’s Parks and Recreation Director and the YMCA-SV Branch Executive Director, or their designees, shall meet not less than annually to review planned maintenance activities. Changes to the common area maintenance scope of services are to be discussed among the Operational Team, and any disputes arising concerning maintenance, costs or program delivery where the Parks and recreation Directors and the YMCA-SV Executive Director are not able to resolve those issues, the City Manager and the YMCA-SV CEO shall meet to resolve any disagreements.
Operating Provisions

An Operational Team including the City’s Parks and Recreation Director and the Redwood City YMCA-SV Executive Director and/or their designees shall be established to continually plan and oversee all programs and services in Red Morton Park following the opening of the New YMCA. Below are the guidelines for program delivery, noting that modifications that can be made through periodic partner meetings with the Director of Parks and the Redwood City YMCA-SV Executive Director.

In recognition of evolving program delivery models over time, if either party wishes to make changes to the programs described below within its respective purview, the Operational Team will discuss the proposed programming changes to help ensure there is minimal, if any, service overlap. Should any disputes arise concerning program delivery, the City Manager and YMCA-SV’s CEO shall cooperate to jointly resolve any issues. The parties may enter into an agreement to memorialize the intent set forth in these guidelines.

A. RWC Operated Programs in Red Morton Park
   1. Senior Programs (including but not limited to Theatre, Gardening, Arts and Crafts, Teaching Kitchen and Food Service)
   2. Computer Access, Programs, Games
   3. Special Needs Youth and Adults (including AFAR & SNAP)
   4. Teen Programming (local government program)
   5. Veterans and Senior Clubs
   6. Afterschool Organized Sports (focused on ages 9+)
   7. Gymnasium Specialty Activities (including but not limited to Basketball, Volleyball, Indoor Soccer, various sports tournaments and rentals, Gymnastics and Pickleball)
   8. Performing Arts including Theatre
   9. Specialty programs (including but not limited to Karate, Dance, Gymnastics, Art, Watercolor, Clay, Woodshop, Photography, Gardening)
   10. Senior nutrition services, cooking programs, catering
   11. Picnics and rentals
   12. Community Recreation and Event

B. YMCA-SV Operated Programs in Red Morton Park
   1. Aquatics (lessons, Recreational Teams, Water Fitness, Water Exercise Therapy, Rec/Lap Swim/Herkner Pool Programs including RWC Sharks)
   2. Health and Wellness (Group Exercise Classes including licensed programs, Strength, Cardio Training, Mind-Body Programs, Wellness Programs, Specialty Fitness Workshops, and Community Integrated Health (including but not limited to Type II diabetes program, Parkinson’s and Enhanced Fitness / Arthritis)
   3. Special Interest Programs – Starter Sports (up to age 9), Exploratory Activities, Parent / Child, Family Programs, Kids sports
   4. Child Care / After School Care / Kids Club

Exhibit F
5. Teen specific programming (including Youth and Government Program for state, 
federal and international programs, Annual Nature / Photography Trip Program, 
leadership development)

C. Programs Offered by both RWC & YMCA-SV in Red Morton Park
   1. Gymnasium Activities
   2. Recreational Activities
   3. Day Camps
   4. Nutrition
   5. Adaptive PE
   6. Senior Wellness programs
   7. Variety of summer camp programs
   8. Sports tournaments
   9. Pre-school programs

D. Programs / Services in Red Morton Park
   1. Programs that are offered by both RWC and YMCA-SV will be coordinated by the 
      Director of Parks and Recreation and the YMCA-SV COO to avoid redundancy, allow 
      for coordination of joint promotional opportunities and maintenance of special 
      events calendars.
   2. Hours of Operation – It is expected that the YMCA hours of operation of its facility 
      are: Monday – Friday 5:30am – 10:30pm; Saturday & Sunday 7am – 10:30pm. The 
      YMCA-SV shall have the right to amend its operating hours.
   3. Membership Fees / Options – The YMCA-SV shall set its membership and usage fees 
      for this facility and reserves the right to make changes to the fee structure at any 
      time during the term of this operating agreement. The YMCA-SV shall include 
      separate membership fee categories for veterans, seniors and families.
   4. RWC to provide food concessions within its facility. It is agreed that permanent 
      concessions selling food and/or products will not be permitted in the common areas. 
      An outdoor eating area will be available to all.

E. Facilities in Red Morton Park
   1. Reciprocal Access and Use of facilities will be determined by the Director of Parks / 
      Recreation and YMCA-SV COO.
   2. The City of RWC and the YMCA-SV intend to independently control and operate 
      their respective facilities.
   3. RWC and the YMCA-SV agree that use of the common areas for special events shall 
      be permitted subject to agreement by both parties. Adequate notice to the other 
      party shall be required and the sponsoring party agrees to be responsible for timely 
      cleanup following such events.
   4. RWC Fields – The YMCA-SV shall be allowed to use City's fields on an “as available” 
      basis.

Exhibit F
5. No parking spaces shall be assigned, except as may be agreed to by RWC and the YMCA-SV.
6. RWC and the YMCA-SV shall be responsible for the maintenance and upkeep of their respective facilities.
7. The City shall maintain and coordinate the gymnasium schedule. The City shall retain first right to program and use the facility for City-run programs and services, the YMCA-SV shall have second rights, and any other third-party users shall have last rights, which shall be set forth in the City's reservations policy.

Notwithstanding any of the foregoing, the City's operations of its facilities shall comply with the covenants and requirements of its bond financing for the construction of the New VMB/SC and common area improvements.
EXHIBIT G

Supplementary Conditions- Insurance and Indemnification
[on following page]
ARTICLE 1 INSURANCE

1.01 At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Contract Documents:

A. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars ($2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse and underground property damage hazards. If Contractor's commercial general liability insurance policy contains a general aggregate limit, then the general aggregate limit shall apply separately to the Project or shall be at least twice the required occurrence limit. Contractor's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

B. Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or "any auto", or the exact equivalent, with a limit of no less than two million dollars ($2,000,000) per accident. If contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

C. Policy shall be provided for replacement value on an "all-risk" basis. The City shall be named as loss payee on the policy and there shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the project, (2) coverage with limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site. Such insurance shall be on a form acceptable to City to ensure adequacy of terms and limits.

D. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

1.02 If Contractor normally carries insurance in an amount greater than the minimum amounts required by City in Paragraph 1.01 above, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

The limits of insurance this Contract requires may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the City's benefit, to the extent required by the Contract, before the City's insurance or self-insurance may be called upon to protect City as a named insured.

1.03 All policies of insurance shall be placed with insurers acceptable to City. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of [A-VII] or better, unless otherwise specified in Contract Documents. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City, warrant such increase. Contractor shall increase required insurance amounts upon direction by City.

All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the coverage limits. Insurance policies containing an SIR provision shall provide or be endorsed
to provide that the SIR may be satisfied by either the named Contractor/named insured or the City.

1.04 Required Endorsements: The policies required under Document 00 7200 (General Conditions) and this Document 00 7316 (including any umbrella or excess liability policy(ies)) shall be endorsed as follows (excluding Workers Compensation insurance with respect to Paragraph A below):

A. Policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction contracts, an endorsement providing completed operations to the additional insured, ISO form CG 20 37, is also required.

B. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required hereunder. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.

C. Waiver of Subrogation Generally; Worker's Compensation Insurance: Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against City and all additional insureds, as well as other insurance carriers for the Work. For Worker's Compensation Insurance, Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

D. Insurance shall be primary to City and no other insurance or self-insured retention carried or held by City shall be called upon to contribute to a loss covered by insurance for the named insured.

E. All endorsements shall include the applicable policy number, the named insured(s) and policy terms.

F. Contractor or its insurance broker shall submit to City a copy of the "Declarations Page" for each policy identified under Paragraph 1.01 above. The Declarations Page shall include the name of the insurance carrier, the applicable policy number, the types of coverage and limits of insurance provided, the effective date(s) of the policy, the insurance broker's name and license number, and a list of all coverage forms and endorsements.

1.05 Certificates of insurance and endorsements shall have clearly typed thereon City Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to City (Attention: City Risk Manager / Purchasing Agent) at the address listed in Document 00 5200 (Agreement), 10 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within 10 Days of cancellation. Contractor shall maintain all insurance in full force and effect during entire period of performance of Contract Documents, including warranty and guarantee periods. However, Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment, and shall maintain General Liability Insurance throughout the entire Extended Term specified Paragraph 1.01 above. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon City's request, Contractor shall submit to City, within 30 Days, copies of the actual insurance policies or renewals or replacements.

1.06 Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents, or require Contractor to reimburse City.

1.07 If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from City under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from City, City may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If City is compelled to pay compensation, City may, in its discretion, either
1.08 Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.

1.09 Except for Comprehensive General Liability Insurance, of which Subcontractors need only obtain $1,000,000 in coverage, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to City within ten Days of City’s request.

ARTICLE 2 INDEMNIFICATION

2.01 City and each of its officers, employees, consultants and agents including, without limitation, the City Council, Project Manager and each City’s Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work, loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

2.02 To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), Contractor shall defend, indemnify, and hold harmless, City and each of its officers, employees, consultants and agents including, without limitation, the City Council, Project Manager and each City Representative, from claims, suits, actions, losses and liability of every kind, nature and description including, without limitation, claims and fines of regulatory agencies and attorney’s fees and consultant’s fees, directly or indirectly arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or in part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except their sole negligence, willful misconduct, or active negligence.

2.03 With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against City and each of its officers, employees, consultants and agents including, without limitation, City, the Board, Project Manager and each City’s Representative. City shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Public Contract Code Section 9201.

2.04 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them. The Contractor’s defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein.

2.05 To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, City may in its discretion back charge Contractor for City’s costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.

2.06 Contractor’s obligations to defend and indemnify City shall survive the termination or completion of this Contract for the full period of time allowed by law.

END OF DOCUMENT
EXHIBIT E

Schedule of Performance

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Execution of Master Project Agreement by YMCA-SV</td>
<td>Prior to December 16, 2019.</td>
</tr>
<tr>
<td>Execution of Master Project Agreement by City</td>
<td>Within three (3) business days after approval of Master Project Agreement by City Council</td>
</tr>
<tr>
<td>Approval of Final Plans for Phase I Improvements</td>
<td>By March 1, 2020.</td>
</tr>
<tr>
<td>City issuance of Bonds to finance Phase 1 Improvements</td>
<td>By March 1, 2020.</td>
</tr>
<tr>
<td>City award of construction contract to construct Phase 1 Improvements</td>
<td>By June 30, 2020</td>
</tr>
<tr>
<td>Commencement of construction of Phase 1 Improvements</td>
<td>Within 60 days after award of construction contract.</td>
</tr>
<tr>
<td>Completion of construction of Phase 1 Improvements</td>
<td>With 18 months after commencement of construction.</td>
</tr>
<tr>
<td>City provides YMCA-SV Written Notice of Demolition of Existing VMSC</td>
<td>At least Ninety (90) days prior to commencement of demolition work.</td>
</tr>
<tr>
<td>and Gift Shop/Administration Building on Project Site.</td>
<td></td>
</tr>
<tr>
<td>Demolition by City of Existing VMSC and Gift Shop/Administration Building on Project Site</td>
<td>Within 18 months after completion of the Phase 1 Improvements.</td>
</tr>
<tr>
<td>YMCA-SV prepares final plans for Phase 2 Improvements and submits plans to City for approval</td>
<td>By September 1, 2023.</td>
</tr>
<tr>
<td>City approval of final plans for Phase 2 Improvements</td>
<td>Within 60 days after City has deemed the application for the Phase 2 Improvements to be complete.</td>
</tr>
<tr>
<td>YMCA-SV notifies City that it has sufficient financing to construct New YMCA and allocable share of Common Area Improvements and all other</td>
<td>By December 1, 2023.</td>
</tr>
</tbody>
</table>
conditions for conveyance of leasehold interest to YMCA Site have been satisfied.

<table>
<thead>
<tr>
<th>Event</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Execution of Ground Lease</td>
<td>Within 30 days after YMCA notification to City that all conditions to execution of Ground Lease have been satisfied, but in any event no later than July 1, 2024</td>
</tr>
<tr>
<td>Commencement of construction of Phase 2 Improvements</td>
<td>Within 60 days after issuance of building permits for Phase 2 Improvements.</td>
</tr>
<tr>
<td>Completion of Phase 2 Improvements</td>
<td>Within 24 months after commencement of construction.</td>
</tr>
<tr>
<td>Close of Escrow for City purchase of Hudson Street Property</td>
<td>Within 45 business days after the issuance of a certificate of occupancy for the New YMCA.</td>
</tr>
</tbody>
</table>

See attached.
EXHIBIT F

Traffic Improvements

The traffic improvements to be installed and constructed in connection with the Project are as follows:

New roundabout at Vera Avenue and Valota Road
New median island and curb extensions at the Valota Road and Madison Avenue intersection
New mini traffic circle at Madison Avenue and Myrtle Street
Expansion of existing traffic circle at Hudson Street and Madison Avenue and removal of two-way stop control on Madison Avenue
EXHIBIT G

Purchase and Sale Agreement

[on following pages]
AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY AND
JOINT ESCRROW INSTRUCTIONS

This Purchase and Sale Agreement and Joint Escrow Instructions (this "Agreement") is made as of _____, 20__ (the "Effective Date"), between THE YMCA OF SILICON VALLEY, a California non-profit corporation ("Seller"), and THE CITY OF REDWOOD CITY, a charter city and California municipal corporation ("Buyer" or "City") who agree as follows:

RECITALS

A. This Agreement is entered into in furtherance of a Master Project Agreement between the City of Redwood City and the YMCA of Silicon Valley, dated ___________ _____, 20__, pursuant to which the City will develop and construct a new Veterans Memorial/Senior Center facility and the YMCA will ground lease (the "Ground Lease") certain property from the City in order to develop and construct a new facility to replace its current facility located at 1445 Hudson Street, Redwood City (the "Existing Facility").

B. Seller intends to continue its operations at the Existing Facility until such time as the new facility (the "New YMCA") is completed, as set forth in the Master Project Agreement. As a result, the close of escrow for the purchase of the Property, as set forth herein, will not occur for some time. However, the Parties understand and agree that the ability to finance and complete construction of the New YMCA is dependent upon the sale of the Property on the terms and conditions set forth in this Agreement.

ARTICLE 1. AGREEMENT OF SALE.

Subject to and on the terms and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller all of the following (collectively, the "Property"):

1.1 Land. The real property which is more particularly described in Exhibit A, together with (a) all privileges, rights, easements and appurtenances belonging to the real property, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the real property, (b) all development rights, air rights, water, water rights and water stock relating to the real property, and (c) all right, title and interest of Seller in and to any streets, alleys, passages, other easements and other rights-of-way or appurtenances included in, adjacent to or used in connection with such real property, before or after the vacation thereof (collectively, the "Land");

1.2 Improvements. Any and all structures, systems, facilities, fixtures, fences and parking areas located on the Land (such as heating and air conditioning systems and facilities used to provide utility services and/or ventilation) and other improvements located upon the Land, including, but not limited to, ______ square feet of building improvements located on ______ acres of land known as the “YMCA of Silicon Valley” located at 1445 Hudson Street, Redwood City, California (collectively, the "Improvements"). The Land and the Improvements are sometimes collectively referred to in this Agreement as the "Property"; Seller shall convey the Property in broom-clean condition with all personal property removed.
ARTICLE 2. PURCHASE PRICE.

2.1 **Amount.** The purchase price (the "**Purchase Price**") for the Property shall be **SEVEN MILLION THREE HUNDRED EIGHT-FOUR THOUSAND DOLLARS** ($7,384,000.00) which shall be adjusted as follows: Beginning on January 1, 2021, and on each January 1 thereafter during the term of this Agreement, the Purchase Price shall be increased based on the percentage increase in single-family home sales prices in the prior 12 months, as such data is compiled by the San Mateo County Association of Realtors (SAMCAR) and presented on its website (https://www.samcar.org/market-data.htm); provided however, that in no event shall the annual increase in the Purchase Price be less than Four Percent (4%) or greater than Seven Percent (7%).

2.2 **Deposit/Purchase Price.** Within Ten (10) business days after the Effective Date, Buyer shall deposit **ONE THOUSAND DOLLARS** ($1,000) into Escrow (as defined below) into an interest-bearing account on behalf of Buyer (the "**Deposit**"). The Deposit shall be refundable to Buyer if this Agreement is terminated under the provisions of Section 9.6 (Default, Termination and Remedies) hereof. If the Closing of the transaction contemplated by this Agreement occurs, the Deposit shall be disbursed to Seller and applied to the Purchase Price at Closing. The failure of Buyer to make the Deposit within the time frame specified in this Section shall be material breach of this Agreement and Seller may terminate the Agreement. Buyer shall pay the Purchase Price to Seller through escrow at the Closing described in Section 9.5 (Buyer's Deposit of Documents and Funds). On or before the Closing Date (as defined in Section 9.1 (Time)), Buyer shall deposit into Escrow the Purchase Price, subject to adjustment by reason of any applicable prorations and the allocation of closing costs, described below. The Deposit and Purchase Price shall be made by wire transfer of federal funds, cashier's check or in another immediately available form.

ARTICLE 3. DUE DILIGENCE.

3.1 **Due Diligence Period; Inspection and Access.**

3.1.1 **Due Diligence Period.** The "**Due Diligence Period**" means the period beginning the later of (a) the Effective Date, or (b) the date on which Buyer has received all of the Due Diligence Documents (defined in Section 3.2) from Seller and ending at 5:00 p.m. on the date Six (6) months later.

3.1.2 **Access to Information and the Property.** Buyer shall conduct its investigation of the Property during the Due Diligence Period at no cost to Seller. This investigation ("**Due Diligence Investigation**") may include, at Buyer's option: a physical inspection of the Land and all Improvements thereon, including soil, geological and other tests, engineering evaluations of the mechanical, electrical, HVAC and other systems in the Improvements and review of the Plans; review of all governmental matters affecting the Property, including zoning, environmental and building permit and occupancy matters; review and verification of all financial and other information previously provided by Seller relating to the operation of the Property; review of the condition of title to the Property, including the building, structural system and roof inspection; and review of such other matters pertaining to an investment in the Property as Buyer deems advisable. In addition to the Due Diligence
Documents delivered to Buyer pursuant to Section 3.2, Buyer and its representatives shall have the right of access during reasonable business hours to all files, books and records maintained by Seller or its agents, wherever located, relating to the Property, including the right to copy the same. Buyer and its representatives shall also have the right of access to the Property during reasonable business hours to conduct its investigation of the physical condition of the Property. Seller agrees that the rights granted to Buyer herein and the results of its Due Diligence Investigation shall not relieve Seller of any obligations Seller may have under any other provisions of this Agreement, or under other documents entered into concurrently herewith, or implied by law, nor shall they constitute a waiver by Buyer of the right to enforce any of the same. Seller shall cooperate with Buyer in its due diligence activities and provide reasonable access to the Property, its records, or provide information so long as it is within Seller's control.

3.2 Delivery of Due Diligence Documents. Within Ninety (90) days after the Effective Date, Seller shall deliver to Buyer, at Seller's expense, all of the documents described in the remaining subsections of this Section 3.2 (collectively, the "Due Diligence Documents") if such Due Diligence Documents are in Seller's possession or control.

3.2.1 Title Report and Survey. A preliminary title report or commitment for title insurance (the "Preliminary Title Report"), dated no earlier than ten (10) days before the Effective Date, covering the Property and issued by a title insurance company or companies acceptable to Buyer (the "Title Company"), together with a legible copy of each document, map and survey referred to in the Preliminary Title Report. Buyer, at Buyer's sole cost, may obtain an as-built survey of the Property (the "Survey") prepared by a certified land surveyor in accordance with the most recent American Land Title Association standards, certified by such surveyor to Buyer and the Title Company;

3.2.2 Plans. Copies of all as-built plans and specifications for the Improvements, including without limitation the plans and specifications for and a complete description of all existing renovations and improvements to the Property and all rentable space therein, and as-built drawings for all underground utilities (collectively, the "Plans");

3.2.3 Soils Report. Any soils report on the Land prepared at Seller's request or in the possession or control of Seller, including (if available) a report on compliance with any soils work recommended to be done prior to construction of the Improvements;

3.2.4 Engineers' Reports. Any structural, mechanical, environmental or geological reports concerning the Property which have been prepared at Seller's request or which are within Seller's possession or control;

3.2.5 Inspection Reports. Copies of all written reports received by Seller within Three (3) years prior to the Effective Date from Seller's insurance companies, any governmental agency or any other person or entity, which requires or demands correction of any condition, or requests modification in or termination of any uses of the Property, accompanied by Seller's summary of (a) any oral reports from such insurance companies or governmental agencies, and (b) the present status of any matter noted in any oral or written report, any asbestos assessments or reports or Phase 1 investigations.
3.2.6 Agreements. Copies of written, and written descriptions of oral, easements, covenants, restrictions, agreements, contracts and other documents, whether existing or, to the knowledge of Seller, proposed as of the Effective Date, including without limitation any agreements relating to the leasing or management of the Property, which (a) affect the Property, (b) are not disclosed by the Preliminary Title Report. If no such documents exist, Seller shall furnish its certification to that effect; and

3.2.7 Requested Information. Such other documents and information concerning the Property as Buyer may reasonably request.

3.3 Approval/Disapproval of Due Diligence Investigations. Buyer shall approve or disapprove the results of Buyer's Due Diligence Investigation, in the exercise of Buyer's sole discretion, by written notice delivered to Seller no later than the expiration of the Due Diligence Period. Buyer's disapproval shall terminate this Agreement unless, at the time Buyer gives notice of its disapproval, Buyer also notifies Seller of Buyer's desire to enter into negotiations with Seller for the purpose of reaching an accommodation concerning the disapproval. If Buyer so notifies Seller and the parties have not reached a written agreement satisfactory to both of them regarding the disapproval within Ten (10) days after the date of the disapproval notice, Buyer, at its option, may either (a) elect to terminate this Agreement by so notifying Seller and recover the Deposit, or (b) elect to proceed with the transactions contemplated by this Agreement notwithstanding its earlier disapproval. If Buyer fails to deliver to Seller notice of its approval or disapproval of the results of its Due Diligence Investigation, Buyer shall be deemed to have disapproved such results. If Buyer elects to terminate the Agreement, Buyer shall return to Seller all of the documents previously delivered by Seller to Buyer within Five (5) business days of such termination.

3.4 Title Review.

3.4.1 Monetary Liens. At its expense, Seller shall remove all liens on the Property at or prior to the Closing (collectively, "Monetary Liens"): (i) all delinquent taxes, bonds and assessments and interest and penalties thereon (it being agreed that Seller shall not be required to remove any non-delinquent taxes and assessments imposed by any governmental agency that are paid with the property taxes for the Property); and (ii) all other monetary liens, including without limitation all those shown on the Preliminary Title Report (including judgment and mechanics' liens, whether or not liquidated, and mortgages and deeds of trust, with Seller being fully responsible for any fees or penalties incurred in connection therewith).

3.4.2 Approval/Disapproval of Title Review. Buyer shall approve or disapprove of the Preliminary Title Report, the Survey and any exceptions to title shown thereon (other than the Monetary Liens) in the exercise of Buyer's sole discretion, by the expiration of the Due Diligence Period. If Buyer disapproves, Buyer may either (a) terminate this Agreement by giving Seller written notice of termination or (b) give Seller a written notice ("Disapproval Notice") identifying the disapproved title matters ("Disapproved Title Matters"). With respect to any Disapproved Title Matters, other than the Monetary Liens, Seller shall notify Buyer in writing within five (5) days after Seller's receipt of the Disapproval Notice whether Seller will cause the Disapproved Title Matters to be removed or cured at or prior to Closing. If Seller elects not to remove or cure all Disapproved Title Matters, Buyer may, at its option: (i) subject
to satisfaction of the other conditions to Closing, close the purchase of the Property and take title subject to the Disapproved Title Matters which Seller elects not to remove or cure; or (i) terminate this Agreement in accordance with Section 9.6.1 (Buyer's Termination).

3.4.3 **Buyer's Options.** If any Disapproved Title Matters (including the Monetary Liens) have not been removed at least five (5) days prior to Closing or provision for their removal at the Closing has not been made to Buyer's satisfaction, Buyer may, at its option: (i) close the purchase of the Property and take title subject to the Disapproved Title Matters which have not been removed; (ii) close the purchase of the Property and cure or remove the Disapproved Title Matters which have not been removed. Buyer may credit the costs of such cure or removal against the Purchase Price by reducing the amount of cash payable by Buyer at the Closing, but only to the extent such costs are expended to remove (A) Monetary Liens referred to in Section 3.4.1 or (B) Disapproved Title Matters which Seller agreed to remove; or (iii) terminate this Agreement in accordance with Section 9.6.1 (Buyer's Termination).

3.4.4 **Failure to Disapprove.** If Buyer fails to notify Seller of its approval or disapproval of the Preliminary Title Report, the Survey or the exceptions shown thereon by the end of the Due Diligence Period, then Buyer shall be deemed to have disapproved the same.

**ARTICLE 4. CONDITIONS PRECEDENT.**

4.1 **Buyer's Conditions.** Buyer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 4.1 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or in part by Buyer by written notice to Seller.

4.1.1 **Due Diligence.** Buyer having approved of the results of its Due Diligence Investigation pursuant to Section 3.3 (Approval/Disapproval of Due Diligence Investigations);

4.1.2 **Title Review.** Buyer having approved of the results of its review of title pursuant to Section 3.4.

4.1.3 **Title Policy.** Seller having caused the Title Company to deliver to Buyer (a) a CLTA Owner's policy of title insurance, provided that Buyer may require an ALTA Owner's Policy if Buyer pays the incremental premium for ALTA coverage ("Title Policy") (or at Buyer's election a binder therefor) for the Property, or (b) the Title Company's irrevocable commitment to issue such policy of title insurance, (including such coinsurance, reinsurance and endorsements as Buyer shall require), with liability equal to the Purchase Price showing fee title to the Property vested in Buyer and subject only to: (i) the matters and exceptions which were approved by Buyer pursuant to Section 3.4 (Title Review); and (ii) the standard printed exceptions in the form of title policy called for (collectively, "Conditions of Title").

4.1.4 **Performance of Covenants.** Seller performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Seller prior to or at the Closing.

4.1.5 **Representations and Warranties.** The representations and warranties of Seller set forth in Article 5 being true and accurate on the Closing Date, as if made on such date.
4.1.6 **Non-Foreign Certification.** Seller having executed and delivered to Buyer on or prior to the Closing Date a certification (the "**Non-Foreign Certification**"), substantially in the form of **Exhibit B**.

4.1.7 **California Certification.** Seller having furnished the residency certification required pursuant to Sections 18805 and 26131 of the California Revenue and Taxation Code or having authorized Escrow Holder in writing to withhold from the Purchase Price the amounts required to be withheld by such Sections.

4.1.8 **Ground Lease.** The Seller, as YMCA, and the Buyer, as City, have entered into the Ground Lease, as set forth in the Master Project Agreement, and construction of the New YMCA has commenced.

4.2 **Seller's Conditions.** Seller's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 4.2 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or part by Seller by written notice to Buyer.

4.2.1 **Covenants.** Buyer performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Buyer prior to or at the Closing.

4.2.2 **Representations and Warranties.** The representations of Buyer set forth in Article 6 being true and accurate on the Closing Date, as if made on such date.

4.2.3 **Ground Lease.** The Seller, as YMCA, and the Buyer, as City, have entered into the Ground Lease, as set forth in the Master Project Agreement, and City has issued a certificate of occupancy for the New YMCA.

**ARTICLE 5. SELLER'S REPRESENTATIONS AND WARRANTIES.**

To the Best of Seller’s knowledge, Seller hereby makes the following representations and warranties to Buyer with the understanding that each such representation and warranty is material and is being relied upon by Buyer:

5.1 **Defects.** The Improvements are in moderate condition and repair and are, to the best of Seller’s knowledge, free of any latent or patent design, construction, physical or mechanical defects and there is no known settlement, earth movement, or termite infestation affecting the Property.

5.2 **Documents.** All of the Due Diligence Documents which have been delivered or made available to Buyer pursuant to Article 3, and all other documents delivered to Buyer by or on behalf of Seller (a) are true, correct and complete copies of what they purport to be, (b) represent truly the factual matters stated therein, (c) are in full force and effect, (d) have not been modified, except as set forth therein and (e) do not omit any information required to make the submission thereof accurate and complete in all material respects.
5.3 Taxes and Condemnation. Except as disclosed in writing by Seller prior to expiration of the Due Diligence Period, there are no presently pending or contemplated special taxes or assessments which will affect the Property. There are no presently pending or, to Seller's knowledge, contemplated proceedings to condemn or demolish the Property or any part of it.

5.4 Utilities. To the best of Seller's knowledge, all water, sewer, gas, electric, telephone and drainage facilities, and all other utilities required by law or by the normal operation of the Property, are (a) installed to the property lines of the Property, (b) connected to the Property, (c) adequate to service the Property in its present use and to permit full compliance with all requirements of law and normal usage by the occupants of the Property and (d) in good working order and repair.

5.5 Licenses. To the best of Seller's knowledge, Seller has all required licenses, permits (including, without limitation, all building permits and occupancy permits), easements and rights-of-way which are required in order to continue the present use of the Property. Seller has no knowledge of any law or regulation of any governmental authority having jurisdiction which might require the Property to be improved beyond its present state or which might restrict the use and enjoyment of the Property in the manner it is presently being used and enjoyed.

5.6 Contracts/Leases/Occupancy Rights. Except for the existing service contracts and leases which shall be terminated prior to Closing, there are no agreements or other obligations to which Seller is party or, to Seller's knowledge, by which it or the Property is bound which may affect the current use of the Property. Seller shall terminate all contracts, leases and/or rights to occupy and/or use the Property, as the case may be, prior to Closing.

5.7 Litigation. To Seller's knowledge, there are no actions, suits, proceedings, judgments, orders, decrees or governmental investigations pending or threatened against the Property or Seller which could affect the Property or the purchase, use or enjoyment thereof by Buyer.

5.8 Agreements with Governmental Authorities. To Seller's knowledge, there are no agreements with governmental authorities, agencies, utilities or quasi-governmental entities which affect the Property except the Master Project Agreement, the Ground Lease and those agreements which are identified in the Preliminary Title Report and those matters which are disclosed by the Survey.

5.9 Hazardous Materials.

5.9.1 Definitions. For purposes of this Agreement:

(Cal. H&S Code Sections 25300 et seq.), and the California Water Code Sections 1300, et seq.,
as said laws have been supplemented or amended to date, the regulations promulgated pursuant
to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which
regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or Release or
threatened Release into the environment of Hazardous Material.

(b) "Hazardous Material" means any substance which is
(i) designated, defined, classified or regulated as a hazardous substance, hazardous material,
hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect
or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any
fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable
explosives, (vii) infectious materials or (viii) radioactive materials.

(c) "Release" means any spilling, leaking, pumping, pouring, emitting,
discharging, injecting, escaping, leaching, dumping or disposing into the environment of any
Hazardous Material (including the abandonment or discarding of barrels, containers, and other
receptacles containing any Hazardous Material).

5.9.2 Representations. Except as otherwise disclosed in writing to Buyer, Thirty
(30) days prior to the Effective Date:

(a) To the best of Seller's knowledge, Seller has not received any
written notice of violation issued pursuant to any Environmental Law with respect to the
Property or any use or condition thereof.

(b) To the best of Seller's knowledge, Seller has not used, handled,
stored, transported, released or disposed of any Hazardous Material on, under or from the
Property in violation of any Environmental Law.

(c) To the best of Seller's knowledge there exists no writ, injunction,
decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive,
summons or investigation pending or, to Seller's knowledge, threatened pursuant to any
Environmental Law relating to (i) the ownership, occupancy or use of any portion of the Property
by Seller or occupant or user of any portion of the Property, (ii) any alleged violation of any
Environmental Law by Seller or occupant or user of any portion of the Property, or (iii) the
suspected presence, Release or threatened Release of any Hazardous Material on, under, in or
from any portion of the Property.

(d) To the best of Seller's knowledge, no asbestos abatement or
remediation work has been performed on the Property.

(e) To the best of Seller's knowledge, there is no PCB-containing
equipment or PCB-containing material located on or in the Property.

5.10 Title to the Property. Seller has good and marketable title to the Property, subject
to the Conditions of Title. There are no outstanding rights of first refusal or first look, options to
purchase, rights of reverter, or claim of right relating to the transfer or sale of the Property or any
interest therein. To Seller's knowledge, there are no unrecorded or undisclosed documents or
other matters which affect title to the Property. No person holding a security interest in the Property or any part thereof has the right to consent or deny consent to the sale of the Property as contemplated herein, and Seller has the right to pay off such person and to remove all such liens as of the Closing Date. Seller has enjoyed the continuous and uninterrupted quiet possession, use and operation of the Property.

5.11 Seller's Authority. Seller has the requisite power and authority to own and operate the Property and conduct its business where the same is now owned or operated. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Seller (or its board of directors or shareholders) in order to consummate the transactions contemplated herein. This Agreement and the other documents executed by Seller in connection herewith are legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement by Seller, nor performance of any of its obligations hereunder, nor consummation of the transactions contemplated hereby, shall conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which Seller was organized, or any indenture, mortgage, deed of trust, agreement, undertaking, instrument or document to which Seller or any affiliate thereof is a party or is bound, or any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over Seller.

5.12 Foreign Person. Seller is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code.

5.13 Misstatements and Omissions. Neither the representations and warranties made by Seller in this Article 5 nor elsewhere in this Agreement contain any untrue statement or any omission of a material fact.

ARTICLE 6. BUYER'S REPRESENTATIONS AND WARRANTIES.

Buyer makes the following representation and warranties to Seller with the understanding that each such representation and warranty is material and is being relied upon by Seller:

6.1 Buyer's Authority. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Buyer in order to consummate the transactions contemplated herein.

6.2 No Conflict. Neither the execution nor delivery of this Agreement by Buyer, nor performance of any of its obligations hereunder, nor consummation of the transactions contemplated hereby, shall conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which Buyer was organized, or any agreement to which Buyer is a party or is bound, or any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over Buyer.
6.3 Misstatements and Omissions. Neither the representations and warranties made by Buyer in this Article 6 nor elsewhere in this Agreement contain any untrue statement or any omission of a material fact.

ARTICLE 7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND INDEMNIFICATION.

7.1 Survival of Warranties. Buyer and Seller agree that each representation and warranty in Articles 5 and 6, respectively, shall survive the Closing Date and shall not merge with the delivery to Buyer of the Grant Deed.

7.2 Notice of Changed Circumstances. If either party becomes aware of any fact or circumstances which would render false or misleading a representation or warranty made by such party, then it shall immediately give notice of such fact or circumstance to the other party, but such notice shall not relieve any party of any liabilities or obligations with respect to any representation or warranty.

7.3 Indemnification.

7.3.1 Seller's Indemnity. Seller's obligations pursuant to this Section 7.3.1 shall survive the Closing. Seller at its sole cost and expense hereby agrees to indemnify, defend (with counsel acceptable to Buyer), protect and hold harmless Buyer, from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action and compliance requirements, enforcement and clean-up actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, actual attorneys' fees and costs of defense and costs and expenses of all experts and consultants (collectively, the "Losses"), arising directly or indirectly, in whole or in part, out of any one or more of the following:

(a) the breach or alleged breach of any covenant of Seller contained in this Agreement or the inaccuracy or alleged inaccuracy of any representation or warranty of Seller contained in this Agreement;

(b) Seller's ownership of the Property or the operation of the Property prior to the Closing Date; or

(c) the presence on, in or under the Property of any Hazardous Material on or before the Closing Date, any Release of any Hazardous Material, on, under or from the Property prior to the Closing Date or the use, generation, manufacturing, production, handling, storage, transport, discharge or disposal of any such Hazardous Materials on or before the Closing Date, from, under or about the Property, irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Law or other applicable laws, regulations, codes and ordinances. The indemnity contained in this paragraph (c) shall further apply, without limitation, to: (i) all residual contamination and contamination affecting any natural resources; (ii) all consequential damages; (iii) the costs of any required remediation or removal work on the Property, including, without limitation: (A) costs of remediation or removal incurred by the United States Government or the State or any other person; and (B) fines or penalties which arise from the provisions of any statute, state or federal; and (iv) liability for
personal injury or property damage arising under any statutory or common-law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of an abnormally dangerous activity.

7.3.2 Buyer's Indemnity. Buyer's obligations pursuant to this Section 7.3.2 shall survive the Closing. Buyer at its sole cost and expense hereby agrees to indemnify, defend (with counsel acceptable to Buyer), protect and hold harmless Seller, and their respective directors, officers and agents from and against any and all Losses, arising directly or indirectly, in whole or in part, out of any one or more of the following:

(a) the breach or alleged breach of any covenant of Buyer contained in this Agreement or the inaccuracy or alleged inaccuracy of any representation or warranty of Buyer contained in this Agreement;

(b) Buyer's ownership of the Property or the operation of the Property after the Closing Date; or

(c) the presence on, in or under the Property of any Hazardous Material after the Closing Date, any Release of any Hazardous Material, on, under or from the Property after the Closing Date or the use, generation, manufacturing, production, handling, storage, transport, discharge or disposal of any such Hazardous Materials after the Closing Date, from, under or about the Property, irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Law or other applicable laws, regulations, codes and ordinances. The indemnity contained in this paragraph (c) shall further apply, without limitation, to: (i) all residual contamination and contamination affecting any natural resources; (ii) all consequential damages; (iii) the costs of any required remediation or removal work on the Property, including, without limitation: (A) costs of remediation or removal incurred by the United States Government or the State or any other person; and (B) fines or penalties which arise from the provisions of any statute, state or federal; and (iv) liability for personal injury or property damage arising under any statutory or common-law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of an abnormally dangerous activity.

ARTICLE 8. SELLER'S PRECLOSING COVENANTS.

Seller shall comply with the covenants contained in this Article 8 from the Effective Date through the Closing Date unless Buyer consents otherwise in writing. Buyer may grant or withhold any such consent requested by Seller in Buyer's sole discretion.

8.1 Contracts and Documents. Seller shall not, without Buyer's approval, not to be unreasonably withheld or delayed, (a) amend or waive any right under any of the Due Diligence Documents; or (b) enter into any material agreement of any type affecting the Property that would survive the Closing and shall cancel any service or other contracts which would survive Closing.

8.2 Insurance. Seller shall maintain or cause to be maintained in full force and effect its present insurance policies for the Property.
8.3 Compliance with Obligations. Seller shall fully and timely comply with all obligations to be performed by it under all existing service and operating contracts which currently bind the Property until Closing, the other Due Diligence Documents, the Conditions of Title and all permits, licenses, approvals and laws, regulations and orders applicable to the Property.

8.4 No Transfers. Seller shall not sell, encumber or otherwise transfer any interest in all or any portion of the Property, or agree to do so.

8.5 Maintenance. At its sole cost and expense, Seller shall operate and maintain the Property such that on the Closing Date the Property shall be in at least as good a condition and repair as on the Effective Date, reasonable wear and tear excepted. Without limiting the generality of the foregoing, Seller shall, at a minimum, spend such amounts for repair and maintenance as are consistent with its prior practice. Seller shall promptly advise Buyer of any significant repair or improvement required to keep the Property in such condition. Seller shall not make any material alterations to the Property.

8.6 Best Efforts. Seller shall use its best efforts to cause the conditions set forth in Section 4.1 (Buyer's Conditions) to be satisfied by the Closing Date, and Seller shall not take or permit any action that would result in any of the representations and warranties set forth in Article 5 becoming false or incorrect.

ARTICLE 9. CLOSING.

9.1 Time. Seller shall provide Buyer with at least Ninety (90) days' advance written notice of when it is prepared to close escrow for the conveyance of title to the Property to the Buyer; provided however, that all conditions set forth in Article 4 (Conditions Precedent) have been either satisfied or waived. The parties shall close this transaction (the "Closing") in accordance with the Master Project Agreement and, when the parties notify the Escrow Holder (the "Closing Date") but in no event shall the Closing Date occur later than Forty-Five (45) days form the receipt of a certification of occupancy for the New YMCA, as such date may be extended by the provisions of Article 10 of this Agreement.

9.2 Escrow. This Article 9, together with such additional instructions as

_________________, ______________, California

_________________, ______________ ("Escrow Holder"), shall reasonably request and the parties shall agree to, shall constitute the escrow instructions to Escrow Holder. If there is any inconsistency between this Agreement and the Escrow Holder's additional escrow instructions, this Agreement shall control unless the intent to amend this Agreement is clearly stated in said additional instructions. Buyer and Seller shall cause Escrow Holder to execute and deliver a counterpart of this Agreement to each of them. If the Title Company does not serve as the Escrow Holder, the Title Company shall provide a letter to Buyer, in form and content acceptable to Buyer, pursuant to which the Title Company accepts responsibility and liability for the acts and omissions of Escrow Holder in discharging Escrow Holder's obligations hereunder, including, without limitation, any acts or omissions of Escrow Holder relating to the Title Company's commitment to issue the Title Policy, the receipt, recording or delivery of any documents placed into escrow, and the receipt and disbursement of any funds placed into escrow.
9.3 **Seller's Deposit of Documents and Funds Into Escrow.** Seller shall deposit into escrow on or before Closing the following documents:

9.3.1 A duly executed and acknowledged grant deed, in the form acceptable to Buyer, conveying the Property to Buyer ("Grant Deed") in the form attached as **Exhibit C**;

9.3.2 A certificate executed by Seller stating that all representations and warranties made by Seller pursuant to this Agreement are true and correct as of the Closing Date ("Seller's Certificate");

9.3.3 Buyer shall pay for the CLTA increment of the premium for the Title Policy and Seller shall pay all other costs of Closing, including recording fees, transfer taxes and fees, one-half of the escrow fees, sales tax and any other costs of Closing customarily paid by sellers of real property, plus or minus prorations as provided in Section 9.8 (Prorations); provided that, subject to Section 9.6 (Default, Termination and Remedies), Buyer and Seller shall bear their own attorneys' fees and costs in connection with the negotiation and preparation of this Agreement and the transactions completed by this Agreement;

9.3.4 **Seller's Non-foreign Certification;**

9.3.5 All records and files relating to the management or operation of the Property, including, without limitation, property tax bills, insurance, and property taxes; and

9.3.6 Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.4 **Deliveries Outside of Escrow.** Notwithstanding Section 9.3 (Seller's Deposit of Documents and Funds Into Escrow), Seller and Buyer may elect to deliver the documents described in Section 9.3 outside of escrow (other than documents which are to be recorded) by giving Escrow Holder a joint written notice of such election, specifying the documents which will be so delivered outside of escrow. Upon receipt of such notice, Escrow Holder shall have no further obligation concerning such specified documents.

9.5 **Buyer's Deposit of Documents and Funds.** Buyer shall deposit into escrow:

9.5.1 The Purchase Price in accordance with the provisions of Article 2, plus or minus prorations as provided in Section 9.8 (Prorations), by cashier's or certified check or electronic transfer of federal funds to Escrow Holder, on or before the Closing Date; and

9.5.2 Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.6 **Default, Termination and Remedies.**

9.6.1 **Buyer's Termination.** This Agreement shall automatically terminate without further notice or action by Buyer upon the occurrence of any of the following events,
provided that Buyer is not then in material breach of this Agreement: (a) Seller has notified Buyer that it does not intend to develop the New YMCA, as set forth in the Master Project Agreement and the parties have terminated the Master Project Agreement; or (b) any condition to Closing contained in Section 4.1 (Buyer’s Conditions) has not been satisfied or waived by Buyer by the Closing Date; or (b) Buyer having exercised its right to terminate this Agreement pursuant to Section 3.3 (Approval/Disapproval of Due Diligence Investigation), Section 3.4 (Title Review) or Article 10 (Damage, Destruction and Condemnation). In such event, the parties shall have no further obligation to each other except for those obligations that specifically survive the termination of this Agreement. If this Agreement terminates as a result of Seller’s material breach of this Agreement, Buyer shall have all remedies it may have hereunder or at law as a result of such occurrence, including the remedy of specific performance.

9.6.2 Seller’s Termination. Provided that Seller is not then in material breach of this Agreement, this Agreement shall automatically terminate without further notice or action by Seller if any condition to Closing contained in Section 4.2 (Seller’s Conditions) has not been satisfied or waived by Seller by the Closing Date.

9.6.3 Release from Escrow. Upon termination of this Agreement pursuant to Section 9.6.1 (Buyer’s Termination) or 9.6.2 (Seller’s Termination), Escrow Holder shall promptly return to Buyer and Seller, respectively, all documents and monies deposited by them into escrow without prejudice to their rights and remedies hereunder.

9.6.4 Remedies.

(a) Buyer’s Remedies. If Seller breaches this Agreement, Buyer shall be entitled to pursue all remedies permitted herein and by law, including the remedy of specific performance. No termination of the escrow by Buyer following a breach by Seller shall be deemed to waive such breach or any remedy otherwise available to Buyer.

(b) Seller’s Remedies. If Seller’s conditions precedent have been satisfied, and Closing does not occur due to failure of Buyer to meet its obligations or the fulfillment of any Buyer’s obligations contained herein, Seller may pursue all remedies permitted herein and by law, including the remedy of specific performance.

(c) Termination after Six (6) Years. If the transaction contemplated herein does not close within Six (6) years from the Effective Date, either party may terminate this Agreement with notice to the other, Buyer may receive a refund of its deposit from Seller and neither party shall have any further obligation to each other.

9.7 Closing. When Escrow Holder has received all documents and funds identified in Sections 9.3 (Seller’s Deposit of Documents and Funds Into Escrow) and 9.5 (Buyer’s Deposit of Documents and Funds), has received notification from Buyer and Seller that all conditions to Closing to be satisfied outside of escrow have been satisfied or waived and Title Company is irrevocably committed to issue the Title Policy, then, and only then, Escrow Holder shall:

9.7.1 Record the Grant Deed;

9.7.2 Cause the Title Company to issue the Title Policy to Buyer;
9.7.3 To the extent not otherwise delivered to Buyer outside of escrow, deliver to Buyer: (a) a conformed copy (showing all recording information thereon) of the Grant Deed; (b) fully executed original counterparts of the Bill of Sale, the General Assignment; and (c) the Seller's Certificate, and the Non-foreign Certification;

9.7.4 Deliver the Purchase Price (as adjusted pursuant to Section 9.8 (Prorations)) to Seller.

Escrow Holder shall prepare and sign closing statements showing all receipts and disbursements and deliver copies to Buyer and Seller and, if applicable, shall file with the Internal Revenue Service (with copies to Buyer and Seller) the reporting statement required under Section 6045(e) of the Internal Revenue Code.

9.8 Prorations. Subject to the other provisions of this Section 9.8, all receipts and disbursements of the Property will be prorated as of 11:59 p.m. on the day immediately preceding the Closing Date. Not less than Five (5) business days prior to the Closing, Seller shall submit to Buyer for its approval a tentative prorations schedule showing the categories and amounts of all prorations proposed. The parties shall agree on a final prorations schedule prior to the Closing and shall deliver the same to Escrow Holder. If following the Closing either party discovers an error in the prorations statement, it shall notify the other party and the parties shall promptly make any adjustment required.

9.8.1 Capital Expenditures and Accounts Payable. All capital and other improvements (including labor and material) which have been performed or contracted for, by or on behalf of Seller prior to the Closing Date, and all sums due for accounts payable which have been incurred with respect to the Property prior to the Closing Date shall be paid by Seller and shall be subject to the indemnification provisions of Section 7.3 (Indemnification). Buyer shall furnish to Seller for payment any bills for such period received after the Closing Date, and Buyer shall have no further obligation with respect thereto.

9.8.2 Property Taxes. All real and personal property ad valorem taxes and special assessments, if any, whether payable in installments or not, including without limitation, all supplemental taxes attributable to the period prior to the Closing Date for the calendar year in which the Closing occurs, shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation. If the amount of any installment of real property taxes is not known as of the Closing Date, then a proration shall be made by the parties based on a reasonable estimate of the real property taxes applicable to the Property and the parties shall adjust the proration when the actual amount becomes known upon the written request of either party made to the other.

9.8.3 Utility Charges. All utility charges shall be prorated as of the Closing Date and Seller shall obtain a final billing therefor. All utility security deposits, if any, shall be retained by Seller.

9.9 Possession. Seller shall deliver exclusive right of possession of the Property to Buyer on the Closing Date, subject only to the Conditions of Title.
ARTICLE 10. DAMAGE, DESTRUCTION AND CONDEMNATION.

This Agreement shall be governed by the Uniform Vendor and Purchaser Risk Act as set forth in Section 1662 of the California Civil Code as supplemented and modified by this Article 10. Seller shall promptly notify Buyer in writing of any material damage to the Property and of any taking or threatened taking of all or any portion of the Property. Within a reasonable period of time after receipt of such notice, Buyer shall determine whether a material part of the Property has been damaged or whether such taking or threatened taking has affected or will affect a material part of the Property. As used herein, (a) the destruction of a "material part" of the Property shall be deemed to mean an insured or uninsured casualty to the Property having an estimated cost of repair which in the reasonable judgment of Buyer equals or exceeds $200,000; and (b) a taking by eminent domain of a portion of the Property shall be deemed to affect a "material part" of the Property if in the reasonable judgment of Buyer the estimated value of the portion of the Property taken exceeds Five Hundred Thousand Dollars ($500,000.00). Upon making its determination, Buyer shall notify Seller in writing of the results of such determination. Buyer may elect, by written notice delivered to Seller within 30 days after giving Seller notice of such determination, to terminate this Agreement in accordance with Section 9.6.1 (Buyer's Termination) if a material part of the Property has been damaged or if such taking has affected or will affect a material part of the Property. If Buyer does not so terminate, (i) in the case of damage to a material part of the Property, Seller shall assign to Buyer at the Closing its right to recover under any insurance policies covering such damage and shall pay Buyer at the Closing the amount of the deductible, if any, and (ii) in the case of a threatened or actual taking of a material part of the Property, Seller shall assign to Buyer at the Closing Seller's entire right, title and interest in the proceeds thereof. If between the Effective Date and the Closing Date the Property suffers damage which is not material, Seller shall repair such damage at its expense prior to the Closing, and the Closing Date shall be extended for a reasonable period of time not to exceed 30 days to allow for completion of such repairs. The Closing Date shall be extended as necessary to permit Buyer to exercise its rights under this Article 10.

ARTICLE 11. GENERAL.

11.1 Notices. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) when personally delivered to the recipient at the recipient's address set forth below; (b) five business days after deposit in a sealed envelope in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below; or (c) one business day after deposit with a recognized overnight courier or delivery service, addressed to the recipient as set forth below, whichever is earlier. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday.
The addresses for notice are:

SELLER: YMCA OF SILICON VALLEY.
Attn: Sasandra Berlin Walker, President and CEO
80 Saratoga Avenue
Santa Clara, CA 95051
Tel: (408) 351-6450
Email: dfisch@ymcasv.org

With copies to:
David Fisch, Vice-President of Property
YMCA of Silicon alley
80 Saratoga Avenue
Santa Clara, CA 95051
Tel: (408) 351-6450
E-Mail: dfisch@ymcasv.org

Ira Holtzman, Chief Financial Officer
YMCA of Silicon Valley
80 Saratoga Avenue
Santa Clara, CA 95051
Tel: (408) 351-6450
E-Mail: ira.holtzman@ymcasv.org

Jorgenson, Siegel, McClure & Flegel, LLC.
Attn: Mindie S. Romanowsky, Attorney for Seller
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Tel: (650) 324-9300
E-mail: msr@jsmf.com

BUYER: City of Redwood City
Attn: Melissa Stevenson Diaz, City Manager
1017 Middlefield Road
Redwood City, CA 94063
Phone: (650) 780-7301
Email: mdiaz@redwoodcity.org

With a copy to: City of Redwood City
Attn: Veronica Ramirez, City Attorney
1017 Middlefield Road
Redwood City, CA 94063
Phone: (650) 780-7200
Email: vramirez@redwoodcity.org
Either party may change its address by written notice to the other given in the manner set forth above.

11.2 Entire Agreement. This Agreement and the Exhibits hereto contain the entire agreement and understanding between Buyer and Seller concerning the subject matter of this Agreement and supersede all prior agreements, including any previous letter of intent or terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or Seller concerning the Property or the other matters which are the subject of this Agreement.

11.3 Amendments and Waivers. No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party.

11.4 Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

11.5 References. Unless otherwise indicated, (a) all Article, Section and Exhibit references are to the articles, sections, schedules and exhibits of this Agreement, and (b) all references to days are to calendar days. All the Exhibits attached hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or California state holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

11.6 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed in California. Any action regarding this Agreement shall be brought in the Superior Court of San Mateo County.

11.7 Confidentiality and Publicity. The parties shall at all times keep this transaction and any documents received from each other confidential, except to the extent necessary to (a) comply with applicable law and regulations, or (b) carry out the obligations set forth in this Agreement. Any such disclosure to third parties shall indicate that the information is confidential and should be so treated by the third party. No press release or other public disclosure may be made by Seller or any of its agents concerning this transaction without the prior consent of Buyer.
11.8 **Time.** Time is of the essence in the performance of the parties' respective obligations under this Agreement.

11.9 **Attorneys' Fees.** In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith.

11.10 **Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However, Seller shall not have the right to assign all or any portion of its interest in this Agreement without Buyer's prior written consent. Buyer shall have the right to assign all or any portion of its interest in this Agreement, or substitute for itself a nominee, upon notice to Seller not later than three days prior to the Closing Date.

11.11 **Further Assurances.** Seller, at any time before or after Closing, shall, at its own expense, execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by Buyer and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of transferring and confirming to Buyer, or reducing to Buyer's possession, any or all of the Property or otherwise carrying out the terms of this Agreement.

11.12 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over against any party to this Agreement.

11.13 **Remedies Cumulative.** The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party.

11.14 **Commissions, Indemnity, Disclosure.** Each party represents to the other party that there is no broker representing such party in the current transaction, and that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the transactions contemplated by this Agreement. Seller shall be responsible for any broker commission associated with this purchase. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including without limitation attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 11.14 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.
11.15 **Counterparts/Facsimile/PDF Signatures.** This Agreement may be executed in counterparts and when so executed by the parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument that shall be binding upon the parties, notwithstanding that the parties may not be signatories to the same counterpart or counterparts. The parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart. In order to expedite the transaction contemplated herein, facsimile or.pdf signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile or.pdf document, are aware that the other party will rely on the facsimile or.pdf signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the Effective Date.

**BUYER:**

CITY OF REDWOOD CITY, a charter city and California municipal corporation

By______________________________

Melissa Stevenson Diaz, City Manager

**ATTEST:**

By:______________________________

Pamela Aguilar, City Clerk

**APPROVED AS TO FORM:**

By:______________________________

Veronica Ramirez, City Attorney

**SELLER:**

THE YMCA OF SILICON VALLEY, a California non-profit corporation

By______________________________

Its______________________________
APPROVED AS TO FORM:
Jorgenson, Siegel, McClure & Flegel LLP

By:__________________________
   Mindie S. Romanowsky

Acceptance by Escrow Holder

Escrow Holder acknowledges receipt of the foregoing Agreement and accepts the
instructions contained therein.

Dated: _________________, 20__

By:__________________________

Name:_______________________

Title:_______________________
EXHIBIT A
LAND DESCRIPTION
EXHIBIT B

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), provides
that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign
person. To inform the CITY OF REDWOOD CITY, a California municipal corporation (the
"Transferee"), that withholding of tax under Section 1445 of the Code will not be required upon
the transfer of a U.S. real property interest to the Transferee by ________________ (the
"Transferor"), the undersigned hereby certifies the following on behalf of the Transferor;

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust or
foreign estate (as those terms are defined in the Code and the Income Tax Regulations
promulgated thereunder);

2. The Transferor's U.S. employer identification number is ________________; and

3. The Transferor's office address is ________________________________.

The Transferor understands that this Certificate may be disclosed to the Internal Revenue
Service by the Transferee and that any false statement contained herein could be punished by
fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and, to the best
of my knowledge and belief, it is true, correct and complete, and I further declare that I have
authority to sign this document on behalf of the Transferor.

DATED: _______________, 20__.

____________________, a California corporation

By: ______________________________________

Name: ____________________________________

Title: ____________________________________
EXHIBIT C

FORM OF GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

City of ______________________

__________________________, CA
ATTN: City Clerk

EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE SECTION 27383

APN: ______________________

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

The undersigned Grantor(s) declare(s): City of ______________________ is exempt from property taxes

Documentary transfer tax is $__________.
☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens and encumbrances remaining at time of sale.
☐ Unincorporated area ☒ City of ______________________ and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

hereby GRANT(S) to

the following described real property in the City of ______________________

County of ______________________

State of California:

SEE ATTACHED EXHIBIT A

Dated: ______________, 20___

By: ______________________
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )
COUNTY OF _________________________ )

On ______, 20__ before me, ______________________________, Notary Public, personally appeared ______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: ________________________________  (seal)
CERTIFICATE OF ACCEPTANCE

Pursuant to Section 27281 of the
California Government Code

This is to certify that the interest in real property conveyed by the Grant Deed dated
, 20 , from , to the
City of Redwood City, a municipal corporation, is hereby accepted by the undersigned officer
on behalf of the City of Redwood City, pursuant to the authority conferred by Resolution No.
, adopted by the City Council of the City of Redwood City on ,
and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: , 20

CITY OF REDWOOD CITY

By: 
EXHIBIT H

YMCA-SV Community Benefits

COMMUNITY BENEFITS

Over and above the creation of the community-oriented facilities, the following community benefits are intended for the Project:

- Open community swim for City residents every first Sunday of each month (hours TBD)
- Free quarterly education seminars and workshops which could include, but not limited to Nutrition, Wellness, open to RWC residents
- Quarterly “YMCA-SV Open House” days for City residents at the New YMCA
- CPR/AED training open to RWC resident enrollment
- Senior Rates
- Veteran rates (preferred group rate - % reduction TBD)
- Scholarships and Financial Assistance for those who qualify
- Joint Redwood City and YMCA Community events (Holiday, Other annual traditions and ongoing events) to be held at the Senior Center, YMCA, common areas or in Red Morton Park.
- Quarterly “Togetherness” Family and Individual volunteer activities coordinated with Redwood City and other organizations’ to benefit the community.
- Community Health & Wellness Fairs
- Swim Team – Summer hours TBD, potentially blended into Y programming. Potential for a year-round program.
- Childcare subsidy/discount for those that qualify needing financial assistance
EXHIBIT I

BASIC COMMON AREA MAINTENANCE AND OPERATING PRINCIPLES

Common Area Maintenance:

The City shall maintain or engage services to maintain the project common areas including the west parking lot, east parking lot, drop off area, promenade and landscaped areas. The maintenance effort shall meet or exceed the City’s standard maintenance practices. In support of the common area maintenance (“CAM”) costs borne by the City, once the YMCA-SV has received a certificate of occupancy for the New YMCA and the west parking lot and drop-off area construction is complete, the YMCA-SV shall contribute 50% of the common area maintenance costs on a monthly basis, as follows:

- A flat fee of $35,000 per year with an annual escalator of 3%. This includes landscaping, tree maintenance, irrigation, irrigation repairs, lighting maintenance, graffiti removal and common area refuse management.
- 50% of common area electricity and water costs
- 50% of asphalt maintenance costs for the west parking lot asphalt. To the extent possible, the City and YMCA-SV shall plan for such work, communicating the need in advance of annual budgeting processes through a common Operational Team (see below).
- Unanticipated damage in the west parking lot or drop off areas that is not covered by insurance or third parties shall be split 50% unless such incidents involve special circumstances such as third-party vendors responsible for the occurrence. If the damage occurs due to events, vendors or programs managed by the City or by the YMCA-SV, the managing party shall be responsible for the repair costs. Damages over $10,000 shall be discussed by the Operational Team.

Examples of items not included as part of CAM include underground utility connections and repairs, public street & traffic mitigation measures, facility doors, walls, windows, roofs, skylights, building interiors, building painting, lights attached to each facility, fences, fenced in areas and refuse collection associated with each individual facility.

An Operational Team including the City’s Parks and Recreation Director and the YMCA-SV Branch Executive Director, or their designees, shall meet not less than annually to review planned maintenance activities. Changes to the common area maintenance scope of services are to be discussed among the Operational Team, and any disputes arising concerning maintenance, costs or program delivery where the Parks and recreation Directors and the YMCA-SV Executive Director are not able to resolve those issues, the City Manager and the YMCA-SV CEO shall meet to resolve any disagreements.
Operating Provisions

An Operational Team including the City’s Parks and Recreation Director and the Redwood City YMCA-SV Executive Director and/or their designees shall be established to continually plan and oversee all programs and services in Red Morton Park following the opening of the New YMCA. Below are the guidelines for program delivery, noting that modifications that can be made through periodic partner meetings with the Director of Parks and the Redwood City YMCA-SV Executive Director.

In recognition of evolving program delivery models over time, if either party wishes to make changes to the programs described below within its respective purview, the Operational Team will discuss the proposed programming changes to help ensure there is minimal, if any, service overlap. Should any disputes arise concerning program delivery, the City Manager and YMCA-SV’s CEO shall cooperate to jointly resolve any issues. The parties may enter into an agreement to memorialize the intent set forth in these guidelines.

A. RWC Operated Programs in Red Morton Park
   1. Senior Programs (including but not limited to Theatre, Gardening, Arts and Crafts, Teaching Kitchen and Food Service)
   2. Computer Access, Programs, Games
   3. Special Needs Youth and Adults (including AFAR & SNAP)
   4. Teen Programming (local government program)
   5. Veterans and Senior Clubs
   6. Afterschool Organized Sports (focused on ages 9+)
   7. Gymnasium Specialty Activities (including but not limited to Basketball, Volleyball, Indoor Soccer, various sports tournaments and rentals, Gymnastics and Pickleball)
   8. Performing Arts including Theatre
   9. Specialty programs (including but not limited to Karate, Dance, Gymnastics, Art, Watercolor, Clay, Woodshop, Photography, Gardening)
   10. Senior nutrition services, cooking programs, catering
   11. Picnics and rentals
   12. Community Recreation and Event

B. YMCA-SV Operated Programs in Red Morton Park
   1. Aquatics (lessons, Recreational Teams, Water Fitness, Water Exercise Therapy, Rec/Lap Swim/Herkner Pool Programs including RWC Sharks)
   2. Health and Wellness (Group Exercise Classes including licensed programs, Strength, Cardio Training, Mind-Body Programs, Wellness Programs, Specialty Fitness Workshops, and Community Integrated Health (including but not limited to Type II diabetes program, Parkinson’s and Enhanced Fitness / Arthritis)
   3. Special Interest Programs – Starter Sports (up to age 9), Exploratory Activities, Parent / Child, Family Programs, Kids sports
   4. Child Care / After School Care / Kids Club
   5. Teen specific programming (including, but not limited to, Youth and Government Program for state, federal and international programs, Annual Nature / Photography Trip Program and leadership training)

EXHIBIT I
C. Programs Offered by both RWC & YMCA-SV in Red Morton Park
   1. Gymnasium Activities
   2. Recreational Activities
   3. Day Camps
   4. Nutrition
   5. Adaptive PE
   6. Senior Wellness programs
   7. Variety of summer camp programs
   8. Sports tournaments
   9. Pre-school programs

D. Programs / Services in Red Morton Park
   1. Programs that are offered by both RWC and YMCA-SV will be coordinated by the Director of Parks and Recreations and the YMCA-SV COO to avoid redundancy, allow for coordination of joint promotional opportunities and maintenance of special events calendars.
   2. Hours of Operation – It is expected that the YMCA hours of operation of its facility are: Monday – Friday 5:30am – 10:30pm; Saturday & Sunday 7am –10:30pm. The YMCA-SV shall have the right to amend its operating hours.
   3. Membership Fees / Options – The YMCA-SV shall set its membership and usage fees for this facility and reserves the right to make changes to the fee structure at any time during the term of this operating agreement. The YMCA-SV shall include separate membership fee categories for veterans, seniors and families.
   4. RWC to provide food concessions within its facility. It is agreed that permanent concessions selling food and/or products will not be permitted in the common areas. An outdoor eating area will be available to all.

E. Facilities in Red Morton Park
   1. Reciprocal Access and Use of facilities will be determined by the Director of Parks / Recreation and YMCA-SV COO.
   2. The City of RWC and the YMCA-SV intend to independently control and operate their respective facilities.
   3. RWC and the YMCA-SV agree that use of the common areas for special events shall be permitted subject to agreement by both parties. Adequate notice to the other party shall be required and the sponsoring party agrees to be responsible for timely cleanup following such events.
   4. RWC Fields – The YMCA-SV shall be allowed to use City’s fields on an “as available” basis.
   5. No parking spaces shall be assigned, except as may be agreed to by RWC and the YMCA-SV.
   6. RWC and the YMCA-SV shall be responsible for the maintenance and upkeep of their respective facilities.
   7. The City shall maintain and coordinate the gymnasium schedule. The City shall retain first right to program and use the facility for City-run programs and services.

EXHIBIT 1

82483.0001632444940.5
the YMCA-SV shall have second rights, and any other third-party users shall have last rights, which shall be set forth in the City’s reservations policy.

Notwithstanding any of the foregoing, the City’s operations of its facilities shall comply with the covenants and requirements of its bond financing for the construction of the New VMB/SC and Common Area Improvements.