

JOINT OCCUPANCY LEASE AND DEVELOPMENT AGREEMENT

This JOINT OCCUPANCY LEASE AND DEVELOPMENT AGREEMENT (this "Lease") is made as of _____ ("Effective Date") by and between the CHULA VISTA ELEMENTARY SCHOOL DISTRICT, a school district organized and existing pursuant to the California Education Code ("Landlord" and, sometimes referred to herein as, "District"), and YMCA OF SAN DIEGO COUNTY, a California non-profit public benefit corporation ("Tenant") with respect to the following facts:

I. Recitals.

A. Landlord, a California school district, is the owner of that certain real property located at 670 Flower Street, Chula Vista, California 91910, commonly known as the Feaster Charter School.

B. California Education Code Section 17515 et seq. authorizes school districts to enter into joint occupancy leases and agreements with private persons, firms or corporations for the purpose of jointly occupying real property upon terms and conditions as the parties thereto may agree.

C. The governing board of a school district may let real property that belongs to the district if the instrument by which the property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the joint use of the school district and the lessee during the term of the agreement.

D. On June 12, 2012, Landlord's Governing Board ("Board") adopted resolution number 2011-12.109, Resolution of Intent to Lease Real Property for Joint Use of a Community Recreation Facility at Mae L. Feaster Elementary School. Notice of adoption of the resolution and the time and place of holding the public hearing was made by publishing the resolution once a week for three weeks in The Star News.

E. On September 12, 2012, at a public hearing of the Board received and accepted a single proposal for the development and lease of a portion of Landlord's property at the Mae L. Feaster Charter School property for joint use of a state-of-the-art community recreation facility by Landlord and Tenant.

F. Pursuant to the foregoing Landlord intends to lease a portion of the Mae L. Feaster Elementary School Property for development a state of the art recreation facility for joint use. The leased property is depicted and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Premises"), to Tenant.

G. Tenant shall construct, develop and open the state-of-the-art community recreation facility on the Premises for joint use with Landlord. Tenant shall offer the Programs (as defined below) and services more particularly described in this Lease (collectively, the "Project"), all pursuant to the terms and conditions set forth herein.

II. **Agreement.**

NOW, THEREFORE, in consideration of the terms and conditions of this Lease, Landlord and Tenant agree as follows:

I. **LEASE OF THE PROPERTY.**

Landlord, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of Tenant to be paid, kept, performed and observed by Tenant, hereby leases to Tenant, and Tenant hereby hires and leases from Landlord the Premises.

2. **LEASE TERM AND TERMINATION.**

2.1 **Initial Term.** Subject to the terms and conditions of this Lease, Tenant hereby leases the Premises from Landlord and Landlord hereby leases the Premises to Tenant for an initial term (the "Initial Term") commencing on the Effective Date and ending on the calendar date that is Thirty (30) calendar years later, unless sooner terminated as provided for herein.

2.2 **Optional Term.** At the end of the Initial Term, Tenant is granted the option to extend this Lease for an additional Thirty (30) calendar years (the "Optional Term") provided that the following conditions are met: (i) Tenant has completed the Improvements (as defined below) in a timely manner to the satisfaction of Landlord; (ii) Tenant is in actual occupancy of the Premises and is maintaining and operating the Improvements in accordance with the terms hereof to the satisfaction of Landlord; (iii) Tenant has timely paid all loan payments, rent and other financial obligations, as they become due, during the Initial Term; and (iv) Tenant is not in default of any of the terms, covenants and conditions of this Lease.

2.3 **Termination.** This Lease may be terminated as follows:

- a. By Landlord, upon 90 days written notice to Tenant, in the event that the Premises becomes subject to any law or regulation that prohibits, or make impracticable, the continued operation of the Improvements in the manner contemplated hereunder.
- b. By Landlord, upon thirty (30) days written notice to Tenant in the event of a Default (which in the sole discretion of District constitutes

a material default) and subsequent failure to cure in any manner provided hereunder, or, if not otherwise provided, failure to cure with in thirty (30) days of notice from Landlord of the conditions resulting in the default.

- c. It is understood and agreed that, upon termination of this Lease, for any reason, Tenant shall surrender the Premises and Improvements to Landlord in substantially their condition on the date construction is complete and the Improvements are accepted; reasonable wear and tear and any other conditions acceptable to Landlord are exempted. If, however, the termination is due to a Default involving failure to maintain the Improvements and the Improvements have deteriorated so as to, in Landlord's sole discretion, be unfit for the purpose for which they are being constructed, Landlord may decide to repair or demolish the Improvements and Tenant shall be solely responsible and agrees to reimburse Landlord for any and all costs incurred by Landlord in connection therewith.

3. THE IMPROVEMENTS AND PROJECT.

- 3.1 **Construction of Improvements.** Tenant shall, at its sole cost and expense, cause the construction of the following improvements, facilities and related amenities (the "Improvements") on or prior to the Completion Date (as defined below):

Brief Description	Approximate Area (Sq. Ft.)
Administration, Lobby and Social Lounge	7,596
Locker/Shower Room	3,157
Gymnasium	7,344
Child Recreation Center & Outdoor Play Yard/Youth Fitness Area	7,785
Teen & Family Wellness Center & Multi-Purpose Rooms	11,275
6 Lane 25 yard Pool & Children's Splash Pond	32,960
Synthetic Surface Soccer/Sports Pavilion	32,578
Outdoor Courts	26,648
SUBTOTAL:	129,343
Landscaping	As Needed
Parking	As Needed

- 3.2 **Design and Construction.** Prior to commencing any construction work in connection with the Improvements, Tenant shall, at a minimum, do the following: (i) engage the services of a licensed architect and any other

needed design consultant; (ii) obtain all permits required by law in connection with the construction of the Improvements; (iii) obtain all required approvals for the preliminary and final design schematics, plans and specifications, including, but not limited to Landlord, the YMCA national and state headquarters, as applicable, the California Department of Education ("CDE"), the Division of the State Architect ("DSA") and any other applicable approvals from any governmental agencies or other institutions or entities having jurisdiction over the construction and operation of the Premises and/or the Improvements; (iv) engage a licensed contractor to construct the Improvements; (v) obtain the approval of the Board of Trustees of the District in connection with the final design and exterior colors; and (vi) provide Copies to Landlord of all final approvals.

- a. Tenant shall construct, or cause to be constructed, the Improvements in accordance with all applicable laws and in a form satisfactory to Landlord. At all times during construction and inspections of the Premises conducted in connection with this Lease, a physical barrier, and visual screening satisfactory to the District, must be in place to prevent access to the site by non-construction personnel, specially students, and to prevent or minimize contact between the contractors, subcontractors or agents of Tenant and District students. It shall be Tenant's responsibility to comply with the fingerprinting provisions of the Education Code, in accordance with the provisions of the Operational Provisions defined below, and to ensure that all agents, contractors, subcontractors or any other persons entering the Premises in connection with the construction or design of the Improvements comply with such fingerprinting requirements, to the extent applicable.
- b. At all times during construction, and until final acceptance of the Improvement, Tenant shall provide the District with up to date contact information for the Inspector of Record, required by DSA and retained by Tenant in connection with the construction of the Improvements.

- 3.3 **Completion Date.** The Improvements, in substantially the form of the design drawings and specifications derived from the conceptual site and floor plans of which are attached hereto as **Exhibits B-1 and B-2**, as approved by the District prior to the commencement of construction, shall be completed, ready for occupancy and operational on or prior to _____ (the "Completion Date"), as such timing is more particularly set forth in the Schedule of Performance attached hereto as **Exhibit C** (the "Schedule of Performance"). Tenant shall not unreasonably

postpone construction of the Improvements contemplated herein. The Improvements shall be designed with reasonable and customary care the purpose for which they are being built and shall comply with all zoning and general plan requirements applicable to the Premises, as modified by Tenant's Conditional Use Permit. On or prior to the date that is sixty (60) calendar days from the Completion Date, Tenant shall provide copies of the final "as-built" drawings to the District.

- 3.4 **Compliance with Applicable Laws.** The Tenant shall construct or cause to be constructed the Improvements, and all associated public infrastructure facilities and amenities required by the City of Chula Vista (the "City") pursuant to its conditions of approval, if any, and all parking areas and landscaping, in accordance with and within the limitations established in this Lease and as required by the City. In connection with the construction, alteration or any required repairs, the Tenant shall also comply with the requirements of the CDE, the Field Act, commencing with section 17280 of the Education Code, as amended from time to time (the "Field Act"), Title 24 of the California Code of Regulations, the Americans with Disabilities Act, commencing with section 12101 of volume 42 of the United States Code, as amended from time to time the ("ADA"), the local fire department, the City's Municipal Code, the Area Redevelopment Plan, if any, all applicable federal, state and local laws, rules and regulations and any applicable mitigation measures adopted pursuant to the California Environmental Quality Act ("CEQA") and all other applicable laws, rules or regulations .
- 3.5 **Cost of Construction.** The cost of constructing all Improvements, and all public infrastructure facilities relating to the Project or required by Landlord, the City, OSA, CDE, CEQA, YMCA of the USA or any other federal, state or local unit of government having jurisdiction over, or providing services to, the Project shall be borne solely by the Tenant.
- 3.6 **Construction Period.** Anything to the contrary herein contained notwithstanding, Tenant shall complete all construction on the main facility within Eighteen (18) months of the commencement thereof (the "Construction Period"). The commencement of construction shall be the date provided in the Schedule of Performance or before, as evidenced by notice to proceed to any contractor or subcontractor, and can only be changed or amended by the written mutual agreement of the parties and any revisions shall only become effective after both the District and Tenant have agreed to the change. Until such an amendment is approved, the previously approved Schedule of Performance shall continue to govern the obligations of the parties.
- 3.7

- 3.8 **Progress of Construction.** During the Construction Period, the Tenant shall submit to Landlord monthly written reports of the progress to date of the construction. The reports shall be in the same form and in the same detail as are normally prepared for internal reports of the Tenant or for reports from the Tenant's general contractor to the Tenant. The reports shall be in such form and detail as to reasonably inform Landlord of the status of construction to the date of each report, and shall include a reasonable number of photographs (if so requested by Landlord) taken since the date of the immediately previous report submitted by the Tenant to Landlord.
- 3.9 **Notice of Construction Meetings.** Tenant shall give reasonable notice to Landlord of the date, time and place of each construction-related meeting. Landlord may choose to attend any such meeting at its sole discretion.
- 3.10 **Final Acceptance of Improvements.** Prior to Tenant's final acceptance of the Improvements, Tenant shall obtain all appropriate certificates and warranties and shall conduct all necessary inspections. Tenant shall provide copies of all such certificates, including a certificate certifying that no materials containing lead or asbestos have been specified, used or installed on the Improvements, to the District.

4. **USE OF THE PREMISES AND IMPROVEMENTS AND OPERATIONAL PROVISIONS.**

- 4.1 **Use of the Premises.** Tenant covenants and agrees for itself, its successors and assigns, that during the Term, unless otherwise consented to by Landlord in writing, the Premises shall be devoted to and used for the construction and development of the Improvements and the operation of the Programs as further set forth herein.
- 4.2 **Purpose and Use of the Improvements.** The Improvements shall be used primarily for recreational, educational and social programs and services intended to benefit the District and the community, including but not limited to those described in **Exhibit D**, and for any other uses needed in the community, typically provided by Tenant, appropriate for the Improvements constructed and acceptable to Landlord (collectively, the "Programs"). Landlord reserves the right to, on an annual basis, on or prior to the anniversary date of the Effective Date of this Lease, review and comment upon and/or veto any of the programs being provided or made available to the community by Tenant; provided that the District will only veto any programs not in compliance with District policies or procedures or that materially interfere with the educational functions and operations of the District and/or the Feaster Charter School.

4.3 **District Use.** District and Tenant agree that District shall be allowed to make use of the Premises and the Improvements in the following manner:

- a. **Exclusive Use of Certain Improvements.** Students of the District's Feaster Charter School, and any other students or employees designated by District and approved by Tenant, shall have sole and exclusive use of certain Improvements on the days and times set forth in Exhibit E, as from time to time modified or amended by District and Tenant. There shall be no charge or fees for such use, except for agreed upon lifeguard and supervisory costs, if any, and clean-up and damage costs, if District fails to clean-up and/or repair any damage caused by such users in the manner provided for herein. Exhibit E may be amended at any time by the mutual agreement of the parties, which agreement shall be so evidenced by the signature of an authorized representative of each party on a revised version of Exhibit E, which shall be effective as of the date thereof. Any such exhibit shall govern the District's "Exclusive Use" from its date forward, until amended by the parties, but shall have no other effect on the contents and validity of this Lease.
- b. **Reserved Use.** In addition to the Exclusive Use reserved to the District above, the District and Tenant may agree on dates and times for District students and/or employees designated by District and agreed to by Tenant to reserve the use of the facilities during hours of non-operation by the YMCA at the charge and upon the conditions agreed upon by Tenant and District.
- c. **Shared Use.** District's staff, students and invitees may use the Improvements and/or participate in YMCA Programs at rates, including flat rates and/or group rates, and pursuant to any conditions agreed upon by District and Tenant.
- d. **Other Use.** Nothing in this Agreement shall be construed to prohibit or prevent the use of the Premises or Improvements by District's students, staff, volunteers, employees, agents or invitees in the manner, at the fees and on the conditions normally applicable to any person in the community.

4.4 **Physical Barrier.** Once completed, the Improvements and Premises shall be accessible to the District from the Feaster Charter School Property, but shall be separated with a physical barrier from the school facilities located at the Feaster Charter School Property. The barrier can be a chain-link fence to match existing fence and access can be through a gate that should remain locked at all times. Only the Principal or designees of the Principal, of the school and the manager assigned by Tenant to supervise

the operations at the Improvements shall have keys to said lock. The keys shall be accounted for at all times and shall only be used on the dates and times scheduled by mutual agreement of the parties for District use of the Improvements.

4.5 **Operational Provisions.** The Tenant's use and operation of the Improvements and the Premises shall also be subject to the District's laws and regulations governing the use and operation of District property. Certain operational provisions for Tenant are set forth in **Exhibit F**. The operational provisions constitute obligations of Tenant additional to all other obligations set forth in this Lease. If a conflict arises in connection with any operational guideline and any obligation set forth in this Lease, Tenant shall inform District and District shall determine, at its sole discretion, which obligations Tenant must fulfill. Exhibit F may be amended at any time by the mutual agreement of the parties hereto, which agreement shall be evidenced by the signature of an authorized representative of each party on a revised version of Exhibit F. Any such amendment shall be effective as of the date thereof and shall replace the then current version of Exhibit F, but shall have no other effect on the content and validity of this Lease.

4.6 **Only Lawful Uses Permitted.** Tenant shall not use the Feaster Charter School Property, Premises or Improvements for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental body or entity. Furthermore, Tenant shall not maintain or commit any nuisance, as now or hereafter defined by any applicable statutory or decisional law, on the Property, Premises or Improvements, or any part thereof.

5. RENT.

5.1 **Net Lease.** Except as otherwise provided in this Lease, it is the intent of the parties hereto that the rent paid by Tenant to Landlord pursuant to this Lease shall be absolutely net to Landlord and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Premises and the Improvements which may arise or become due during the Term.

5.2 **Rent.** During the Initial Term of this Lease, Tenant shall pay to Landlord as rent ("Rent") the amount of one dollar (\$1.00), payable on an annual basis no later than the Effective Date and on each anniversary of the Effective Date thereafter. During the Optional Term, Tenant shall pay to Landlord as Rent the amount of one dollar (\$1.00) or as adjusted by Landlord and Tenant.

- 5.3 **Payment of Rent.** All Rent that becomes due and payable pursuant to this Lease shall be paid to Landlord at the address of Landlord listed in Section 24.7 or such other place as Landlord may from time to time designate by written notice to the Tenant without notice or demand, and without set off, counterclaim, abatement, deferment, suspension or deduction. The term "rent" or "Rent" shall include all payments under this Lease, including, without limitation, any additional rent, fees, charges, taxes, utility costs or expenses which may be due and payable to Landlord under the terms of this Lease.

6. UTILITIES AND TAXES.

- 6.1 **Utilities.** Tenant shall pay or cause to be paid, all charges for gas, electricity, water, garbage collection, telephone, internet, cable television, and any other services or utilities furnished to the Premises in connection with the Improvements and/or Programs and/or any use thereof. To the extent any sewer use charges, tap-in fees, capacity fees, permit fees, hookup or similar charges or assessments for utilities concerning the Premises or the Improvements are levied against the Feaster Charter School Property during the Term, Tenant agrees to compensate Landlord for such charges promptly upon request. Tenant shall provide for separate utility connections for all utilities used on the Premises, to the extent required by law or the service provider.

6.2 **Real Estate Taxes.**

- a. As used herein, the term "real estate taxes" shall mean all real estate or real property taxes, possessory interest taxes, assessments for the Improvements or the Premises, municipal or county water and sewer fees, assessments, rates and charges, or any other assessments or taxes, which shall be levied against, or in connection with, the Premises.
- b. Tenant shall have the right to contest the amount or validity of any real estate or real property taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to Landlord, and Tenant may postpone payment of any such contested real estate or real property taxes pending the prosecution of such proceedings and any appeals so long as such proceedings shall operate to prevent the collection of such real estate taxes and the sale of the Premises and any Improvements to satisfy any lien arising out of the nonpayment of the same, and Tenant furnishes a bond to Landlord in an amount acceptable to Landlord securing the payment of the same in the event a decision in such contest shall be adverse to Tenant.

- 6.3 **Personal Property.** Tenant covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personal property as may be from time to time situated within the Premises or the Improvements.
- 6.4 **Possessory Interest.** Pursuant to the provisions of the California Revenue and Taxation Code, Landlord hereby provides notice to Tenant that Tenant's leasehold interest created by this Lease may result in a possessory interest tax being levied against Tenant, and that in such event Tenant shall be obligated to pay such tax.

If, pursuant to the California Revenue and Taxation Code, the Premises and/or Improvements are required to be assessed and taxed in the same manner as privately owned property, Tenant shall pay or cause to be paid before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes which may be levied against any and all interests in the Premises and any Improvements during the Term, and not merely the assessed value of the leasehold interest in the Premises; provided, however, that Tenant may apply for any applicable exemption from the payment of property taxes and assessments.

7. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.

- 7.1 **Ownership During Term.** All Improvements constructed on the Premises by Tenant, as permitted by this Lease, shall, during the Term, be and remain the property of Tenant; provided, however, that: (i) Tenant shall have no right to waste the Improvements, or to destroy, demolish or remove any Improvements except as otherwise permitted pursuant to this Lease or approved by Landlord pursuant to a written amendment to this Lease; and, (ii) Tenant's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease.
- 7.2 **Ownership at Termination.** Upon termination of this Lease for any reason whatsoever, title to all Improvements, fixtures and furnishings on the Premises and/or any other portion of the Feaster Charter School Property shall, without compensation to Tenant, automatically vest in Landlord free and clear of all liens, encumbrances, and claims to or against them by Tenant or any third person, firm, or entity, including but not limited to any mortgagee or lender. Tenant agrees to execute a quitclaim deed and go all things necessary to transfer clean title to the Premises and Improvements to Landlord. Tenant shall transfer the Premises and Improvements in good, clean, and safe working condition to the District.

8. INDEMNIFICATION: FAITHFUL PERFORMANCE.

- 8.1 Tenant shall not suffer or permit any liens to be enforced against the fee simple estate in reversion of Landlord as to the Premises and the Improvements, nor against Tenant's leasehold interest, for any reason, including but not limited to by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises, or any part thereof, through or under Tenant. Tenant agrees to defend, indemnify, and hold Landlord and City and their respective trustees, officers, officials, employees, agents, and representatives, harmless against such liens, claims, or actions, including attorney's fees and costs. If any such lien shall at any time be filed against the Feaster Charter School Property, Premises and/or Improvements, Tenant shall, within thirty (30) days after notice to Tenant of the filing thereof, cause the same to be discharged of record; provided, however, that Tenant shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings but in such event, Tenant shall notify Landlord and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Landlord. Tenant shall prosecute such proceedings with due diligence.
- 8.2 Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Improvements, or any part thereof.
- 8.3 Prior to commencement of construction of the Improvements, or any repair or alteration thereto (other than emergency repair or alteration), Tenant shall give Landlord not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by state and local laws. It is agreed that Tenant may provide reasonable notice of not less than twenty-four (24) hours in case of an emergency repair or alteration.

9. [RESERVED]

10. MAINTENANCE AND REPAIR; CAPITAL REPLACEMENT RESERVE.

- 10.1 **Maintenance and Repair.** Landlord places prime importance on quality maintenance to ensure the safety and well-being of its students, staff, visitors and volunteers at the Feaster Charter School and any other person using the Improvements and/or participating in any Programs.

Except as otherwise provided in this Lease, Tenant assumes full responsibility for the construction, operation and maintenance of the Improvements, without any expense to Landlord, and agrees to perform all repairs and replacements necessary to maintain and preserve the Improvements and the Premises in a clean and safe condition reasonably satisfactory to Landlord and in compliance with all applicable laws. Normal wear and tear of the Improvements will be acceptable to Landlord assuming Tenant regularly constructs and performs all necessary repairs to maintain the Improvements in first-class condition, similar to their condition on the date the Improvements are accepted from the contractor. In addition, Tenant shall keep the Premises and the Improvements free from all graffiti and any accumulation of debris or waste material.

- 10.2 Tenant hereby waives all rights to make repairs or to cause any work to be performed at the expense of Landlord as provided for in Section 1941 and 1942 of the California Civil Code.
- 10.3 Notwithstanding the foregoing, in the event Tenant breaches any of the covenants contained in this Article 10 and such default continues for a period of two (2) days after written notice from Landlord (with respect to graffiti, debris, waste material), ten (10) days after written notice from Landlord with respect to general maintenance, thirty (30) days after written notice from Landlord (with respect to landscaping and building improvement work estimated at 55,000 or less "minor work"), or sixty (60) days after written notice from Landlord (with respect to landscaping and building improvement work estimated at over 55,000 "major work") then Landlord, in addition to whatever other remedy it may have at law or inequity, shall have the right to enter upon the Premises and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, Landlord shall be permitted (but is not required) to enter upon the Premises to perform all acts and work necessary to protect, maintain, and preserve the Improvements, including any minor work or major work required. All costs incurred by Landlord in connection with the performance of said works of maintenance and/or repair plus a twenty percent (20%) administrative charge, shall be paid by Tenant within thirty (30) days of receipt of an invoice from Landlord. Payment of such invoice by Tenant shall not come from or reduce any rent or other monies due Landlord pursuant to this Lease or any other instrument or agreement between Landlord and Tenant.
- 10.4 The following standards shall be complied with by Tenant, its contractors, its maintenance staff and maintenance contractors, as applicable:
 - a. Tenant shall maintain the Improvements, including all common areas, all interior and exterior facades, and all exterior areas of all

buildings, in a safe and sanitary fashion suitable for their intended purpose. Tenant shall be responsible for all utility services, administrative services, supplies, contract services, maintenance, maintenance reserves, and management for the Premises including interior spaces, common area spaces and public rights-of-way for the Improvements.

- b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
- c. Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; and removal of all trash, litter and other debris from all areas maintained prior to the end of the day in which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of.
- d. The Improvements shall be constructed, repaired and maintained in conformance and in compliance with the approved construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of Landlord (and the City, if such approval is required).
- e. All construction repair and maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations.
- f. Any and all chemicals, unhealthful substances, and pesticides used in and during construction, repair and maintenance shall be applied only by persons possessing valid California applicator licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.
- g. Parking lots, lighting fixtures, trash enclosures, and all areas on the Premises which can be seen from the adjacent streets shall be kept free from any accumulation of debris or waste materials by

regularly scheduled maintenance.

11. ENVIRONMENTAL MATTERS.

11.1 **Definitions.** For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

- a. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the County of San Diego, the State of California, regional governmental authority or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article II of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. ' 13-17), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. ' 6901 et seq. (42 U.S.C. 6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.
- b. The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Improvements, facilities, soil, groundwater, air or other elements on, in or of the Feaster Charter School Property or the Premises by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or

of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Lease) emanating from the Premises.

- c. The term "Governmental Requirements" shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Premises are located, and any other state, county city, political subdivision, Landlord, instrumentality or other entity exercising jurisdiction over Landlord, Tenant or the Premises.

11.2 **Tenant's Environmental Indemnity.** Tenant shall save, protect, defend, indemnify and hold harmless Landlord, its, trustees, officers, officials, employees, volunteers, assigns, successors in interest and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation fees, reasonable attorney's fees and costs and remedial and response costs) (the foregoing are collectively referred to as "Liabilities" in this paragraph) which may now or in the future be incurred or suffered by Landlord and its, trustees, officers, officials, employees, or agents by reason of, resulting from, in connection with, or existing in any manner whatsoever as a direct or indirect result of (1) Tenant's use, generation, discharge, emission or release from the Premises of any Hazardous Materials or Hazardous Materials Contamination prior to or after the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Tenant of any acts or omissions with respect to use or operation of the Premises, the Improvements or the Programs, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by Landlord of any act required to be performed by the Tenant under this Lease. Tenant's obligations under this Article 11 shall survive the expiration or early termination of this Lease and shall not merge with any grant deed.

11.3 **Landlord's Covenant.** Landlord covenants and represents that, as of the Effective Date of this Lease, there are no known Hazardous Materials or Hazardous Materials Contamination at the premises. Tenant may, at its sole cost and expense, conduct a Phase I Environmental Site Assessment ("ESA") prior to making improvements on the Premises and, if so recommended in the Phase I ESA, a Phase II ESA. Landlord agrees to remediate any Hazardous Materials Contamination uncovered by the Phase II ESA, at Landlord's sole cost and expense.

- 11.4 **Duty to Prevent Hazardous Material Contamination.** Tenant shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Tenant shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by similar projects in San Diego County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials. Tenant shall not, and shall not cause or permit any other person or entity to, release, store, bring upon, dispose of or transport to or from the Premises any Hazardous Materials or by-products or waste from such Hazardous Materials.
- 11.5 **Obligation of Tenant to Remediate Premises.** In the event of contamination of the Premises arising directly or indirectly from Tenant's use, generation, discharge, emission or release upon, about or beneath the Premises of any Hazardous Materials occurring during the Term, Tenant shall, subject to Landlord's rights herein, at its sole cost and expense, promptly take (i) all action properly required by any federal, state, regional, or local governmental or political subdivision requirements and (ii) all actions necessary to make full economic use of the Premises for the purposes contemplated by this Lease, which requirements or necessity. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Tenant shall take all actions necessary to promptly restore the Premises to an environmentally sound condition for the uses contemplated by this applicable Governmental Requirements.
- 11.6 **Right of Entry.** Notwithstanding any other term or provision of this Lease, Tenant shall permit Landlord or its agents or employees to enter the Premises at any time during normal business hours, without prior notice in the event of an emergency, and with not less than twenty-four (24) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Premises or Improvements, or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Tenant has failed to do so after written notice from Landlord and expiration of a reasonable opportunity to cure such deficiency, not exceeding seven (7) days, unless such cure reasonably requires a greater period of time in which case Tenant shall be in compliance herewith if Tenant commences such cure within the same

seven (7) day period. All costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor.

- 11.7 **Storage or Handling of Hazardous Materials.** Subject to the provisions of this Lease, Tenant, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Premises. In the event Tenant does store, use, transport, handle or dispose of any Hazardous Materials, Tenant shall notify Landlord in writing at least ten (10) days prior to their first appearance on the Premises and Tenant's failure to do so shall constitute a material default under this Lease. Tenant shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. After notification to Landlord of the intended use of a hazardous material, Landlord may, at its sole discretion, determine that such use shall not be allowed on the Premises and/or the Improvements and shall notify Tenant in writing. Tenant agrees to abide by any such determination.

12. DAMAGE OR DESTRUCTION.

- 12.1 **Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** Subject to Section 12.3 below, if the Improvements are totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Tenant shall take all steps necessary to promptly and diligently commence the repair or replacement of the Improvements (and any parts of the Premises and the Feaster Charter School Property collaterally damaged by said fire or casualty) to substantially the same condition as existed immediately prior to the casualty, whether or not any insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration. Tenant shall be solely responsible for any costs exceeding any insurance proceeds. Tenant shall complete the same as soon as possible thereafter so that the Improvements and Programs can continue to be operated and occupied in accordance with the Lease. In no event shall the repair, replacement, or restoration period exceed one (1) year from the date of loss unless Landlord's Superintendent, or her or his designee, in his or her sole and absolute discretion, approves a longer period of time. Repair or restoration of any affected portion of the Feaster Charter School Property shall be given priority, at District's request. Landlord shall cooperate with Tenant, at no expense to Landlord, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other

governmental agencies with jurisdiction over the Feaster Charter School Property and Premises do not permit the repair, replacement, or restoration, Tenant may elect not to repair, replace, or restore the Improvements by giving notice to Landlord (in which event Tenant will be entitled to all insurance proceeds but Tenant shall be required to remove all debris from the Feaster Charter School Property and the Premises and to restore the Brief Description Property and Premises to approximately their original condition on the date of this Lease) or Tenant may reconstruct such other Improvements as are consistent with applicable land use regulations and approved by the City, Landlord, and the other governmental agencies with jurisdiction. In the event Tenant elects not to repair, replace, or restore, and gives Landlord notice of such election as provided herein, this Lease shall terminate.

12.2 **Continued Operations.** During any period of repair, Tenant shall continue, or cause the continuation of, the operation of the Improvements and Programs to the extent reasonably practicable and to the extent it is safe.

12.3 **Damage or Destruction Due to Cause Not Required to be Covered by Insurance.** If any Improvements are completely destroyed or substantially damaged by a casualty against which Tenant is not required to (and has not) insured, then Tenant may elect not to repair, replace, or restore such Improvements by providing Landlord with written notice within ninety (90) days after such substantial damage or destruction. In such event, Tenant shall remove all debris from the Feaster Charter School Property and Premises. As used in this Section 12.3, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is ten (10%) or more of the replacement cost of the Improvements, to the extent constructed at the time of the casualty. If Tenant fails to give such notice Tenant shall be conclusively deemed to have waived its right not to repair, replace, or restore the Improvements and thereafter Tenant shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed Improvements in accordance with Section 12.1 above shall continue operation of the Improvements and Programs during the period of repair (if practicable) in accordance with Section 12.2 above. If Tenant elects not to repair, replace, or restore, and gives Landlord notice of such election as provided herein, this Lease shall terminate.

13. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.

13.1 **No Assignment.** Tenant shall not sell, assign, sublease, mortgage, pledge, hypothecate or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease, mortgage,

pledge, hypothecation or transfer in any other mode or form of the whole or any part of the Premises or Improvements (each of which events is referred to in this Lease as an "assignment"), without prior written approval of Landlord, which approval may be given or withheld in Landlord's sole and absolute discretion. It shall be deemed reasonable for Landlord to refuse to consent to an assignment for any reason or for no stated reason. In the event such approval is granted, the assignment shall not be effective unless and until the assignor and assignee have signed an assignment and assumption agreement in a form and with contents approved by Landlord's Governing Board. Any purported assignment without the prior written consent of Landlord shall render this Lease absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee and shall cause the automatic vesting of title to the Improvements in Landlord, in the manner provided above.

- 13.2 **No Subordination.** Landlord and Tenant acknowledge and agree that neither Landlord's interest or fee ownership of the Premises (including its reversionary interest therein and in the Improvements) nor Landlord's right to receive rent hereunder shall be subordinate to any permitted encumbrance or any other lien, mortgage, deed of trust, pledge or other encumbrance of Tenant's leasehold interest hereunder.

14. INDEMNITY.

- 14.1 **Tenant Indemnity.** Tenant agrees to indemnify, defend and save free and harmless Landlord, its agents, officers, representatives and employees from and against any claims, liabilities, penalties, fines and for any damage to the goods, properties or effects of Tenant, its subtenants or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, and for injuries to or deaths of any persons, whether caused by or resulting from any act or omission of Tenant or its subtenants or any other person on or about the Premises and Improvements, or in connection with the operation thereof, or from any defect in the Premises or the Improvements (collectively referred to in this paragraph as the "Claims"). Upon demand from Landlord, Tenant shall appear and defend Landlord against any such Claims. Tenant also agrees to indemnify, defend, and save free and harmless Landlord and its officers, officials, employees, agents, and representatives against any costs and expenses incurred by Landlord (including but not limited to attorney's fees and costs and expert witness fees) on account of any Claims. Tenant shall not be responsible for (and such indemnity shall not apply to) any such Claims due to or arising solely out of any acts, errors or omissions of Landlord or its officers, officials, employees, agents, and representatives. This provision shall survive the termination of this Lease.

14.2 **District Indemnity.** In connection with the Exclusive Use of any Improvements by the District, as described above in Section 4.3, or any other exclusive use of any Improvements by District employees, officers, or agents, District agrees to defend and indemnify and hold harmless the YMCA and its officers, directors, agents and employees from and against any claims, liabilities, penalties, fines or damage arising out of the sole and exclusive negligent acts or omissions of District's officers, employees or agents; provided that no violation of any duty of care owed by the YMCA hereunder has contributed to the damage, injury or other incident for which relief is being sought. In the event that both parties are held jointly and severally liable for an act or negligence related to the District's Exclusive Use of the Premises and or the Improvements, and, if there is no determination as to the relative fault of each party, the District and the YMCA shall each bear their own costs of defense and shall cooperate to reach an agreement as to the appropriate sharing of liabilities, penalties, fines and/or damages arising from the claim.

15. **INSURANCE BY TENANT.**

15.1 **Insurance to be Provided by Tenant.** During the Term, Tenant, at its sole cost and expense, shall:

- a. Maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Premises and the Improvements, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance and casualty loss policies. Such insurance policy shall be maintained in an amount not less than one hundred percent (100%) of the "Full Replacement Cost" of the Improvements, as defined herein in this Article 15.
- b. Maintain or cause to be maintained such policies of insurance, in such amounts and with such terms and conditions that are set forth in any loan documents concerning the Improvements.
- c. Maintain or cause to be maintained Commercial General Liability insurance, in an amount not less than Five Million Dollars (\$5,000,000), per person, per occurrence and not less than Ten Million Dollars (\$10,000,000) aggregate limit with deductible or self-insurance of not more than \$100,000 . Aggregate limits shall be specific to the premiums. The required amount of insurance shall be subject to increases as Landlord may reasonably require from time to time. Tenant agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any

way the extent to which Tenant may be held responsible for the payment of damages to persons or property resulting from Tenant's activities, or the activities of any other person or persons for which Tenant is otherwise responsible.

- d. Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier or through or a self insurance program, as authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Tenant in connection with the Premises, Improvements and Programs and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or behalf of any person incurring or suffering injury or death in connection with the Premises or the Improvements or the operation thereof by Tenant. If Tenant self-insures for worker's compensation, Tenant must provide District with a Certificate of Consent to Self-Insure issued by the State of California and a letter certifying self-insurance and limits on liability. In addition, District may request evidence of financial integrity, such as copies of Tenant's audited financial statements.
- e. Before commencement of any demolition or construction work the Tenant shall also procure or cause to be procured, at Tenant's sole cost and expense and shall maintain in force until completion of the construction of the Project "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to Landlord. The builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

- 15.2 **Definition of "Full Replacement Cost"**. The term "Full Replacement Cost" as used in this Article 15 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Improvements, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Tenant shall cause the Full Replacement Cost to be determined from time to time by appraisal by the insurer or, if no such appraisal is available, by

an appraiser mutually acceptable to Landlord and Tenant, not less often than once every twelve (12) months.

- 15.3 **General Insurance Provisions.** All policies of insurance provided for in this Article 15, except for the workers' compensation insurance, shall name Tenant as the insured and Landlord as additional insured. Tenant must provide District with Certificates of Insurance that indicate appropriate coverages as provided for in this Lease. Tenant agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Tenant agrees to submit policies of all insurance required by this Article 15 of this Lease, or certificates evidencing the existence thereof, to Landlord on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof shall be submitted to Landlord. Unless otherwise provided in Section 15.1, all insurance provided for under this Article 15 shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California, approved by Landlord. All policies and certificates of insurance, including worker's compensation, shall also: (i) provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to Landlord; and (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by Landlord and shall contain a waiver of subrogation for the benefit of Landlord.
- 15.4 **Failure to Maintain Insurance.** If Tenant fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and upon ten (10) days prior notice to Tenant, to procure and maintain such insurance and charge Tenant for the same. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).
- 15.5 **Insurance Proceeds Resulting from Loss or Damage to the Improvements.** All proceeds of insurance with respect to loss or damage to the Improvements during the Term of this Lease shall be payable, under the provisions of the policy of insurance, to Tenant, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Improvements.
- a. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such proceeds shall be apportioned between Tenant and Landlord as their interests may

appear.

- b. In the event this Lease is terminated by mutual agreement of Landlord and Tenant and the Improvements are not restored, repaired or rebuilt, the insurance proceeds shall be jointly retained by Landlord and Tenant and shall be applied first to any payments due under this Lease from Tenant to Landlord, second to restore the Premises and the Improvements to their original condition and to a neat and clean condition, and finally any excess shall be apportioned between Tenant and Landlord as their interests may appear. The value of each interest for the purpose of apportioning excess proceeds under this Section shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

16. INSURANCE BY DISTRICT.

District shall maintain in effect adequate insurance, as required by law, in connection with any school related activities of District students to be performed or carried out at the Premises or the Improvements. In the event that District does not maintain insurance for those activities, District will provide a statement of self-insurance in form and content satisfactory to the YMCA.

17. OBLIGATION TO REFRAIN FROM DISCRIMINATION.

There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises or the Improvements or participation in the Programs, and Tenant itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination or segregation.

18. NONDISCRIMINATION IN EMPLOYMENT.

Tenant, for itself and its successors and assigns, agrees that during the operation of Programs and the Improvements, and during any work of repair or replacement, Tenant shall not discriminate against any employee or applicant for employment on the basis of any category or status not permitted by law.

19. LABOR STANDARDS.

Tenant shall comply, and require all contractors and subcontractors employed pursuant to this Lease to comply with all applicable labor standards provisions of the California Labor Code and federal law, including payment of prevailing wage

if applicable.

20. COMPLIANCE WITH LAW.

Tenant agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal and any other regulatory authorities, pertaining to the Feaster Charter School Property, the Premises and the Improvements, as well as the Programs. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that Tenant, has violated any such ordinance or statute in the use of the Premises or the Improvements, or in the operation of the Programs, shall be conclusive of that fact as between Landlord and Tenant.

21. ENTRY AND INSPECTION.

Landlord reserves and shall have the right during reasonable business hours (except in cases of emergency), upon twenty-four (24) hours prior notice (except in cases of emergency) to Tenant by Landlord, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises and the Improvements or to inspect the operations conducted thereon.

22. RIGHT TO MAINTAIN AND CURE PERIOD.

In the event that the entry or inspection by Landlord pursuant to Section 21 hereof discloses that the Premises or the Improvements are not in a decent, safe, and sanitary condition, Landlord shall give written notice to Tenant specifying the unacceptable condition or conditions. Tenant shall then have thirty (30) days to cure, correct, or remedy the condition(s), unless a lesser period is specified hereunder or is required to protect the health or safety of the tenants or residents of the community (the "Cure Period"). If such cure, correction, or remedy, is not reasonably completed during the Cure Period, Tenant shall not be in default if the cure, correction, or remedy is commenced within the Cure Period and is diligently prosecuted to completion to District's satisfaction. If the condition(s) are not cured, corrected, or remedied within the above time periods, Landlord shall have the right upon notice to Tenant (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Tenant and Tenant hereby agrees to pay promptly any and all costs incurred by Landlord, plus a twenty (20%) percent administrative charge, in having such necessary maintenance work done in order to keep the Premises and or the Improvements in a decent, safe and sanitary condition. If Tenant fails to reimburse Landlord within thirty (30) days of the date of an invoice sent by Landlord to Tenant in connection with such

work, Tenant shall pay Landlord interest on such amounts at the highest rate permitted by law, as provided in Section 24.6 herein. The rights reserved in this Section shall not create any obligations on Landlord or increase obligations elsewhere in this Lease imposed on Landlord.

23. EVENTS OF DEFAULT AND REMEDIES.

23.1 **Events of Default by Tenant.** The occurrence of one or more of any of the following events shall constitute an "Event of Default" by Tenant hereunder if Tenant shall have not cured, corrected, or remedied such failure within the Cure Period, or if it is not practicable to cure or remedy such failure within the Cure Period (which impracticability shall not apply to monetary defaults), within such longer period as shall be reasonable under the circumstances provided that Tenant has commenced to cure within the Cure Period and has made progress satisfactory to Landlord:

- a. Construction of the Improvements is not commenced or completed within the time set forth in the Schedule of Performance; or
- b. Tenant shall abandon or surrender the Premises or the Improvements; or
- c. Tenant shall fail or refuse to pay, within ten (10) days of notice from Landlord, any installment of Rent or any other sum required by this Lease to be paid by Tenant either to Landlord or another creditor; or
- d. Tenant shall fail to perform any covenant or condition of this Lease; or
- e. Tenant shall be declared in default pursuant to any loan or grant obtained by Tenant in connection with the Improvements or the Programs.

23.2 **Remedies of Landlord.** In the event of any such default as described in Section 23.1 Landlord may, at its option, take anyone or more of the following actions:

- a. Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Landlord in enforcing this provision) to the account of Tenant, which charge shall be due and payable within thirty (30) days after presentation by Landlord of a statement of all or part of said costs, plus a twenty (20%) percent administrative charge;

- b. Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Landlord in enforcing this provision) from the proceeds of any insurance;
- c. Exercise its right to maintain any and all actions at law or suits in equity to compel Tenant to correct or cause to be corrected said default;
- d. Have a receiver appointed to take possession of Tenant's interest in the Premises and the Improvements, with power in said receiver to administer Tenant's interest in the Premises and the Improvements, to collect all funds available to Tenant in connection with its operation and maintenance of the Premises and the Improvements; and to perform all other consistent with Tenant's obligation under this Lease as the court deems proper;
- e. Maintain and operate the Premises and the Improvements, without terminating this Lease;
- f. Terminate this Lease by written notice to Tenant.

23.3 Right of Landlord in the Event of Termination of Lease. Upon termination of this Lease pursuant to Section 23.2, it shall be lawful for Landlord to re-enter and repossess the Premises and the Improvements and Tenant, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Premises and the Improvements peaceably to Landlord immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Tenant agrees that upon such termination, title to all the Improvements shall automatically vest in Landlord.

- a. Even though Tenant has breached the Lease and abandoned the Premises or the Improvements, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of its rights and remedies under this Lease. No ejectment, re-entry or other act by or on behalf of Landlord shall constitute a termination unless Landlord gives Tenant notice of termination in writing.
- b. Termination of this Lease shall not relieve or release Tenant from any obligation incurred pursuant to this Lease prior to the date of such termination. Termination of this Lease shall not relieve Tenant from the obligation to pay any sum due to Landlord or from any claim for damages against Tenant.

23.3 **Damages.** Damages which Landlord recovers in the event of default under this Lease shall be those which are then available under applicable California case and statutory law to landlords for leases in the State of California

23.4 **Rights and Remedies are Cumulative.** The remedies provided by this Article 23 are not exclusive and shall be cumulative to all other rights and remedies possessed by Landlord under this Lease or at law or equity. The exercise by Landlord of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Tenant.

24. MISCELLANEOUS.

24.1 **Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of this Lease.

24.2 **Legal Actions and Venue.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Diego County, State of California, in any other appropriate court in that County, or in the Federal District Court in the District of California in which the Feaster Charter School Property is located.

24.3 **Incorporation of Recitals.** The Recitals set forth above and all Exhibits attached to this Lease, as those exhibits may be amended from time to time, are incorporated herein by reference.

24.4 **Acceptance of Service of Process.** In the event that any legal action is commenced by Tenant against Landlord, service of process on Landlord shall be made by personal service upon Landlord, or in such other manner as may be provided by law. In the event that any legal action is commenced by Landlord against Tenant, service of process on Tenant shall be made by in any manner as may be provided by law, and shall be effective whether made within or without the State of California.

24.5 **Inspection of Books and Records.** Landlord has the right upon not less than forty-eight (48) hours notice, and during normal business hours) to inspect the books and records of Tenant pertaining to the Premises and the operation of the Improvements as pertinent to the purposes of this Lease.

24.6 **Interest.** Any amount due Landlord that is not paid when due shall bear

interest at the highest rate permitted under law from the day such amount becomes past due and accruing daily on all unpaid balances until said amount plus interest is fully paid.

- 24.7 **Notices.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be given either by (i) personal service, (ii) delivery by reputable document delivery service that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed as follows:

Landlord: Chula Vista Elementary School District
84 East J Street
Chula Vista, California 91911
Telephone: (619) 425-9600
Facsimile: (619) 425-XXXX

With a copy to: TBA
Address
City, State Zip
Telephone: (XXX) XXX-XXXX
Facsimile: (XXX) XXX-XXXX

Tenant: YMCA of San Diego County
3708 Ruffin Road
San Diego, CA 92123
(858) 292-9622
Facsimile: (858) 292-0045

With a copy to: Attention: Bernie Porter
Chief Counsel
YMCA of San Diego County
3708 Ruffin Road
San Diego, CA 92123
(858) 292-9622
Facsimile: (858) 292-0045

Any such notice shall also be sent via facsimile or electronic mail. Either party may later designate a different address for service of notice by providing written notice to the other party. Notices personally delivered or delivered by document delivery service shall be effective upon receipt; provided, however that refusal to accept delivery shall constitute receipt. Mailed notices shall be effective as of Noon on the third business day following deposit with the United

States Postal Service. Any notices attempted to be delivered to an address from which the receiving party has moved without providing notice to the delivering party shall be effective as of Noon on the third day after the attempted delivery or deposit in the United States mail.

- 24.8 **Time is of the Essence.** Time is of the essence in the performance of the terms and conditions of this Lease.
- 24.9 **Non-Merger of Fee and Leasehold Estates.** If both Landlord's and Tenant's estates in the Premises and the Improvements become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Landlord. The expiration or termination of this Lease, or voluntary or involuntary surrender by Tenant, or the mutual cancellation of this Lease, shall not work as a merger and shall, at the option of Landlord, terminate all or any existing tenancies, subleases, or subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all such existing subleases or subtenancies .
- 24.10 **Holding Over.** The occupancy of the Premises after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.
- 24.11 **Conflict of Interest.** No member, official or employee of Landlord shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Tenant 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 Lease.
- 24.12 **Non-Liability of Landlord Officials and Employees.** No member, official, officer, employee, agent, or representative of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or successor or on any obligations under the terms of this Lease.
- 24.13 **Relationship.** The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

- 24.14 **Waivers and Amendments.** All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Landlord or Tenant. The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach of Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Landlord to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Landlord from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of Landlord and Tenant.
- 24.15 **Entire Agreement.** This Lease sets forth the entire understanding of the parties with respect to Tenant's ground lease of the Premises and the Construction and operation of the Improvements.
- 24.16 **Counterparts.** This Lease may be executed in counterparts, each of which, when this Lease has been signed by all the parties hereto, shall be deemed an original.
- 24.17 **Severability.** If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.
- 24.18 **Terminology.** All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limits nor amplifies the provisions of the Lease itself.
- 24.19 **Memorandum.** Unless otherwise agreed to by Landlord, a memorandum of this Lease shall not be recorded.
- 24.20 **Binding Effect.** This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

24.21 **Estopped Certificate.** Each of the parties shall at any time and from time to time upon not less than thirty (30) days ' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid by Tenant, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any successor in interest to Landlord or any prospective mortgagee or encumbrances thereof, and it being further intended that any such statement delivered by Landlord may be relied upon by any prospective assignee of Tenant's interest in this Lease or any prospective mortgagee or encumbrances thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

24.22 **Force Majeure.** The time within which Landlord or Tenant is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, acts of terrorism, riot, insurrection or other cause beyond the reasonable control of the applicable party.

24.23 **Quiet Enjoyment.** Landlord does hereby covenant, promise and agree to and with Tenant that Tenant, for so long as Tenant is not in default hereof, shall and may at all times peaceably and quietly have, hold, use, occupy and possess the Premises throughout the Term.

24.24 **Landlord Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Landlord, the Superintendent of Landlord or his or her designee is authorized to act on behalf of Landlord unless specifically provided otherwise herein or the law otherwise requires. No approval required hereby by Landlord or Tenant shall be unreasonably withheld or delayed.

25. [RESERVED]

26. RIGHTS OF LEASEHOLD MORTGAGEE CONCERNING FINANCING.

Tenant has informed Landlord that Tenant plans to encumber the Premises and

the Improvements for the construction of the Project (the "Construction Loan"). Tenant will cause the encumbrance to be removed as an exception to title within ten years of the end of construction by paying off the Construction Loan or otherwise entering into agreements with any lenders to remove such exceptions. Landlord agrees that so long as any Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holders of any such Leasehold Mortgage to Landlord, the following provisions shall apply:

- 26.1 **No Cancellation.** There shall be no early cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of each Leasehold Mortgagee.
- 26.2 **Notice of Default.** Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of the notice upon each Leasehold Mortgagee of whom it has knowledge at the latest address previously given to Landlord.
- 26.3 **Leasehold Mortgagee's Right to Perform.** Each Leasehold Mortgagee shall have the rights, but not the obligations, at any time prior to termination of this Lease to pay all of the rent due hereunder, with all due interest and late charges, to effect any insurance, to pay any taxes or assessments, to make any repairs or 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 pursuant to the terms hereof to be done in the performance and observation of the agreements, covenants and conditions hereof to prevent termination of this Lease. Any Leasehold Mortgagee and its agents and contractors shall have full access, subject to the terms of the Lease, to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if done by Tenant.
- 26.4 **Leasehold Mortgagees Right to Cure.** Subject to any Cure Period in this Lease, if any default shall occur which, pursuant to any provision of this Lease, purportedly entitles Landlord to terminate this Lease, Landlord shall not be entitled to terminate this Lease, and the notice shall be rendered void, if the Leasehold Mortgagee or trustee under any such mortgage, within thirty (30) days after the default, shall both: (i) either (a) cure the default if the same can be cured by the expenditure of money; or (b) if the default is not so curable, commence, or cause any trustee under the Leasehold Mortgage to commence, and thereafter to diligently and promptly pursue to completion steps and proceedings to foreclose on the interests covered by the Leasehold Mortgage; and (ii) perform or cause the performance of all the covenants and conditions of this Lease requiring the expenditure of money by Tenant until such time as the

leasehold shall be sold upon foreclosure pursuant to the Leasehold Mortgage, or shall be released or reconveyed there under, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

- 26.5 **Termination Subject to Mortgagee Rights.** All rights of Landlord to terminate this Lease as the result of the occurrence of any default shall be subject to, and conditioned upon, Landlord having first giving to each Leasehold Mortgagee written notice of the default in the same manner and with the same time period as required in favor of Tenant, and all Leasehold Mortgagees having failed to remedy such default or acquire Tenant's leasehold estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in this Lease.
- 26.6 **Mortgagee Loss Payable.** Landlord agrees that the names of each Leasehold Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified in the applicable Leasehold Mortgage.
- 26.7 **New Lease.** Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Tenant or its property, Landlord will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease for the remainder of the Term, effective as of the date of such termination, at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Premises, provided:
- a. The senior Leasehold Mortgagee shall make written request upon Landlord for the new lease within thirty (30) days after the date of termination;
 - b. The senior Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto any expenses, including attorneys' fees, to which Landlord shall have been subjected by reason of the default;
 - c. The senior Leasehold Mortgagee shall perform and observe all covenants herein contained on Tenant's part to be performed, and shall further remedy any other conditions which Tenant under the terminated Lease was obligated to perform under its terms, to the

extent the same are curable or may be performed by the senior Leasehold Mortgagee; and

- d. The tenant under the new lease shall have the same obligations and responsibilities and the same right, title and interest in and to all Improvements as Tenant had under the terminated Lease immediately prior to its termination.
- e. Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 26, shall be prior to any Leasehold Mortgage or other lien, charge or encumbrance on the Premises, to the same extent as the terminated Lease, and shall be accompanied by a conveyance of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the new lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the new lease. The rights granted any Leasehold Mortgagee to a new lease shall survive any termination of this Lease.
- f. If a Leasehold Mortgagee shall elect to demand a new lease under this Section 26, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, and any subtenants actually occupying the Premises, or any part thereof, as designated by the Leasehold Mortgagee subject to any non-disturbance or attornment agreements with such subtenants.
- g. Unless and until Landlord has received notice from all Leasehold Mortgagees that the Leasehold Mortgagees elect not to demand a new lease as provided in this Section 26, or until the thirty (30) day period after the date of termination has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Leasehold Mortgagee.

26.8 **No Obligation to Cure.** Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease or to cure any default of Tenant referred to above.

26.9 **Right to Assign.** Foreclosure of any Leasehold Mortgage, or any sale there under, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Leasehold Mortgagee or its designee

through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant hereunder.

26.10 **No Personal Liability.** In the event any Leasehold Mortgagee or its designee becomes the Tenant under this Lease or under any new lease obtained pursuant to this Section 26, the Leasehold Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or a new lease only for the period of time that the Leasehold Mortgagee or its designee remains the actual beneficial holder of the leasehold estate hereunder, and only to the extent provided in this Lease or such new lease. The right of any Leasehold Mortgagee, or its designee, thereafter to assign this Lease or the new lease shall be subject to the restrictions on assignment within the Lease except that an assignment by any Leasehold Mortgagee to an assignee with a net worth ("Net Worth") of not less than the present value of the rental payments due for the balance of the lease term (excluding Option periods) shall be exempt from any assignment restriction. For purposes of this Section 26 Net Worth shall mean, as of any applicable date of determination, the excess of (i) the net book value of all assets of the proposed assignee after all appropriate deductions (including, without limitation, reserves for doubtful receivables, obsolescence, depreciation and amortization), over (ii) all debt of the proposed assignee, all as determined in accordance with GAAP

26.11 **Separate Agreement.** Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee, an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to Landlord, Tenant and each Leasehold Mortgagee, between Landlord, Tenant and the Leasehold Mortgagees, agreeing to all of the provisions hereof.

26.12 Certain Definitions:

The term "Leasehold Mortgage," whenever used herein, shall mean: (a) the instrument or instruments securing one or more financings pursuant to the terms of this Lease, encumbering only the leasehold interest of Tenant, and include whatever security instruments are used in the locale of the Premises, including, without limitation, mortgages, deeds of trust, security deeds, and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code; and (b) any instruments required in connection with a sale-leaseback transaction. The term "Leasehold Mortgagee" shall include one or more holders of the beneficial interest and secured position

under any Leasehold Mortgage.

- 26.13 **Landlord's Mortgages.** Landlord may mortgage or otherwise encumber its interest in the Premises; however, such mortgage or other encumbrance shall be subject to Tenant and any Leasehold Mortgagee receiving assurance (a "nondisturbance agreement") from the lender encumbering Landlord's interest that the Tenant's possession, this Lease and the Leasehold Mortgagee's security interest in the Lease will not be disturbed so long as Tenant (or the Leasehold Mortgagee) is not in breach of the Lease and attorns to the record owner of Landlord's interest. Upon request by a lender encumbering Landlord's interest in the Premises, Tenant shall enter into a subordination, non-disturbance and attornment agreement that shall subordinate the Lease to the encumbrance by Landlord. Such subordination, non-disturbance and attornment agreement must substantially provide that as long as Tenant (or the Leasehold Mortgagee) performs Tenant's obligations under the Lease, no foreclosure of, deed given in lieu of foreclosure of, of sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's (or the Leasehold Mortgagee's) rights under this Lease.
- 26.14 **No Liability.** Any such Leasehold Mortgage shall provide that Landlord shall have no personal liability or obligation for the repayment of any such loan or for the performance of any obligations under such mortgage or any of the other documents or instruments which evidence, govern or secure such loan. In no event shall Landlord have any obligation to subordinate its leasehold interest in the Premises or any financing secured by Landlord's leasehold interest to any Tenant financing or to execute any obligation to subordinate its leasehold interest in the Premises to any Tenant financing or to execute any Leasehold Mortgage. In addition, Landlord shall have no obligation to guarantee any of Tenant's indebtedness or other obligations under such loan.
- 26.15 **Due Authority of Signatories.** Each person signing this Lease represents and warrants that he or she has been duly authorized, by appropriate action of the Party that he or she represents, to act on behalf of that Party and to bind that Party to the terms and conditions of this Lease.

[The remainder of this page is intentionally left blank - the signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

Landlord:

Chula Vista Elementary School District

BY: _____
Dr. Francisco Escobedo
Superintendent

Attest:

By: _____
Name:
Title:

Tenant:

YMCA of San Diego County,
A California nonprofit public corporation

BY: _____
Name
President

Attest:

By: _____
Name:
Title: