

**Grant Contract
Special Provisions**

General Provisions

A. Definitions

1. The term "State" and used herein means the California State Department of Parks and Recreation.
2. The term "Act" as used herein means the Appropriation for the Program.
3. The term "Project" as used herein means the project described on page 1 of this Contract.
4. The term "Grantee" as used herein means the party described as the Grantee on page 1 of this Contract.
5. The term "Application" as used herein means the individual Application and its required attachments for grants pursuant to the enabling legislation and/or program.

B. Project Execution

1. Subject to the availability of grant moneys in the Act, the State hereby grants to the Grantee a sum of money (grant moneys) not to exceed the amount stated on page 1 in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Description of Project on page 1 and under the terms and conditions set forth in this Contract.

Grantee shall assume any obligation to furnish any additional funds that may be necessary to complete the Project. Any modification or alteration in the Project as set forth in the Application on file with the State must be submitted to the State for approval.
2. Grantee shall complete the Project in accordance with the time of Project Performance set forth on page .1, and under the terms and conditions of this Contract.
3. Grantee shall comply as lead agency with the California Environmental Quality Act (Public Resources Code, Section 21000, et. seq.)
4. If the Project includes development, the Grantee shall comply with all applicable current laws and regulations effecting development projects, including, but not limited to, legal requirements for construction contracts, building codes health and safe codes, and disabled access laws.
5. Grantee shall permit periodic site visits by the State to determine if development work is in accordance with the approved Project Scope including a final inspection upon Project completion.
6. Grantee agrees to submit any significant deviation from the original Project Scope to the State for prior approval.
7. If the Project includes acquisition of real property, the Grantee agrees to comply with all applicable state and local laws or ordinances effecting relocation and real property acquisition.
8. Grantee shall provide for public access in accordance with the intent and provisions of the enabling legislation and/or program.

C. Project Costs

The Grant moneys to be provided Grantee under this Contract may be disbursed as follows:

1. If the Project includes acquisition of real property, the State may disburse to Grantee the grant moneys as follows, but not to exceed in any event the State grant amount set forth on page 1 of this Contract:
 - a. When acquisition is through negotiated purchase, State may disburse the amount of the State approved purchase price together with State approved costs of acquisition when an escrow is opened.
 - b. When acquisition is allowed pursuant to this Act through proceedings in eminent domain, State may disburse the amount of the total award as provided for in the final order of condemnation together with State approved costs of acquisition.
 - c. In the event Grantee abandons such eminent domain proceedings, Grantee shall bear all costs in connection therewith and that no grant moneys shall be disbursed for such costs.
2. If the Project includes development, the State may disburse to Grantee the grant moneys as follows, but not to exceed in any event the State grant amount set forth of page 1 of this Contract:
 - a. Up to ten percent of the total grant for preliminary costs.
 - b. On proof of award of a construction contract or commencement of construction by force account, up to ninety percent of the total grant, or the actual cost, whichever is less.
 - c. Remaining grant funds shall be paid up to the amount of the Grant or the actual Project cost, whichever is less, on completion of the Project and receipt of a detailed summary of Project costs from the Grantee.

D. Project Administration

1. Grantee shall promptly submit such reports as the State may request. In any event Grantee shall provide State a report showing total final Project expenditures.
2. Grantee shall make property and facilities acquired or developed pursuant to this Contract available for inspection upon request by the State.
3. Grantee shall use any moneys advanced by the State under the terms of this Contract solely for the Project herein described.
4. If grant moneys are advanced, the Grantee shall place moneys in a separate interest bearing account, setting up and identifying such account prior to the advance, interest earned on grant moneys shall be used on the Project or paid to the State. If grant moneys are advanced and not expended, the unused portion of the Grant shall be returned to the State within 60 days of completion of the Project or end of the Project Performance Period, whichever is earlier.
5. Grantee shall use income earned by the Grantee from use of the Project to further Project purposes, or, if approved by the State, for related purposes within the Grantee's jurisdiction.

E. Project Termination

1. Grantee may unilaterally rescind this Contract at any time prior to the commencement of the Project. After Project commencement this Contract may be rescinded, modified or amended by mutual agreement in writing.
2. Failure by the Grantee to comply with the terms of this Contract or any other Contract under the Act may be cause for suspension of all obligations of the State hereunder.
3. Failure of the Grantee to comply with the terms of this Contract shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State such failure was due to no fault of the Grantee. In such case, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Contract.
4. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this Contract, is the preservation, protection and net increase in the quantity and quality of parks, public recreation facilities and/or historical resources available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of

grant moneys under the provisions of this Contract, the Grantee agrees that payment by the Grantee to the State of an amount equal to the amount of the grant moneys disbursed under this Contract by the State would be inadequate compensation to the State for any breach by the Grantee of this Contract. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this Contract shall be the specific performance of this Contract, unless otherwise agreed to by the State.

5. Grantee and State agree that if the Project includes development, final payment may not be made until the Project conforms substantially to this Contract.

F. Hold Harmless

1. Grantee shall waive all claims and recourse against the State including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Contract except claims arising from the concurrent or sole negligence of State, its officers, agents, and employees.
2. Grantee shall indemnify, hold harmless and defend State, its officers, agents and employees against any and all claims demands, damages, costs, expenses or liability costs arising out of the acquisition, development, construction, operation or maintenance of the property described as the Project which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of State, its officers, agents, or employees.
3. Grantee agrees that in the event State is named as codefendant under the provisions of Government Code Section 895 et seq., the Grantee shall notify State of such fact and shall represent State in the legal action unless State undertakes to represent itself as codefendant in such legal action in which event State shall bear its own litigation costs, expenses, and attorney's fees.
4. Grantee and State agree that in the event of judgment entered against the State and Grantee because of the concurrent negligence of the State and Grantee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. Grantee shall indemnify, hold harmless and defend the State, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the Grantee has certified. Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

G. Financial Records

1. Grantee shall maintain satisfactory financial accounts, documents and records for the Project and to make them available to the state for auditing at reasonable times. Grantee also agrees to retain such financial accounts, documents and records for three years following project termination or completion.

Grantee and State agree that during regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Contract or matters related thereto. Grantee shall maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this Contract.
2. Grantee shall use a generally accepted accounting system.

H. Use of Facilities

1. Grantee agrees that the Grantee shall use the property acquired or developed with grant moneys under this Contract only for the purposes for which the State grant moneys were requested and no other use of the area shall be permitted except by specific act of the Legislature.
2. The Grantee shall maintain and operate the property acquired or developed for a period commensurate with the type of Project and the proportion of State Grant funds and local funds allocated to the capital costs of the Project.

I. **Nondiscrimination**

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this Contract.
2. The Grantee shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of resident and pursuant to law.
3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this Project Contract or under provisions of the enabling legislation and/or program.

J. **Application Incorporation**

The Application and any subsequent change or addition approved by the State is hereby incorporated in this Contract as though set forth in full in this Contract.

K. **Severability**

If any provision of this Contract or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the Contract which can be given effect without the invalid provision or application, and to this end the provisions of this Contract are severable.

State of California – The Resource Agency
DEPARTMENT OF PARKS AND RECREATION

APPLICATION FOR LOCAL ASSISTANCE GRANT

PROJECT NAME East Palo Alto YMCA	GRANT AMOUNT \$295,500	
GRANTEE (Agency and address-including zip code) County of San Mateo Parks and Recreation Division 455 County Center, 4th Floor Redwood City, CA 94063-1646	ESTIMATED TOTAL PROJECT COST \$9,000,000 <small>(State Grant and other funds)</small>	
	COUNTY County of San Mateo	NEAREST CITY City of East Palo Alto
	PROJECT ADDRESS 550 Bell Street	
	NEAREST CROSS STREET University Ave.	
	SENATE DISTRICT NO. SD 11	ASSEMBLY DISTRICT NO. AD 21

Grantee's Representative Authorized in Resolution

Marcia Raines	Director, Environmental Services Agency	650-599-1388
<small>Name (type)</small>	<small>Title</small>	<small>Phone</small>

Person with day-day responsibility for project (if different from authorized representative)

Ross Nakasone	Management Analyst	650-363-4027
<small>Name (type)</small>	<small>Title</small>	<small>Phone</small>

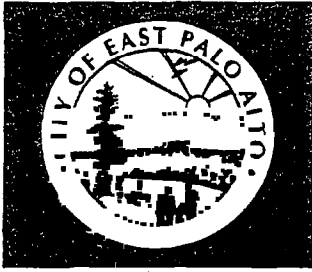
Brief description of project

In partnership with the City of East Palo Alto, the YMCA will construct a 40,000 square foot multi-purpose recreational facility at Bell Street Park in East Palo Alto. The YMCA will raise the funds for construction and operate the new facility. The YMCA and the City have signed a 55-year land lease and operating agreement.

For Dev. Projects Land Tenure—Project is: <u>1</u> acres: _____ Acres owned in fee simple by Grant Applicant <u>1</u> Acres available under a <u>55</u> year lease _____ Acres other interest (explain):	For Acquisition projects—Projects will be _____ Acres: _____ Acquired in fee simple by Grant Applicant _____ Acquired in other than fee simple (explain) _____
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I certify that the information contained in this project application form, including required attachments, is accurate:

Signed _____ Grantee's Authorized Representative as shown in Resolution	_____ Date
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City of East Palo Alto Public Works Department

October 31, 2001

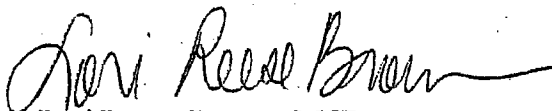
Mr. Barry Taylor
YMCA of the Mid-Peninsula
4151 Middlefield Road
Palo Alto, CA 94303

Dear Mr. Taylor:

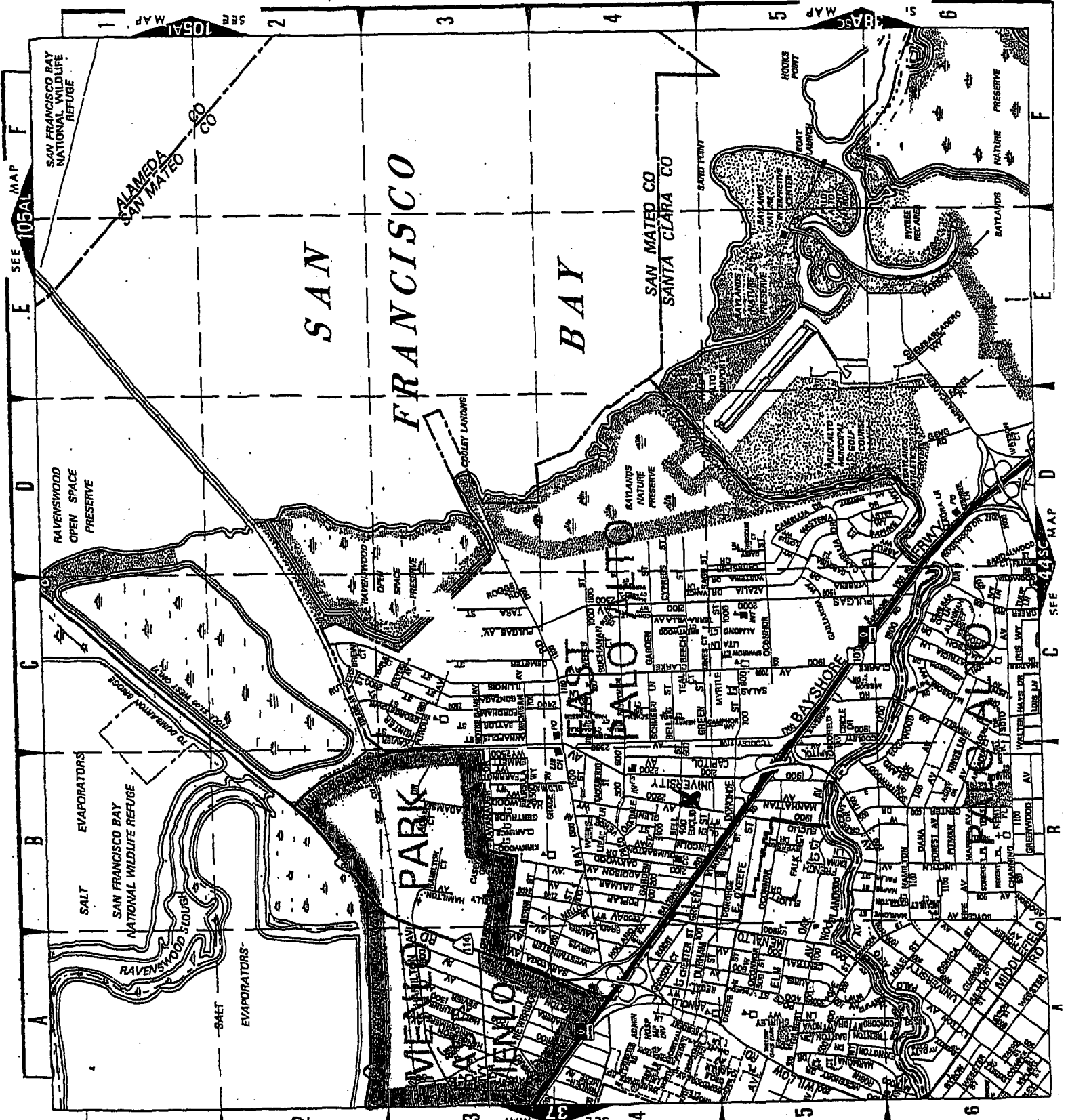
This letter is a confirmation of our discussion regarding the appropriate California Environmental Quality Act (CEQA) compliant document for the City of East Palo Alto, Bell Street Park Senior Center project. In accordance with CEQA guidelines, Section 15303 (c), design review approval for the Senior Center was exempt from the provisions of CEQA based on the minimum square footage of the building. I have attached a copy of the appropriate CEQA section that exempted this project at the time, for your review. A proposal to expand the building or demolish and reconstruct a new senior center in the future would be subject to further CEQA review contingent upon the proposed design and square footage of the building.

If I can be of further assistance please do not hesitate to contact me at the number provided for your convenience.

Sincerely,


Lori Reese-Brown, MCP

cc: Richard Mao, Director of Public Works



SAN MATEO

DETAIL

X MARK PACO ALTO Y M CA

GROUND LEASE

THIS GROUND LEASE (this "Lease") made and entered into this 24th day of MAY, 200~~8~~⁰⁷ by and between the CITY OF EAST PALO ALTO, a municipal corporation, hereinafter called "Landlord", and YMCA OF THE MID-PENINSULA, INC, a California not-for-profit corporation, hereinafter called "Tenant."

PREAMBLE

WHEREAS, Landlord is the owner of certain real property and improvements thereon located in the City of East Palo Alto and commonly known as the Bell Street Park; and

WHEREAS, Landlord and Tenant have entered into a Memorandum of Understanding dated December 21, 1998 (the "MOU") calling for a joint undertaking and allocation of responsibilities for the preliminary design and pre-construction activities for a multi-purpose recreation facility to be operated by Tenant; and

WHEREAS, said MOU calls for a Ground Lease to be developed and executed by Landlord and Tenant along with an operating agreement specifying the manner in which said facility is to be operated by Tenant,

NOW, THEREFORE, for and in consideration of and pursuant to the mutual terms, covenants and conditions hereinafter contained, Landlord and Tenant agree as follows.

COVENANTS

1. Leasing

Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the real property described in Exhibit A attached hereto and shown on the diagram attached hereto as Exhibit B (the "Premises").

2. Term.

A. Initial Term. The initial term of this Lease (the "Initial Term") shall commence the later of (i) execution of this Lease by both parties or (ii) the effective date of the ordinance adopted by the City of East Palo Alto (the "City") by which this Ground Lease is authorized (the "Commencement Date"). The Initial Term shall end on that date which is fifty-five (55) years after the Commencement Date, plus the period of time required by Tenant to complete the improvements provided for by this Lease, or a period of twenty-four (24) months, whichever is less. When the Commencement Date and the date of expiration of the Initial Term are determined the parties shall execute a letter agreement setting forth such dates. As used in this Paragraph 2.A, the phrase "effective date of the ordinance" shall mean that date upon which any period of protest, appeal or referendum relating to the ordinance authorizing this Ground Lease has expired without protect, appeal or referendum (or the date that any such protect, appeal or referendum is determined in a manner which upholds such ordinance).

B. Options to Extend. Subject to the rights of Landlord set forth in this Paragraph 2.B, Tenant shall have the option to extend the Initial Term for successive periods of five (5) years each (each an "Extended Term") by delivering written notice of such election (the "Exercise Notice") to Landlord not later than three (3) years prior to the expiration of the Initial Term, or any previously exercised Extended Term, but not earlier than five (5) years prior to such date. Each Extended Term shall be upon all of the terms and conditions of this Lease, including the payment of Rent (as defined in Paragraph 4 hereof). Upon receipt of the Exercise Notice, Landlord and Tenant shall meet and attempt to determine if it will be mutually advantageous to Landlord and Tenant to continue the occupancy of the Premises and the YMCA Facility (as hereinafter defined) by Tenant during the Extended Term. If Landlord and Tenant

are unable to agree upon the continued occupancy of the Premises and the YMCA Facility by Tenant during the Extended Term, Landlord shall have the right to reject the Exercise Notice by giving Tenant written notice of such rejection within six (6) months after the date of the Exercise Notice, in which event the Exercise Notice shall be null and void and the Term of this Lease shall expire at the end of the Initial Term, or the end of any then effective Extended Term, as the case may be. If Landlord fails to give written notice rejecting the Exercise Notice as set forth in the preceding sentence, this Lease shall continue for the Extended Term. Time is of the essence for the giving of the Exercise Notice and any notice of rejection pursuant to this Paragraph 2.B. As used in this Lease, the word "Term" shall mean the Initial Term plus any Extended Term exercised by Tenant pursuant to the provisions of this Paragraph 3.

3. Use of Premises.

A. Multi-Purpose YMCA Facility. The Premises shall be used solely for construction and operation of a non-profit multi-purpose YMCA recreation facility and related facilities to serve principally East Palo Alto residents, as well as other members of the YMCA, and for no other purpose without the prior written consent of the City Manager of the City (the "City Manager"), provided that Tenant shall be entitled to use such facility to conduct community service programs, for emergency shelter or healthcare in the event of local disaster, such as fire, earthquake or flood, and otherwise in furtherance of Tenant's mission to build strong kids, strong families and strong communities. Tenant shall operate such facility in accordance with the terms and provisions of the Operating Agreement attached hereto as Exhibit C (the "Operating Agreement"). Tenant shall comply with, and shall not use or occupy the Premises in violation of, any law, code, rule, regulation or requirement of any federal, state or local

governmental authority or any certificates of occupancy or other permits or entitlements issued in connection with the Premises or the improvements constructed on the Premises by Tenant.

B. **City Sublease.** Tenant agrees to sublease to City the approximately 1,500 square foot area of the Building (as defined in Paragraph 5.A.(i) below) shown on the Preliminary Plans attached hereto as Exhibit D for occupancy and use by the City's recreation department (the "City Recreation Office Space"). Tenant shall deliver the City Recreation Office Space in "shell office" condition with finished and painted walls, drop ceilings, slab floor, and electrical, mechanical and lighting systems as described in the Preliminary Plans. The sublease shall be for a term commencing on the date of completion and opening of the Building and shall expire on the date of expiration of the Term or earlier termination of this Lease. City shall pay to Tenant sublease rent of \$1.00 per year, payable in advance, during the term of the sublease. City may install in the City Recreation Office Space such customary office furniture, fixtures and equipment as City may require. Tenant shall contract and pay for customary office electrical power and water service to the City Recreation Office Space. City shall contract and pay for all other utility services to be provided to the City Recreation Office Space including, but not limited to, telephone and/or cable television or internet access service.

C. **Sharing of Space.** Tenant intends to conduct a broad range of recreational and other programs and services developed and sponsored by Tenant utilizing the YMCA Facility for most hours on most days. Tenant intends to collaborate with City and other non-profit groups serving the East Palo Alto community in developing programs and activities to meet the needs of the community. Periodically, Tenant will meet with the Director of the City's Recreation Department and other groups serving the East Palo Alto community to assess the

recreational and other needs of the community and the availability of programs and program space to address those needs.

City may present its future needs for program space to Tenant on a quarterly basis and Tenant agrees to inform City Manager, in response to City's presentation, of the availability of space within the YMCA Facility that is not scheduled for the conduct of Tenant programs or services, or the conduct of programs or services sponsored by others, and will allow City to schedule the use of such available space for the conduct of City sponsored or collaboratively sponsored programs. Tenant and City Manager shall cooperate in the scheduling of the use of available space within the YMCA Facility for the conduct of City sponsored or collaboratively sponsored programs during Tenant's normal days and hours of operation. City shall be solely responsible for the conduct of any City sponsored recreational programs at the YMCA Facility and shall indemnify and hold Tenant harmless from and against any and all claims arising from the conduct of any City sponsored programs at the YMCA Facility. In the conduct of any City sponsored programs at the YMCA Facility, City shall comply with Tenant's reasonable restrictions on access and usage and shall pay any additional costs incurred by Tenant as the result of the conduct of any City sponsored programs at the YMCA Facility.

4. Rent.

The annual rent ("Rent") shall be one dollar (\$1.00) payable in advance for the entire Initial Term on the Commencement Date of the Initial Term. Rent due for any Extended Term shall be prepaid in its entirety upon commencement of the Extended Term.

Landlord and Tenant agree and acknowledge that (i) the construction and operation of the YMCA Facility (as hereinafter defined) by Tenant pursuant to this Lease shall benefit Landlord, the East Palo Alto community and the residents of, and visitors to, East Palo Alto; (ii) the leasing

of the Premises to Tenant pursuant to this Lease will allow Tenant to construct and commence operations in the YMCA Facility at the earliest possible date and will benefit Tenant; (iii) it is in the mutual best interests of Landlord and Tenant, and their respective and mutual constituencies, to enter into this Lease; and (iv) given the benefit to Landlord and the East Palo Alto community from the construction and operation of the YMCA Facility pursuant to this Lease, the value to be derived by Landlord by entering into this Lease with Tenant is reasonably equivalent to the value that Landlord could anticipate from entering into other transactions for the Premises.

5. **Improvements to be Constructed by Tenant.**

A. **Scope of Improvements.** Tenant agrees to construct the following improvements on the Premises:

(i) **Building.** A multi-purpose recreational building, which shall consist of approximately 40,000 square feet (the "**Building**"), consistent with preliminary plans and specifications therefor prepared by Carrasco & Associates (the "**Architect**") as submitted to and approved by the City Manager (the "**Preliminary Plans**"), and installation therein of all necessary furniture, fixtures, equipment, and accessories necessary for operation of the Building. The Preliminary Plans are identified in Exhibit D attached hereto.

(ii) **Landscaping.** Such landscaping (the "**Landscaping**") and other improvements as are shown on the Preliminary Plans or which are required by City in connection with the issuance of necessary approvals and permits for the construction of the Building.

The term "**YMCA Facility**" as hereinafter sometimes used shall include the Building, Landscaping and other improvements constructed on the Premises by Tenant.

B. **Payment.** Tenant shall construct the YMCA Facility at its sole cost and expense, except Landlord shall be obligated to contribute up to Five Hundred Thousand Dollars

(\$500,000.00), toward architectural and engineering fees for the YMCA Facility, such funds to be acquired through San Mateo County CBDG funds. Subject to the foregoing contribution by Landlord, Tenant shall promptly pay for all labor and materials in connection with such construction and Tenant shall keep the Premises free and clear of all mechanics' liens resulting from such construction.

In connection with the development and construction of the YMCA facility, Landlord agrees to waive the City's development review costs, including, but not limited to, application fees, plans review and public noticing costs, engineering and plan-checking fees, and building and occupancy permit fees.

C. **Selection of Contractors.** Subject to the terms and conditions of this Lease, Tenant shall have the right to select the general contractor responsible for construction of the YMCA Facility and all subcontractors to be used by the general contractor. Notwithstanding the foregoing to the contrary, Landlord and Tenant agree that if required Tenant shall comply with the requirements of the California Government Code for the awarding of any contracts, including, but not limited to notice to bidders, compliance with all governmental regulations and prevailing wage schedules.

D. **Construction Obligations.** Construction drawings and specifications for the YMCA Facility (the "Construction Drawings") shall be prepared by Architect and submitted to Landlord for its approval, which will not be unreasonably withheld or delayed. Within sixty (60) days after approval by Landlord of the Construction Drawings, Tenant shall submit the Construction Drawings to the City for issuance of all permits and approvals required for such construction. Within sixty (60) days after issuance by the City of all required permits and approvals for the construction of the YMCA Facility, Tenant shall commence the construction

thereof, and thereafter shall diligently complete construction, using reasonable efforts to complete the Building no later than twenty-four (24) months after commencement thereof, subject to extension for any Force Majeure Conditions (as defined in Paragraph 5.E below). Tenant shall construct the Building in accordance with all applicable laws, ordinances and regulations of the city, state and federal governments.

E. **Extension of Time.** Tenant shall not be held liable for failure to complete the Building within the time specified in Paragraph 5.D because of delays caused by Landlord or its employees, agents, or representatives, by acts of God, acts of the public enemy, fire, floods, epidemics, quarantine restrictions, moratoriums, strikes, shortages of labor or materials, freight embargoes, weather delays, delays in obtaining construction inspections or approvals by the City, or delays of subcontractors due to such causes or other delays beyond the reasonable control of Tenant (collectively, "Force Majeure Conditions"). Within ten (10) business days after the beginning of any such delay due to a Force Major Condition, Tenant shall notify the City Manager thereof in writing of the cause of the delay and the expected duration of such delay.

6. **Alterations to Building and Expansion.**

From time to time during the Term, Tenant may make any alterations or improvements to the YMCA Facility desired by Tenant, provided that (i) any modification to the exterior surface of the exterior walls or any increase in the height of the Building or any increase in the area of the Building shall require the prior written approval of the City Manager, which shall not be unreasonably withheld or delayed, and (ii) all proposed alterations or improvements shall conform to all requirements of the City's building code and other applicable City ordinances.

7. Signs.

Tenant may install, maintain or replace its standard YMCA signs on the façade of the Building and on monument signs along the street frontage of the Premises, subject to compliance with all applicable sign ordinances of the City. Upon expiration of the Term, all signs shall be removed, and any damage resulting from such removal shall be repaired by Tenant, at Tenant's sole cost.

8. Use of the City's Facilities.

Throughout the Term, as may be extended, Tenant shall use and operate those facilities owned by the City located in Bell Park as described in the Operating Agreement.

9. Assignment.

Tenant shall not assign this Lease without the consent in writing by the City Manager, except to a Lender as permitted by Paragraph 18 hereof, or to any other YMCA organization which results from merger, acquisition or consolidation. Subject to the forgoing, in the event Tenant assigns this Lease without such prior consent, then this Lease may be terminated by Landlord upon thirty (30) days' written notice to Tenant.

10. Hold Harmless.

A. Tenant Indemnification of Landlord. To the maximum extent permitted by law, Tenant shall indemnify, defend and hold Landlord and the Landlord's council members, officers, employees, agents, successors and assigns harmless from and against any and all claims, damages, causes of action, liabilities, obligations and costs, including without limitation reasonable attorney's fees and costs, arising out of or resulting in whole or part from (i) any act or omission of Tenant or any of the Tenant's agents, employees, contractors, members, licensees,

guests or invitees on the Premises or (ii) any personal injury or property damage occurring on the Premises, occurring during the Term of this Lease.

B. **Landlord Indemnification of Tenant.** To the maximum extent permitted by law, Landlord shall indemnify, defend and hold Tenant and Tenant's directors, officers, employees, agents, successors and assigns harmless from and against any and all claims, damages, causes of action, liabilities and costs, including without limitation reasonable attorney's fees and costs arising out of or resulting in whole or part from (i) any act or omission of Landlord or any of Landlord's agents, employees, contractors, members, licenses, guests or invitees on or about any portion of Bell Street Park other than the Premises or (ii) any personal injury or property damage occurring on or about any portion of the Bell Street Park other than the Premises, occurring during the Term of this Lease.

C. **Survival of Indemnifications.** The foregoing indemnifications set forth in Paragraph 10.A and 10.B above shall survive expiration of the Term of this Lease or the sooner termination of this Lease with respect to any cause of action or claim arising prior to the expiration of the Term of this Lease or the termination of the Lease.

11. **Insurance.**

A. **Commercial General Liability.** During the Term Tenant shall obtain and keep in force, at its own expense, a policy of commercial general liability insurance, on an occurrence form, with a company authorized to engage in the insurance business within the State of California, with the following minimum limits of liability:

\$1,000,000	for death of or injury to any one person in any one occurrence.
2,000,000	for death of or injury to two or more persons in any one occurrence.
500,000	for damage to or loss of property sustained by any one person in any one occurrence.

1,000,000 for damage to or loss of property sustained by two or more persons in any one occurrence.

B. Casualty Policy. Commencing upon the completion of the Building and continuing thereafter throughout the Term, Tenant shall also obtain and keep in force, at its own expense, an policy of fire and extended coverage casualty insurance, with a company authorized to engage in the insurance business in the State of California, insuring Tenant against loss by reason of destruction or damage of the Building and improvements therein (excluding personal property) by fire, smoke damage, vandalism, malicious misconduct and sprinkler leakage, in an amount not less than one hundred percent (100%) of the full replacement cost thereof, less any deductible. Coverage shall include demolition and any increases in construction cost resulting from changes in building codes.

C. Builder's Risk. During the period commencing with the commencement of construction of the Building and continuing until construction of the Building is completed, Tenant shall also obtain and keep in force, at its sole expense (or cause the general contractor to so obtain and keep in effect) a policy of builder's risk insurance covering all risks of physical loss in the amount of the full replacement value of the Building.

D. Policies. All insurance provided for in this Paragraph 11 shall be issued by companies with a Best Rating of at least A-VIII. All insurance provided for in this Paragraph 11 shall name Landlord, its officers agents and employees as additional insureds (or a loss payee in the case of the insurance to be maintained pursuant to Paragraphs 11.B and 11.C), shall be evidenced by the original or certified copies of the insurance policy or policies, or by certificates of insurance, shall provide that such insurance shall not be cancelled or reduced in coverage without at least thirty (30) days' written notice to Landlord, and shall be approved as to form and sufficiency by the City Attorney of the City. Subject to the terms of Paragraph 16

below, Landlord agrees that any proceeds available from the all-risk fire and extended coverage policy or builder's risk obtained pursuant to Paragraph 11.B and 11.C hereof, shall be made available for Tenant's use in restoring the Building in the event of any casualty, and Tenant shall have the right to settle any claim with the insurer. Landlord shall promptly execute and deliver to Tenant any documents or endorsements requested by Tenant and reasonably necessary to settle any claim or to release proceeds to Tenant for the purpose of restoration.

E. Waiver of Subrogation. Landlord and Tenant each waive all rights of subrogation and recovery against each other and their respective directors, officers, employees, agents and representatives resulting from any loss or damage to the extent covered by any insurance carried by either party pursuant to this Lease or otherwise. Both parties agree to obtain waiver of subrogation clauses for the benefit of the other party from their insurance carriers, to the extent reasonably practicable to do so.

12. Taxes.

Tenant shall pay before delinquency directly to the charging authority all taxes on its personal property and upon any leasehold or possessory interest created under this Lease and any real property taxes or assessments that may be due in connection with the Premises to extent that the Premises, or the interest of Landlord and/or Tenant under this Lease, are not exempt from the imposition of such taxes. Tenant shall have the right to contest by appropriate proceedings the imposition of any taxes or assessments upon the Premises or the interest of Tenant under this Lease.

13. Utilities.

Tenant shall pay when due directly to the charging authority all invoices rendered in connection with all utilities serving the Premises, including water, gas, electricity, sewer and

telephone. Tenant shall arrange for and make all necessary utility connections to the Building, at its sole cost, and in the manner approved by the City.

14. Entry.

Landlord or its designated representative shall have the right during the term of this Lease to enter the YMCA Facility upon not less than two (2) business days' prior notice, except in an emergency, for the purpose of constructing, maintaining, replacing or adding underground utility facilities, including but not limited to water mains, sanitary sewer mains, storm drain mains, gas mains, telephone and electrical distribution facilities and fire alarm circuits, provided that no such improvement shall be installed under the Building and all such improvements shall be buried to a depth and properly installed so as to not interfere with the use or stability of the Building, and Landlord shall use reasonable efforts to minimize disruption to Tenant's use of the Building. Landlord shall replace at its cost any surface improvements and Landscaping that may be damaged or disturbed by such construction, maintenance, replacement or addition to the condition of such improvements or Landscaping at the time such disturbance or damage occurred.

15. Maintenance.

Tenant shall keep and maintain the YMCA Facility in good condition and repair and shall make all necessary repairs thereto at Tenant's sole cost. Landlord shall not be required or obligated to make any changes, replacements, alternations, additions, improvements or repairs of any kind, nature or description whatsoever to the YMCA Facility, except Landlord shall, at its sole cost, keep in good condition and repair those portions of the Bell Street Park which are to be maintained by Landlord pursuant to the Operating Agreement. Tenant hereby expressly waives

all right to make repairs at Landlord's expense under California Civil Code Sections 1941 and 1942.

16. **Damage or Destruction.**

A. **Obligation to Rebuild.** In the event the Building is destroyed or damaged by any casualty, Tenant may elect, in its sole and absolute discretion, to terminate this Lease effective as of the date of such casualty if the insurance proceeds which are available to restore the Building, excluding any deductible, are insufficient to pay the entire cost thereof or if the Building is damaged or destroyed by a casualty which is not covered by the insurance to be maintained by Tenant pursuant to Paragraph 11.B or Paragraph 11.C. In addition, in the event the Building is destroyed or damaged by any casualty during the last five (5) years of the Term and restoration thereof would take more than six (6) months to complete as reasonably estimated by Tenant's contractor, Tenant shall have the right, in its sole and absolute discretion, to terminate this Lease effective as of the date of such casualty. Tenant shall deliver written notice to Landlord of such election within ninety (90) days of determining the amount of the insurance proceeds available and cost of restoration or the length of time necessary for restoration, as the case may be. In the event Tenant does not deliver written notice of such election to Landlord within said ninety (90) day period, Tenant shall diligently restore the Building to substantially the same condition it was in prior to such casualty after receipt of the insurance proceeds and issuance of all necessary permits and approvals required for such restoration. If Tenant elects to terminate this Lease pursuant to the foregoing, Tenant shall promptly assign to Landlord all insurance proceeds available under the casualty policy maintained by Tenant under Paragraph 11.B or Paragraph 11.C hereof, provided that if Landlord so elects, Tenant shall demolish the existing improvements on the Premises, and remove all debris, to the extent of

available insurance proceeds. Upon termination of this Lease pursuant to the foregoing, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed conveying to Landlord all of Tenant's right, title and interest in and to the Premises and the Building and all improvements located thereon and all fixtures attached thereto, except for Tenant's personal property.

B. **Statutory Waivers.** Landlord and Tenant agree that the provisions of this Paragraph 16 control the rights and obligations of the parties with respect to any damage to or destruction of the Building. Landlord and Tenant hereby waive the provisions of California Civil Code Sections 1932 and 1933(4) and any other ordinance, law or statute now or hereafter in effect which would grant to Landlord and/or Tenant the right to terminate this Lease in the event of damage to or destruction of all or any part of the Building.

17. **Ownership of Improvements.**

Title to the Building and other improvements constructed by Tenant on the Premises shall be and remain in Tenant during the Term. At the expiration or sooner termination of this Lease, the YMCA Facility shall become the property of Landlord and the Premises shall be surrendered by Tenant to Landlord as required by Paragraph 33 hereof.

18. **Mortgage of Leasehold Interest.**

A. **Right to Encumber.** Tenant may encumber by mortgage or deed of trust, or other proper instrument, its leasehold interest in the Premises covered by this Lease, together with its rights to the use and occupancy of the YMCA Facility thereon, as security for the indebtedness of Tenant for a construction or permanent loan, the amount and terms of which shall be satisfactory to Tenant, in its sole discretion. Landlord shall, promptly upon Tenant's request, execute and deliver to Tenant or Tenant's lender (the "Lender") any documents reasonably requested by Tenant or the Lender in connection with such loan, provided that

Landlord shall not incur any costs in connection therewith, and Landlord shall not be obligated to subordinate its fee title interest in the Premises to the security of such loan. In the event any Lender shall succeed to Tenant's interest in the Premises by foreclosure or assignment in lieu of foreclosure, Landlord shall attorn to and recognize the rights of Lender as the new tenant under this Lease. In the event Tenant defaults in performance of any obligation under this Lease, Landlord will not terminate this Lease because of such default unless and until Landlord gives sixty (60) days' written notice to Lender, and Lender either (i) fails to cure such default, if the same can be cured by the payment of money required to be paid under the provisions of this Lease, or (ii) if such default is not curable by such payment of money, fails to commence and thereafter diligently pursue foreclosure and sale proceedings under such security instrument and to keep the payment of Rent and other sums due under this Lease current during the pendency of such foreclosure and sale proceedings.

B. **Lender's Rights**. In no event shall the Lender become personally liable to perform the obligations of Tenant hereunder unless and until such Lender becomes the holder of the leasehold estate created by this Lease pursuant to foreclosure, assignment or transfer in lieu of foreclosure, and thereafter the Lender, or its successors and assigns, shall remain liable for such obligations only so long as the Lender, its successors or assigns remain the holder of such leasehold estate. If the Lender shall become the holder of the leasehold estate, it shall be entitled to all rights and privileges granted to Tenant pursuant to this Paragraph 18 and shall have the right of assignment of all or any part of the leasehold interest, subject to Landlord's approval, which shall not be unreasonably withheld or delayed. In the event of the Lender's acquisition of the leasehold estate by foreclosure or assignment in lieu of foreclosure, Landlord shall enter into a new lease with the Lender covering the Premises if requested by the Lender if Lender pays all

costs resulting from default and termination and remedies all defaults as though this Lease had not been terminated. The new Lease shall be for the remaining portion of the existing Term with all other provisions hereof to remain in effect including, but not limited to, any remaining rights to extend the Term pursuant to Paragraph 2.B. Landlord and Tenant shall cooperate in including in this Lease, by suitable modification from time to time, any provision which may reasonably be requested by any proposed Lender for the purpose of implementing the provisions of this Paragraph 18, provided that no such modification shall in any way adversely affect the rights or obligations of either Landlord or Tenant, in any material respect, and provided that Landlord shall not incur any cost in connection therewith.

19. **Event of Default; Landlord's Remedies.**

A. **Event of Default.** The occurrence of any one or more of the following events (an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

(i) The failure of Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, and such failure shall not have been cured within thirty (30) days after receipt by Tenant of written notice thereof from Landlord;

(ii) Tenant's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after receipt by Tenant of written notice of such failure from Landlord; provided that, where such failure cannot reasonably be cured within said thirty (30) day period, Tenant shall not be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently completes to cure such matter;

(iii) Tenant's assignment of its assets for the benefit of its creditors;

(iv) The sequestration of, attachment of, or execution on, any substantial part of the property of Tenant or on any property essential to the conduct of Tenant's business on the Premises, and Tenant shall have failed to obtain a return or release on such property within sixty (60) days thereafter, or prior to sale pursuant to such sequestration, attachment or execution, whichever is earlier;

(v) An entry of any of the following orders by a court having jurisdiction, and such order shall have continued for a period of sixty (60) days after entry:

(1) an order for relief in any proceeding under Title 11 of the United States Code, or an order adjudicating Tenant to be bankrupt or insolvent; (2) an order appointing a receiver, trustee or assignee of Tenant's property in bankruptcy or any other proceeding; or (3) an order directing the winding up or liquidation of Tenant; or

(vi) The filing of a petition to commence against Tenant an involuntary proceeding under Title 11 of the United States Code, and Tenant shall fail to cause such petition to be dismissed within sixty (60) days thereafter.

B. **Remedies.** Upon any Event of Default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or equity:

(i) **Continue Lease in Effect.** Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Landlord shall be entitled to keep this Lease in full force and effect for so long as Landlord does not terminate Tenant's right to possession (whether or not Tenant shall have abandoned the Premises) and Landlord may enforce all of its

rights and remedies under this Lease, including the right to recover Rent and other sums as they become due under this Lease; or

(ii) **Terminate Lease.** Landlord may terminate the Tenant's right to possession by giving Tenant written notice of termination. Any termination under this paragraph shall not release Tenant from the payment of any sum then due Landlord or from any claim for damages or Rent previously accrued or then accruing against Tenant.

C. **Recovery by Landlord.** In the event this Lease is terminated pursuant to this Paragraph 19.B., Landlord may recover from Tenant:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period than of the partnership, shall be deemed a Transfer requiring Landlord's prior written consent.

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) of this Paragraph 19.C. shall be computed by allowing interest at the lower of five percent (5%) per annum plus the discount rate of the Federal Reserve Bank of San Francisco, or the maximum rate then permitted by law. The "worth at the time of award" of the amount referred to in subparagraph (iii) of this Paragraph 19.C. shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). The term "Rent" as used in this paragraph shall include all sums required to be paid by Tenant to Landlord pursuant to the terms of this Lease.

20. Default by Landlord.

A. Cure Period. Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within the period of time specifically provided herein, or if no period of time has been provided, then within thirty (30) days after receipt of written notice from Tenant specifying therein the nature such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently complete such obligation. In the event of any such default by Landlord, Tenant shall, in addition to all rights and remedies available at law or in equity to redress such default, have the right to terminate this Lease upon thirty (30) days' written notice to Landlord.

B. Notice to Lender. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee of a mortgage encumbering Landlord's fee interest in the Premises whose address shall have been furnished to Tenant, and before Tenant shall have any right to terminate this Lease, Tenant shall grant such beneficiary or mortgagee a reasonable period within which to cure the default or to obtain title to the Premises, if such action is necessary to effect a cure.

21. Covenants of Parties:

A. Landlord. Landlord covenants and agrees to keep and perform all of the terms, covenants, agreements and conditions hereof on its part to be kept and performed, and covenants that as long as Tenant pays the Rent in the amounts and the times, and in the manner herein provided, and keeps and performs all of the terms, covenants, agreements, and conditions

hereof on its part to be kept and performed, Tenant may have and hold the Premises, for the Term, without hindrance by Landlord or any person or entity claiming by, through or under Landlord, subject to the terms and conditions of this Lease. Landlord further covenants, warrants and represents that: (i) Landlord is solvent and is able to pay its debts as they come due; and (ii) by this Lease, Landlord is not transferring any interest in property of Landlord or incurring any obligations with the intent to hinder, delay or defraud any present or future creditor of Landlord. The non-performance of any covenant or agreement of Landlord hereunder shall be a default entitling Tenant to terminate this Lease as provided in Paragraph 20 hereof.

B. **Tenant.** Tenant covenants and agrees to pay the Rent and all other sums required to be paid by Tenant hereunder in the amounts, and at the times, and in the manner herein provided and to keep and perform all the terms, covenants, agreements and conditions hereof on its part to be kept and performed, and at the expiration or sooner termination of this Lease, Tenant covenants to peaceably and quietly to quit and surrender to Landlord the Premises in the manner and condition required by this Lease. Tenant further covenants, warrants and represents that: (i) Tenant is solvent and is able to pay its debts as they come due; and (ii) by this Lease, Tenant is not transferring any interest in property of Tenant or incurring any obligations with the intent to hinder, delay or defraud any present or future creditor of Tenant. The non-performance of any covenant or agreement of Tenant hereunder shall be a default entitling Landlord to terminate this Lease as provided in Paragraph 19 hereof.

22. **Nondiscrimination and Affirmative Action.**

A. **Tenant's Obligations.** During the Term, Tenant agrees as follows:

(i) Tenant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex or sexual orientation. Tenant

will take affirmative action to ensure that applicants and employees are treated without regard to their race, color, religion, national origin, sex or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City Manager setting forth the provisions of this nondiscrimination clause.

(ii) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex or sexual orientation.

(iii) Tenant further agrees that it will not discriminate against any person on account of race, color, religion, national origin, sex or sexual orientation in the use of the Premises, or in the conduct or performance of any function on the Premises and that the YMCA Facility will be open to all on equal and reasonable terms.

(iv) In order that this provision against discrimination shall achieve the intended result, Tenant shall present to the City Manager, or his/her designated representative, for approval, the program of affirmative action it proposes to undertake to insure that persons are employed and employees are treated so that they receive equal employment opportunities without regard to race, color, religion, national origin, sex or sexual orientation. Such program shall include not only the affirmative action proposed to be undertaken by Tenant in its own employment practices but also the affirmative action that it proposes to undertake to assure that all subcontractors working under it provide equal employment opportunities for all persons

without regard to race, color, religion, national origin, sex or sexual orientation. Failure to carry out the approved program of affirmative action shall be deemed to be a violation of this Lease.

(v) Tenant agrees to make available annually to Landlord any such books, records, and accounts as may be required by Landlord for the purpose of investigation to ascertain compliance with the affirmative action program set forth herein.

(vi) In the event of Tenant's noncompliance with said affirmative action program, this Lease may be cancelled, terminated or suspended in whole or in part by Landlord as provided in Paragraph 19 hereof.

23. Eminent Domain.

A. Termination of Lease. If the whole or any substantial part of the Premises, the Building or any other improvements on the Premises shall be taken by any public authority under the power of eminent domain, then the Term shall cease as to the part so taken from the day the possession shall be taken. Tenant shall have the right to either cancel this Lease or to continue in the possession of the remainder of the Premises under the terms of this Lease. Such right to cancel shall be exercised, if at all, with thirty (30) days after possession of the part taken by public authority. If Tenant continues in possession of the remainder of the Premises, the rental therefor shall be reduced in proportion to the amount of the Premises which Tenant is no longer able to use, as reasonably determined by Landlord and Tenant.

B. Award. All compensation and damages awarded for the taking of the Premises and the Building, or any other improvements on the Premises, or any portion thereof, shall be allocated as follows:

(i) First to Landlord, that portion of the award as shall represent compensation for the portion of the Premises taken, considered as vacant land;

(ii) Second, to Tenant, an amount equal to the unamortized cost, if any, as of the date possession is taken, of the portion of the Building and other improvements constructed by Tenant on the Premises so taken, based upon Tenant's original cost of the Building and such improvements amortized on a straight-line basis over a fifty-five (55) year life;

(iii) Third, to Tenant, severance damages if any and the cost to restore the Building and other improvements taken, in the event of a partial taking;

(iv) Fourth, to Landlord and Tenant, their respective expenses and disbursements reasonably paid or incurred in connection with the eminent domain proceedings;

(v) Fifth, to Tenant the net unrecovered value of Tenant's leasehold and Tenant's relocation expense; and

(vi) Sixth, to Landlord, any residue.

C. **Release from Obligations.** If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this Paragraph 23, all Rent and other charges payable by Tenant hereunder attributable to the portion of the Premises taken shall be paid up to the date upon which actual physical possession shall be taken by the condemnor, and the parties shall thereupon be released from all further liability with respect to the portion so taken, at which time, Tenant shall make, exercise, acknowledge and deliver to Landlord a quitclaim deed conveying to Landlord all of Tenant's right, title and interest in and to the portion of the Premises taken.

24. **Waivers.**

No waiver by either party at any time of any of the terms, conditions or covenants of this Lease shall be deemed as a waiver at any time thereafter of the same or of any other term, condition or covenant herein contained, nor of the strict and prompt performance thereof. No

delay, failure or omission of Landlord to re-enter the Premises or to exercise any right, power or privilege or option arising from any default of Tenant, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option or be construed as a waiver of such default or a relinquishment of any right or acquiescence therein. No notice to Tenant shall be required to restore or revive time as of the essence after the waiver by Landlord of any default. No option, right, power, remedy or privilege of Landlord shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given to Landlord by this Lease shall be deemed cumulative.

25. Agent for Service of Process.

It is expressly agreed and understood that if Tenant is not a resident of this State, or is an association or partnership without a member or partner resident of this State, or is a foreign corporation, then in any such event Tenant shall file with Landlord a designation of a natural person residing in the County of San Mateo, State of California, giving his name, residence and business address as his or its agent for the purpose of service of process in any court action between him or it and Landlord arising out of or based upon this Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service covenanted upon such personally upon such Tenant; and it is further expressly agreed, and stipulated that if for any reason service of such process upon agent is not possible, then in such event Tenant may be personally served with such process out of this State, and that such service shall constitute valid service upon such Tenant; and it is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objections and protests thereto.

26. Attorney's Fees.

In the event of any action or suit upon this Lease, the prevailing party shall be entitled to receive reasonable attorney's fees and court costs, as determined by the court. "Prevailing party" within the meaning of this paragraph shall include, without limitation, a party who brings an action against the other party after the other party is in breach or default, if such action is dismissed upon the other party's payment of the sums allegedly due or performance of the covenant allegedly breached, or if the party commencing such action or proceeding obtains substantially the relief sought by it in such action whether or not such action proceeds to a final judgment or determination.

27. Estoppel Certificate.

Landlord and Tenant shall, from time to time, upon not more than ten (10) days' prior written request by the other party, execute, acknowledge and deliver to Landlord, or Tenant, as the case may be, a statement in writing certifying that this Lease is unmodified and in full force and effect, as stated therein, the dates to which Rent and other sums due under this Lease have been paid to, and nature of any known defaults under this Lease by the other party. Such statement may be relied upon by any prospective purchaser of the Premises, or any lender proposing to make a loan to either party to be secured by the Premises, or Tenant's leasehold interest therein.

28. Terms Binding on Successors.

All the terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this paragraph shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

29. Memorandum.

Upon execution hereof, Landlord and Tenant shall execute, acknowledge and record in the Recorder's Office for the County of San Mateo, a short form memorandum of this Lease substantially in the form of Exhibit E attached hereto. Upon expiration of the Term or sooner termination thereof, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed conveying all right, title and interest of Tenant in the Premises to Landlord.

30. Time of Essence.

Time shall be of the essence of this Lease and the performance of each and every one of the provisions hereof.

31. Notices.

All notices which may be proper or necessary for the parties hereto to serve on each other, in the case of Landlord shall be served upon Landlord by delivering the same in writing personally or by commercial carrier to the City Manager at the City offices, East Palo Alto, California, or by depositing the same addressed to Landlord at the City Offices, 2415 University Avenue, East Palo Alto, CA 94303, in a United States mail deposit box, sent by certified mail return receipt requested, with the postage thereon fully prepaid; and in the case of Tenant shall be served upon Tenant by delivering the same in writing to Tenant personally or by commercial carrier, or by depositing the same addressed to Tenant at YMCA of the Mid-Peninsula, 4151 Middlefield Road, Palo Alto, California 94303, in a United States mail deposit box, certified mail return receipt requested, with the postage thereon fully prepaid; or said notice may be served by so delivering or mailing the same at such other address or addresses as Landlord or Tenant may from time to time, by written notice served upon the other, designate and appoint. Notices shall be deemed effective when delivered.

32. Amendments.

This Lease may be amended only by a writing executed by both Landlord and Tenant.

33. Surrender.

Tenant shall surrender possession of the Premises, the Building and the other improvements located on the Premises to Landlord on the date of expiration of the Term, or at the end of any subsequent holdover period permitted by Landlord or upon the date of any earlier termination of this Lease (the date of surrender being referred to as the "Surrender Date"); "broom clean" and in good condition and repair, subject to reasonable wear and tear and any casualty loss. Tenant shall remove all trade fixtures furnishings, equipment, other personal property and debris (collectively, "Personal Property") from the Building, and shall repair any damage to the Building resulting from such removal. Any Personal Property not removed by Tenant on or before the Surrender Date shall be considered abandoned, and Landlord may remove any or all Personal Property and dispose of it in any lawful manner, or may store the Personal Property in a public warehouse or elsewhere for the account and at the expense and risk of Tenant.

34. Holdover.

If Tenant holds over after the date of expiration of the Term or the date of any earlier termination of the Lease with Landlord's prior written consent, (a) Tenant's occupancy of the Premises shall be deemed a month-to-month tenancy, the Lease shall be deemed extended, and both may be terminable by either party upon 30 days' written notice to the other party, and (b) Tenant's occupancy of the Premises during the holdover period shall be subject to all applicable terms and conditions of the Lease as if the Term had not expired or the Lease had not been terminated, as the case may be. If Tenant remains in possession of all or part of the

Premises after the expiration of the Term or earlier termination of this Lease without Landlord's written consent, only clause (b) of the immediately preceding sentence shall apply, and in addition to such other remedies as may be available to Landlord at law or in equity, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, losses, damages, liabilities and costs arising from or related to Tenant's continued possession, including without limitation claims, damages or losses incurred in connection with prospective or actual successor tenants, lost rents, lost development opportunities and Landlord's reasonable attorneys' fees, costs and expenses.

35. **Severability.**

If any part of this Lease is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall not be affected.

36. **Headings.**

The titles and headings of the various articles and paragraphs of this Lease are intended solely for convenience of reference and are not intended to explain, modify or place any interpretation upon any of the provisions of this Lease.

37. **Entire Agreement.**

This Lease contains the entire understanding and agreement between the parties with respect to the leasing of the Premises and supersedes all prior correspondence, memoranda or agreements, whether written or oral, originating before the date of this Lease with respect to the Premises including the MOU.

38. **Waivers.**

No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the

provisions of this Lease shall constitute an impairment or waiver of any such right, remedy, election or option. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or other covenants, conditions or obligations.

39. Governing Law.

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

40. Brokers.

Each party represents and warrants for the benefit of the other that it has not engaged the services of any broker, finder or other person who may claim any commission fee or other compensation in connection with this Lease, and each party shall indemnify the other and hold the other harmless from and against all claims which may be made by any such broker or finder that a commission is due through such indemnifying party.

41. Authority.

Each party represents and warrants to the other that the execution, delivery and performance of this Lease is within its duly authorized powers and has been duly authorized.

42. Dispute Resolution.

Any dispute which may arise under the terms of this Lease shall be resolved in the following manner: The City Manager and the President/CEO of Tenant shall jointly agree to appoint a third party arbitrator and the three shall attempt to resolve the dispute. However, in the event that said three persons are unable to resolve the dispute, the decision of the three shall not be binding, and each party shall be free to independently pursue whatever legal remedies are available.

43. Exhibits.

The following Exhibits attached to this Lease are incorporated herein by reference and form a part of this Lease:

Exhibit A - Legal description of the Premise

Exhibit B - Diagram of the Premises


Exhibit C - Operating Agreement

Exhibit D - Preliminary Plans

Exhibit E - Memorandum of Ground Lease.

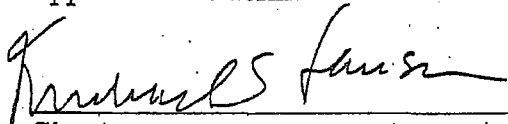
IN WITNESS WHEREOF, Landlord has hereunto set its corporate name and seal by its officers thereunto duly authorized, and Tenant has hereunto set its name, the day and year first above written.

CITY OF EAST PALO ALTO

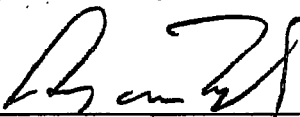
By  By _____

By _____ By _____

Approved as to form:


City Attorney

YMCA OF THE MID-PENINSULA, INC.

By 
President/Chief Executive Officer
BARRY M. TAYLOR

Bell Street Park Master Plan

East Palo Alto

California

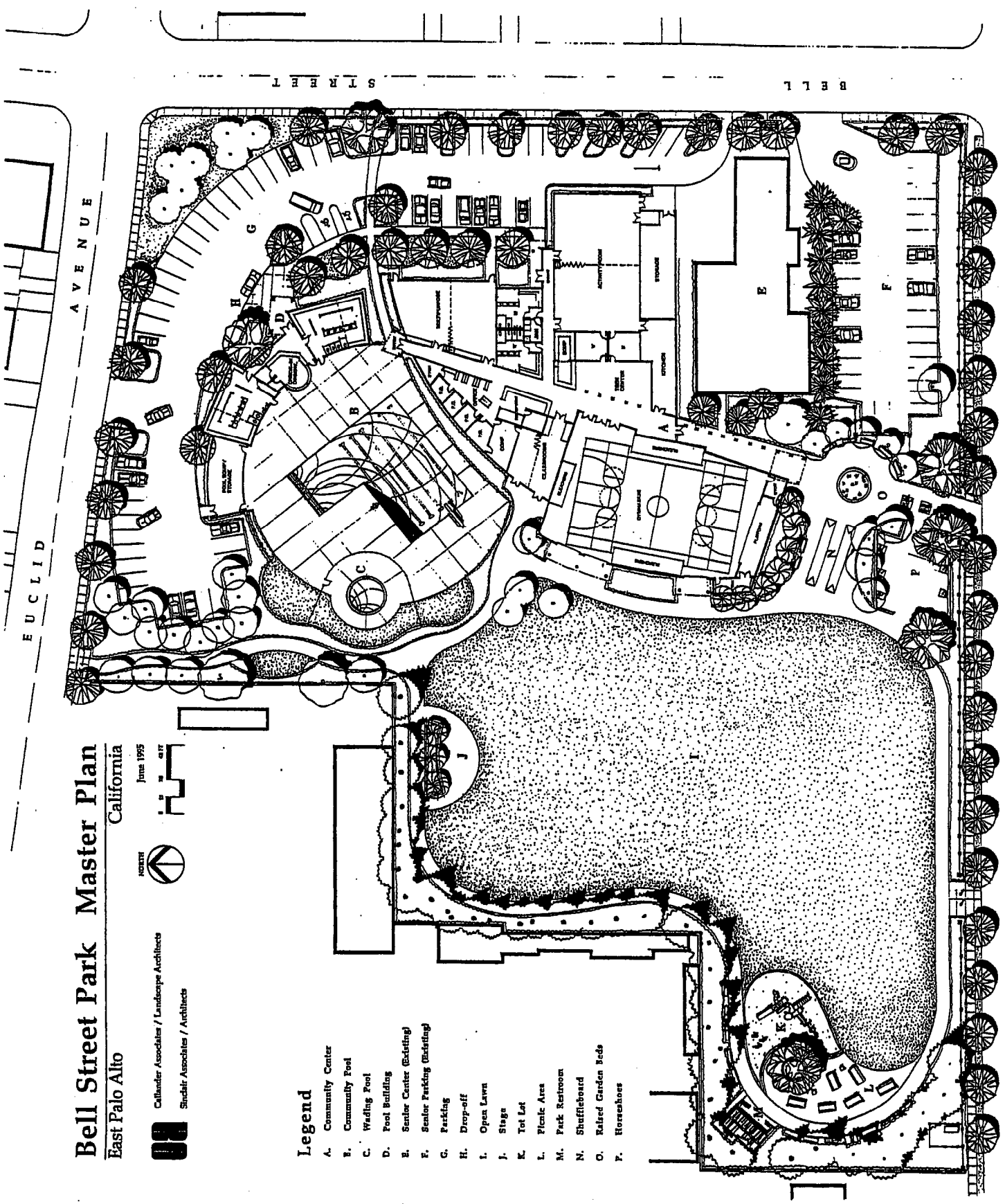
June 1995



Callender Associates / Landscape Architects
Sindlar Associates / Architects

Legend

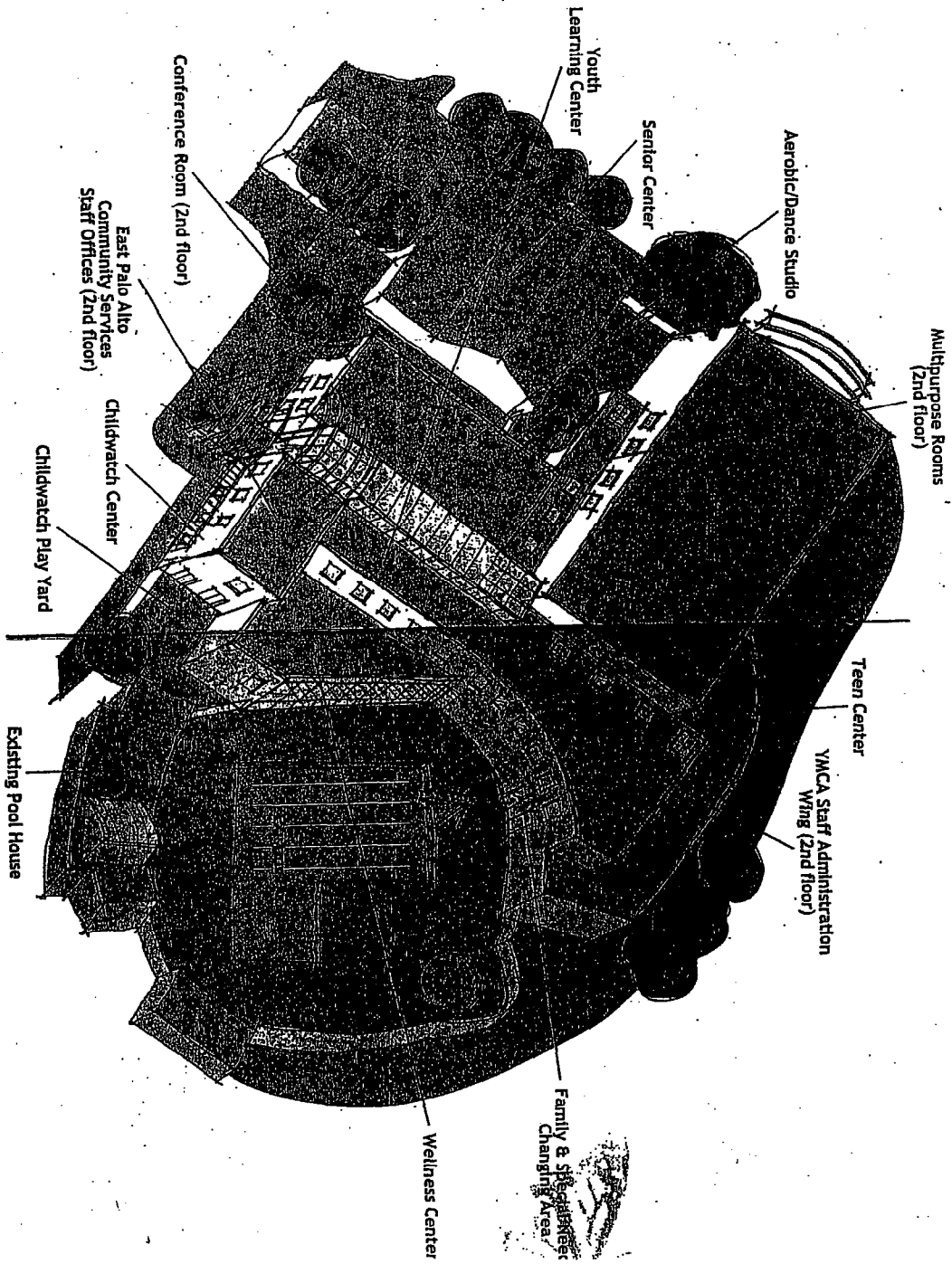
- A. Community Center
- B. Community Pool
- C. Wading Pool
- D. Pool Building
- E. Senior Center (Existing)
- F. Senior Parking (Existing)
- G. Parking
- H. Drop-off
- I. Open Lawn
- J. Stage
- K. Tot Lot
- L. Picnic Area
- M. Park Restroom
- N. Shuffleboard
- O. Raised Garden Beds
- P. Horsehoes



UNIVERSITY AVENUE

EUCCLID AVENUE

BELL STREET



**YMCA OF THE MID-PENINSULA
WORKSHEET TO DETERMINE CAPITAL ESTIMATE FOR EAST PALO ALTO**

I.	<u>DIRECT PROJECT COSTS</u>	AS OF 03/01/01
1.	Cost of new construction: 41,000 sq. feet @ \$180.00 per sq. feet	1. \$ 7,380,000
2.	Cost of renovation:	2. 0
3.	Furnishings and equipment:	3. 500,000
4.	Landscaping, fencing, paving, grading	4. Included above
5.	Architectural, engineering fees and admin. costs: \$700,000 (\$500,000) In Kind	5. 200,000
6.	Property Manager	6. 75,000
7.	Subtotal:	7. \$ 8,155,000
II.	<u>INDIRECT PROJECT COSTS</u>	
8.	Land Acquisition and/or leasing costs, plus, present indebtedness (mortgage, loans, etc.) In Kind.	8. 0
9.	Development studies A. Parking: \$ 5,000 B. Interest survey: In Kind	9. 5,000
10.	Capital Campaign costs	10. 120,000
11.	YMCA Contingency (8%)	11. 662,000
12.	Subtotal:	12. \$ 787,000
13.	Total:	13. \$ 8,942,000

**East Palo Alto YMCA Capital Campaign
Dollars Committed to Date by Source**

Foundations	\$2,247,500
Corporations	\$514,000
Government	\$800,000
Association Board	\$203,126
Senior Directors	\$1,071,000
East Palo Alto YMCA Board	\$234,210
Other YMCA of the Mid-Peninsula Branch Boards	\$13,360
Misc. Individuals	\$339,500
<hr/>	
Total Project \$\$ Committed to Date	\$5,422,696

Exhibit C

Operating Agreement

1. **Operation of the YMCA Facility.**

A. **Operations in General.** Tenant shall operate the YMCA Facility using practices and procedures that are consistent with the practices and procedures used in the operation of its other facilities. Membership and participation in programs offered at or through the YMCA Facility shall be open to all persons, and there shall be no restrictions based on residence. Subject to Tenant's financial assistance criteria and to any limits of financial assistance which Tenant has available from time to time, Tenant shall provide financial assistance to anyone who desires to become a member of the YMCA Facility or to participate in programs offered at or through the YMCA Facility. The foregoing shall not be construed to confer on any person any right to obtain a membership or to participate in programs offered by Tenant. Tenant expressly reserves the right, subject to the non-discrimination and affirmative action requirements of Paragraph 22 of this Lease, to refuse membership or program participation to, or to revoke membership or program participation by, any person who fails to agree to or abide by the membership and/or program participation requirements of Tenant.

B. **Management of the YMCA Facility.** The day-to-day operation of the YMCA Facility shall be directed and managed by the East Palo Alto YMCA Board of Directors, staff and volunteers. The East Palo Alto YMCA Board of Directors, staff and volunteers shall be responsible for the development and review of the programs and services to be provided at the YMCA Facility, taking into account the recommendations of the Advisory Committee (as defined in Paragraph 2 below).

2. **Joint Advisory Committee.** In order to provide information to and to obtain input from the East Palo Alto community other communities served by the YMCA Facility

relative to the programs and services offered at and through the YMCA Facility, Landlord and Tenant agree to form a joint advisory committee (the "Advisory Committee"). The purpose of the Advisory Committee is to provide community based information to Landlord and Tenant relative to the programs and services offered at or through the YMCA Facility and the needs of the communities served by the YMCA Facility. Tenant shall take into account the recommendations of the Advisory Committee, but shall not be bound by the recommendations of the Advisory Committee in Tenant's operations and programs. The Advisory Committee shall be composed of six (6) members, three (3) of which shall be appointed by Landlord and three (3) of which shall be appointed by Tenant. The committee members shall serve for terms of three (3) years. The Advisory Committee shall meet initially once every six (6) months following the completion of the construction of the YMCA Facility. The frequency of the meetings of the Advisory Committee may change from time to time by agreement of the members of the Advisory Committee. The members of the Advisory Committee shall establish such rules for the governance of the Advisory Committee as they shall deem necessary or appropriate. The Advisory Committee shall present its recommendations to Landlord and Tenant in writing not less than annually.

3. Aquatic Facilities. The existing swimming pool, bathhouse and adjacent walkways and automobile parking area (the "Aquatic Facilities") are included as a part of the Premises and the YMCA Facility under this Lease. During the term of this Lease, Tenant shall have the exclusive right to occupy, use and operate the Aquatic Facilities as a part of the YMCA Facility. Tenant shall maintain the Aquatic Facilities in good condition and repair at its sole cost and expense and shall make all replacements required to keep the Aquatic Facilities in good operating condition. Subject to compliance with the requirements of Paragraph 6 of this Lease, Tenant may make such alterations, additions and improvements to the Aquatic Facilities as

Tenant shall desire, provided that the Aquatic Facilities shall be used principally for water sports activities. All utilities consumed in connection with the operation of the Aquatic Facilities shall be billed directly to Tenant and shall be paid by Tenant directly to the utility provider prior to delinquency.

4. **Landscaping.** During the preparation of the Construction Drawings pursuant to Paragraph 5D of this Lease, Tenant's landscape architect shall work with Landlord to integrate the landscaping on the Premises with the overall landscaping theme of Bell Street Park. Landlord shall, at Landlord's sole cost and expense, maintain in good, healthy condition the landscaping located in those portions of Bell Street Park other than the Premises. Tenant shall, at Tenant's sole cost and expenses, maintain in good, healthy condition, the landscaping on the Premises.

5. **Parking.** Tenant shall have the exclusive right to use all driveways, accessways and parking areas located on the Premises, including the existing parking spaces located at Aquatic Facility, for its members, licenses, guests, invitees, employees and subtenants and may designate such parking area for Tenant's exclusive use and may otherwise control the use of such driveways, accessways and parking areas. Landlord shall allow Tenant's members, licenses, guests, invitees, employees and subtenants to use on-street parking available on all streets contiguous with the Bell Street Park. Any City metered parking on the streets contiguous with the Bell Street Park shall allow parking up to at least 2 hours.

6. **Taxes.** The Bell Street Park, including the Premises, is owned by the City and is not subject to the imposition of real property taxes and assessments under California law. Landlord shall not take any action or consent to the taking of any action that would allow the imposition of real property taxes and/or assessments, or any charge or assessment in lieu of or in substitution for, real property taxes or assessments against the Bell Street Park and/or the

Premises. In the event the Bell Street Park and/or the Premises shall become subject to the imposition of real property taxes and assessments, or any charge or assessment in lieu of or in substitution for, real property taxes or assessments, then Landlord shall pay any such real property taxes, charges and assessments, if any, imposed upon or allocable to those areas of the Bell Street Park and the facilities located thereon other than the Premises, and Tenant shall pay such real property taxes, charges and assessments, if any, imposed upon or allocable to the Premises and the facilities located thereon.

7. **Existing Gymnasium.** As a part of the construction design process pursuant to Paragraph 5 of this Lease, Landlord and Tenant shall review the functionality of the existing gymnasium located on the Premises and determine whether the existing gymnasium should be refurbished or replaced. If Landlord and Tenant agree that the existing gymnasium should be retained as a part of the YMCA Facility and not replaced, Tenant shall operate and manage the existing gymnasium as part of the YMCA Facility. If Landlord and Tenant agree to replace the existing gymnasium, Tenant shall, as a part of the YMCA Facility, build a new gymnasium.

8. **License.** Landlord hereby grants to Tenant and its agents, employees, contractors, members, licensees, guests, and invitees an irrevocable license for pedestrian and vehicular ingress and egress over and across those portions of the Bell Street Park designated by Landlord for vehicular and/or pedestrian ingress and egress. Such license is coupled with Tenant's leasehold interest in the Premises created pursuant to this Lease and shall be irrevocable during the Term of this Lease.

A451986



State
of
California
SECRETARY OF STATE'S OFFICE

CORPORATION DIVISION

I, *TONY MILLER*, Acting Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this

OCT - 4 1994



Tony Miller
Acting Secretary of State

A451986

**RESTATED ARTICLES OF INCORPORATION OF
YMCA OF THE MID-PENINSULA**

A California Public Benefit Nonprofit Corporation

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

OCT - 3 1994

TONY MILLER, Acting Secretary of State

The undersigned, Barry M. Taylor, hereby certifies that:

ONE: He is the duly elected and acting president and assistant secretary of YMCA of the Mid-Peninsula, a California nonprofit corporation.

TWO: The Articles of Incorporation are hereby amended to read as set forth in full herein:

ARTICLE I

The name of the corporation is YMCA of the Mid-Peninsula.

ARTICLE II

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

The purposes for which the corporation is formed are as follows:

(a) The general purposes and powers of the corporation are as follows:

1. The corporation is organized exclusively for the purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (hereinafter referred to as the "Code"). All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

2. In furtherance of the purposes set forth in this Article II, the corporation may exercise all the rights and powers conferred on nonprofit public benefit corporations under the laws of the State of California.

(b) Notwithstanding any other provision of these articles, the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers, express or implied, so as to disqualify the corporation from exemption from federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(3) of the Code and/or from exemption from California income tax under Section 23701 of the Revenue and Taxation Code by reason of being an organization described in Section 23701d of the Revenue and Taxation Code. All references to the Revenue and Taxation Code contained herein are deemed to include corresponding provisions of any future California Revenue and Taxation Code.

ARTICLE III

The authorized number, if any, and qualifications of members of the corporation, the different classes of membership, the property, voting and other rights and privileges of members, their liability for dues, assessments and sanctions, the termination or transfer of membership, and such other provisions relating to members as may be adopted, shall be stated in the Bylaws.

ARTICLE IV

(a) No substantial part of the activities of this corporation shall consist, except as otherwise provided in Section 501(h) of the Code, of carrying on propaganda, or

otherwise attempting to influence legislation, and this corporation shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

(b) The property of the corporation is irrevocably dedicated to religious, charitable or educational purposes meeting the requirements for exemption provided by Section 214 of the Revenue and Taxation Code and no part of the net earnings or assets of this corporation shall inure to the benefit of, or be distributed to, any of its directors, trustees, officers, private shareholders or members, or to individuals, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

(c) In the event of liquidation, termination, winding up or dissolution of this corporation (whether voluntary, involuntary or by operation of law), the Board of Directors shall, after paying or making provisions for the payment of all of the debts, obligations, and liabilities of the corporation, transfer all of the property and remaining assets of this corporation to one or more Qualified Organizations, as defined below, as the Board of Directors shall determine. For purposes of this Article IV, "Qualified Organization" shall mean a corporation or other organization organized and operated exclusively for charitable, educational, or religious purposes meeting the requirements for exemption provided by Section 214 of the Revenue and Taxation Code, as shall at the time qualify either (i) as exempt from federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(3) of the Code, or

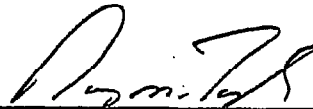
(ii) as a corporation or other organization, contributions to which are deductible under Section 170(c)(1) of the Code.

ARTICLE V


In accordance with the provisions of Section 9913 of the California Corporations Code, this corporation elects to be governed by all of the provisions of the California Nonprofit Public Benefit Corporation Law not otherwise applicable to this corporation under Section 9910-9927 of the Corporations Code.

3. The foregoing amendment has been approved by the required vote of the Board of Directors of this corporation. This corporation has no members as defined in Section 5056 of the California Corporations Code.

IN WITNESS WHEREOF, the undersigned have executed this certificate on SEPTEMBER 20, 1994.

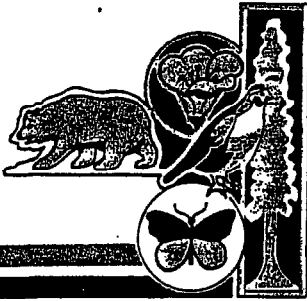


President, Barry M. Taylor



Assistant Secretary, Barry M. Taylor

A451986



State
of
California
SECRETARY OF STATE'S OFFICE

CORPORATION DIVISION

I, *TONY MILLER*, Acting Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

OCT - 4 1994



Tony Miller
Acting Secretary of State

A451986

**RESTATED ARTICLES OF INCORPORATION OF
YMCA OF THE MID-PENINSULA**

A California Public Benefit Nonprofit Corporation

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

OCT - 3 1994

TONY MILLER, Acting Secretary of State

The undersigned, Barry M. Taylor, hereby certifies that:

ONE: He is the duly elected and acting president and assistant secretary of
YMCA of the Mid-Peninsula, a California nonprofit corporation.

TWO: The Articles of Incorporation are hereby amended to read as set
forth in full herein:

ARTICLE I

The name of the corporation is YMCA of the Mid-Peninsula.

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The purposes for which the corporation is formed are as follows:

(a) The general purposes and powers of the corporation are as follows:

1. The corporation is organized exclusively for the purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (hereinafter referred to as the "Code"). All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

2. In furtherance of the purposes set forth in this Article II, the corporation may exercise all the rights and powers conferred on nonprofit public benefit corporations under the laws of the State of California.

(b) Notwithstanding any other provision of these articles, the corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers, express or implied, so as to disqualify the corporation from exemption from federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(3) of the Code and/or from exemption from California income tax under Section 23701 of the Revenue and Taxation Code by reason of being an organization described in Section 23701d of the Revenue and Taxation Code. All references to the Revenue and Taxation Code contained herein are deemed to include corresponding provisions of any future California Revenue and Taxation Code.

ARTICLE III

The authorized number, if any, and qualifications of members of the corporation, the different classes of membership, the property, voting and other rights and privileges of members, their liability for dues, assessments and sanctions, the termination or transfer of membership, and such other provisions relating to members as may be adopted, shall be stated in the Bylaws.

ARTICLE IV

(a) No substantial part of the activities of this corporation shall consist, except as otherwise provided in Section 501(h) of the Code, of carrying on propaganda, or

otherwise attempting to influence legislation, and this corporation shall not participate in or intervene in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

(b) The property of the corporation is irrevocably dedicated to religious, charitable or educational purposes meeting the requirements for exemption provided by Section 214 of the Revenue and Taxation Code and no part of the net earnings or assets of this corporation shall inure to the benefit of, or be distributed to, any of its directors, trustees, officers, private shareholders or members, or to individuals, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof.

(c) In the event of liquidation, termination, winding up or dissolution of this corporation (whether voluntary, involuntary or by operation of law), the Board of Directors shall, after paying or making provisions for the payment of all of the debts, obligations, and liabilities of the corporation, transfer all of the property and remaining assets of this corporation to one or more Qualified Organizations, as defined below, as the Board of Directors shall determine. For purposes of this Article IV, "Qualified Organization" shall mean a corporation or other organization organized and operated exclusively for charitable, educational, or religious purposes meeting the requirements for exemption provided by Section 214 of the Revenue and Taxation Code, as shall at the time qualify either (i) as exempt from federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(3) of the Code, or

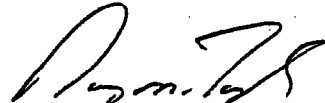
(ii) as a corporation or other organization, contributions to which are deductible under Section 170(c)(1) of the Code.

ARTICLE V


In accordance with the provisions of Section 9913 of the California Corporations Code, this corporation elects to be governed by all of the provisions of the California Nonprofit Public Benefit Corporation Law not otherwise applicable to this corporation under Section 9910-9927 of the Corporations Code.

3. The foregoing amendment has been approved by the required vote of the Board of Directors of this corporation. This corporation has no members as defined in Section 5056 of the California Corporations Code.

IN WITNESS WHEREOF, the undersigned have executed this certificate on SEPTEMBER 20, 1994.



President, Barry M. Taylor



Assistant Secretary, Barry M. Taylor

The undersigned certify under penalty of perjury that they have read the foregoing Restated Articles of Incorporation and know the contents thereof, and that the statements therein are true.

Executed on SEPTEMBER 20, 1994 at PALO ALTO, California.



President, Barry M. Taylor



Assistant Secretary, Barry M. Taylor