SW/vv
04/16/15
Item #12B

AN ORDINANCE 2015-04-16-0308

AUTHORIZING THE EXECUTION OF A 50 YEAR GROUND LEASE FOR $1.00 PER YEAR WITH THE YMCA OF GREATER SAN ANTONIO FOR A 15,000 SQUARE FOOT RECREATIONAL FACILITY FOR APPROXIMATELY 6 ACRE PARCEL GENERALLY LOCATED AT 3100 ROOSEVELT AVENUE, THE FORMER MISSION DRIVE-IN.

* * * * *

WHEREAS, in May 2012, voters approved the 2012-2017 Bond Program, consisting of five propositions totaling $596 million; and

WHEREAS, the Bond Program funds will be used on various capital improvement projects to address community infrastructure needs and improve the overall quality of life in San Antonio; and

WHEREAS, as part of that program, $2.5 million in Parks, Recreation, and Open Space Improvements General Obligation funds were approved for the development of the Greater Mission Recreational Facility; and

WHEREAS, project design is anticipated to begin upon execution of the Funding Agreement and construction is expected to be completed by December 2016; and

WHEREAS, since opening the first YMCA in San Antonio in 1907, YMCA has grown and expanded in the greater San Antonio area; and

WHEREAS, today there are ten facilities, three early learning centers, and after school programs in seven school districts; and

WHEREAS, YMCA has committed to matching the City's funds and will provide $1,000,000.00 initially for the 15,000 square foot facility; and

WHEREAS, the amenities planned for this facility include a community room/wellness kitchen, a multi-generation center, wellness center, two fitness studios, and locker rooms; and

WHEREAS, design start is anticipated to begin upon approval of this agreement and estimated to be completed in August 2015; and

WHEREAS, construction start is anticipated to begin September 2015 and estimated to be completed in December 2016; and

WHEREAS, YMCA will continue to fundraise up to $1,500,000.00 for the future expansion in accordance with its master plan, which includes a gymnasium and indoor swimming area; and

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WHEREAS, the YMCA has committed to meeting these goals; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department of Transportation and Capital Improvements or his designee, is authorized execute a 50 year ground lease for $1.00 per year with the YMCA of Greater San Antonio for a 15,000 square foot recreational facility for an approximately 6 acre parcel generally located at 3100 Roosevelt Avenue, the former Mission Drive-In. A copy of the ground lease, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29028000, Internal Order 223000000251 and General Ledger 4407720.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 16th day of April, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Hollis Young

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**12B (in consent vote: 12A, 12B)**
Date:	04/16/2015
Time:	11:02:01 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a 50 year ground lease for $1.00 per year with the YMCA of Greater San Antonio for a parcel generally located at 3100 Roosevelt Avenue, the former Mission Drive -In.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

GROUND LEASE
YMCA GREATER SAN ANTONIO

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Authorizing Ordinance:

Landlord:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Address for Rent Payment:	P.O. Box 839966, San Antonio, Texas 78283-3966
Tenant	Young Men's Christian Association of Greater San Antonio, a Texas non-profit corporation
Tenant's Address:	3233 N. St. Mary's Street, San Antonio, Texas 78212
Premises:	A parcel containing approximately 3.9 Acres located

	at 3100 Roosevelt Drive, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A,** which is incorporated herein for all purposes.
Permitted Use:	Multi-use community recreational facility
Lease Commencement Date:	The effective date of the Authorizing Ordinance
Initial Term:	Until the expiration of 50 years from the Lease Commencement Date
Initial Term Rent:	One-time rent payment of $50.00
Annual Rent:	$0.00
Construction Completion Date:	To be completed by November of 2016.

Background:

In 2012, the City of San Antonio (City) held a Bond Election and received voter approval to fund a variety of Parks, Recreation & Open Space Improvements pursuant to such bonds. Among the Parks, Recreation & Open Space Improvements projects approved is the "Greater Mission Area Recreation Facility" project, described in the official bond brochure as "Greater Mission Area Recreation Center LF: Leverage funding for the development of a multi-use recreation facility with the flexibility to partner with outside sources for programming and management." The City must comply with official brochure terms and conditions including fulfillment of a public purpose in accordance with all applicable laws of public funding and authorizing instruments for the public funding. Under this edict, the City identified the YMCA as the appropriate party to partner with, entering into a separate funding agreement as well as this ground lease. The public benefit to be provided is recreational facilities, operated under non-profit regulations, available to the citizens of San Antonio.

1. Demise of Premises.

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements, rights, and privileges of Landlord, existing now or at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Landlord as owner of the Premises by the closing of any street, sidewalk, or alley.

2. Lease Term.

Fixed Beginning and Termination Date
2.01. The Initial Term is as stated above.

Right to Extend
2.02. Tenant may extend this lease for 20 additional years by giving Landlord written notice of Tenant's intention to do so. Tenant must give the notice within the last two years of the Initial Term, but no later than six months before it expires.

Termination
2.03. Unless renewed, this lease terminates without further notice when the Initial Term expires. If renewed, it terminates without further notice when the renewed term expires. Tenant's holding over expiration is not a renewal of the lease and does not give Tenant rights under the Lease in or to the Premises.

Holdover
2.04. If Tenant holds over and continues in possession of the Premises after the Initial Term (or any extension) expires, Tenant's occupancy will be at will, subject to all the terms of this lease.

3. Rent.

Initial Term Rent
3.01. Tenant must pay a one-time rent payment of fifty (50) dollars to Landlord upon execution of the lease. Payments must be in lawful money of the United States to the Address for Rent Payment, unless Landlord notifies Tenant to make payment to some other address.

Annual Rent
3.02. In consideration of Tenant's provision of recreation services during the term of the lease there will be no annual rent.

4. Taxes.

Payment by Tenant
4.01. As a part of the rent due under this lease, and to the extent the Tenant is not otherwise exempt from paying the following, Tenant must pay and discharge all taxes, general and special assessments, and other charges of any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term when due, whether belonging to Landlord or to Tenant, if any. Tenant must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency. Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments. Tenant may, in good faith at its own expense (in its own name or in that of Landlord, or both), contest taxes,

charges, and assessments (if applicable). However, it must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

Payment by Landlord
4.02. If taxes, special assessments, or governmental charges remain unpaid and uncontested later than 15 days before delinquency, Landlord may give written notice to default, specifying the default. If Tenant continues to fail to pay the taxes, special assessments, or governmental charges, or to timely contest them in good faith, before delinquency, Landlord may pay the items specified in the notice. Tenant must then reimburse Landlord on demand for amounts paid or expended for such purpose, with interest at 18% per annum from the date of Landlord's payment until Tenant's reimbursement.

5. Utilities.

Tenant must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the lease term, including any connection fees. Tenant understands and agrees that this provision applies to any existing as well as contemplated facilities.

6. Use of Premises.

Permitted and Prohibited Use of Premises
6.01. Tenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing. Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

Illegal Use Not Permitted
6.02. Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation. Tenant is not considered to have violated this provision unless:

a. Landlord has notified Tenant in writing specifying the alleged violation;

b. There has been a final adjudication by a court of competent jurisdiction that the specified use violates the law, rule or regulation; and

c. Tenant has had a reasonable time after final adjudication to cure the specified violation.

7. Construction by Tenant.

7.01. Conditions

General Conditions: Tenant may erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the Premises and may change the contour of the Premises, subject to the following:

a. Tenant bears the cost of the work. [*See Specific Conditions below]

b. Tenant keeps the Premises free of mechanics' and materialmen's liens.

c. Except for routine maintenance of existing buildings and improvement, Tenant notifies Landlord, before work begins, of the time work will begin and the general nature of the work.

d. Tenant will secure Landlord's approval of all plans in the manner provided for later in this Lease.

Specific Conditions: Tenant may construct a 15,000 square foot or larger multi-function recreation facility, the total cost of which is estimated to be $5,000,000.00. Construction costs are to be paid by Tenant in the amount of $2,500,000.00 and Landlord in the amount of $2,500,000.00, which sum includes $50,000.00 which will be retained by the City. Tenant has committed to raising its share of the funds necessary to construct the center and agreed to fund on-going operations, once completed. This Lease is subject to the Funding Agreement entered into between Landlord and Tenant. Tenant shall provide evidence to Landlord that $2,500,000.00 in project funds have been raised prior to the receipt of any City funding under the Funding Agreement.

Easements, Dedications, Zoning, and Restrictions

7.02. Landlord will offer reasonable cooperation to Tenant concerning easements, dedications, zoning, and restrictions of the Premises as follows:

a. Easements and Dedications. On Tenant's request, Landlord will join with Tenant in executing and delivering the documents, from time to time and throughout the lease term, as may be reasonable, appropriate, necessary, or required by the several governmental agencies, public utilities, and companies to grant easements and make dedications consistent with Landlord's long-term plans for the Premises.

b. Zoning. On Tenant's request, Landlord will execute the documents, petitions, applications, and authorizations as are appropriate or required to be submitted for the Premises, or any part of them, for the purposes of obtaining conditional use permits, zoning and rezoning, tentative and final tract approval, precise plan approval, and further, for the purposes of annexation to or the creation of districts and governmental subdivisions, if such actions are consistent with Landlord's long-term plan for the Premises.

c. Restrictions. At Tenant's request, Landlord will execute and deliver or join in the execution and delivery of the documents appropriate and necessary to impose on the Premises covenants, conditions, and restrictions (1) regulating use of the Premises, or any part of them, (2) establishing common and parking areas; establishing party walls; (3) providing for enlarging common and parking areas by mutual and reciprocal parking rights, (4) providing for rights of ingress and egress; and (5) providing for other matters as are reasonably necessary for the Tenant's development of the improvements on the Premises. All such items must be conducive to orderly development of the Premises as a commercial unit and consistent with Landlord's long-term plan for the Premises.

d. Expenses. Tenant exclusively bears the cost and expense of any action required of Landlord under subparagraphs a through c above.

Landlord's Approval of Plans

7.03. The following rules govern Landlord's approving construction, additions, and alterations of buildings or other improvements on the Premises:

a. Written Approval Required. No building or other improvement may be constructed on the Premises unless the plans, specifications, and proposed location of the building or other improvement has received Landlord's written approval, whose approval shall not be unreasonably withheld or delayed. All buildings or other improvements must comply with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the Premises may be begun until plans and specifications covering the exterior of the proposed addition or alteration have been first submitted to and approved by Landlord, whose approval shall not be unreasonably withheld or delayed.

b. Submission of Plans. Tenant must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing a multi-function recreation center or for constructing any other buildings or improvements or additions or alterations to any buildings or, improvements that require Landlord's approval under subparagraph a above. Tenant must submit three copies of detailed working drawings, plans, and specifications for all improvements for Landlord's approval within 30 days after this lease is executed, but not later than 30 days before construction is to begin. If Tenant wishes to construct any other buildings or improvements or make any additions or alterations to buildings or improvements for which Landlord's approval is required under Subsection (a) above, Tenant must submit copies of detailed working drawings, plans, and specifications for Landlord's approval before the project begins.

c. Landlord's Approval. Landlord will promptly review and approve all plans submitted to it or note in writing any reasonable required changes or corrections. Tenant must comply with reasonable changes or corrections required by Landlord, and Tenant must resubmit plans showing the changes and corrections within 15 days after the corrections or changes have been noted. Minor changes in work or materials not affecting the general character of the building project may be made at any time without Landlord's approval, but a copy of the altered plans and specifications must be furnished to Landlord.

d. Exception to Landlord's Approval. The following items do not require submission to, and approval by, Landlord

i. Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.

ii. Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements to comply with legal requirements.

e. Effect of Approval. Landlord's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises, and Landlord may not unreasonably withhold approval. It does not excuse Tenant from any governmental permits, licenses, or other requirements of general applicability, including adherence to City adopted building/construction codes. Further, Landlord's approval does not constitute approval of the architectural or engineering design. By approving the plans and specifications, Landlord assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications.

Ownership of Buildings, Improvements, and Fixtures

7.04. Any buildings, improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the lease term become part of the real property of the Premises and must remain on the Premises and become Landlord's property when the lease terminates.

Right to Remove Fixtures

7.05. Tenant may, at any time while it occupies the Premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Tenant in, under, or on the Premises. Before the lease terminates, Tenant must repair any damage to any buildings or improvements on the Premises resulting from removal. Any such items not

removed from the Premises by Tenant within thirty (30) days after the lease terminates or expires shall become Landlord's property.

8. Encumbrance of Leasehold Estate.

Tenant's Right to Encumber

8.01. Tenant may encumber its leasehold interest without obtaining Landlord's consent, but no such encumbrance is or can be a lien on Landlord's fee title. The indebtedness secured by the encumbrance will at all times be and remain inferior and subordinate to all the conditions, covenants, and obligations of this lease and to all Landlord's rights under this lease. References in this lease to "Lender" refer to any person to whom Tenant has encumbered its leasehold interest.

Notices to Lender

8.02. At any time after execution and recordation in Bexar County, Texas, of any mortgage or deed of trust encumbering Tenant's leasehold interest, Lender may notify Landlord in writing that the mortgage or deed of trust has been given.

Lender's Consent Required for Modification

8.03. Landlord and Tenant will neither modify nor terminate this lease by mutual consent without Lender's written consent.

Lender's Right to Prevent Forfeiture

8.04. Lender may do any act required of Tenant to prevent forfeiture of Tenant's leasehold interest. All such acts are as effective to prevent a forfeiture of Tenant's rights under this lease as if done by Tenant.

Lender's Right to Foreclose

8.05. Lender may realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or equity or by the security documents. In so doing, it may transfer, convey, or assign Tenant's title to the leasehold estate created by this lease to any purchaser at a foreclosure sale. Lender also may acquire and succeed to Tenant's interest under this lease by virtue of a foreclosure sale. No assumption by Lender may be inferred from or result (1) from foreclosure or other similar proceedings or (2) from other action or remedy provided for by the mortgage, deed of trust, or other security instrument, or (3) from a conveyance from Tenant under which the buyer at foreclosure or grantee acquires Tenant's rights and interest under this lease. Any buyer at a foreclosure sale, including Lender, is bound by all Lease provisions including use limitations and said buyer becomes obligated to Landlord as the Tenant under the lease.

9. Repairs, Maintenance, and Restoration.

Tenant's Duty to Maintain and Repair

9.01. Tenant must keep and maintain all buildings and improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Tenant's own expense.

Damage or Destruction
9.02. If any building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Tenant must, within one (1) year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement at its own cost (unless such damage or destruction occurs within the last 5 years of the term hereof (as extended), in which event Tenant may elect to terminate this lease, whereupon any applicable insurance proceeds will be assigned to Landlord and Tenant shall have no repair or restoration obligations). Except as set forth above, Tenant must pursue the repair, reconstruction, or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty. However, if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond Tenant's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

10. Mechanic's Liens.

Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action to do so at Tenant's sole expense. If Tenant contests the lien, Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Tenant loses the contest, Tenant must cause the lien to be discharged and removed before any judgment is executed.

11. Condemnation.

Parties' Interests
11.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this lease.

Total Taking—Termination
11.02. If the entire Premises are taken or so transferred, this lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. All proceeds of condemnation are to be divided between Landlord and Tenant, with all proceeds applicable to the land

comprising the Premises are to be paid to Landlord, and all proceeds applicable to the improvements on the Premises, up to the amount of $1,000,000.00, are to be paid to Tenant.

Partial Taking—Termination
11.03. If only part of the Premises is taken or transferred, this lease terminates if, in Tenant's opinion, the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Tenant's business cannot be effectively and practicably operated on it. In such case, this lease and all rights, title, and interest under it cease on the date that title vests in the condemning authority. In such event, all proceeds applicable to the land comprising the Premises are to be paid to Landlord, and all proceeds applicable to the improvements on the Premises, up to the amount of $2,500,000.00, are to be paid to Tenant.

Partial Taking—Continuation
11.04. If part of the Premises is taken or transferred and, in Tenant's opinion, the remainder of the Premises is in such that Tenant's business can be effectively and practicably operated on the remaining Premises, this Lease terminates only as to the portion of the Premises taken or transferred. The termination is as of the date title vests in the condemning authority. The Lease continues as to the portion not taken or transferred. In such event, all proceeds applicable to the land comprising the Premises are to be paid to Landlord, and all proceeds applicable to the improvements on the Premises, up to the amount of $2,500,000.00 are to be paid to Tenant.

Separate Condemnation Award
11.05. In any case, Tenant is free to seek a separate condemnation award for any loss of or diminishment to its leasehold.

12. Insurance

Allocation of Claims
12.01. Landlord disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Any and all claims resulting from any obligation for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Tenant.

Required Insurance
12.02. Tenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. g. Explosion, Collapse, Underground h. Damage to property rented by Tenant	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage h. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Builder's Risk (if applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
*if applicable	

Required Clauses

12.03. Each insurance policy required by this Lease must contain the following clauses:

> "This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:
>
> (a) City Clerk, City of San Antonio
> City Hall/2nd Floor
> P. O. Box 839966

San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Parks & Recreation Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

Required Deliveries
12.04. Tenant must require its insurance carrier(s) to deliver to Landlord's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Landlord. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will provide 30 days' prior notice to Tenant and an opportunity to discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof.

Additional Insurance for Improvement Work
12.05. If Tenant makes leasehold improvements, Tenant must further provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by Landlord's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must procure and maintain the insurance, as well as other insurance coverage enumerated above, in full force and effect during the construction phase. Also, payment and performance bonds naming Landlord as

indemnitee must be provided by Tenant or its contractors or subcontractors. If the construction is minor, Tenant may send a written request to the City's Director of Transportation & Capital Improvements to waive the requirements in this Section. Only Landlord's Risk Manager, whose decision is final, may grant a waiver.

Certificates
12.06. Within 30 days after the Commencement Date, Tenant must deliver certificates to Landlord's Risk Manager and the City Clerk from Tenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

Address for Delivery
12.07. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancelation.

Liability Not Limited
12.08. Nothing herein contained limits in any way Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees under this Lease.

Waiver of Claims Against Landlord
12.9. **Tenant waives all claims against Landlord for injury to persons or property on or about the Premises, whether or not caused by Landlord's negligence.**

13. Indemnification

13.01. These definitions apply to the indemnity provisions of this Contract:

13.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this agreement. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

13.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

13.01.03. "Indemnitor" means Tenant.

13.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

13.03. If an Indemnitee is finally adjudged to be solely negligent, Indemnitor need not further indemnify the so-adjudged Indemnitee from its sole negligence. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be solely negligent and must continue to indemnify other Indemnitees.

13.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

13.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

13.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

13.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

13.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

13.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

14. Assignment and Subletting

Consent Required

14.01. Any attempt at transfer, assignment, or subletting of Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent is void and terminates the Lease. Tenant must, upon such termination, immediately and peacefully vacate the Premises within three days after Landlord's notice to Tenant.

Limitations on Consent

14.02. Landlord's consent on one occasion does not waive need for consent to any later attempted transfer, assignment, or subletting.

15. Default and Remedies.

Termination on Default

15.01. If Tenant defaults in performing any obligation arising out of this lease and does not correct the default within thirty (30) days after receipt of written notice to Tenant and any lender, notice to whom is required by this lease, Landlord may terminate this lease; provided, however, if Tenant begins the process necessary to cure any default, the cure period shall be extended for so long as Tenant is diligently pursuing the cure of such default. If Landlord is otherwise entitled to terminate this lease, and does so under the provisions hereof, Landlord or its agent or attorney may resume possession of the Premises and relet them for the remainder of the term. For the purpose of posting the notice required by Property Code Section 93.002(f), the "front door" of the lease Premises is 3233 N. St. Mary's Street, San Antonio, Texas 78212.

Other Remedies

15.02. Termination of this lease does not relieve Tenant from paying (A) money owing to Landlord under the lease at the time of termination, or (B) any claim for damages against Tenant under this lease. Termination does not prevent Landlord from enforcing payment by any remedy provided for by law or from recovering from Tenant for any default. Landlord's rights, options, and remedies under this lease are cumulative, and no one of them is exclusive of the other. Landlord may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by Landlord of a breach of any

covenant or condition of this lease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this lease.

Subleases Not Affected
15.03. Landlord's exercising any remedy does not affect the existence of subleases entered into according to this lease.

16. General Protective Provisions.

Right of Entry and Inspection
16.01. Tenant must permit Landlord or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Tenant is complying with this lease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

No Partnership or Joint Venture
16.02. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

Force Majeure
16.03. If constructing the building, curing any default (other than failure to pay insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

Termination on Bankruptcy
16.04. Bankruptcy, insolvency, assignment for the benefit of creditors, or the appointment of a receiver is an event of default.

Joint and Several Liability
16.05. If the Lease names more than one Tenant or Landlord; the obligations of all Tenants and Landlords are joint and several.

Appropriations.
16.06. Should obligations of Landlord under this instrument be funded through the City of San Antonio General Fund, such obligations will be subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, Landlord may terminate this Lease and have no further liability.

17. Prohibited Interests in Contracts

Prohibited Interest

17.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Tenant's Warranties
17.02. Tenant warrants and certifies as follows:

(i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

(ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

City's Reliance is Reasonable
17.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

18. Miscellaneous.

Rights and Remedies Cumulative
18.01. The rights and remedies under agreement are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Time of Essence
18.02. Time is of the essence under this agreement.

Yielding Up

18.03. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted.

Applicable Law
18.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Severability
18.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

Successors
18.06. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

Integration
18.07. **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

Modification
18.08. This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries
18.09. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Notices
18.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal

Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

Captions
18.11. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

Counterparts
18.12. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Further Assurances
18.13. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

19. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

CITY OF SAN ANTONIO

By: _____
Mike Frisbie, P.E.
Director TCI

YMCA of Greater San Antonio

By: _____
Sandy Morander
President & CEO

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney