

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436
Attention: City Clerk

APN 089-110-006

[SPACE ABOVE FOR RECORDER'S USE ONLY]
Exempt from filing/recording fees per Govt. Code §27383

GROUND LEASE AGREEMENT

CITY OF LOMPOC AND CHANNEL ISLANDS YOUNG MEN'S CHRISTIAN ASSOCIATION

This Ground Lease Agreement ("**Lease**") is made and entered into this ____ day of _____, 2021 ("**Lease Date**"), by and between the **CITY OF LOMPOC**, a California municipal corporation ("**Landlord**"), and the **CHANNEL ISLANDS YOUNG MEN'S CHRISTIAN ASSOCIATION**, a California non-profit corporation (dba Channel Islands YMCA) ("**Tenant**").

RECITALS:

A. In 1993, Landlord acquired and currently owns fee title to that real property commonly known as College Park located north of West College Avenue between Lompoc High School and Lompoc Shopping Center (APN 089-110-006), which is legally described in Exhibit A ("**College Park**"). College Park is improved with an aquatic center, a skate park, and a building ("**Building**") that is currently used as a YMCA ("**YMCA**"). The YMCA is located on a 12,000 square foot portion of College Park at 201 West College Avenue, as depicted in Exhibit B and bound by the footprint of the Building as of the Lease Date ("**Leased Premises**").

B. City entered into that certain Ground Lease dated March 28, 1977, with William F. Burke, Dennis Kuttler, and Richard H. Beguelin (collectively "**Original Tenant**"), recorded on July 5, 1977, as Instrument No. 77-33795 in the Official Records of Santa Barbara County ("**Original Lease**"). Original Tenant assigned the Original Lease to Lompoc Courthouse Racquetball/Handball Courts, a limited partnership, on April 18, 1978. Lompoc Courthouse Racquetball/Handball Courts then assigned the Original Lease to Tenant pursuant to that certain Consent to Assignment and Amendment of Lease dated June 1, 1981. The Original Lease was amended pursuant to that certain Amendment to Lease dated June 1, 1981, which was recorded on August 27, 1981, as Instrument No. 81-35675 ("**Existing Lease**"). Tenant is currently in possession and control of the Leased Premises pursuant to the Existing Lease.

C. No portion of the Leased Premises are currently subleased.

D. Tenant provides many valuable services and programs to the Lompoc community as part of the operation of a YMCA.

E. The parties desire to enter into a new lease, which will replace the Existing Lease as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1.0 LEASED PREMISES; TERM; EXISTING LEASE

1.1 Leased Premises. As of the Effective Date (defined in Section 1.2), Landlord leases to Tenant and Tenant hereby hires from Landlord, the Leased Premises, in AS-IS condition and subject to the terms and conditions of this Lease.

(a) **Possession.** Tenant acknowledges that it has been in possession of the Leased Premises since 1981 and is in possession as of the Effective Date.

(b) **Condition.** As Tenant has been in possession of the Leased Premises for many years under the Existing Lease, Tenant is fully aware of the condition of the Leased Premises and certifies to Landlord that it is in good condition and repair, and accordingly as of the Effective Date acknowledges that it has and shall remain in possession of the Leased Premises in AS-IS condition as of the Effective Date. This Lease is subject to all existing easements, covenants, servitudes, licenses, rights-of-way and all matters of record.

(c) **Ownership of Improvements.** All improvements on the Leased Premises, including but not limited to the Building, shall be owned by Tenant until expiration or sooner termination of this Lease, at which time they shall become property of Landlord, without payment of any compensation to Tenant.

(d) **Statutory Disclosure Notice.** Pursuant to California Civil Code Section 1938, Landlord provides the following statutory notice to Tenant:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

1.2 Term. The term of this Lease shall commence on May 1, 2021 (“**Effective Date**”) and shall end on April 30, 2031 (“**Term**”). However, if Tenant is in default under the Existing Lease prior to the Effective Date, Landlord shall have the right, in its sole discretion, to terminate this Lease and the Existing Lease shall remain in full force and effect and Landlord shall have all rights and remedies under the Existing Lease. Tenant shall have the option, in its sole discretion, to extend the Term for two (2) successive periods of five (5) years each by giving Landlord written notice of such extension prior to the expiration of the Term or any extension of the Term. As used in this Lease the word “Term” shall include any extension of the Term.

1.3 Holding Over. Any holding over after the expiration of the Term, with or without the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancellable upon thirty (30) days written notice and Tenant shall pay to Landlord the

Default Monthly Rent (defined in Section 2.1(a)) per month until Tenant vacates the Leased Premises. Nothing in this Section shall imply any right of Tenant to hold over or relieve Tenant for such holding over or any damages to Landlord as a result of such holding over.

1.4 Termination of Existing Lease. As of the Effective Date, the Existing Lease is terminated and superseded by this Lease; provided, however, any and all outstanding liabilities or potential liabilities then existing under the Existing Lease are hereby incorporated into this Lease and shall remain subject to the obligations of Tenant, including, but not limited to, indemnity obligations, payment for utilities, etc.

1.5 Recordation of Lease. In accordance with Government Code Section 37393, this Lease shall be recorded in the Official Records of Santa Barbara County. Upon termination of this Lease, Tenant shall execute and acknowledge any documents reasonably requested by Landlord in order to terminate the Lease of record. This obligation shall survive termination of this Lease for any reason.

2.0 RENT; MATERIAL CONSIDERATION; TAXES; UTILITIES

2.1 Annual Rent & Other Consideration.

(a) **Annual Rent.** For each year of the Lease (“**Lease Year**”), Tenant shall pay to Landlord the sum of One Dollar (\$1.00) as annual rental (“**Annual Rent**”), which sum shall be paid in advance on the first (1st) day of each Lease Year. All rent to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice, or demand.

However, in the event that Tenant shall cease to be a Tax Exempt Entity (as defined below) or if Tenant is in Default (as defined in Section 8.1), the Annual Rent (which shall be payable monthly) shall, at Landlord’s election and notice to Tenant, increase to the fair market rental value (as determined by Landlord) for the balance of the Term which shall be, in no event, less than Two Thousand Four Hundred Dollars (\$2,400) per month (“**Default Monthly Rent**”) and shall be payable to Landlord on the first day of each month without demand, offset, or notice. Notwithstanding the cure of any Default, the Default Monthly Rent shall be payable for the balance of the Term.

(b) **Tax Exempt Entity.** Tenant represents and warrants to Landlord that (i) Tenant is exempt from federal income taxation pursuant to Internal Revenue Code Sections 501(c)(1) and/or 501(c)(3) and applicable California law (“**Tax Exempt Entity**”); and (ii) Tenant’s use of the Leased Premises as a YMCA is a tax exempt activity.

(c) **Programs and Services.** Tenant’s obligations under this Lease to operate a YMCA and to provide programs, services, activities and other services to the public as are customary to a first-rate YMCA, as further described in Section 3.1 (cumulatively “**Programs and Services**”), is material consideration for this Lease. Upon Landlord’s request from time to time, Tenant shall promptly provide Landlord with a summary of all Programs and Services for Landlord’s review and approval. Tenant’s failure to provide Programs and Services to the reasonable satisfaction of the City shall be a material default under this Lease.

(d) **No Security Deposit.** The parties acknowledge that Landlord does not hold any security deposit under this Lease.

2.2 Rent. All monetary obligations of Tenant under this Lease, including, but not limited to, insurance premiums, property taxes, maintenance expenses, late charges, and utility costs shall be deemed “**Rent**” for purposes of this Lease.

2.3 Real and Personal Property Taxes.

(a) Mandatory Disclosure Regarding Possessory Interest Taxes. Notice is hereby given to Tenant pursuant to California Revenue and Taxation Code Section 107.6 and Health and Safety Code Section 33673 that the interest of Tenant created in the Leased Premises pursuant to this Lease may be subject to real property taxation and accordingly Tenant may be subject to the payment of property taxes levied on said possessory interest unless Tenant otherwise qualifies for an exemption. It is Tenant’s obligation to secure any such exemption.

(b) Payment of Taxes. To the extent that any *ad valorem* tax is imposed, or sought to be imposed, on the Leased Premises (either in the form of a possessory interest tax or otherwise), Tenant shall pay, at the election of Landlord, either directly to the taxing authority or to Landlord, annual real estate taxes and assessments levied upon the Leased Premises (including any possessory interest taxes), as well as taxes of every kind and nature levied and assessed in lieu of, in substitution for, or in addition to, existing real property taxes. Such amount shall be paid on the date that is twenty (20) days prior to the delinquent date or, if Landlord receives the tax bill, ten (10) days after receipt of a copy of the tax bill from Landlord, whichever is later. Upon termination of this Lease, Tenant shall immediately pay to Landlord any final amount of Tenant’s share of such taxes and assessments as determined by Landlord.

(c) Personal Property Taxes. During the Term, to the extent that any personal property tax is assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Tenant contained in the Leased Premises, Tenant shall pay prior to delinquency all such taxes, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the Leased Premises.

2.4 Utilities. Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power, sewer, telephone service, trash removal and all other services and utilities used in, upon, or about the Leased Premises during the term of this Lease. Any outstanding amounts due for utilities prior to the Effective Date shall be the sole responsibility of Tenant.

3.0 USE OF THE LEASED PREMISES

3.1 Permitted Use. The Leased Premises shall only be used for the operation and maintenance of a YMCA, including, but not limited to wellness and group exercise programs, chronic disease prevention programs, youth programs/childcare, youth sports, and other related amenities. Tenant shall have the right to provide facilities for and to sell snacks.

Use of the facility, however, shall not be limited to persons holding YMCA membership. The facility shall be operated in such a manner to the general public on a non-discriminatory basis. Tenant may charge members of the public a “daily membership fee” in order to use the facility. All rates and charges for patrons served on or from the Leased Premises shall be reasonable and consistent with the quality of services and facilities offered. A schedule of fees shall be posted on the Leased Premises at all times. Tenant shall have sole authority to establish rate and price structures for its other facilities and services.

In operating the facility, Tenant shall not discriminate on the basis of a user's race, creed, sex, nationality, or place of origin, and shall be open to the general public. In addition, Tenant shall comply with all ordinances of the County of Santa Barbara relating to the provisions of services in a non-discriminatory manner. For good cause, Tenant may refuse service or use of the facilities to any person.

In operating the facility, Tenant shall provide the Programs and Services to the public for the general benefit and welfare of persons residing in the City of Lompoc and in surrounding unincorporated areas of Santa Barbara County.

Tenant shall not use the Leased Premises for any other purposes without the prior written consent of Landlord.

3.2 Prohibitions. Tenant shall not do or permit anything to be done in or about the Leased Premises which will in any way obstruct or interfere with the rights of other tenants or occupants in College Park or injure or annoy them or use or permit the Leased Premises to be used for any improper, immoral, unlawful or objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in or about the Leased Premises, or commit or suffer to be committed any waste in or upon the Leased Premises. Tenant shall not do or permit anything to be done in or about the Leased Premises, nor bring or keep anything therein, which will in any way increase the existing rate of or affect any fire or other insurance upon the Leased Premises, or part thereof, or the contents of the Leased Premises, or cause cancellation of any insurance policy covering the Leased Premises, or part thereof, or its contents.

3.3 Compliance with Laws. Tenant has and shall, at its sole cost and expense, comply with all applicable laws, ordinances and regulations of any governmental agency having jurisdiction as may thereafter be modified. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

3.4 Signs. The placement or construction of new, replacement or additional signs on the Leased Premises shall comply with Chapter 17.316 of the Lompoc Municipal Code, including any revision thereof, and shall also be subject to the discretionary approval by Landlord. Signs on the Leased Premises as of the Effective Date have been approved by Landlord.

3.5 Continuous Operations. During the Term, Tenant shall continuously operate the Leased Premises as a YMCA and provide the Programs and Services with standard operational hours to be established by Tenant and approved by Landlord ("**Operations Covenant**"). The Operations Covenant is material consideration for this Lease.

4.0 ALTERATIONS; REPAIRS; MAINTENANCE

4.1 Alterations & Improvements. Tenant shall not make, or suffer to be made, any alterations or improvements to the Leased Premises, or any part thereof, without the prior written consent of Landlord which may be withheld or conditioned in Landlord's sole discretion. Any alterations to the Leased Premises, except movable furniture and trade fixtures, shall automatically be a part of the Leased Premises and, at the expiration or earlier termination of this Lease, shall belong to Landlord. As a condition to such approval, Landlord may require that any such alterations be

removed at termination of the Lease. Any removal of alterations or furniture and trade fixtures shall be completed in a good and workmanlike manner at Tenant's sole cost and expense. Any damage occasioned by removal shall be repaired at Tenant's expense so that the Leased Premises will be surrendered in a good, clean and sanitary condition. Any and all trade fixtures, equipment, or appurtenances installed by Tenant shall conform with the requirements of all municipal, state, federal, and governmental authorities including requirements pertaining to the health, welfare, or safety of employees or the public.

4.2 Maintenance and Repair.

(a) **Tenant's Obligations.** Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, under, or about the Leased Premises, except as required by Section 4.2(b). During the Term, Tenant, at Tenant's sole cost and expense, shall be responsible for day-to-day cleaning and maintenance of the Building and janitorial services, the sweeping of sidewalks adjacent to the Building, and any and all additions, alterations, or repairs that may be required to keep the Leased Premises in a safe, clean, orderly, and attractive condition, to the reasonable satisfaction of Landlord. Tenant, at Tenant's sole cost and expense, shall also be responsible for maintaining all landscaping immediately surrounding the Leased Premises in a safe, attractive, and well-kept manner; provided, for the sake of clarity, that Tenant shall not be responsible for maintaining landscaping in the parking lot adjacent to the Building. Tenant waives all right to make repairs at the expense of Landlord, and Tenant shall obtain any required governmental permits for any maintenance or repair work required under this Lease. Tenant agrees on the last day of the Term or sooner termination of this Lease, to surrender the Leased Premises, with appurtenances, in the same condition as when originally received by Tenant under the Existing Lease, with the addition of any improvements authorized or made by Landlord and not required to be removed, and in a good, clean and sanitary condition, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted. Landlord reserves the right, under Section 10.1, to inspect the Leased Premises to assure that Tenant is in compliance with its obligations under this Lease.

(b) **Landlord's Obligations.** Notwithstanding Section 4.2(a), Landlord will be responsible, at its sole cost, for the maintenance and repair of (i) all facilities necessary to supply water, sewerage, gas, electricity, telephone, and other utility service hook-ups, to within five (5) feet of the Building and (ii) the parking area surrounding the Leased Premises, including surfacing, striping, and landscaping, with the exception of damage caused by Tenant.

4.3 No Claims Against Leased Premises. Tenant shall not suffer or permit to be enforced against the Leased Premises, or any part thereof, any mechanic's, materialman's, contractor's or subcontractor's liens arising from any claim for any work of construction, repair, restoration, replacement or improvement of or to the Leased Premises or any other claim or demand however the same may arise, but Tenant shall pay or cause to be paid any and all such claims or demands before any action is brought to enforce the same against the Leased Premises. Tenant agrees to indemnify and hold Landlord and the Leased Premises free and harmless of all liability for any and all such claims and demands, together with Landlord's reasonable attorneys' fees and all costs and expenses in connection with any such claims or liens.

5.0 INSURANCE AND INDEMNIFICATION

5.1 Insurance Provided by Tenant.

(a) **Personal Property Insurance.** Tenant, at its expense, shall maintain fire and extended coverage insurance written on a per occurrence basis on its trade fixtures, equipment, personal property and other materials within the Leased Premises from loss or damage to the extent of their full replacement value.

(b) **Liability & Property Insurance.** Tenant shall, at Tenant's sole cost and expense, but for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Leased Premises and on any sidewalks directly adjacent to the Leased Premises written on a per occurrence basis in an amount not less than a combined single limit of TWO MILLION DOLLARS (\$2,000,000) for bodily injury, death, and property damage. Tenant shall also provide fire and property damage insurance to Landlord in the amount of the fair market value of the Leased Premises. The policy shall also include plate glass coverage.

(c) **Workers' Compensation Insurance.** Tenant shall, at Tenant's sole cost and expense, maintain a policy of workers' compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Leased Premises.

(d) **General Provisions.** All of the policies of insurance required to be procured by Tenant under this Lease shall be primary insurance and shall name Landlord, its elected or appointed officers, employees, and agents as additional insureds. The insurers shall waive all rights of contribution they may have against Landlord, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice by registered mail to Landlord. Prior to the Effective Date and at least thirty (30) days prior to the expiration of any insurance policy, Tenant shall provide Landlord with copies of all applicable policies evidencing the required insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in the State of California and rated A:VII or better by Best's Insurance Guide. In the event the City Manager of Landlord, or his/her designee ("**Risk Manager**") determines that (i) Tenant's activities in the Leased Premises creates an increased or decreased risk of loss to Landlord, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Tenant agrees that the minimum limits of any insurance policy required to be obtained by Tenant may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Tenant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of Landlord within ten (10) days of receipt of notice from the Risk Manager.

(e) **Failure to Maintain Insurance; Proof of Compliance.** If Tenant fails or refuses to procure or maintain insurance required by this Lease, or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in full force and paid for, Landlord shall have the right but not the obligation, at Landlord's election and on five (5) days' notice,

to procure and maintain such insurance. The premiums paid by Landlord shall be treated as added rent due from Tenant with interest at the rate of ten percent (10%) per annum or the maximum allowable legal rate in effect in the State of California on the date when the premium is paid, whichever is higher, to be paid on the first day of the month following the date on which the premium was paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the day of the notice. Notwithstanding that Landlord may secure policies under this Section, the failure of Tenant to obtain and maintain insurance under this Lease shall also constitute a material default by Tenant.

5.2 Indemnification. Tenant shall defend, indemnify, and hold Landlord harmless from, and reimburse Landlord for, any loss, cost, expense, liability, or damages of every kind or nature, including but not limited to injury to or death of any person or destruction of the Leased Premises in connection with or related to, the use by Tenant or any third party (including officers, directors, employees and invitees) of the Leased Premises or any facilities located thereon in connection with the business being conducted by Tenant. In addition, Tenant shall defend, indemnify, and hold Landlord harmless from any breach or default in the performance of any obligation to be performed by Tenant under this Lease, any violation of governmental law or regulation, or any intentional misconduct or negligence of Tenant, or any officer, agent, employee, guest, or invitee of Tenant, regardless of whether such intentional misconduct or negligence was active or passive.

In the event of the occurrence of any event which is an indemnifiable event pursuant to this Section, Tenant shall notify Landlord promptly and, if such event involves the claim of any third person, Tenant shall assume all expenses with respect to the defense, settlement, adjustment, or compromise of any claim; provided that Landlord may, if it so desires, employ counsel at its own expense to assist in the handling of such claim. Tenant shall obtain the prior written approval of Landlord before entering into any settlement, adjustment or compromise of such claim. Tenant shall reimburse Landlord or any third party (including officers, directors, and employees of Landlord) for any legal expenses and costs incurred in connection with or in enforcing the indemnity herein provided. All indemnification obligations hereunder shall survive the expiration or termination of this Lease. Notwithstanding the generality of the foregoing, Tenant's obligation to indemnify Landlord shall not extend to liability solely caused by the negligence or willful misconduct of Landlord, its officers, employees or agents on the Leased Premises, or events or activities conducted by Landlord.

6.0 ABANDONMENT AND SURRENDER; DAMAGE

6.1 Abandonment. Tenant shall not vacate or abandon the Leased Premises at any time during the Term; and if Tenant shall abandon, vacate or surrender the Leased Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Leased Premises shall be deemed to be abandoned, at the option of Landlord. Tenant shall be deemed to have abandoned the Leased Premises if it fails to comply with the Operations Covenant.

6.2 Surrender of Lease. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate existing subleases, or may, at the option of Landlord, operate as an assignment to it of any or all subleases.

6.3 Damage. In the event the Leased Premises are destroyed or damaged by fire or other casualty or act of God as to be rendered uninhabitable (“**Casualty**”), this Lease may be terminated by either party in its sole discretion upon written notice to the other party within thirty (30) days of such occurrence. Tenant agrees to promptly notify Landlord in writing of any damage to the Leased Premises resulting from a Casualty. In the event of a Casualty, all insurance proceeds available for such damage shall be paid to Landlord which, if termination has been elected, shall remain the property of Landlord and if termination has not been elected, shall be used to promptly repair the Leased Premises. Rent shall not be prorated during the period of repairs to the Leased Premises.

7.0 ASSIGNMENT AND SUBLETTING

Tenant shall not assign this Lease or sublet all or any portion of the Leased Premises, without the prior written consent of Landlord, which consent may be withheld or conditioned in the sole discretion of Landlord. For purposes of this Lease, an assignment shall be deemed to include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Tenant, taking all transfers into account on a cumulative basis. Landlord shall be under no obligation to consider a request for Landlord’s consent to an assignment until Tenant shall have submitted in writing to Landlord a request for Landlord’s consent to such assignment together with audited financial statements of the proposed assignee, evidence that the proposed assignee is a Tax Exempt Entity, a history of the proposed assignee’s business experience, and such other information as required by Landlord.

8.0 DEFAULT AND REMEDIES

8.1 Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant (“**Default**”):

- a. Tenant fails to pay Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice by Landlord to Tenant.
- b. Landlord determines that Tenant has failed to provide Programs and Services as set forth in Section 2.1.c.
- c. Tenant violates the Operations Covenant as set forth in Section 3.5.
- d. Tenant fails to provide the insurance policies in compliance with Section 5.1.
- e. A failure by Tenant to observe or perform any other covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice by Landlord to Tenant; provided, however, that if the nature of the default involves such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within such thirty (30) day period and thereafter diligently prosecutes said cure to completion.
- f. Tenant makes any general assignment or general arrangement for the benefit of creditors, or the filing by or against Tenant of a petition to have Tenant adjudged a

bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located in or about the Leased Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located in or about the Leased Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

Any repetitive failure by Tenant to perform its obligations, though intermittently cured, may, at the sole election of Landlord, be deemed an incurable default.

Any notice required to be given by Landlord under this Section 8.1 shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure.

8.2 Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, without notice or demand, and without limiting Landlord in the exercise of a right or remedy Landlord may have by reason of such default or breach:

(a) Terminate Tenant's right to possession of the Leased Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Leased Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Leased Premises, expenses of reletting, including necessary renovation and alteration of the Leased Premises, for reasonable attorneys' fees and costs, any real estate commission actually paid, or the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Default Monthly Rent for the balance of the Term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided. Unpaid installments of Default Monthly Rent or other sums shall bear interest from due date thereof at the rate of ten percent (10%) per annum or at the maximum legal rate then in effect in California, whichever is higher. In the event Tenant shall have abandoned the Leased Premises, Landlord shall have the option of (1) taking possession of the Leased Premises and recovering from Tenant the amount specified in this subparagraph, or (2) proceeding under the provisions of the following subparagraphs.

(b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover Default Monthly Rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of California. Furthermore, Tenant agrees that no election by Landlord as to any rights or remedies available hereunder or pursuant to any law or judicial decisions of the State of California shall be binding upon Landlord until the time of trial of any such action or proceeding.

(d) Take custody of all personal property owned by Tenant on the Premises and to dispose of the personal property and to apply the proceeds from any sale of that property to Tenant's obligations under this Lease.

8.3 No Waiver. The waiver by Landlord of any term, covenant or condition shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition in this Lease. Acceptance of late payment of any Rent by Landlord shall not be deemed a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease.

8.4 Landlord's Default. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Leased Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within a thirty (30) day period and thereafter diligently prosecutes the same to completion. Tenant shall have the right to terminate this Lease as a result of Landlord's default but not to any damages.

8.5 Sale of Leased Premises. In the event of the sale of the Leased Premises, Landlord shall be entirely freed and relieved of all liability under any and all of the covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale. At such sale or any subsequent sale of the Leased Premises, the purchaser shall be deemed, without any further agreements between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out each and all of the covenants and obligations of Landlord under this Lease.

9.0 CONDEMNATION. In the event a condemnation or a transfer in lieu thereof results in a taking of any portion of the Leased Premises, Landlord may, or in the event a condemnation or a transfer in lieu thereof results in a taking of twenty-five percent (25%) or more of the Leased Premises, either party may, upon written notice to the other party given within thirty (30) days after such taking or transfer in lieu thereof, terminate this Lease. Tenant shall not be entitled to share in any portion of the award and Tenant expressly waives any right or claim to any part thereof. Tenant shall, however, have the right to claim and recover, only from the condemning authority (but not from Landlord), any amounts necessary to reimburse Tenant for the cost of relocation and removing fixtures. If this Lease is not terminated as above provided, Landlord shall use the condemnation award to restore the Leased Premises. Rent shall not be prorated during the period of repairs to the Leased Premises.

10.0 MISCELLANEOUS

10.1 Entry and Inspection. Tenant shall permit Landlord and its agents to enter into and upon the Leased Premises at all reasonable times for the purpose of inspecting the same for compliance with applicable municipal or other laws, rule, and regulations, for the purpose of assuring that Tenant is complying with the terms and conditions of this Lease, for the purpose of confirming maintenance of the Leased Premises as required by this Lease, and/or to evaluate the completion of work requested and undertaken by Tenant (including compliance with correction notices, if any), or

for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of placing upon the Leased Premises any usual or ordinary signs or any signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any liability to Tenant for any loss of occupation or quiet enjoyment of the Leased Premises. Tenant shall permit Landlord, at any time within six (6) months prior to the expiration of this Lease, to place upon the Leased Premises any usual or ordinary "For Lease" signs, and during such six (6) month period Landlord or his agents may, during normal operating hours, enter upon said Leased Premises and exhibit same to prospective tenants.

10.2 Estoppel Certificate. Tenant agrees, within ten (10) days after written request, to deliver to Landlord such estoppel certificate in the form provided by Landlord together with Tenant's current financial statements. Tenant shall be liable for any loss or liability resulting from any incorrect information in the estoppel certificate or its failure to deliver an estoppel certificate pursuant to this Section.

10.3 Time of the Essence. Time is of the essence of this Lease and each and all of its provisions.

10.4 Jurisdiction and Venue. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Lease, and service mailed to either party as set forth herein shall be adequate service for such litigation. The parties further agree that Santa Barbara County, California, is the proper venue for any litigation.

10.5 Successors in Interest. All covenants shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties.

10.6 Entire Agreement. This Lease (i) covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease, (ii) supersedes any and all previous obligations, agreements and understandings between the parties, oral or written including the Existing Lease to the extent specified in Section 1.4; and (iii) merges all preliminary negotiations and agreements of whatsoever kind or nature herein. Tenant acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its agents or representatives.

10.7 Construction. This Lease shall be construed according to its fair meaning as if prepared by both parties. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

10.8 Authority. Tenant represents that each individual executing this Lease on behalf of Tenant is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms. Tenant represents and warrants to Landlord that the entering into this Lease does not violate any provisions of any other agreement to which Tenant is bound.

10.9 Relationship of Parties. The relationship of the parties is that of Landlord and Tenant. Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's activities, programs, services, or charitable purposes or activities.

10.10 Nondiscrimination. Tenant herein covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Leased Premises herein leased, nor shall Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Leased Premises.

10.11 Notices. Any notices, demands or communications under this Agreement between the parties shall be in writing, and may be given by (i) personal service, (ii) overnight delivery, or (iii) mailing via United States mail, certified mail, postage prepaid, return receipt requested (“**US Mail**”), addressed to each party as set forth below or such other address as may be furnished in writing by a party, and such notice or communication shall, if properly addressed, be deemed to have been given (a) as of the date so delivered under delivery methods (i) or (ii) above, or (b) three (3) business days after deposit into the U.S. Mail.

Tenant: Channel Islands YMCA
105 E Carrillo Street
Santa Barbara, CA 93101
Attn: Margo M. Byrne, CEO

Landlord: City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436
Attention: City Manager

With Copy to: City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436
Attention: City Attorney

10.12 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party shall impair such right or remedy or be construed as a waiver. A party’s consent to or approval of any act by the other party requiring the party’s consent or approval shall not be deemed to waive or render unnecessary the other party’s consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

10.13 Attorney’s Fees. In the event that any action or proceeding is brought by either party to enforce any term or provision of this Lease, the prevailing party shall recover its reasonable attorneys’ fees and costs incurred with respect thereto.

10.14 Force Majeure. If either party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, pandemics, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted),

performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section shall excuse Tenant from the prompt payment of all obligations under this Lease.

10.15 Quiet Enjoyment. As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Leased Premises during the Term.

10.16 Exhibits Incorporated. Exhibits A, B, and B-1 attached to this Lease are made a part hereof as if fully set forth herein.

IN WITNESS WHEREOF, the parties have duly executed this Lease on the day and year specified below.

TENANT

CHANNEL ISLANDS YOUNG MEN'S CHRISTIAN ASSOCIATION,
a California non-profit corporation
(dba Channel Islands YMCA)

By: _____
Margo M. Byrne
Chief Executive Officer

By: _____
Daniel Watkins
Secretary

LANDLORD

CITY OF LOMPOC, a California
municipal corporation

By: _____
Jenelle Osborne, Mayor

ATTEST

Stacey Haddon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Jeff Malawy, City Attorney

[END OF SIGNATURES]

EXHIBIT A

LEGAL DESCRIPTION OF COLLEGE PARK

That certain real property located in the City of Lompoc, County of Santa Barbara, State of California, described as follows:

The easterly 178.33 feet of Lot 236 and the westerly 190.00 feet of Lot 237 of the City of Lompoc, California as said lots are shown upon the map thereof entitled "Map of the Subdivisions of the Ranchos Lompoc and Mission Vieja, in the County of Santa Barbara, California," recorded in Book 1 of Map and Surveys at Page 45 in the Office of the Santa Barbara County Recorder, containing 4.57 acres of land, more or less. Also known as: APN: 089-110-06 and "College Park".

Excepting therefrom all uranium, thorium and other materials determined to be peculiarly essential to the production of fissionable materials, pursuant to the provisions of the Atomic Energy Act of 1946 (60 Stats. 761) as reserved and excepted in the deed to the County of Santa Barbara, recorded April 9, 1948 as instrument no. 4971 in book 773, page 407 of Official Records of said county.

EXHIBIT B

DEPICTION OF LEASED PREMISES



