



Resolution 2003-085

**A RESOLUTION APPROVING THE CITY AND YMCA OPERATING AGREEMENT
FOR THE FIELD HOUSE**

WHEREAS, the City is constructing an indoor soccer complex that will be known as the Old Town Field House; and

WHEREAS, the YMCA (Young Men's Christian Association) operates the facility known as the Sherwood Family YMCA located at 23000 SW Pacific Highway; and

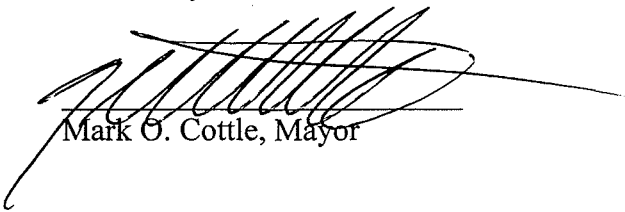
WHEREAS, the City would like the YMCA to operate the Old Town Fieldhouse in a similar manner.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

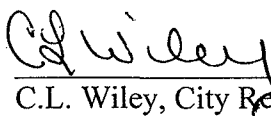
Section 1. The City Manager is authorized to sign the operating agreement, attached hereon as Exhibit A, between the City and the YMCA for the operation of the Old Town Field House.

Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 14th day of October 2003.


Mark O. Cottle, Mayor

ATTEST:


C.L. Wiley, City Recorder

Old Town Field House Operating Agreement
City of Sherwood and YMCA

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OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement"), effective as of the date set forth in the Basic Agreement Information, is made and entered into by and between The Young Men's Christian Association of Columbia-Willamette, an Oregon non-profit corporation, acting through Sherwood Regional Family YMCA as Operator ("Operator") and City of Sherwood, a municipal corporation, as City ("City"), respectively.

1. General: Facility.

(a) City owns land ("Land") described in Exhibit "A" attached hereto, together with a newly constructed recreation Facility located thereon known as the "Sherwood Old Town Field House" (the Land and Improvements sometimes collectively herein the "Facility"). A site plan depicting the Facility is attached as Exhibit "B", the specifications for the improvements and equipment are attached as Exhibit "C" and each party has in their possession a set of the construction drawings for the improvements initialed by both parties.

(b) City and Operator mutually desire and hereby mutually agree that Operator undertake the operation of the Facility as a stand alone facility.

2. Term.

(a) The initial term of this Agreement ("Term") shall commence upon the substantial completion of the Facility and issuance of a Certificate of Occupancy, and, unless extended or sooner terminated as hereinafter provided, shall end on the last day of the 240th month following the date of commencement. Upon the commencement of the Term, City and Operator shall execute a memorandum confirming the date of commencement of the Term.

(b) The Term of this Agreement shall be automatically extended for additional increments of five years each unless one party gives the other party notice of its intent to terminate the Agreement at least one year prior to an expiration date.

(c) This Agreement may also be terminated if:

(i) Upon 180 days notice by the Operator if the cumulative operating deficit (for one or multiple years) exceeds \$100,000; or

(ii) By the City if the Operator fails to provide a program which reasonably conforms to the standards of similar recreational facilities, provided that the City has first given the Operator notice of what it claims are defects in the program and Operator fails to timely cure the defects as provided in Section 16.

(iii) Upon failure of the Operator to qualify as a "501 (c)(3) Organization" as such term is defined in Paragraph (c) of Section 14 of this Agreement.

(iv) The operation of the Facility by the Operator constitutes an unrelated trade or business use of the Facility by the Operator within the meaning of Section 513(a) of the Internal Revenue Code of 1986, as amended.

(v) Operator fails to comply with the provisions of Section 14 of this Agreement.

Upon termination of this Agreement, Operator shall remove its business records and assets from the premises. Equipment purchased from operating revenues of the Facility, or capital levy funds provided by the City, shall be left on the premises.

3. Financial.

(a) Operator shall conduct its operations of the Facility in conformance with its status as a non-profit charitable corporation. To support on-going operations, most classes, events and programs shall have a fee for service.

(b) Operator shall divide any "net income"¹ in the following manner, 60% to support operations of the "Sherwood Y- Teen Center", 25% to be provided to the City For use on City Field improvements and maintenance and 15% for the City's General Fund, to support City operations.

(c) Operator shall, beginning ~~June 30, 2005~~ ^{JANUARY} and every January thereafter, for term of note, provide payment in an amount not less than \$75,000 to cover debt service for the financing of the Facility and depreciation as to the building and playing surface(s).

(d) Operator shall provide City with quarterly financial reports covering the Facility operations and attendance.

The operating budget shall include reasonable reserves for repairs and replacement of equipment (see Section 10) which are the responsibility of Operator pursuant to this Agreement, and shall otherwise conform to the requirements of this Agreement. The YMCA Board established in Section 7 shall review and approve the annual operating budget of the Facility.

4. Utilities

Utilities at the Facility will be shared between the Operator and the City's Engineering/Public Works Facility. Operator shall pay all utility fees in regards to the Old Town

¹ "Net Income" is defined as fees for service less all applicable expenses including \$75,000 annual payment for debt service and depreciation.

Field House operations. Operator and City agrees to review utility fees on an annual basis or as needed. Allocation of fees will be calculated in the following manor:

- a. Water: allocated by agreement based on water tables.
- b. Electricity: allocated by number of lights and outlets based on usage.
- c. Sewer: allocated by dwelling unit usage.
- d. Natural Gas: allocated by per meter usage.
- e. Telephone: allocated by mutual agreement.

5. Property Taxes. The parties contemplate that the Facility will be exempt from real property taxes and assessments.

6. Use. The Facility is to be used and operated only as full branch of the Operator continuously during the Term of the Agreement for the purpose of providing a public benefit for residents of the City and the surrounding area, including social, recreational, health and fitness programs. The Operator is to have control over all programs conducted therein. Such programs are to be consistent with the programs conducted by the Operator in its other facilities subject to such modifications as deemed required by the operator to meet the needs and demographics of the geographic area which the Facility is to serve. Operator shall not discriminate in membership or hiring on the basis of religion or any other status protected by State or Federal law.

7. Community Involvement/Dispute Resolution. The Facility is to be operated with its own staff employed by the Operator. The Operator's Board already constituted by the Operator will function as the oversight committee for services in the Facility. Any disagreements between the City and Operator arising out of or relating to this Agreement which are not resolved by negotiations, will first be mediated by an impartial third party. If mediation is unsuccessful, then any and all disputes arising out of or relating to this Agreement shall be resolved by binding arbitration utilizing the American Arbitration Association or the Arbitration Service of Portland, Inc., whichever body is selected by the filing party. The award of the arbitrator may be enforced in any court of competent jurisdiction.

8. Alterations, Additions or Improvements.

(a) During the Term of the Agreement, Operator will not make any alterations to any building structure or any building system in the Facility without the consent of the City, which consent shall not be unreasonably withheld or delayed.

(b) Except for alterations to building structure or building systems for which City's consent is required pursuant to Section 8 (a), Operator, at its election and at its expense, may

make alterations, additions and improvements from time to time to the Facility as Operator may elect.

(c) All alterations, additions or improvements shall become City's property immediately and, at the end of the Term hereof, shall remain in the Facility without compensation to Operator, provided that all furniture and equipment installed in the Facility by the Operator which are not paid for from the operating revenues or City bond proceeds shall remain the property of Operator and, upon the expiration or earlier termination of this Agreement, Operator shall be entitled to remove any and all of the same together with its business records so long as Operator repairs any damage caused by such removal; provided, however, that City, at City's election, may purchase any of such furniture and equipment and fixtures at such price as Operator and City mutually may agree upon.

(d) Operator at its expense shall obtain any and all permits and consents of applicable governmental authorities in respect of all such alterations, additions, and improvements and shall comply with the requirements of all laws, ordinances, codes and regulations applicable thereto, including without limitation all building codes and the Americans with Disabilities Act.

9. Liens. Operator shall keep the Facility free and clear of and from any and all mechanics', materialmen's and other liens for work or labor done, services performed and for materials used or furnished in or about the Facility by or on behalf of Operator. Operator at all times shall pay and discharge, promptly and fully, any and all claims upon which any such lien may or could be based, provided that Operator in good faith may contest any such lien if Operator obtains and records a statutory lien release bond the effect of which is that the lien is expunged from City's title as a matter of law. Operator shall save, defend and hold City, the Facility free and harmless of and from any and all such liens or claims of liens or suits or other proceedings pertaining thereof.

10. Repairs.

(a) Except with respect to damage caused by the negligent or willful act or omission of Operator, its agents, employees, invitees or contractors or Operator's misuse of the Facility (which Operator shall repair at its expense), City shall repair and replace as necessary, all structural load bearing components of the improvements (including, without limitation, exterior walls and interior load-bearing walls), the roof and roof membrane (except that City shall not be responsible for any roof repairs necessitated by the access of the Operator its agents, employees, invites or contractors to the roof without the permission of the City . Operator shall be responsible for maintenance and repair of all major plumbing, heating, ventilating, air conditioning and electrical systems, all major lighting facilities and equipment, all windows, exterior doors and plate glass and condition of the playing surface. Operator shall bear the cost of all such repair and replacement and Operator shall establish maintenance reserves in the operating budget to cover the cost of such repairs and replacements.

(b) Except for City's maintenance and repair obligations under Section 10(a), Operator at its expense shall keep the Facility in good order, condition and repair, ordinary wear and tear excepted, including landscaping and outside areas. Operator shall be responsible for non-routine consumable maintenance items.

11. Destruction or Damage.

(a) Definitions.

(i) "Facility Partial Damage" means damage to the Facility which, in City's reasonable determination, can be repaired within 180 days from the date of casualty.

(ii) "Facility Total Destruction" means damage to the Facility which, in City's reasonable determination, cannot be repaired within 180 days from the date of casualty.

(iii) "Insured Loss" is damage or destruction which was caused by a peril which is required to be covered by the insurance provided for herein.

(iv) City shall make its determinations under clauses (i) and (ii) above as promptly as practicable, but in any event within 30 days following the date of the casualty.

(b) Partial Damage - Insured Loss. If there is damage which is an Insured Loss and which falls into the classifications of Facility Partial Damage, then City shall, at City's expense (but not in excess of the insurance proceeds received by it pursuant to Section 12(d) hereof), repair such damage as promptly as possible and restore the Facility to the condition existing prior to the casualty (including the cost of any required code upgrade), and this Agreement shall continue in full force and effect. If the City will not receive sufficient insurance proceeds to repair such damage, City will give written notice thereof to Operator. City or Operator may elect within forty-five (45) days after such notice to contribute the shortfall (without obligation to so do), without reimbursement from City, and if neither so elects, either party may terminate this Agreement effective as of the date of the casualty by giving notice to the other party prior to the Commencement of Restoration [as defined in Section 11(e)(ii)]. City shall have no obligation to repair Operator's trade fixtures or equipment, except for damage thereto caused by City.

(c) Partial Damage - Uninsured Loss. If there is damage which is not an Insured Loss and which falls into the classification of Facility Partial Damage, City may at City's election either (1) repair such damage as promptly as possible at City's expense, in which event the Agreement shall continue in full force and effect, or (2) terminate this Agreement as of the date of the casualty by giving notice to Operator within forty-five (45) days after the date of the City's

reasonable determination that the casualty constitutes Facility Partial Damage. If City elects to terminate this Agreement, Operator shall have the right within thirty (30) days after the receipt of such notice to give notice to City of Operator's intention to repair such damage at Operator's expense, without reimbursement from City, in which event this Agreement shall continue in full force and effect, and Operator shall proceed to make such repairs as soon as reasonably possible. If Operator does not give such notice within such thirty (30) day period, this Agreement shall be terminated as of the date of the occurrence of such casualty.

(d) Total Destruction. If there is damage, whether or not an Insured Loss (including destruction required by any authorized public authority), which falls into the classification of Premises Total Destruction, this Agreement shall automatically terminate as of the date of such total destruction.

(e) Operator's Remedies.

(i) Operator shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration. If Operator incurs any expenses by reason of damage, destruction, repair or restoration of the premises, such expenses, including interest expense incurred, shall be reimbursed to Operator based on a reasonable amortization in future operating budgets.

(ii) If City is required or elects to restore the Facility under the provisions of this Section 11, and does not commence such restoration within one hundred eighty (180) days after the date the damage occurs, Operator may, at Operator's election, terminate this Agreement by giving City notice thereof at any time prior to the commencement of such restoration. For purposes hereof "commencement of restoration" shall mean the commencement of the actual work of restoration on or about the Facility. If the City commences restoration but fails to substantially complete such restoration within two hundred seventy (270) days from the date of the casualty as such period may be extended by acts of force majeure and other events beyond the reasonable control of City, including without limitation, adverse weather, Operator may terminate this Agreement upon notice to City given at any time before restoration is completed. In either event, this Agreement shall terminate as of the date of such notice.

(f) Waiver. City and Landlord waive the provisions of any statutes which relate to termination of leases when leased property is damaged or destroyed, and agree that such events shall be governed by the Terms of this Agreement.

12. Insurance: Waiver of Subrogation.

(a) Waiver of Subrogation. City and Operator each hereby waive any and every claim for recovery from the other for any and all loss or damage to the Facility or to the contents thereof,

which loss or damage is covered by valid and collectible property damage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), City and Operator each agree to give to each insurance company which has issued, or in the future may issue, to it policies of physical damage insurance, written notice of the terms of his mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

(b) Operator's Liability Insurance

(i) General Requirements. Operator shall procure and keep in effect from the date of this Agreement and at all times until the end of the Term hereof (including any extension thereof) broad form commercial general liability insurance against claims for bodily injury, personal injury and property damage, based upon, arising out of or involving the use and occupancy of the Facility, and any areas adjacent, and the business operated by Operator or any other occupant on the Facility. Such insurance shall be primary and shall include Broad Form Contractual liability insurance coverage insuring Operator's indemnity obligations under this Agreement (excluding the indemnity obligations under Section 14(b)(v) hereof). Such coverage shall have a minimum combined single limit of liability of at least \$ 5,000,000 in the aggregate. Such insurance shall not limit Operator's liability under any provision of this Agreement.

(ii) Endorsements. The policies required under this Section 12 (b) shall name City an additional insured and also shall contain the following endorsements:

- Council members? elected & appointed*
officers
- (A) including City's officers and employees as additional insured;
- (B) providing for coverage of Operator's automobile non-ownership liability; and
- (C) covering plate glass breakage.

(c) Workers' Compensation Insurance. Operator shall maintain Workers' Compensation insurance in accordance with Oregon law.

(d) Casualty Insurance-Facility. Operator shall maintain during the Term of this Agreement (including an extension thereof) a policy or policies of insurance, with loss payable to City, covering all risks of direct physical loss or damage to the Facility (except the perils of flood and earthquake), in an amount equal to the full replacement cost of the Facility, as the same shall exist from time to time. Said policy(ies) shall include coverage for any additional costs resulting from debris removal and the enforcement of any building, zoning safety or land use laws resulting from a loss covered by such insurance. If such insurance has a deductible

clause, the deductible amount shall not exceed \$1,000 per occurrence. Operator may provide the insurance required under this Section 12(d) under an existing policy or policies maintained by Operator covering the Facility and other facilities of Operator, provided that (i) such insurance meets all of the requirements of this Section and Section 12(g) below, and (ii) the amount of insurance proceeds for any loss or damage to the Facility is not reduced by reason of casualties sustained on other properties covered by such insurance.

(e) Casualty Insurance-Personal Property. Operator shall maintain during the Term of this Agreement (including any extension thereof) a policy or policies of insurance covering all risks of direct physical loss or damage to the equipment, personal property and fixtures located in the Facility in an amount equal to the full replacement cost thereof, as the same shall exist from time to time. If such insurance has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence. Operator may provide the insurance required under this Section 12(e) under an existing policy or policies maintained by Operator covering the equipment, personal property and fixtures located in other facilities of Operator, provided that (i) such insurance meets all of the requirements of this Section and Section 12(g) below, and (ii) the amount of insurance proceeds for any loss or damage to the equipment, personal property and fixtures located in the Facility is not reduced by reason of casualties sustained on equipment, personal property and fixtures located in other properties covered by such insurance. In the event of a casualty and unless this Agreement is terminated as a consequence thereof, Operator shall use the proceeds of such insurance received by it to repair and replace as necessary any damage to or destruction of such equipment, personal property and fixtures.

(f) Policy Requirements. All insurance required under Section 12(b)- 12(f), inclusive, shall be issued by companies duly admitted to transact business in the State of Oregon and reasonably acceptable to City. No such policy shall be cancelable, non-renewable or subject to material modification except after thirty (30) days written notice from the insurance company to Operator and City. Operator shall cause to be delivered to City certificates issued by the relevant carrier evidencing to be in force the insurance required by this Agreement, each of which certificates shall be delivered to the City prior to the applicable date by which it is first to be in force. At least thirty (30) days prior to the expiration of such policies, Operator shall furnish City with updated certificates, insurance "binders" or other evidence of renewal thereof reasonably acceptable to City. If Operator fails to do so, City may obtain the required insurance at the cost of Operator. Operator shall reimburse City upon demand for such cost. The amount of insurance coverage provided herein shall be reviewed every three years during the Term hereof by City's and Operator's respective independent insurance advisors and shall be adjusted to reflect the recommendations of such advisors.

(g) Limitation. Notwithstanding the foregoing provisions of this Section 12 to the contrary, while Operator represents and covenants to City that as of the commencement of the Term, Operator will have in force and effect the insurance to be maintained by Operator pursuant to this Section 12, Operator thereafter shall only be required to carry the insurance set forth in

this Section 12 to the extent that Operator carries such insurance on other facilities operated by it pursuant to its then general risk management procedures and policies, provided, nevertheless, that Operator agrees to perform and comply at all times in any event with any difference or additional insurance requirements imposed in connection with the financing of the Facility.

13. Waiver: Indemnity.

(a) Operator. Operator covenants and agrees that City, with respect to the Facility and the use and operation thereof by Operator, shall not at any time after the commencement of the Term to any extent whatsoever be liable, responsible for in anywise accountable for, and Operator waives and releases any claim (including any claim for contractual or implied indemnity) against City on account of, and Operator shall forever indemnify, defend, hold and save the City free and harmless of, from and against any injury to or death of persons, for loss of or damage, to property, of any land or nature, including without limitation, loss, injury, death or damage due to criminal act by third persons, and all claims, losses, damages, judgments, penalties, costs, expenses and liabilities arising out of the foregoing (collectively "losses"), which losses are suffered or sustained by:

(i) Operator, in respect of Operator's property located in, on or about the Facility, and/or

(ii) any person whatsoever may at any time be using or occupying or visiting the Facility or be in, on or about the same, including Operator's and City's respective agents, employees, contractors and invitees, except in case of either clause (i) and/or

(iii) to the extent such losses shall be caused by the breach by City of this Agreement and/or negligent or willful act or omission of City, its agents, servants and invitees.

(b) City covenants and agrees that Operator, with respect to the Facility and the use and operation thereof by Operator, shall not at any time after the date hereof or to any extent whatsoever be liable, responsible or otherwise accountable for, and City waives and releases any claim (including any claim for contractual or implied indemnity) against Operator on account of, and City shall forever indemnify, defend, hold and save the Operator free and harmless of, from and against, any losses which are suffered or sustained by:

(i) City in respect of any City property adjoining the Facility; and/or

(ii) Any person whatsoever may at any time be in or on any City property adjoining the Facility, including Operator's and City's respective agents, employees, contractors, and invitees, but excluding, nevertheless, from this clause (ii) the losses sustained by any person in the course of any activity or program conducted by Operator

in or on such City property adjoining the Facility except in case of either clause (i) and/or (ii) to the extent such losses shall be caused by the breach of Operator of this Agreement and/or negligent or willful act or omission of Operator, its agents, servants and invitees.

The foregoing indemnity obligations of each party shall include reasonable attorneys' fees, investigation costs, and all other reasonable costs and expenses incurred by the indemnified party from the first notice that any claim or demand is to be made or may be made.

(c) The provisions of this Section 13 shall survive the termination of this Agreement with respect to any losses occurring prior to such termination and are in addition to, and are not intended to modify or otherwise impair the force and effect, of Section 14(b) hereof.

14. Compliance with Legal Requirements.

(a) During the Term of this Agreement, Operator shall comply promptly with (i) all laws, statutes, regulations, ordinances, governmental rules, or requirements now in force or which may hereafter be in force, (ii) the requirements of any board of fire underwriters or other similar body now or hereafter constituted, and (iii) any direction or occupancy certificate issued pursuant to any law by any public officer or officers insofar as any of them relate to or affect the use or occupancy of the Facility, or the condition of the Facility, the responsibility of which is the obligation of Operator under this Agreement. The judgment of any court of competent jurisdiction or the admission by Operator in any action or proceeding against Operator (whether City be a party thereto or not) that Operator has violated any law, statute or governmental rule, regulation, or requirement, shall be conclusive of such violation as between City and Operator.

(b) Environmental Matters.

(i) As used herein, the following items shall have the following meanings:

"Environmental Activity" means any actual, proposed or threatened use, storage, treatment, existence, release, emission, discharge, generation, manufacture, disposal or transportation of any Hazardous Materials from, into, on, under or about the Facility, or any other activity or occurrence by Operator, including its agents, servants, contractors, and/or invitees, that causes or would cause any such event to exist.

"Environmental Requirements" means all present and future federal, state, regional or local laws, statutes, regulations, ordinances, governmental rules or requirements relating to environmental protection or the presence, use, storage, release, spill, emission, discharge, generation, disposal or transportation of any Hazardous Materials.

"Hazardous Material" means any substance, material or waste which is or becomes defined, as a "hazardous waste," "hazardous material," "hazardous substance," "extremely

hazardous waste," or "restricted hazardous waste" under any provision of any federal, state or local law and includes, without limitation, hydrocarbons, petroleum, gasoline, crude oil or any products, by-products or fractions thereof.

(ii) Operator shall not engage in nor permit the occurrence of any Environmental Activity in, on, under or about the Facility except that Operator may use reasonable quantities of ordinary and customary materials reasonably required in the ordinary course of Operator's business permitted at the Facility and only compliance with all then applicable Environmental Requirements and prudent industry practices. Operator shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required under any then applicable Environmental Requirements with respect to any Environmental Activity by Operator, including, without limitation, the discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the Facility, and upon termination of this Agreement shall cause all Hazardous Materials introduced into the Facility by Operator, its agents, servants, contractors and invitees to be removed therefrom in accordance with and in compliance with all applicable Environmental Requirements.

(iii) Upon having actual knowledge or notice thereof, Operator shall immediately notify City in writing of:

(A) any regulatory action that has been instituted, or threatened by any governmental agency or court with respect to Operator or the Facility that relates to any Environmental Activity;

(B) any claim relating to any Environmental Activity by Operator in, on or about the Facility; or

(C) any actual or threatened material Environmental Activity on, under or about the Facility, except any Hazardous Materials whose discharge or emission is expressly authorized by and in compliance with all necessary permits issued by Federal, State, Regional or local Governmental agencies pursuant to Environmental Requirements.

(iv) Operator shall immediately provide City with copies of any communications with federal, state, regional or local governments, agencies or courts with respect to any Environmental Activity or Environmental Requirement which relates to the Facility, and any communications with any third party relating to any claim made or threatened with respect to any Environmental Activity in, on or about the Facility.

(v) Operator shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold City free and harmless from and against any and all claims, damages,

liabilities fines penalties forfeitures losses, costs or expenses (including reasonable consultants', experts' and attorneys' fees) arising from or caused in whole or in part, directly or indirectly; by any Environmental Activity, or the failure to comply with any Environmental Requirement in, under or about the Facility, by Operator', Operator's agents, servants, contractors and invitees or any party other than City. Operator's obligations under this Section 14(b) shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any investigations, monitoring, repair, cleanup, restoration, removal or remediation action, or detoxification or decontamination, or the preparation and implementation of any closure remedial action or other plans in connection therewith that are required as a result of any Environmental Activity, and shall survive the expiration or earlier termination of the Terms of this Agreement. For purposes of this clause (v), including the indemnity provided herein, City shall include its officers, agents and employees.

(vi) City shall indemnify, defend (by counsel reasonably acceptable to Operator), protect, and hold Operator and each of Operator's employees, officers and directors, free and harmless from and against any and all claims, damages, liabilities, fines, penalties, forfeitures, losses, costs or expenses (including reasonable consultants', experts' and attorneys' fees) arising from or caused in whole or in part, directly or indirectly, by (i) any actual, proposed or threatened use, storage, treatment, existence, release, emission, discharge, manufacture, disposal, or transportation of any Hazardous Materials from, onto, on, generation, or about the Facility, whenever occurring (whether prior, during or subsequent to the Term of this Agreement):

(A) caused by City, its agents, servants, invitees and contractors with respect to Hazardous Materials on or above level grade; or

(B) caused by other than Operator, its agents, servants, invitees and contractors with respect to Hazardous Materials below level grade (excluding Hazardous Materials which are introduced below grade from the Facility during the Term hereof).

City's obligations under this Section 14(b) shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any investigation, monitoring, repair, cleanup, restoration, removal or, remediation action, or detoxification or decontamination, or the preparation and implementation of any closure, remedial action or other plans in connection therewith that are required as a result of any Environmental Activity, and shall survive the expiration or earlier termination of the Term of this Agreement.

(vii) Notwithstanding the provisions of clauses (v) and (vi) of this Section 14(b), the indemnifying party shall be deemed to be performing its indemnity obligations in respect of repair, remediation and cleanup as provided therein so long as it diligently is engaged in such repair, cleanup or remedial actions, including detoxification and

decontamination, in accordance with standards or processes established by the governmental authority supervising such repair, clean-up or remedial action: provided that if in the event of any actual or threatened release or other introduction of Hazardous Materials in the Facility which actual or threatened release or other introduction creates a material risk of immediate personal injury or property damage and is covered by the indemnity provisions of either clause (v) or clause (vi) of this Section 14(b), as the case may be, the indemnity under such clause, as applicable, shall be entitled to take whatever emergency remedial or other collective action as such indemnity deems appropriate, and the costs and expenses incurred by such indemnity thereby shall be covered by such indemnity.

(viii) The provisions of this Section 14(b) shall survive the expiration or earlier termination of this Agreement.

(ix) City represents to Operator that as of the date of this Agreement, City heretofore has not been in receipt of written notice from any governmental agency of any non-compliance of the Facility or any portion thereof with any Environmental Requirements.

(c) As of the date of this Agreement, the Operator is an organization described in Section 501(c)(3) of the Code that is exempt from federal income tax under 501(a) of the Code and the Operator is not a private foundation within the meaning of Section 509(a) of the Code (such organization is hereinafter referred to as a 501 (c)(3) Organization), it has received a letter from the IRS to that effect, such letter has not been modified, limited or revoked, the Operator was and is in compliance with all terms, conditions, and limitations, if any, contained in such letter applicable to it, the facts and circumstances which form the basis of such letter as represented to the IRS continue substantially to exist, and the Operator agrees that it shall not perform any acts or enter into any agreement which shall adversely affect such federal income tax status nor shall it carry on or permit to be carried on at the Facility or permit the Facility to be used in or for any trade or business or by any person if such activity would adversely affect the federal income tax status of interest on the Bonds or if such activity would adversely affect the Operator's status as a 501(c) (3) Organization. The Operator hereby represents for the benefit of the City that no audit nor investigation by the IRS of the tax-exempt status of the Operator is presently being conducted. The Operator shall notify the City as soon as possible in the event that it is notified by the Internal Revenue Service that it is no longer qualifies as a 501(c) (3) Organization.

(i) No portion of the Facility will be used to provide any of the following: any airplane, any skybox, or other private luxury box, any Facility primarily used for gambling, any store the principal business of which is the sale of alcoholic beverages for consumption off premises or residential rental property for family units within the meaning of Section 145(d) of the Code.

15. Entry by City. City may enter the Facility at reasonable hours to (a) inspect the same, (b) determine whether Operator is complying with all its obligations hereunder, and/or (c) post notices of non-responsibility:

16. Events of Default. The occurrence of any one or more of the following events (an "Event of Default") shall constitute a breach of this Agreement by Operator:

(a) If Operator shall fail to pay any sum required to be paid City pursuant to this Agreement when and as the same becomes due and payable and such failure shall continue for more than ten (10) days; or

(b) If Operator shall default in the performance or observance of any other term hereof to be performed or observed by Operator, and within thirty (30) days following written notice from City to Operator, Operator shall have failed to completely cure such default, or if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period, Operator shall not within such thirty (30) day period have commenced with prompt diligence the curing of such default, or, having so commenced, shall thereafter have failed to prosecute with prompt diligence the complete curing of such default; or

(c) If Operator shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or as insolvent, or shall file a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; or shall file an answer admitting, or fail to protest timely the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Operator or any material part of its properties; or

(d) If within thirty (30) days after the commencement of any proceedings against Operator seeking any reorganization, any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, such proceeding shall not have been dismissed, or if within thirty (30) days after the appointment without the consent or acquiescence of Operator, of any trustee, receiver, or liquidator of Operator or of any material part of its properties, such appointment shall not have been vacated; or

(e) If this Agreement or any estate of Operator hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days; or

(f) If Operator shall abandon or surrender the Facility, or be dispossessed by process of law or otherwise, or shall vacate or fail to take possession of the Facility.

17. City's Right to Terminate. If an Event of Default shall occur, City at any time thereafter may give a written termination notice to Operator, and on the date specified in such notice (which shall be not less than three days after the giving of such notice) Operator's right to possession shall terminate, unless on or before such date all sums payable by Operator under this Agreement and all costs and expense incurred by or on behalf of City hereunder shall have been paid by Operator and all other breaches of this Agreement by Operator at the time existing shall have been fully remedied to the satisfaction of City. City may remove all persons and property located therein and hold, administer and dispose of any or all of such properties in accordance with applicable Oregon law.

18. Additional Remedies. The remedies provided for in this Agreement are in addition to any other remedies available to City at law or in equity by statute or otherwise.

19. City's Right to Cure Defaults. All agreements and provisions to be performed by Operator under any of the terms of this Agreement shall be at its sole cost and expense. If Operator shall fail to pay any sum of money required to be paid by it hereunder, or shall fail to perform any other act on its part to be performed hereunder and such failure shall continue for 10 days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Operator from any obligations of Operator, make any such payment or perform any such other act on Operator's part to be made or performed as in this Agreement provided. All sums so paid by City and all necessary incidental costs shall be payable to City on demand.

20. Attorneys' Fees. In the event of any arbitration or judicial proceeding between the parties relative to the subject of this Agreement, the prevailing party shall be entitled to recover for the fees of its attorneys in such amount as the arbitrator or court may adjudge reasonable.

21. Eminent Domain. If any part of the Facility shall be taken as a result of the exercise of the power of eminent domain, this Agreement shall terminate as to the part of the Facility so taken as of the date of taking (as defined below), and either City or Operator shall have the right to terminate this Agreement as to the balance of the Facility remaining after a partial taking, by written notice to the other within thirty (30) days after such date, provided, however, that a condition to the exercise by Operator of such right to terminate shall be that such partial taking shall be to such extent and nature as to substantially and permanently impair the conduct of Operator's business therein. If all of the Facility are taken as a result of the exercise of the power of eminent domain, this Agreement shall terminate upon the date of taking.

Operator shall be entitled to any separate award made in favor of Operator covering Operator's relocation expenses, goodwill, and furniture, fixtures and equipment. The award and any and all other compensation made by the condemning authority in respect of the exercise of the power of eminent domain, including severance damages, shall be the sole property of the City.

If this Agreement is not terminated as a consequence of a taking, City, at its expense, shall restore the Facility then remaining to a complete architectural whole, provided that City's obligation to restore shall not exceed the proceeds of the award received by it, and, if such proceeds are insufficient to restore the Facility then remaining to a complete architectural whole, Operator, at its election (but without obligation), may contribute the shortfall in proceeds, and, if Operator elects not to make such contribution, either party may terminate this Agreement by notice to the other effective as of the date of the taking, which notice shall be given within sixty (60) days following the determination of the amount of the award.

It is understood and agreed that the foregoing provisions of this Section are intended to and do fully define and set forth the respective rights and obligations of the parties in the event of a taking of the Facility or a part thereof, including without limitation the circumstances under which this Agreement shall or may be terminated, and the disposition of any proceeds of any award.

For purposes hereof the "date of taking" shall be deemed to be the date that physical possession of the property taken is delivered to the condemning authority.

22. No Merger. The voluntary or other surrender of this Agreement by Operator, or a mutual cancellation thereof, shall not work a merger, and, at the option of City, either shall operate (a) to terminate all or any existing subcontracts or sub-tenancies under the Agreement, or (b) as an assignment to City of any or all such subcontracts and sub-tenancies.

23. Sale. If the City, or any successor owner of the Facility, shall sell or convey the Facility, all liabilities and obligations on the part of the original City, or such successor owner, under this Agreement accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner.

24. No Light, Air, or View Easement. Any diminution or shutting off of light, air, or view by any structure which may be erected on lands adjacent to the Building shall in no way affect this Agreement or impose any liability on City.

25. Abandonment. Operator shall not vacate or abandon any part or all of the Facility. If Operator shall vacate, abandon, or surrender the Facility, or be dispossessed by process of law or otherwise, any personal property belonging to Operator and left on the Facility shall be deemed to be abandoned, at the option of the City.

26. Surrender. Operator shall at the end of the Term hereof surrender to City the Facility and all alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear excepted. Damage by fire, earthquake, act of God, or the elements that are not otherwise the responsibility of the Operator shall also be excepted. Improvements installed in the Facility by Operator, shall, without compensation to Operator, then become City's property

free and clear of all claims to or against them by Operator or any other person, subject to Operator's removal rights under Section 8(c).

27. Waiver. The waiver by either party of any term, agreement, condition, or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, agreement, condition, or provision herein contained, nor shall any custom or practice which may grow between the parties in the administration of the terms hereof be construed to waive or to lessen the right of such party to insist upon the performance by the other party in strict accordance with said terms.

28. Notice. All notices, demands or other writings provided in this Agreement to be given or made or sent, or which may be given or made or sent by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and upon personal delivery (whether by a party or its agent, or by courier), or by electronic transmissions such as telex, E-Mail or facsimile (provided that such notice is confirmed by mail as next provided) or after seventy-two (72) hours following deposit in the United States mail, registered or certified, postage prepaid, and addressed as follows: to Operator at the address specified in the Basic Agreement Information, or to such other place as Operator may from time to time designate in a notice to City; to City at the address specified in the Basic Agreement Information, or to such other place as City may from time to time designate in a notice to Operator. Operator hereby appoints as its agent to receive the service of all dispossession or distraint proceedings and notices thereunder the person in charge of or occupying the Facility at the time, and, if no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Facility.

29. Complete Agreement. There are no oral agreements between City and Operator affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between City and Operator or displayed by City to Operator with respect to the subject matter of this Agreement. There are no representations between City and Operator other than those contained in this Agreement and all reliance with respect to any representations is solely upon such representations.

30. Corporate Authority. Each of the persons executing this Agreement on behalf of Operator does hereby covenant and warrant that Operator is a duly authorized and existing corporation, that Operator has and is qualified to do business in Oregon, that the corporation has full right and authority to enter into this Agreement, and that the person(s) signing on behalf of the corporation were authorized to do so.

31. Miscellaneous Provisions.

(a) The words "City" and "Operator" as used herein shall include the plural as well as the singular.

(b) Time is of the essence of this Agreement and each and all of its provisions.

(c) The agreements, conditions and provisions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

(d) If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

(e) This Agreement shall be governed by and construed pursuant to the internal laws of the State of Oregon, as the same are applied to agreements made and to be performed in this state.

(f) All remedies hereinbefore and hereafter conferred upon City shall be deemed cumulative and no one shall be exclusive of the other, or shall in any way limit the availability to City of any other remedy conferred by law, whether or not specifically conferred by the provisions of this Agreement.

(g) All indemnities of each party contained in this Agreement shall survive the expiration or other termination hereof with respect to any act, condition or event which is covered by such indemnity.

(h) The parties acknowledge and agree that each party has reviewed and revised and has been provided the opportunity of its respective counsel to review and revise, this Agreement and no rule of construction to the effect that ambiguities are to be resolved against the drafting party shall be employed in the interpretation or construction of this Agreement, or any amendments or exhibits thereto.

(i) The parties acknowledge and agree that Operator is an independent contractor, and not an agent of the City, and has no power or authority to act on behalf of or bind the City in any manner.

32. Brokerage. Each party warrants and represents to the other that such party has not retained the services of any real estate broker, finder or any other person whose services would form the basis for any claim for any commission or fee in connection with this Agreement or the transactions contemplated hereby. Each party agrees to save, defend, indemnify and hold the other party free and harmless from any breach of its warranty and representation as set forth in the preceding sentence, including the other party's attorney's fees.

33. Assignment and Subcontracting.

(a) Operator shall not voluntarily or by operation of law (i) assign, pledge, transfer or encumber (collectively "Assignment") or subcontract all or any part of this Agreement or Operator's interest in the Facility, or (ii) permit the Facility or any part of it to be occupied by anyone other than Operator, its employees, agents, members or representatives, without City's prior written consent, which will not be unreasonably withheld. Any Assignment or subcontract without City's prior written consent shall be voidable and, at City's election, shall constitute an Event of Default. As used herein, the term "subcontract" does not include contracts with independent contractors who provide program assistance and operational support, such as contracts with yoga or aerobics instructors acting as independent contractors.

(b) Any dissolution of Operator or any merger, consolidation or other reorganization of Operator involving as a party thereto an entity not affiliated with the Young Men's Christian Association shall constitute an Assignment requiring City's consent

(c) Each request for consent to an Assignment or subcontract shall be in writing, accompanied by the name, address and business of the proposed assignee or subcontractor, the proposed use of the Facility, the terms and conditions of the proposed Assignment or subcontract and information relevant to City's determination as to the tax-exempt status and financial and operational responsibility and appropriateness of the proposed assignee or subcontractor. Operator agrees to provide City with such other or additional information and documentation as City may reasonably request. No consent to any Assignment or subcontract shall constitute consent to any other Assignment or subcontract or be deemed to be a waiver of the provisions of this Section 33.

(d) City shall be permitted to consider any reasonable factor in determining whether or not to withhold its consent to a proposed Assignment. Without limiting the other circumstances under which it may be reasonable for City to withhold its consent, it shall be deemed reasonable for City to withhold its consent if any of the following conditions are not satisfied:

(i) No Event of Default shall have occurred and be continuing;

(ii) The proposed transferee shall have the financial strength and stability to perform all obligations under this Agreement to be performed by Operator,

(iii) The proposed use of the Facility shall be consistent with the purpose and intent of this Agreement to provide a community recreation center operated as a public benefit for residents of the City, including social, recreational, health and fitness programs in accordance with this Agreement.

(iv) The proposed transferee shall, at all times during the Term of the Assignment or subcontract, be a tax-exempt entity as defined in the Internal Revenue Code of 1986, as amended; and

(v) All third parties whose consent to such transfer, the City is required to obtain shall grant such consent.

(e) Any assignee of, or subcontractor under, this Agreement shall, by reason of accepting such Assignment or entering into such subcontract, be deemed, for the benefit of City, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation in this Agreement to be performed by Operator during the term of the Assignment or subcontract. No assignee or subcontractor shall make any further Assignment or subcontract without City's prior written consent, which City may grant or withhold on and subject to the terms and conditions of this Section 33.

(f) No Assignment or subcontract shall release Operator of Operator's obligations under this Agreement, or alter the primary liability of Operator to perform all other obligations to be performed by Operator under this Agreement.

(g) Operator immediately and irrevocably assigns to City, as security for Operator's obligations under this Agreement, all rents and income from any Assignment or subcontract of all or any part of the Facility as permitted by this Agreement, and City or a receiver for Operator appointed on City's application, can collect such rent and apply it toward Operator's obligations under this Agreement; provided, however, that so long as operator is not in default under the terms of this Agreement, all such rents and income shall remain part of the Facility's operating budget.

(h) If Operator requests City's consent to a proposed Assignment or subcontract, Operator shall pay to City, whether or not consent is given, City's reasonable attorneys' fees incurred in connection with each such request.

34. Estoppel Certificate. Each party shall, within twenty (20) days after written request from the other party, execute, acknowledge and deliver to the requesting party a statement in writing certifying:

(i) The Term Commencement date;

(ii) That this Agreement is in full force and effect (or, if this Agreement has been modified, that this Agreement is in full force and effect as modified, and stating the date and nature of such modification);

(iii) The date to which sums payable City under this Agreement have been paid;

(iv) The fact that there are no Events of Default or breaches of this Agreement by Operator or City except as specified in the statement; and

(v) Such additional information and confirmation reasonably requested by the requesting party. Each party agrees that any statement delivered by such party pursuant to this Section 34 may be relied upon by any third party for whose benefit it is obtained.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in this Basic Agreement Information.

CITY:

CITY OF SHERWOOD CITY

a municipal corporation

OPERATOR:

YOUNG MEN'S CHRISTIAN

ASSOCIATION OF COLUMBIA-

WILLAMETTE

By: _____

(Signature)

By: _____

(Print Name)

Its: _____

(Title)

By: _____

(Signature)

By: _____

(Print Name)

Its: _____

(Title)

Approved as to form by City Attorney