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 AUDITOR, Pierce County, WASHINGTON

Return Address:

City Clerk
 City of Gig Harbor
 3510 Grandview Street
 Gig Harbor, WA 98335

Please print legibly or type information.

Document Title(s) (Or transaction contained therein):

1. **SPORTS COMPLEX LEASE AGREEMENT - YMCA**
- 2.
- 3.
- 4.
- 5.

Grantor(s) (Last name first, then first name and initials):

1. **CITY OF GIG HARBOR**
2. Additional Names on Page ___ of Document.

Grantee(s) (Last name first, then first name and initials):

1. **YMCA of Pierce and Kitsap Counties**
2. Additional Names on Page 23 of Document.

Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range):

A-1 Lot 1, BUSINESS PARK AT HARBOR HILL, according to Plat recorded June 05, 2006, under recording No. 20060523507, records of Pierce County Auditor. Situate in the City of Gig Harbor, County of Pierce, State of Washington

A-2 ALL OF LOT 1, BUSINESS PARK AT HARBOR HILL, ACCORDING TO THE PLAT RECORDED UNDER RECORDING NO. 200605235007, RECORDS OF PIERCE COUNTY AUDITOR...

Legal Description is on Page 29 AND 30 of Document.

Reference Number(s) (Of documents assigned or released):

Additional Reference numbers on Page 33 AND 34 of Document.

Assessor's Property Tax Parcel/Account Number

20060523507

The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the Document to verify the accuracy or completeness of the indexing information provided herein.

Gig Harbor YMCA Sports Complex Lease Agreement

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LEASE AGREEMENT

THIS LEASE (this "Lease" or "Agreement") is made and entered into this 10th day of May, 2021, by and between the City of Gig Harbor, Washington, a municipality of the State of Washington ("Landlord" or "City"), and YMCA of Pierce and Kitsap Counties, a nonprofit corporation organized and existing under the laws of the State of Washington ("Tenant" or "YMCA").

RECITALS

- A. Landlord owns certain real property located in Gig Harbor, Washington consisting of approximately twenty (20) acres (the "Property"). The Property is legally described in **Exhibit A-1**.
- B. Tenant is a nonprofit organization headquartered in Tacoma, Washington. Among others, it owns and operates the Tom Taylor Family YMCA and its eleven (11) acres and its facility adjacent to the Premises (collectively, the "YMCA Property").
- C. Landlord intends to develop or have developed approximately eight (8) acres of its Property (the "Sports Complex Area") into a public and private sports complex (the "Sports Complex") that would serve the Gig Harbor community. The development efforts of the Sports Complex Area for the Sports Complex is referred to herein as the "Project."
- D. Tenant desires to lease from Landlord, and Landlord desire to lease to Tenant, a portion of the Sports Complex Area of the Property, upon which the YMCA will develop a portion of the Sports Complex Area with certain phased improvements (described below), and this portion will be referred to herein as the "Premises", which is outlined on **Exhibit A-2**, attached hereto and incorporated herein by this reference and made a part hereof.
- E. The first phase of improvements to the Premises will consist of two (2) synthetic turf playfields approximately 360' x 210' each, with field lighting, fencing around the turf playfield, a restroom facility and concession stand, 100 surface parking stalls, ingress and egress driveways and curb cuts (the "Phase 1A Improvements"). The Phase 1A Improvements are more fully described in **Exhibit B**, attached hereto and incorporated herein by this reference and made a part hereof.
- F. The Phase 1A Improvements will be developed during what will be commonly referred to as "Phase 1A" of the Project with funding from the City from the YAF Grant (described below) as well as private efforts of Tenant.
- G. Landlord has been awarded \$350,000 in funding through the Washington State Recreation and Conservation Office through a Youth Athletics Facility (the "YAF Grant"). The YAF Grant is required to be spent on the Phase 1A Improvements being constructed during Phase 1A of the Project.
- H. The Project is anticipated to cost a minimum of \$3.85 million dollars. \$350,000 of it will be paid for by the YAF Grant and the remaining amount will be funded by the YMCA through fundraising and other sources. The YAF Grant funds may only be used/available to Tenant if the project meets the YAF Grant requirements.
- I. Landlord has the authority to lease the Premises to Tenant, and Tenant has agreed to lease the Premises from Landlord, for a minimum of thirty-five (35) years, and Tenant shall have three (3) options to renew the lease for twenty (20) years each, provided, a key term of such extensions will be that the lease shall have a nominal rental fee for each year of each renewal period, as consideration for the public benefit that is provided by the YMCA in leasing, operating, and maintaining the Sports Complex according to the terms of the Services Agreement.

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- J. Tenant has agreed to construct the Project and operate and maintain the Sports Complex on the conditions set forth herein and in the Services Agreement.

NOW, THEREFORE, Landlord and Tenant hereby agree to the following terms and conditions:

- A. Recitals. All of the above Recitals A through J are incorporated herein by this reference as if first stated herein.
- B. Description. For and in consideration of Tenant's covenant to pay the rental and other sums provided for herein, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant, and Tenant leases from Landlord the Premises situated in the County of Pierce, State of Washington, described more particularly in Exhibit A-2, for the purpose of the construction and development of a sports complex and the subsequent maintenance and operation thereof (the "**Permitted Use**"). During the Term of the Lease Tenant will design, develop and construct the Phase 1A Improvements. Landlord shall deliver to Tenant the Premises in its as-is condition.
- C. Term and Extensions.
- a. This Lease is effective on May 20, 2021 (the "**Commencement Date**"). This Lease shall continue from and after the Commencement Date until midnight on the date that is thirty-five (35) years after the Commencement Date (the "**Initial Term**"), and the Lease term may be extended according to the provisions herein.
 - b. Tenant is entitled to possession of the Premises on the Commencement Date.
 - c. The YMCA may extend the Lease for up to three (3) renewal periods of twenty (20) years each (each, an "**Extension Period**"). At least 180 days prior to end of the then current Lease term, the YMCA shall have the option to exercise, by written notice to the City (the "**Extension Notice**"), an Extension Period. If the YMCA intends to propose any changes to the terms of the Lease at that time, they shall be included with the Extension Notice, which changes shall be subject to the City's approval. A key term of any and all such Extension Periods, which is hereby approved and not subject to further City approval, however, is that the YMCA will always be able to lease, during each proposed Extension Period, the Premises for a nominal rental fee each year of each Extension Period as consideration for the public benefit that is provided by the YMCA to the City in leasing, operating, and maintaining the Sports Complex according to the terms of the Services Agreement. Any changes to the Lease at any time will require the parties' mutual agreement in writing, with the proper authority and signed by the parties to be bound. The City of Gig Harbor's City Council shall decide on any changes proposed in the Extension Notice in writing at least 90 days prior to end of the then current lease term (the "**Determination Notice**"). In addition to Tenant's ability to propose changes in an Extension Notice, Landlord may also propose changes in the Determination Notice prior to the commencement of any Extension Period. Any changes to the Lease will be made in the form of an amendment to the Lease within 30 days of the issuance of the Determination Notice.
 - d. Upon exercise of this option, Landlord and Tenant shall prepare a notice thereof in recordable form and cause the same to be recorded in the then applicable recording office of Pierce County, State of Washington. Upon exercise of this option, "**Term**" as used herein shall include the exercised Renewal Period.

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D. Termination; Option to Purchase; Fair Market Value.

- a. YMCA is required to submit to the City all land use permit applications necessary for the development of Phase 1A by June 30, 2023 (the “**Application Deadline**”). If the YMCA will not meet the Application Deadline it must provide Landlord with written notice no later than the Application Deadline informing Landlord that the Application Deadline will not be met. If all necessary applications for the development of Phase 1A are not submitted by the Application Deadline, then either party may terminate this Agreement within 30 days of the Application Deadline with no termination fee, the options to purchase will be deemed extinguished, and no requirement to go through dispute resolution as outlined in Section S, by giving the other notice of such termination with an effective date at least 30 days from the Application Deadline. The necessary applications include, at a minimum:
 - i. Major Site Plan
 - ii. Design Review
 - iii. Critical Area Review
 - iv. SEPA Review
 - v. Binding Site Plan
- b. This Lease, or any then current lease Extension Period, automatically terminates at the expiration of the then current lease term unless the Extension Notice has been timely submitted to the City. In the event that either party proposes changes to the Lease prior to the Extension Period as allowed in Section C above, the YMCA shall be entitled to continue the Lease on a month to month basis past the then current lease expiration date under the terms of the then current Lease until the proposed changes are resolved.
- c. In the event that the City’s Determination Notice denies the changes proposed, the City shall state the reasons therefor with particularity and provide an opportunity for the Tenant to terminate the Lease in writing with notice to the City or, propose new or different terms, either of which shall be elected within ten (10) days of receipt of the City’s Determination Notice, and if the YMCA proposes further changes, the City shall make a decision on such proposed changes within thirty (30) days of receipt thereof.
- d. If the parties cannot mutually agree upon a proposed change made by either party by the time for the Extension Period to begin, and that was material and reasonably consistent with the overall structure, spirit and intent of the Agreement, then either party may terminate the lease with at least 180 days’ prior written notice, provided, however, during such 180 day period, the parties must submit the disagreement to the dispute resolution process described in Section S below.
- e. If upon receipt of the City’s Determination Notice, the YMCA elects to terminate the Lease, Tenant will have the exclusive option to purchase (the “**Option to Purchase**”) the Premises for its then current Fair Market Value as defined below.
- f. The Option to Purchase is not available to Tenant if tenant does not make a request to Extend the Lease when additional Extension Periods remain available to the Parties.
- g. Further, the Option to Purchase is not available to Tenant at the conclusion of the third Extension Period.
- h. Any Option to Purchase is contingent upon the City’s ability to legally subdivide or adjust the boundaries of the property such that the Premises can properly exist and be insured as a separate legal lot and the cost of such subdivision will be at the City’s sole expense.
- i. If the YMCA chooses to exercise its Option to Purchase, then the YMCA shall, within 15 days following its receipt of the Determination Notice, or at least 60 days prior to the

expiration of the then current lease term, whichever is earlier, provide its written notice to Landlord of its intent to exercise the Option to Purchase (the “**Option to Purchase Notice**”).

j. Fair Market Value.

- i. After the YMCA provides the City with the Option to Purchase Notice, the City and YMCA shall make a good faith effort to determine and agree upon the then current fair market value (“**Fair Market Value**”) of the Premises. Fair Market Value of the Premises shall consider the value of comparable land parcels of similar size, use, improvements, zoning, location and quality in the Pierce County market. In the calculation of the then current Fair Market Value of the Premises under any one of the three methods of valuation, Tenant shall be given full credit for the value of the Phase 1A Improvements that were made by the Tenant during the lease term, taking into account as a credit, the value of those improvements as they exist at the time of the Fair Market Value assessment of the Premises as a whole, with appropriate depreciation for wear and tear and due consideration given for remaining useful life. Provided, the valuation of the Premises will not take into account (or will be credited to the YMCA) the YMCA services, income generated or other in-kind consideration provided by the YMCA. In the event that the Phase 1A Improvements are determined to diminish the Fair Market Value of the Premises, the Fair Market Value shall be reduced accordingly.
- ii. If the Parties are unable to agree upon the Fair Market Value of the Premises and/or value of the Phase 1A Improvements for credit within thirty (30) days after Tenant delivers its Option to Purchase Notice, the City shall then have ten (10) days to select one real estate appraiser to determine the Fair Market Value of the Premises and value of the Phase 1A Improvements for credit, either positive or negative. Any appraiser selected pursuant to this section shall be a Member of the American Institute of Real Estate Appraisers (“**M.A.I.**”) with at least ten (10) years’ experience appraising commercial properties in the commercial leasing market in Pierce County, or equivalent. The appraiser appointed by the City shall determine the Fair Market Value of the Premises and value of the Phase 1A Improvements according to the confines of subsection (i) above, within thirty (30) days of appointment. The City shall bear the expense of the appraiser’s fees for the appraiser selected by the City.
- iii. Should the Tenant not agree with the City’s appraiser’s valuation, but the Tenant still wishes to nonetheless buy the Premises, the Tenant may hire its own real estate appraiser to determine the Fair Market Value of the Premises and value of the Phase 1A Improvements for credit. The Tenant’s appraiser selected pursuant to this section shall be a Member of the MAI with at least ten (10) years’ experience appraising commercial properties in the commercial leasing market in Pierce County, or equivalent. The appraiser appointed by the Tenant shall then determine the Fair Market Value of the Premises and value of the Phase 1A Improvements according to the confines of subsection (i) above, within thirty (30) days of appointment. The Tenant shall bear the expense of the appraiser’s fees for the appraiser selected by the Tenant.
- iv. Should the City not agree with the Tenant’s appraiser’s valuation, then, if the Tenant still wishes to purchase the Premises, the price that the Tenant shall pay to the City for the Premises shall be the median price between that which the City appraiser calculated and the Tenant own appraiser calculated as fair market value

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for the Premises, applying the Tenant credit described above and the parties shall proceed to closing as described below.

- v. Should the Tenant choose not to purchase the Premises after reviewing the City's appraisal and its own appraisal, the Tenant shall reimburse the City for its appraisal costs, and the City shall be required to purchase from Tenant the Phase 1A Improvements at the then current fair market value of such improvements with appropriate depreciation for wear, tear, and credit for remaining useful life as described in Section (i) above. In this circumstance, Tenant shall have ten (10) days to select one property appraiser to determine the fair market value of the Phase 1A Improvements. The appraiser selected will have at least ten (10) years' experience appraising improvements such as that which makes up the Phase 1A Improvements. The appraiser appointed shall determine the fair market value within thirty (30) days of appointment. Tenant shall bear the expense of the appraiser's fees for the appraiser selected by Tenant.
- vi. Should the City not agree with the Tenant's appraiser's valuation, the City may hire its own appraiser under the same qualification requirements above to determine the Fair Market Value of the Phase 1A Improvements. The appraiser appointed by the City shall then determine the value of the Phase 1A Improvements according to the confines of subsection (i) and (v) above, within thirty (30) days of appointment. The City shall bear the expense of the appraiser's fees for the appraiser selected by the City.
- vii. Should the Tenant not agree with the price that the City's appraiser recommends for the Fair Market Value of the Phase 1A Improvements, then the price that the City shall pay to Tenant for the Phase 1A Improvements shall be the median price between that which the City appraiser calculated for the improvements when generating the credit value and the Tenant appraiser's fair market value. If this results in a negative figure, it shall be deemed to be zero-dollar value.
- viii. Immediately after either mutual agreement of the Fair Market Value for Tenant's Option to Purchase, or calculation of the fair market value of the Phase 1A Improvements for the City's purchase, the purchasing party shall take all necessary steps outlined below to close on the purchase and pay the other party with full completion of said purchase no later than the earlier of: (a) 180 days following the final price determination; or (b) the date the BLA is recorded as necessary to create a separate legal lot, and such date shall be referred to herein as the "**Purchase Closing Date**" and the following additional terms shall apply to the closing:
 1. If the Tenant purchases the Premises, within ten (10) days of the final price determination, the City shall use commercially reasonable efforts to commence the steps necessary to prepare a boundary line adjustment ("**BLA**") or other subdivision of the Property to create the Premises as a separately purchasable lot through a surveyor of its choice at the City's cost and expense and use commercially reasonable efforts to cause the BLA to be approved and recorded within 180 days following the final price determination. Further, the title report shall be updated to reflect the BLA on record prior to closing and the title company shall be willing to insure the Premises as a separate legal lot/parcel.

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2. The purchasing party shall pay the agreed upon or determined Fair Market Value of the Premises or fair market value of the Phase 1A Improvements, as the case may be to the selling party.
3. If Tenant purchases the Premises, any funds remaining in the Capital Reserve Fund shall go to Tenant.
4. If the City purchases the improvements, the appraiser used to obtain the fair market value of the improvements shall calculate the cost to improve the fields to "like new" condition. "Like new" condition is the point where the improvements have at least 75% of the normal useful life that a brand-new field would have. The capital reserve fund is then reduced by the calculated cost to improve the fields to "like new" condition with that reduced amount going to the YMCA along with the fair market value payment for the improvements. The remaining amount in the capital reserve fund goes to Landlord with the field purchase. If the fields are already in "like new" condition or better, no reduction in the capital reserve fund is made and the entire capital reserve fund goes to Landlord with the field purchase.
5. The selling party shall convey the Premises or Phase 1A Improvements as the case may be to the purchasing party by bargain and sale deed, provided that the selling party shall provide the buying party with good and marketable title and be able to deliver possession on the Purchase Closing Date.
6. The selling party shall pay the premium for the standard ALTA title insurance policy and the purchasing party shall pay the cost of any endorsements and the premium for extended coverage.
7. The terms of the sale shall be that the purchasing party is buying the Premises or the Phase 1A Improvements, as the case may be, "AS IS" "WHERE IS" "WITH ALL FAULTS" and in its then condition and state of repair.
8. All revenues and all expenses of the Premises or the Phase 1A Improvements being purchased, including, but not limited to, real and personal property taxes, special assessments, Assessments, rents, water, sewer and utility charges, amounts payable under other contracts, if any, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses normal to the ownership, use, operation and maintenance of the Premises or the Phase 1A Improvements shall be prorated as of 12.01 a.m. on the Purchase Closing Date. If any revenue or expense amount cannot be ascertained with certainty as of the Purchase Closing Date, it shall be prorated on the basis of the Parties' reasonable estimate of such amounts, and shall be the subject of a final proration sixty (60) days after the Purchase Closing Date or as soon thereafter as the precise amounts can be ascertained. Either Party owing the other Party a sum of money based on adjustments made to the prorations after the Purchase Closing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefore to the date of payment if payment is not made within ten (10) days after the delivery of a statement therefor.

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9. Selling party shall deliver such certificates or other documents or agreements as shall be reasonably required by the purchasing party or the title company in connection with the closing.
10. Selling party shall perform, execute and deliver, or cause to be performed, executed and delivered any and all such further acts, deeds and assurances as the purchasing party may reasonably require to evidence and vest in the purchasing party the ownership and title to the applicable interest; and otherwise consummate the purchase contemplated hereunder.

E. Representations and Warranties.

a. *Landlord's Warranties.* Landlord represents and warrants that:

- i. The title to the Premises is vested in Landlord, subject to no defects or encumbrances except as set forth on Exhibit C attached hereto and incorporated herein by this reference.
- ii. Except for liens or encumbrances created by or through Tenant that are the responsibility of Tenant under this Lease, Landlord shall not, after the date hereof, agree to or create any liens or encumbrances on the Premises which are not specifically stated in writing to be subordinate to this Lease and to any amendments or modifications hereto. Landlord shall, at or prior to the Commencement Date, cause the Premises to be free of all liens and encumbrances except as shown on Exhibit C.
- iii. Landlord has the authority to enter into this Lease subject to the approval of the Gig Harbor City Council and its execution and delivery by Landlord has been duly authorized by Gig Harbor City Council; and,
- iv. Tenant shall at all times during the Term of this Lease have the right to peacefully and quietly have, hold and enjoy the Premises, subject to the terms of this Lease.
- v. Landlord has provided to Tenant copies of all environmental and soils reports ("**Reports**") and land surveys in the possession of Landlord, as listed on Exhibit D hereto, to the extent related to the Premises. Landlord has no actual knowledge of any environmental or soils conditions affecting the Premises except as set forth in those Reports and is not aware of any Hazardous Materials present on the Premises in any material amount, or any violation of any Environmental Laws, or any requirement to remediate any environmental condition. Tenant shall make its own investigation of the condition of the Premises prior to the Commencement Date. In the event any soils conditions require environmental remediation as the result of the discovery of Hazardous Materials (as defined below) after the Effective Date, but prior to substantial completion of the Phase 1A Improvements to the Project, Landlord shall, at Landlord's sole discretion, either: (i) pay for any legally required remediation; or (ii) reimburse Tenant for all reasonable, out-of-pocket funds expended for design and construction of the Project and terminate this Lease. As used herein, "**Hazardous Material**" means any hazardous or toxic substance, material, waste or similar term which is regulated by local authorities, the state of Washington and/or the federal government, including, but not limited to, any material, substance, waste or similar term which is: (i) defined as a hazardous material under the laws of the state of Washington; (ii) defined as a hazardous substance under section 311 of the federal water pollution control act (33 U.S.C. §1317); (iii) defined as a

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hazardous waste substance under section 101 of federal resource conservation and recovery act (42 U.S.C. §6901 et. Seq.); (iv) defined as a hazardous waste substance under section 101 of the comprehensive environmental response, compensation and liability act, (42 U.S.C. §9601 et. Seq.); (v) defined as a hazardous waste or toxic substance, waste, material or similar term in any rules and regulations, which are adopted by any administrative agency including, but not limited to the environmental protection agency, the occupational safety and health administration, and any such similar state or local agency having jurisdiction over the Property whether or not such rules and regulations have the force of law; or (vi) defined as a hazardous or toxic waste, substance, material or similar term in any statute, regulation, rule or law enacted by local authorities, the state of Washington, and/or the federal government and in each case such hazardous or toxic substance is present in quantities or amounts requiring remediation.

- b. *Tenant's Warranties.* Tenant represents and warrants that:
- i. Tenant has the authority and power to enter into this Lease and perform its obligations herein;
 - ii. The execution and delivery by Tenant of this Lease has been duly authorized and the person authorized to execute this Lease on behalf of Tenant has been duly authorized to do so;
 - iii. Tenant will operate the Premises in accordance with all of the provisions of this Lease;
 - iv. Tenant will comply with local, state, and federal law and will obtain all necessary permits for any improvements or operations at the Premises;
 - v. Tenant will use commercially reasonable and diligent efforts to fully and completely fund the Project and complete construction of Phase 1A of the Gig Harbor Sports Complex no later than December 31, 2024, or such later date for completion set forth in the YAF Grant Agreement, effective October 23, 2019, as the same may be amended thereafter (collectively, the "YAF Grant Agreement"). Should Tenant not comply with the YAF Grant requirements and all or a portion of the YAF Grant funds are unavailable as a result thereof, Tenant shall nonetheless be responsible to fund the Project.

F. Rental Payment. During the Initial Lease Term, and each of the Extension Periods unless mutually agreed to otherwise, Tenant covenants and agrees to pay Landlord in equal monthly installments, on or before the Commencement Date, and continuing on the first anniversary of the commencement date thereafter, the sum of One Dollar (\$1.00) (the "Rent"). Rent and other sums to be paid by Tenant shall be payable in lawful money of the United States of America. All payments shall be made by Tenant to Landlord without notice or demand, deduction or offset, at such address as Landlord may specify. Tenant may prepay all monthly rent due for the then current term at the outset of the term.

G. Community Benefit Provided. For the duration of the Lease and any extension thereto, Tenant will provide the following community benefits to the City and its residents including:

- a. Affordable rental fees and program rates as further described in this Lease as well as the Services Agreement.

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- b. Financial assistance to those residents/households meeting the United States Department of Health and Human Services Poverty Guidelines to participate in YMCA programs and activities as well as for rental of the facilities.
- c. Provide designated times/hours for free public use of the improvements.
- d. Work in collaboration with the City and other community agencies to host free public or special events on the improvements.
- e. Clean and maintain the parking lot (D3 and D6), restroom/concessions facilities (E1), and internal and perimeter landscaping. For the period of time where the restrooms are constructed but the remaining Phase 1A Improvements are not yet constructed and operational, the Landlord will maintain the restrooms at Landlord's sole cost and expense.

H. Services Agreement. Prior to the substantial completion of construction of the Phase 1A Improvements for any purpose the Parties must enter into the Services Agreement which will outline the structure for the use, maintenance, and control of the Phase 1A Improvements for both the Tenant's and the public's use. The Services Agreement must include, but is not limited to, the following terms:

- a. *General Public Use*. The general public shall be allowed to use the Phase 1A Improvements subject to reasonable time, place, and manner restrictions. At minimum, any time the Phase 1A Improvements are not being utilized by Tenant for programming or are not otherwise reserved, the Phase 1A Improvements shall be open to the general public. City must approve the days and hours which the Premises will be available for Public use. The structure for public use and the extent of public use of the Premises will be defined in the Services Agreement and approved by the City.
- b. *Scheduling*. Tenant will provide its internet-based field/team management software, *PlayerSpace* or equivalent, to enable individuals and families, local sports groups, other community groups, and the general public the ability to reserve use of the fields. Reservations can also be made by contacting Tenant's Field Coordinator (to be hired/assigned by Tenant prior to the Phase 1A Construction Completion Date). All scheduling and management of field use is the sole responsibility of Tenant. Tenant will provide view-only access to these systems to the City.
- c. *Maintenance*. At all times during the Lease Term, or any extension thereof, Tenant shall keep and maintain the Premises and the Phase 1A Improvements in good order, condition and repair at Tenant's sole expense. Notwithstanding, for the period of time where the restrooms are constructed but the remaining Phase 1A Improvements are not yet constructed and operational, the Landlord will maintain the restrooms at Landlord's sole cost and expense. Tenant is not required to complete such maintenance if the Premises or Phase 1A Improvements are damaged by any negligence or intentional act of Landlord, or Landlord's agents or employees. The fields must be able to meet the minimum field condition standards required to host tournaments as specified by the Washington State Interscholastic Athletic Association or other appropriate standards for the majority of user groups. The City of Gig Harbor City Administrator or his/her designee and Tenant will annually review the maintenance and condition of the facilities against the standards established therefor by the mutual agreement of the parties hereto. The Services Agreement may establish further specific requirements of frequency and type of maintenance of the Phase 1A Improvements. Failure to properly maintain and repair the Phase 1A Improvements is a material breach of this agreement.

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- d. *Public Coordination.* Once per quarter, Tenant will host a public coordination meeting with local sports and community groups, individuals, families, and frequent users of the Phase 1A Improvements to schedule and coordinate rentals. A use lottery may be used in the event multiple individuals or groups request use on the same dates and times. Tenant will provide the City with a list of all users quarterly and/or upon request.
- e. *Use Rates.* Tenant will consider utilizing field rental fee rates established by Peninsula School District or other comparable market rates for similar facilities. The parties understand there may be instances where varying from this schedule may be necessary. These rates will be reviewed annually by the City of Gig Harbor Parks Manager, and must be approved by the Mayor or his/her designee once per year.
- f. *Field Coordinator.* Tenant will hire/assign a Field Coordinator to oversee day-to-day cleaning, maintenance, and scheduling. The Field Coordinator, or an assigned staff person, will be responsible for enforcing the field rules and ensuring compliance with the reservation schedule. Tenant will also monitor the facilities during non-programmed/open times for misuse of or damage to the facilities.
- g. *Rules for All Users.* To protect the quality of the synthetic turf fields and provide a healthy and clean environment, Tenant will establish rules for all users that may prohibit pets (except those to assist persons with disabilities), sports/energy/soft drinks, coffee and tea, alcohol, snacks, food, glass containers, sunflower seeds, gum, tobacco or vaping products, fireworks or open flame, bicycles, metal cleats or spikes, golfing, shot putting, javelin, discus throwing, unauthorized use of model planes and rockets (including drones), stakes, spikes, and other pointed objects, from the synthetic turf fields. Signage prohibiting these uses will be posted at all field entry points. Tenant is responsible for the enforcement of all rules of use.
- h. *Insurance for Phase 1A Improvements.* Tenant will maintain appropriate insurance covering the Phase 1A Improvements including, but not limited to: building and outdoor property (includes synthetic turf fields, bleachers, fences, etc.), equipment, and replacement cost valuation.
- i. *Capital Reserve Fund.* Immediately upon Commencement of this Lease Tenant shall establish a separate, interest-bearing Capital Reserve Fund. The Capital Reserve Fund shall be maintained at a level mutually agreed to by the Parties and will support the maintenance, repair, and replacement of the Phase 1A Improvements for the duration of the Lease Term and any extension thereto. The fund level established must be sufficient to address both short-term as well as long-term needs. All rental fees collected by Tenant for use of the Premises for any non-Tenant activity and all donations or sponsorships received by Tenant not directly used for the construction of the Phase 1A Improvements shall be placed into the Capital Reserve Fund. The City of Gig Harbor City Administrator or his/her designee and Tenant will review the status of the Capital Reserve Fund annually, including but not limited to the amounts contributed, used, and any surpluses available. Surplus Capital Reserve funds are those funds above the required Capital Reserve Fund level established by the Parties. Amounts in the Capital Reserve Fund that are considered surplus shall be reinvested in the Phase 1A Improvements or, if no such reinvestment is possible or beneficial, reinvested into the General Public's use of the facilities through reduced rental rates or other similar uses. Reinvestment in the Phase 1A Improvements does not include reimbursement to Tenant for the initial costs incurred in constructing those improvements.
- j. *Donations.* Tenant may offer sponsorship opportunities to individuals or businesses that wish to donate funds to support the ongoing operation, maintenance, and replacement

of the Phase 1A Improvements. All such donations shall be placed into the Capital Reserve Fund unless received and used for the initial construction of the Phase 1A Improvements. Tenant shall inform the City of Gig Harbor City Administrator in advance of any proposed sponsorship which includes any sign or naming right. The facility shall be named the Gig Harbor Sports Complex with any naming right being a ribbon above the main sign. The City has the right to reject any sign or naming right if it believes such is not in the best interests of the Gig Harbor community.

I. Construction of Phase 1A Improvements.

a. *Commencement.*

i. Tenant will commence construction of the Phase 1A Improvements only upon satisfaction of the following conditions:

1. Receipt of all applicable permit(s);
2. The approval of the YMCA's Board of Directors;
3. City will review and approve the construction documents for consistency with this lease agreement; and,

b. *Completion Date.* Design, development, and construction of Phase 1A Improvements is entirely the responsibility of Tenant and must be completed no later than December 31, 2024, or such other date for completion as set forth by the YAF Grant Agreement as the same may be amended (the "**Phase 1A Improvements Construction Completion Date**"). Landlord will manage the distribution of the YAF Grant funds to the YMCA in coordination with the RCO Contact appointed in the YAF Grant Agreement and will, immediately after mutual acceptance of this Agreement, request an extension of the timeline for the Project performance and completion, from September 30, 2022 to December 31, 2024. However, the YMCA understands that such extension is not guaranteed. Notwithstanding, Landlord acknowledges that it, as the "Sponsor" under the YAF Grant Agreement, may request and shall use best efforts to request as many extensions of the period of performance as may be necessary for the YMCA to reasonably complete the project and have access to the YAF Grant funds, so long as the YMCA provides it with sufficient notice of the need for an extension such that the Landlord can submit such a request to the RCO Contact at least 60 days before the Phase 1A Improvements Construction Completion Date.

c. *Payment on the YAF Grant.* In order to receive and use the YAF Grant funds on the Project, Tenant shall submit to the City the necessary documentation required by the YAF Grant with each request for reimbursement from the YAF Grant. The City will process and submit to RCO the reimbursement request with 10 business days of the request for reimbursement. Upon payment of the reimbursement from RCO the City will provide the reimbursement payment to YMCA within 14 business days. The Phase 1A Improvements Construction Completion Date may be further modified by mutual written agreement of the Parties as needed to address further phasing and/or requirements of funding for the Project, and if so modified, the City agrees to use best efforts to promptly seek the approvals necessary of the Washington State Recreation and Conservation Office to such modifications so that the YAF Grant funds will continue to be available toward the Project based on the adjusted Phase 1A Improvements Construction Completion Date.

d. *Ownership.* The Phase 1A Improvements are exclusively the property of Tenant unless purchased by Landlord through the process outlined in Section D.j.v above.

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e. *Permits.* Tenant shall be responsible for obtaining any and all applicable permits for all work associated with improvements on the Premises, including but not limited to the Phase 1A Improvements.

i. YMCA is required to submit to the City all land use permit applications necessary for the development of Phase 1A by the Application Deadline. If the YMCA will not meet the Application Deadline it must provide Landlord with written notice no later than the Application Deadline informing Landlord that the Application Deadline will not be met. If all necessary applications for the development of Phase 1A are not submitted by this date, then either party may terminate this Agreement within 30 days of the Application Deadline, with no termination fee, the options to purchase will be deemed extinguished, and no requirement to go through dispute resolution as outlined in Section 5, by giving the other notice of such termination with an effective date at least 30 days from the Application Deadline. The necessary applications include, at a minimum:

1. Major Site Plan
2. Design Review
3. Critical Area Review
4. SEPA Review
5. Binding Site Plan

If no such termination is timely given, then this Agreement will not terminate and the YMCA agrees to submit the required applications as soon as reasonably practical after the Application Deadline. If either Landlord or Tenant decides to terminate this agreement, Landlord is entitled to all design and permitting documentation generated up until that point upon payment to Tenant of the documented cost thereof. Landlord may forgo the option to obtain and pay for the design and permitting documentation and instead proceed without receiving such materials.

f. *Prevailing Wage.* Tenant will solicit bids from highly-qualified local general contractors to construct the Phase 1A Improvements. Should any law or agreement require payment of prevailing wage, Tenant must comply with such requirement unless they are able to demonstrate that they are exempt from prevailing wage requirements and shall adhere to all applicable federal, state, and local laws.

g. *Inspections.* During Tenant's construction of the Phase 1A Improvements, Landlord may, during normal business hours, be entitled to make such inspections as Landlord deems reasonably necessary, provided that the inspection is scheduled at least 48 hours in advance with the Tenant, the scope of the inspection is included in detail in the scheduling notice, Landlord is accompanied by a Tenant representative at all times during the inspection, Landlord follows the Tenant's protocols for onsite safety during visitation, Landlord carries its own property and liability insurance that will insure against any damage caused by Landlord's inspection, and Landlord shall indemnify Tenant against and hold Tenant harmless from any claims, liens, causes of action, or obligations by persons or entities not a party to this Lease which arise out of or are in any way related to Landlord's inspection at, on or under the Property. The City, as the permitting agency, shall have access to the Phase 1A Improvements consistent with the Gig Harbor Municipal code and the permit requirements.

h. *Funding.* Tenant is entirely responsible for all funding of the Phase 1A Improvements with the exception of the YAF Grant fund, which will serve as a contribution toward said improvements.

- i. *Landlord Contributions to Phase 1A Improvements.* Landlord commits to contributing the following elements to the Phase 1A Improvements at its sole cost and expense:
 - i. The sewer line between the restrooms, including the connection in Harbor Hill drive, which will be completed in conjunction with Landlord's construction of Phase 1B,
 - ii. The water main between McCormick Creek Drive and Harbor Hill Drive and all fire hydrants on Phase 1B connected to that water main,
 - iii. Approximately 40% of the East/West retaining walls (shown in red on AHBLS drawing attached hereto as Exhibit E)
 - iv. Landlord will coordinate with Tenant to provide access to and use of the Phase 1B facilities and amenities such that Tenant can operate existing levels of Tenant programming and existing levels of general public use until such time as the synthetic turf fields are available.
 - v. To ensure that there are operational restrooms serving the Phase 1B project, Landlord will design and construct, initially at Landlord's cost, the concession stand/restroom structure and will build out the restroom to a functional state on the same timeline as the Phase 1B project. If no termination occurs pursuant to Section e above, Tenant is responsible to reimburse Landlord for all design, permitting, and construction costs incurred by Landlord for the concession stand/restroom within 18 months of the completion of the concession stand/restroom. Further, Landlord will maintain the concession stand/restroom structures until the Phase 1A Improvements Construction Completion Date.

J. Phase 1B Obligations.

- a. *Phase 1B Improvements.* The Phase 1B Improvements generally include event lawn, playground(s), bocce ball, pickleball courts, and associated parking. These Phase 1B Improvements fall entirely outside the leased Premises and Tenant has no rights or privileges as it pertains to the Phase 1B Improvements stemming from this Lease.
- b. *Construction of Phase 1B.* Landlord is exclusively responsible to complete all elements of Phase 1B, including but not limited to the clearing, grubbing, and grading and related erosion control to the subgrade, at its sole cost and expense. The water and sewer mainline connections shall be completed no later than June 30, 2022, and the remainder shall be completed no later than the Phase 1A Improvements Construction Completion Date (the "**Phase 1B Improvements Construction Completion Date**"). At all times until such Phase 1B Improvement work is completed, the City shall provide, at its sole cost and expense, adequate, safe, and ADA accessible pedestrian access from the Tom Taylor Family YMCA facility parking lot through or around Phase 1B Improvement work area, to the Phase 1A Improvement work area. The Phase 1B Improvements Construction Completion Date may be further modified by mutual written agreement of the Parties as needed to address further phasing and/or requirements of funding for the Project, and if so modified, the City agrees to use best efforts to promptly seek the approvals necessary of the Washington State Recreation and Conservation Office to such modifications to the extent that the delay of completion of the Phase 1B Improvements may affect the availability of the YAF Grant funds toward the Project.
- c. *Ownership.* The Phase 1B Improvements are exclusively the property of Landlord.
- d. *Funding.* Landlord is entirely responsible for all funding of the Phase 1B Improvements.

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- K. Damage and Reconstruction. In the event any aspect of the Phase 1A Improvements are damaged or destroyed following the Commencement Date, Tenant shall repair, restore or reconstruct the Phase 1A Improvements so as to restore the Phase 1A Improvements to the condition as it existed immediately prior to such damage or destruction, as nearly as practicable in full compliance with all legal requirements; provided, however, that Landlord shall be responsible for any damage caused by Landlord. Modifications may be made to conform to applicable laws, rules and regulations or available means of construction. Only when insurance proceeds fail to cover full reconstruction of the Phase 1A Improvements, Tenant may choose to use the Capital Reserve Funds to further cover the reconstruction. At that point if the insurance proceeds along with the capital reserve funds are insufficient to reconstruct the Phase 1A Improvements, Tenant may restore the Premises to the condition it was in prior to the Commencement Date and this Lease shall automatically terminate when the restoration to pre-Commencement Date condition is complete with the capital reserve fund going to Landlord.
- L. Utilities. Tenant shall pay or cause to be paid when due, and shall indemnify, protect and hold harmless Landlord and the Premises from all charges for public or private utility services to or for the Premises during the Term, including but not limited to, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage. Landlord agrees storm drainage is not separately metered and storm drainage charges will be apportioned to Tenant by Landlord.
- M. Taxes and Assessments. Tenant shall pay when due each and every one of the following (unless exempted, as may be allowed by law):
- a. All real property taxes or payments in lieu thereof due with respect to the Premises or any portion thereof;
 - b. Taxes due or which may be due upon or with respect to the leasehold estate created by this Lease, or the rents payable or paid by Tenant to Landlord, including any business and occupation taxes and leasehold excise taxes, but excluding any tax measured by net income;
 - c. All taxes imposed on or with respect to personal property and intangibles located in or used in connection with the Premises;
 - d. All assessments for public improvements or benefits which are assessed during the Term pertaining only to the Tenant's improvements, and similar assessments and charges that pertain only to the Tenant's Improvements; provided however, that if such assessments pertain to the Sports Complex, then in proportion based on the taxable value of each portion thereof (i.e., one portion may be income generating and another may not); and
 - e. All other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including interest and penalties thereon), which at any time during or in respect of the Term may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof.
 - f. Tenant at its sole cost and expense may by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount or validity or application, in whole or in part, of any Imposition or lien therefor, or any other lien, encumbrance or charge against the Premises arising from work done or materials provided to or for Tenant, if:
(a) such proceedings suspend the collection thereof from Landlord, Tenant and the Premises, unless Tenant has furnished security as provided in section (b) below; (b)

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Tenant shall have furnished such security, if any, as may be required in the proceedings or is reasonably satisfactory to Landlord; and (c) Tenant shall give Landlord reasonable notice of, and information pertaining to, such contest and regular progress reports with respect thereto. Tenant shall indemnify, protect and hold harmless Landlord and the Premises from any lien or liability with respect to any such Imposition or contest thereof, including all costs and expenses related thereto.

N. Indemnification.

- a. The City agrees to indemnify, defend, save and hold harmless the YMCA, its officials, employees, volunteers, and agents from any and all liability, demands, claims, causes of action, suits or judgements, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to the maintenance, use and occupancy of the Facility by the City, its agents, servants, employees or invitees as stipulated in the contract, except those damages solely caused by the gross negligence or willful misconduct of the YMCA, its officials, employees, volunteers, and agents.
- b. The YMCA agrees to indemnify, defend, save and hold harmless the City, its officials, employees, volunteers, and agents from any and all liability, demands, claims, causes of action, suits or judgements, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the design, development, or construction of the Facility by the YMCA, its agents, servants, employees or invitees as stipulated by the contract, except for those damages solely caused by the gross negligence or willful misconduct of the City, its officials, employees, volunteers, and agents.

O. Insurance.

- a. The City shall procure and maintain, without cost or expense to the YMCA, on or before the commencement date of this Agreement and throughout the Agreement term or as long as the City continues to use the Premises, commercial general liability insurance on a form equivalent to the ISO CG 00 01, or equivalent self-insurance coverage, covering bodily injury, personal injury, and property damage arising out of and relating to the general public's use of the Premises outside of any YMCA programming or use with liability limits of not less than \$1,000,000, per occurrence, \$2,000,000 annual aggregate. The City shall provide the YMCA with a certificate or certificates providing evidence of such coverage, within ten (10) days of the execution of this Agreement.
- b. The YMCA shall procure and maintain, without cost or expense to the City, on or before the commencement date of this Agreement and throughout the Agreement term or as long as the YMCA remains in possession of the Premises, commercial general liability insurance on a form equivalent to the ISO CG 00 01, covering bodily injury, personal injury, and property damage arising out of the design, development, construction or use of the Premises by the YMCA, its agents, servants, employees or invitees, and including as additional insureds the City, its agents, servants, employees or invitees, with liability limits of not less than \$1,000,000, per occurrence, \$2,000,000 annual aggregate. These same insurance requirements will be required of any contractor and subcontractors the YMCA hires for design, construction, or maintenance of the improvements. At the YMCA's option, the YMCA may also procure abuse and molestation, workers' compensation, automobile, and professional liability insurance coverage on terms acceptable to the YMCA.

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- c. The YMCA's insurance shall be written on an "occurrence form", with a company that has a current A.M. Best rating of at least "A:VII" or better and licensed to do business in the State of Washington. The City shall be included by endorsement, or blanket policy language, as an additional insured on the YMCA's commercial general liability policy or policies. The YMCA shall not cancel or modify any policies for any reason without fifteen (15) days prior written notice to the City. The YMCA shall provide the City with a certificate or certificates of such insurance, including the required endorsements, within ten (10) days of the execution of this Agreement. The YMCA's insurance coverage shall be primary insurance with respect to the City for matters addressed under N.b., of this Agreement. Any insurance, self-insurance, or insurance pool coverage maintained by either party otherwise shall be primary and non-contributory. The City shall not waive the City's right to subrogation against the YMCA's insurance coverage.
- d. The City's insurance shall be written on an "occurrence form". The City shall not cancel or modify any policies for any reason without fifteen (15) days prior written notice to the YMCA. The City shall provide the YMCA with a certificate or certificates of such insurance, including the required endorsements, within ten (10) days of the execution of this Agreement. The City's insurance coverage shall be primary insurance with respect to the YMCA for matters addressed under N.a, of this Agreement. Any insurance, self-insurance, or insurance pool coverage maintained by the YMCA shall be in excess of the City's insurance and non-contributory. The YMCA shall not waive the YMCA's right to subrogation against the City's insurance coverage.

P. Compliance with Laws. Tenant shall at all times during the Term of this Lease, at Tenant's sole cost and expense, perform and comply with laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated which are applicable to the Premises, Tenant's use of the Premises, or any improvements made by Tenant.

Q. Successors and Assigns.

a. *Successors and Assigns of Landlord.*

- i. From and after the commencement of the Initial Term of this Lease, Landlord shall have the right to sell, transfer, donate, convey, assign, lease or otherwise dispose of any part of the Premises, whether voluntarily, involuntarily, by operation of law or otherwise, to a Successor Public Owner without the prior written consent of Tenant, but with ninety (90) days' notice to Tenant, provided that any such Successor Public Owner shall assume Landlord's obligations hereunder by execution and delivery of assumption agreements in form and substance satisfactory to the Tenant.
- ii. From and after the date that the Phase 1A Improvements are substantially completed, any sale, transfer, donation, conveyance, assignment, lease, or other disposition of the Premises or any portions thereof or any interest therein to any Person other than a Successor Public Owner shall be subject to the prior written consent of Tenant, the execution of any necessary and appropriate amendments to this Lease to reflect the fact that the new owner is a private person and not a Successor Public Owner and the assumption by such person of Landlord's obligations under this Agreement, as amended, by execution of assumption agreements in form and substance satisfactory to the Parties to this Agreement.

b. *Successors and Assigns of Tenant.* YMCA shall not assign its rights or delegate its duties under this Lease to any other person or entity without the prior written consent of

Landlord, such consent not to be unreasonably withheld, conditioned or delayed. In the event of such permitted assignment, such person or entity shall assume the rights and duties and obligations under this Agreement and shall enter into an assumption agreement reasonably satisfactory to Landlord.

R. Default.

- a. *Defaults and Remedies.* In the event any Party shall fail to perform, keep or observe any material term, covenant, agreement or condition contained in this Agreement and any such failure shall remain unremedied for a period of sixty (60) days after written notification thereof shall have been given by any Party to the non-performing Party, the non-performing Party shall be in default under this Agreement; provided, however, that if the default is of such a nature that it is not susceptible of cure within sixty (60) days and if the non-performing Party commences to cure the default within said sixty (60) day period, the non-performing Party shall not be in default under this Agreement so long as it is diligently prosecuting said cure to completion. From and after the date of such default, the non-defaulting Parties shall have, in addition to any other rights or remedies available under this Agreement or otherwise available at law or equity, an action for actual damages (including reasonable attorneys' fees and costs), the right to demand and have specific performance of this Agreement, and an injunction or order to compel the defaulting Party to observe or perform its covenants and obligations hereunder, or shall have the right to immediately terminate this Lease with written notice to the non-performing party following the sixty (60) day period to cure without any obligation to proceed to Dispute Resolution. If the lease is terminated by Landlord for a material breach and failure to cure, Tenant must surrender the Premises in a good and safe condition and relinquishes rights to all Improvements which shall immediately become property of Landlord upon termination of the lease following a material breach and failure to properly cure.
- b. *Rights and Remedies Cumulative.* Notwithstanding any provision of this Agreement to the contrary, (1) the rights and remedies of the Parties to this Agreement, whether provided by law or this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same time or different times, of any other such remedies for the same default or breach by the other Parties, and (2) consequential damages and damages which are speculative or remote are not recoverable under this Agreement even if such damages would otherwise be available under law or equity. No waiver made by any Party with respect to the performance, or manner or time thereof, of any obligation of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of any other obligation of any other Party. No such waiver shall be valid unless it shall be made in writing duly signed by the Party waiving the right or rights.
- c. *Excuses for Nonperformance.* Notwithstanding anything in this Agreement to the contrary, neither Landlord nor Tenant shall be excused from performing any obligation under this Agreement and any delay in the performance of any obligation under this Agreement, shall be excused, if and so long as the performance of the obligation is prevented, delayed or otherwise hindered by acts of God, fire, earthquake, floods, explosion, actions of the elements, war, riots, mob violence, inability to procure labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, operation of law, pandemics, epidemics, mandates or orders of governmental or military authorities. In

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the event any Party is enjoined from performing or prohibited as a matter of law from performing any of its obligations under this Agreement by reason of a court order, such Party shall upon receipt of such court order immediately provide a copy of same to the other Parties. The Party subject to the court order shall either comply with the court order or, at its sole cost and expense, engage counsel selected by such Party and undertake the defense of such action, lawsuit or proceeding and thereafter prosecute the defense of such action, lawsuit or proceeding in good faith and diligently prosecute the same to completion, including the prosecution of appeals from the decision of any trial court or court of intermediate jurisdiction until there has been a final judgment entered by a court of competent jurisdiction which is no longer the subject of a good faith appeal. The Party subject to the court order shall not adjust or settle any such action, lawsuit or proceeding without the prior written consent of the other Parties which consent shall not be unreasonably withheld, conditioned or delayed. The other Parties shall have the right, but not the obligation, to engage counsel and to intervene in any such action, lawsuit or proceeding to protect their interest under this Agreement.

- d. *No Waivers.* No failure by any party hereto to insist upon the strict performance of any provision of this Lease or to exercise any right, power or remedy consequent to any breach thereof, and no waiver of any such breach, or the acceptance of full or partial rent during the continuance thereof, shall constitute a waiver of any such breach or of any such provision. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of any party hereto with respect to any other then existing or subsequent breach.

S. Dispute Resolution.

- a. *Policy.* The parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the parties arising under this Agreement (each a “**Matter in Dispute**”) using the procedures set forth herein.
- b. *Notice and Resolution.* If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior officer of its management with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the parties shall submit the Matter in Dispute to Mediation as provided in Section S.c. below as a condition precedent to pursuing other alternative dispute procedures or litigation.
- c. *Mediation.* The parties shall proceed in good faith to resolve any and all Matters in Dispute as expeditiously as possible and shall cooperate so that the terms of this Lease are effectuated. If, however, the parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the parties may agree in writing to waive this condition.
- d. *Mediation Process.* The parties, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either Landlord or Tenant or an affiliate of either who shall also be a real estate professional and/or construction expert, as may be applicable to the dispute in question, with at least five (5) years’ experience in Pierce County handling matters such as that which caused

mediation to arise ("**Mediator**"). Landlord shall have the responsibility to identify a mediator meeting these qualifications and if such qualifications are met the mediator shall be appointed to handle the matter.

- e. *Consideration of Disputes or Claims.* Upon receipt by the Mediator of written notice of a dispute, from either party, the Mediator shall convene a hearing to review and consider the dispute. Both parties shall be given the opportunity to present their evidence at this hearing. Both parties are encouraged to provide exhibits, calculations and other pertinent material to the Mediator prior to the hearing, for review.
- f. *Site Visit.* The Mediator may visit the Premises as necessary to develop familiarity with the issue(s) surrounding the dispute. The frequency, exact time, and duration of these visits shall be as mutually agreed upon among the Mediator and the parties, but only as necessary to address a dispute.
- g. *Procedures.* Upon the first referral to the Mediator of a dispute hereunder, the Mediator shall, with the agreement of the parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. Unless the parties agree otherwise, the Mediator shall issue its recommendation as soon as possible but, in any event, not later than sixty (60) days following referral of the dispute to the Mediator.
- h. *Independence of Mediator.* It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by the parties, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the parties.
- i. *Records.* The Parties shall furnish the Mediator with all relevant documents each might have along with any document requested by the Mediator.
- j. *Coordination.* The parties will coordinate to effectively assist the Mediator's operation.
- k. *Payment.* The fees charged by the Mediator shall be shared equally by the parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator, which in any event shall not exceed the usual and customary rate or rates prevailing in Pierce County, Washington, for mediation services of the sort described herein.
- l. *Litigation.* Only after the mediation has concluded may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington for Pierce County.

T. Miscellaneous.

- a. *No Partnership.* Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for debts or obligations of Tenant or any other party.
- b. *Time of the Essence.* Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.
- c. *Interpretation.* This Lease shall be construed according to and governed by the laws of the state of Washington. The captions of this Lease and the table of contents preceding this Lease are for convenience and reference only, and are not a part of this Lease, and in no way amplify, define, limit or describe the scope or intent of this Lease, nor in any

way affect this Lease. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against Landlord or Tenant. If any provision of this Lease (other than those relating to payment of rent) or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. In the event of any conflict between this Lease and the MOU, the terms of this Lease will control and be binding on the parties. In the event of any conflict between this Lease and the Services Agreement, the terms of this Lease will control and be binding on the Parties.

- d. *Survival.* Each provision of this Lease which may require the payment of money by, to or on behalf of Landlord or Tenant or third parties after the expiration of the Term hereof or its earlier termination shall survive such expiration or earlier termination.
- e. *Memorandum of Lease.* The parties agree to execute and acknowledge an appropriate memorandum of this Lease.
- f. *Commissions.* Tenant shall save and hold Landlord harmless from any and all claims or demands, requests by real estate brokers, agents or finders with whom Tenant may have dealt in connection with this Lease.
- g. *Notices.* All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other party may be given personally or may be delivered by nationally recognized overnight carrier or by certified mail, return receipt requested, postage prepaid, properly addressed, and sent to the following addresses:

Landlord: City of Gig Harbor
Attn: City Clerk
3510 Grandview Street
Gig Harbor, WA 98335

Tenant: YMCA of Pierce & Kitsap Counties
Attention: Charlie Davis, President/CEO
4717 S 19th St, Ste. 201
Tacoma WA 98405

With Copy to: Gordon Thomas Honeywell LLP
Attention: Jemima J. McCullum, Esq.
1201 Pacific Avenue, Ste. 2100
Tacoma, WA 98401

or to such other address as either party may from time to time designate by written notice to the other.

- h. *Attorneys' Fees.* In any proceeding or controversy associated with or arising out of this Lease or a claimed or actual breach thereof, or in any proceeding to recover the possession of the Premises, the prevailing party shall be entitled to recover from the

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- other party as a part of prevailing party's costs, reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.
- i. *Interest.* Except as otherwise specifically provided herein, any amounts due one party to the other pursuant to the terms of this Lease, including amounts to be reimbursed one to the other, shall bear interest from the due date or the date the right to reimbursement accrues at the "prime rate" published or publicly announced most recently prior to such date in the Wall Street Journal; provided, however, that such rate shall not exceed, in any event, the highest rate of interest which may be charged under applicable law.
 - j. *Heirs and Assigns.* All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon the Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
 - k. *Entire Agreement; Amendments in Writing.* Except for the Services Agreement and the YAF Grant Agreement governing the YAF Grant funds, the terms of each which supplements, but does not supersede, the terms of this Lease, this Lease contains the final and complete expression of the parties relating in any manner to the leasing, use and occupancy of the Premises and other matters set forth in this Lease. Except for the Services Agreement and the YAF Grant Agreement, no prior agreements or understanding pertaining to the same shall be valid or of any force or effect. The covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.
 - l. *Waiver Implied.* No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The acceptance by Landlord of rent with knowledge of the breach of any of the covenants of this Lease by Tenant shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Landlord or Tenant, as the case may be, to or of any act by the other party requiring consent or approval, shall not be deemed to waive or render unnecessary Landlord's or Tenant's consent or approval, as the case may be, to or of any subsequent similar acts by the other party.
 - m. *Hazardous Substances.* Tenant covenants and agrees that hazardous substances or materials, as defined in federal, state, and local laws, shall not be generated, processed, stored, transported, handled or disposed of on the Premises by Tenant, its agents, employees, contractors, or invitees. Tenant shall immediately notify Landlord if Tenant becomes aware of (i) any hazardous substance release, or other hazardous substance problem or liability with respect to the Premises; (ii) any actual or alleged violation with respect to the Premises of any environmental law, or (iii) any lien or action with respect to any of the foregoing. Tenant shall, at its sole expense, take all actions as may be necessary or advisable for the cleanup of hazardous substances with respect to the Premises which may be necessitated as a result of Tenant's violation of this Section, including, without limitation, all removal, containment and remedial actions in accordance with applicable environmental laws and shall further pay or cause to be paid all cleanup, administrative and enforcement costs of governmental agencies if obligated to do so by environmental law. Tenant agrees to defend, indemnify and hold Landlord harmless from any and all claims, demands, costs, fees, penalties, charges and expenses

incurred by or asserted or assessed against Landlord as a result of any hazardous substance placed on the Premises by Tenant, its agents, employees, contractors or invitees.

- n. *Landlord Cooperation.* Landlord shall reasonably cooperate with Tenant to facilitate Tenant's construction, maintenance and operation of the Premises from and after the Effective Date and throughout the Term.
- o. *Ownership of Improvements.* The Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of Landlord for fair market value paid to the Tenant, as provided in Section D (Termination, Option to Purchase, Fair Market Value) above, unless the Premises is purchased by Tenant.
- p. *Leasehold Mortgages Authorized.* On one or more occasions Tenant may mortgage or otherwise encumber Tenant's leasehold estate to an institutional investor under one or more leasehold mortgages and assign this Lease as security for such leasehold mortgage; provided, Tenant shall not place or create any mortgage, deed of trust, or other lien or encumbrance affecting Landlord's fee interest in the Property.


Signature Page to Follow

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

GIG HARBOR, WASHINGTON, a
a municipal corporation in the State of Washington

By



Kit Kuhn, Mayor

TENANT:

YMCA OF PIERCE & KITSAP COUNTIES,
a Washington nonprofit corporation

By

Its 

Charlie Davis, CEO & President

By

Its 

Toko Thompson, CFO & Vice President

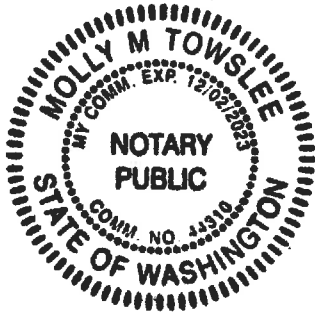
STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this 11th day of May, 2021, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Kit Kuhn, to me known to be the Mayor of City of Gig Harbor, a Municipality, the property owner that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



Molly M Towslee
Notary public in and for the state of
Washington, residing at Gig Harbor
My appointment expires 12/2/23

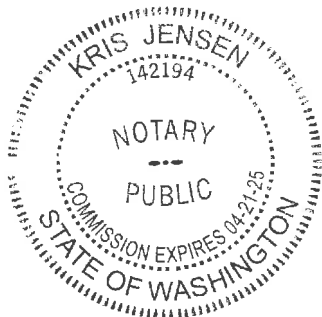
STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this 20th day of May, 2021, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Charlie Davis, known to be the CEO of the YMCA of Pierce and Kitsap Counties, a nonprofit, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



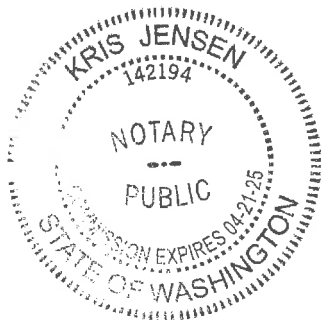
Kris Jensen
Notary public in and for the state of
Washington, residing at Tacoma
My appointment expires 4/21/25

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STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this 20th day of May, 2021, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Toko Thompson, to me known to be the CFO of the YMCA of Pierce and Kitsap Counties, a nonprofit corporation, the _____, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.



[Signature]
Notary public in and for the state of
Washington, residing at Tacoma
My appointment expires 4/21/25

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, a _____, the _____ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that said individual was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Notary public in and for the state of
Washington, residing at _____
My appointment expires _____

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EXHIBIT A-1

Legal Description of the Gig Harbor property

Lot 1, BUSINESS PARK AT HARBOR HILL, according to Plat recorded June 05, 2006, under recording No. 20060523507, records of Pierce County Auditor.

Situate in the City of Gig Harbor, County of Pierce, State of Washington

**Exhibit A-2
Legal Description and Map of the Lease Premises**

ALL OF LOT 1, BUSINESS PARK AT HARBOR HILL, ACCORDING TO THE PLAT RECORDED UNDER RECORDING NO. 200605235007, RECORDS OF PIERCE COUNTY AUDITOR;

EXCEPT THE FOLLOWING:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1;

THENCE ALONG THE EAST LINE OF SAID LOT 1, NORTH 01°10'42" EAST, 154.31 FEET;

THENCE LEAVING SAID EAST LINE, NORTH 88°49'37" WEST, 229.12 FEET;

THENCE SOUTH 01°10'23" WEST, 41.20 FEET;

THENCE NORTH 88°49'25" WEST, 71.37 FEET;

THENCE NORTH 01°10'23" EAST, 41.20 FEET;

THENCE NORTH 88°49'37" WEST, 330.46 FEET MORE OR LESS TO THE WEST LINE OF SAID LOT 1;

THENCE ALONG SAID WEST LINE, SOUTH 01°15'16" WEST, 148.07 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1;

THENCE ALONG THE SOUTH LINE, SOUTH 88°15'40" EAST, 631.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 407,519 SQUARE FEET, OR 9.36 ACRES MORE OR LESS.



01/15/2021

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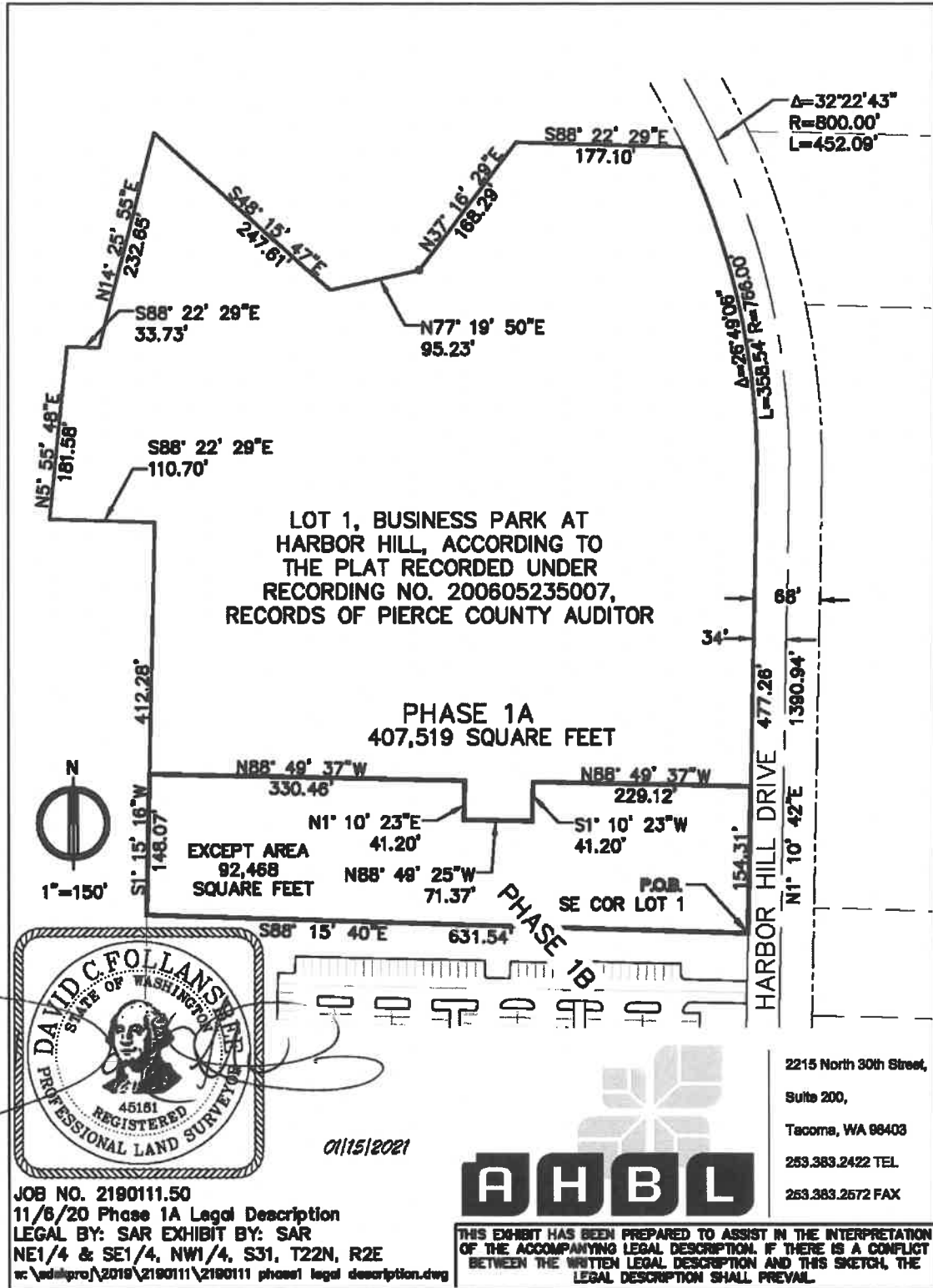


EXHIBIT B
Detailed Description of the Phase 1A Improvements.

The YMCA will design and construct Phase 1A of the Gig Harbor Sports Complex, described in Recital E, further detailed in Exhibit E, limited to the following features/components:

Gig Harbor Sports Complex Phase 1A:

- Two (2) artificial, synthetic turf fields, approximately 360' x 210'
- Field Lighting
- 100 parking stalls
- Ingress/egress into the Phase 1A parking lot
- Landscaping for the Phase 1A improvements
- Restrooms/Concessions structure
- Fencing around the two artificial, synthetic turf fields

EXHIBIT C
List of Encumbrances on Premises

1. Any and all offers of dedication, conditions, restrictions, easements, boundary discrepancies or encroachments, notes and/or provisions shown or disclosed by Short Plat or Plat of Business Park at Harbor Hill recorded under recording number 200605235007.

"Affidavit of Minor Correction of Survey" recorded July 24, 2006 under Recording No. 200607240465.

Modification and/or amendment by instrument:

Recording Information: 201712275011

2. The terms and provisions contained in the document entitled "Storm Water Facilities Maintenance Agreement and Restrictive Covenant"

Recorded: May 25, 2006

Recording No.: 200605250980

3. The terms and provisions contained in the document entitled "Declaration of Storm Water Facility Easement"

Recorded: May 25, 2006

Recording No.: 200605250981

4. The terms and provisions contained in the document entitled "Storm Water Facility Maintenance Agreement"

Recorded: May 25, 2006

Recording No.: 200605250982

5. Covenants, conditions, restrictions and/or easements contained in Recording No.: 200605250984

Modification and/or amendment by instrument:

Recorded: November 29, 2007

Recording Information: 200711290681

6. The terms and provisions contained in the document entitled "Harbor Hill Water Tank and Mainline Extension Latecomers Agreement"

Recorded: April 21, 2009

Recording No.: 200904210526

7. The terms and provisions contained in the document entitled "Harbor Hill Development Agreement"

Recorded: November 16, 2010

Recording No.: 201011160780

Modification and/or amendment by instrument:

Recording Information: 201212040216, 201405010313 and 201806280130

8. The terms and provisions contained in the document entitled "Harbor Hill Development Agreement"

Recorded: January 24, 2010

Recording No.: 201011241249

9. The terms and provisions contained in the document entitled "Joinder Agreement"

Recorded: December 02, 2010

Recording No.: 201012020196

Modification and/or amendment by instrument:

Recording Information: 201806280130

10. Covenants, conditions, restrictions and/or easements contained in Recording No.: 201712290500

11. The terms and provisions contained in the document entitled "Partial Assignment and Assumption Agreement: Harbor Hill Development Agreement"

Recorded: December 29, 2017

Recording No.: 201712290501

12. Full Reconveyance: LOT 1, BUSINESS PARK AT HARBOR HILL, RECORDED MAY 23, 2006 UNDER RECORDING NO. 200605235007, IN PIERCE COUNTY, WASHINGTON

13. Quit Claim Deed: AFN 200605030287

EXHIBIT D
Environmental and Soils Reports and Land Surveys for the Premises

- D-1: Phase 1 Environmental Site Assessment, Dated November 10, 2017
- D-2: Cultural Resources Assessment, Dated October 24, 2018
- D-3: Business Park at Harbor Hill Plat/Survey, Dated 05/22/2006, AFN 200605235007

EXHIBIT E
Retaining Wall Diagram.

**Auditor's notation
to facilitate
scanning process**