



CITY OF NORMAN, OK CITY COUNCIL STUDY SESSION

Municipal Building, Executive Conference Room, 201 West Gray, Norman,
OK 73069

Tuesday, March 21, 2023 at 5:30 PM

AGENDA

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.

CALL TO ORDER

AGENDA ITEMS

1. DISCUSSION REGARDING OPERATOR AGREEMENTS FOR THE YOUNG FAMILY ATHLETIC CENTER AND THE SENIOR CENTER.

ADJOURNMENT

LEASE AND MANAGEMENT AGREEMENT

This Lease and Management Agreement is entered into on the ____ day of _____, 2023, by and between the City of Norman, Oklahoma, a municipal corporation, referred to herein as the “City”, and, Healthy Living Center Norman, LLC an Oklahoma not-for-profit corporation, hereinafter referred to as “Operator”, for the purpose of developing a contractual relationship related to the lease and management of the City’s planned Senior Wellness Center

WHEREAS, Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, providing a one-half (1/2) percent sales tax dedicated to fund a number of Quality of Life projects, including a Senior Wellness Facility; and

WHEREAS, the City approved a contract with Frankfurt-Short-Bruza Associates (“FSB”) in August 2019 (K-1920-40) for Professional Design Services for the Facility; and

WHEREAS, in addition to \$7.6 million budgeted for construction of the Facility, the City allocated an additional \$4.8 million with the adoption of Resolution R-2021-63 on October 29, 2020; and

WHEREAS, after the increase in allocated funding allowed for larger scope of Facility design and construction, the City approved an amendment to FSB’s contract in accommodate the design and construction of the Facility in a single phase, rather than multiple phases over time, on a 4.7 acre site in the southeast corner of the Norman Regional Hospital’s Porter Avenue Wellness Village Campus; and

WHEREAS, in November 2020, after soliciting proposals pursuant to a Request for Proposals related to the operation of the Facility, and subsequent interviews, the City opted to enter into negotiations with Operator, for the ultimate lease and management of the Facility.

WHEREAS, on April 13, 2021, the City entered into an MOU (K-2021-109) with the Operator for the purpose of developing a contractual relationship related to the lease and management of the City’s planned Senior Wellness Facility; and

WHEREAS, also on April 13, 2021, the City entered into a contract (K-2021-115) with Crossland Construction Company for Construction Management at Risk Services for the Senior Wellness Center Project; and

WHEREAS, the City acquired the 4.7 acre site located in the southeast corner of Norman Regional Hospital’s Porter Avenue Wellness Village Campus in May 2022; and

WHEREAS, the City finds it appropriate, desirable, and in the public interest to enter into this Agreement in order to provide for the successful management, operation and administration of the Senior Wellness Facility to be managed and operated by Healthy Living & Fitness, Inc.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Grant, Term of Lease and Certain Definitions

- 1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, the City does hereby lease, demise, and let unto Operator, and Operator does hereby take and lease from City, the Leased Premises, to have and to hold the Leased Premises, together with all the rights, privileges, easements, and appurtenances belong to or in any way pertaining to the Leased Premises, for the term and subject to the provisions hereinafter provided.
- 1.2 Term.
- a) The initial term of this Lease shall be for a period commencing on the Effective Date and terminating on the 5th anniversary of the Operational Date, unless earlier terminated in accordance with the provisions of this Agreement.
 - b) The term of the Lease may be renewed for up to three (3) additional five-year terms upon written acceptance of the Parties.
- 1.3 Certain Definitions. The following terms and phrases shall have the meaning set forth in this Section 1.3.
- a) Capital Item. Any furniture, fixture, or equipment that costs \$5,000 or more and has an expected life of more than one year.
 - b) City Manager. The City Manager of the City of Norman or such other City employee as may be designated by the City Manager to provide oversight and implementation of this agreement.
 - c) Effective Date. The date first set forth above in the introductory paragraph of this Lease.
 - d) Event of Default. Has the meaning set forth in Section 7.5.
 - e) Facility. The various buildings, facilities, and improvements located on the Land which are used as the Senior Wellness Facility.
 - f) Force Majeure. Any unforeseeable causes beyond a Party's control and without such Party's fault or negligence, including, but not limited to, acts of God, acts of

the public enemy, acts of any federal, state, or local government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation pursuant to federal, state, or local laws.

- g) Land. The certain tract of land comprising the Senior Wellness Facility, situated in the City of Norman, described in Exhibit A and made a part hereof for all purposes.
- h) Leased Premises. The Land, together with all buildings, fixtures, facilities and other improvements located on or affixed to the Land.
- i) Operational Date. The date the Senior Wellness Facility is substantially complete and upon which the Operator's operation and management duties and obligations provided hereinafter shall begin.
- j) Parties. The City of Norman and Healthy Living Center Norman, LLC.
- k) Partner. A business or entity that the Operator has contracted with to provide goods or services to benefit the users of the Facility.
- l) Project Manager. The Parks and Recreation Director of the City of Norman or such other City employee as may be designated by the Parks and Recreation Director to manage the construction and operation of the Facility.
- m) Subcontractor. Any business or entity that the Operator has contracted with to perform services for the Operator.
- n) Sublease. A lease and/or license granted by the Operator of all or any portion of the Operator's leasehold estate in the Facility or the Leased Premises.
- o) Tenant. Any business or entity that has a sublease with the Operator.
- p) Utility Costs. Costs related to electric, gas, sanitation, and water usage attributable to the Facility.

ARTICLE II

Obligations During Planning and Construction

2.1 City Obligations during Planning and Construction

- a) The City will design and construct the Senior Wellness Facility using funds made available for such purpose, including Norman Forward Sales Tax proceeds and other funding that may be made available for the project from time to time.
- b) The City will ensure Operator is provided the opportunity to participate in all planning and construction meetings as needed.

2.2 Operator Obligations during Planning and Construction

- a) Operator will participate in all planning and construction meetings when requested by the Project Manager.
- b) The Executive Director will attend City Council meetings, meetings of the Board of Park Commissioners, meetings of the Norman Forward Senior Center Ad Hoc Advisory Group, and meetings of the Norman Forward Sales Tax Citizen's Financial Oversight board when requested by the Project Manager. The Executive Director has binding authority on items not requiring full board approval.
- c) During planning and construction, Operator will use reasonable efforts to secure and contract with all Subcontractors, Tenants, and Partners it believes are necessary to manage and operate the Leased Premises as of the Operational Date.
- d) During planning and construction, Operator will use reasonable efforts to hire and train all staff and coordinate and train all volunteers necessary to manage and operate the Leased Premises as of the Operational Date.

ARTICLE III

Leased Premises

3.1 Demise

The City hereby leases and demises the Leased Premises to Operator, and the Operator hereby accepts the Leased Premises, provided premises are complete and built to plans and specifications and that all items are in working order, and agrees to be bound by the covenants, provisions, and terms set forth in this Agreement. Operator expressly acknowledges and warrants that neither Operator nor its Partners or Subcontractors shall prohibit or inhibit lawful public access, and use of, the Leased Premises except to the extent permitted by this Agreement.

3.2 Consideration

- a) The Parties agree that in consideration for the City's leasing the Leased Premises to the Operator, Operator will provide operation, management and maintenance of the Leased

Premises pursuant to this Agreement and at no cost to the City except as expressly set forth herein.

- b) The Operator further agrees and consents to accept and bear sole financial responsibility for the proper and adequate funding of the start-up, management, and operation of the Leased Premises, including but not limited to, utility bills, employee salaries and Facility marketing, except as otherwise provided herein including, but not limited to, those items in section 6.1.
- c) In consideration of the Operator's agreement to provide all necessary operating capital as well as acceptance of the financial risk, which the City acknowledges shall constitute substantial consideration of which the City is the beneficiary, the City agrees that Operator is entitled to receive and shall retain all net revenues (if any) from memberships, food and beverage concessions, events, special programs, and sponsorship sales realized through the Operator's operation of Leased Premises in the manner and at the quality anticipated by this Agreement. All such net revenues shall be reinvested into the programs, operation, maintenance, and management of the Leased Premises and shall be accounted for separately from any other facilities owned or managed by Operator.

3.3 "As-Is" Condition of Leased Premises

Upon the Operational Date of this Agreement, the Leased Premises shall be accepted by Operator in its "as-is" condition. Operator acknowledges that the City has not made any representations whatsoever in connection with the condition of the Leased Premises, or any portion thereof. Throughout construction of the Leased Premises, the City will conduct all necessary inspections and after completion, it will be inspected to ensure compliance with the plans and specifications and then presented to the City Council for final acceptance. The City shall not be liable for any latent, or patent defects in the Leased Premises, or any portion thereof. Any warranties provided to the City with the original construction of the Facility, the Facility furniture, fixtures or equipment, or other Facility Capital Items will be held and maintained by the City; however the Operator may request repairs or replacements it believes are covered under the warranty provisions pursuant to the procedures set forth in Section 6.2 herein.

3.4 Purpose and Use

The Leased Premises are to be used as the City of Norman's Senior Wellness Facility and shall be open and available to the public. The Leased Premises as a whole may not be converted for any other use, and restrictions or incompatible uses which would exclude its use as senior wellness facility are prohibited. It is understood by the Parties it is permissible to rent some areas of the Leased Premises by members of the public for temporary exclusive use pursuant to the terms of this Agreement.

The Parties agree that nothing in this Agreement shall be construed as preventing the City from entering the Leased Premises at any time during the Term of this Agreement for the purpose of satisfying the obligations of the City or to ensure compliance with this Agreement.

Additionally, the Facility may be reserved for City functions or events at no cost to the City up to four (4) times per calendar year in accordance with the Rental/Booking Policies and Procedures. City's use of the Facility is on a per year basis only and shall not accumulate or accrue from year to year. City may schedule one of the four events for a weekend. The right of the City to reserve the Facility shall be on a first come, first served basis with other events and uses. Operator shall not be required to move or rescheduled an already scheduled event in order to accommodate a City function or event. City use herein will not prohibit Operator's use of those portions of the Facility not being utilized by City. City will provide its own security and clean up for City functions or events. Use by the City will not interfere with normal operations of the Center.

3.5 Ownership of Assets

All property, improvements (including Operator Improvements), associated with the operation and management of the Leased Premises are solely the property of the City unless otherwise provided in this Agreement or any amendments thereto. Facility equipment provided initially provided upon Operational Date or any equipment purchased to replace such Facility equipment shall be considered the property of the City. Additional equipment, above the inventory provided, which is not replacement equipment shall remain the property of the Operator. Upon termination or expiration of this Agreement all modification or improvements to the Leased Premises that cannot be removed without damage to the Leased Premises, whether constructed by the City, Trust, or Operator shall become property of the City. Notwithstanding the foregoing, the ownership of data processing programs and software and personal property purchased and owned by Operator shall remain with Operator. Additionally, any personal property or equipment provided by a Partner or Subcontractor of Operator shall remain with such Partner or Subcontractor.

Membership data and information are property of the Operator. However, the City shall have access to membership data with the exception of information governed by state and federal statutes for up to two (2) years after the termination or expiration of this Agreement.

3.6 Subleases

Operator shall be permitted to enter into subleases of the Leased Premises with one or more Tenants with written permission of the City Manager, whose approval shall not be unreasonably withheld, provided that Operator and Tenant fully comply with all provisions and requirements of this Agreement and the Leased Premises remains sufficiently open and available for its intended purpose and use. Operator shall cause

all subleases to contain such provisions as may be necessary to cause said Tenant to abide by and conform to the requirements in this Agreement. Operator shall provide the City Manager with notice of any sublease including, but not limited to, the name, address, telephone number, fax number, email, and name of the contact person for purposes of notices or other communications.

3.7 Furniture, Fixtures and Equipment

The Leased Premises includes furniture, fixtures, and equipment ("FF&E") necessary for the operation of a senior wellness facility. A list of FF&E provided in the Facility will be provided to the Operator no later than the Operational Date and all items agreed upon by both parties. Operator must maintain as a minimum, the same quantity of FF&E provided as of the Operational Date throughout the Initial Term and any Renewal Term of this Agreement. Operator must maintain an inventory list of FF&E which includes the date each item is purchased and who owns each item listed as further detailed in Section 4.3(C). Operator is responsible for the maintenance of all FF&E in accordance with Section 6.1 of this Agreement. For clarity, FF&E are not considered to be Capital Items as described in Sections 1.3(a) and 6.2.

3.8 Non-Discrimination for Use of the Leased Premises

- a) Operator agrees that it will not discriminate by segregation or otherwise on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex in furnishing or refusing to furnish, to such person or persons the use of the Leased Premises, and the improvements thereon, including any and all services, privileges, accommodations and activities provided thereby.
- b) Operator shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex; provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by Operator solely to its employees, clients, and invitees.
- c) Operator is required to adopt and implement policies and procedures that prevent and discourage any staff, volunteer, agent, or tenant from discriminating against speech on the basis of viewpoint, including but not limited to proselytizing a particular religion, prohibiting advertising based solely upon the content, or only allowing artwork of one political view.

- d) In the event of Operator's noncompliance with this nondiscrimination clause, in addition to other remedies set forth in this Agreement, the City may immediately terminate this Agreement despite any requirement provided in Agreement.
- e) Operator agrees to insert the above nondiscrimination clauses in any subleases, subcontracts or contracts by which said Operator grants a right or privilege to any person, firm, company, entity or corporation to render accommodations, work, product and/or services to the public on or from the Leased Premises. The above nondiscrimination clause is not required in rental agreements for the rental of space to parties not providing goods or services to the members on the Leased Premises.

ARTICLE IV

Operation

4.1 Agreed Conditions Relating to Facility Operations

- a) Within 30 days of the Effective Date of this Agreement, City will provide \$_____ in initial funding to assist Operator with funding items that will be needed at the Facility prior to the opening date such as membership software, accounting software, and other soft costs related to the opening of the Facility.

- b) Days and Hours of Operation

The Parties agree that the Facility will be open to the members at least sixty-five (65) hours a week, excluding weeks with federal holidays, and that those operating hours must include at least four (4) consecutive hours on one weekend day. Operator shall have the right to close portions of the building on Saturdays. The Operator has the discretion to determine the specific operating hours but shall make reasonable efforts to accommodate the needs of the community. This condition may be changed upon written approval of the Operator and the City Manager.

- c) Programming and Services

The Operator agrees to provide the ongoing programming consistent with those provided in Exhibit B. The Operator is expected to offer additional programs and services as the Operator deems appropriate to meet the needs of the members. The specific times, classes, or services offered shall be determined solely by the Operator. The Operator may modify regularly offered programs and services as demand by members dictates. Reductions in the number of programs or services provided in Exhibit B must be communicated to the City Manager or his or her designee at least ten (10) days prior to such changes being implemented. The

Operator is responsible for all costs associated with the Programs and Services and any supplies necessary.

d) Fees to Members

The Operator must establish a reasonable fee schedule for the members of the Facility that will provide sufficient funding with which to operate and maintain the Facility as required herein. The fee schedule shall include a sliding scale fee structure that accounts for adjustments based upon the economic need of those members who would otherwise be unable able to use the Facility. A copy of the initial fee schedule is attached hereto as Exhibit C.

The Parties further agree that the fee schedule for members may only be increased twice each calendar year. All proposed changes to the fee schedule, including changes to the sliding scale structure, are subject to City approval as provided herein. Proposed changes must first be presented to the Board of Parks Commissioners for its consideration. The Board of Parks Commissioners shall make a recommendation thereon, which shall be provided to the City Manager. All proposed changes must be provided to the City Manager for review and approval prior to implementation whose approval shall not be unreasonably withheld.

e) Security for Leased Premises

The City will provide adequate exterior lighting and security cameras in all public areas prior to the Operational Date.

Operator will provide all other security measures necessary for the safe and secure operation, management, and maintenance of the Leased Premises. Operator is to determine what measures are necessary and must take all reasonable actions to ensure the Leased Premises is safe and secure.

e) Distribution or Sale for Public Consumption of Alcoholic Beverages. Operator is permitted, in connection with specific events or activities at the Facility, to permit the distribution or sale of alcoholic beverages for on premise consumption.

4.2 Approval of Policies and Procedures

Operator must prepare and follow policies and/or procedures that address vital and routine functions associated with the management and operation of the Leased Premises. Within 180 days of the Effective Date, Operator will provide all policies or procedures pertaining to such subjects to the City Manager for review. Such policies or procedures must be approved by the City Manager, whose approval will not be unreasonably withheld. The policies should include the following subject matters:

- a) Facility Use
- b) Prohibition Against Abuse of Program Participants
- c) Claims Reporting and Investigation - as relates to formal complaints and related incidents arising from providing services to members of the Leased Premises.
- d) Facility Rental/Booking Policies.
- e) Finance and Accounting Procedures.
- f) Safety Procedures - including but not limited to protocols for user safety, emergency response procedures, communication, and other policies and procedures having an impact on the safety of members and staff.

All material changes in, additions to and other modifications of the approved Policies and Procedures, as from time to time proposed and presented by Operator, shall be subject to review by the City Manager.

4.3 Reporting Requirements

a) Quarterly Report.

On or before the 15th day of each quarter of any calendar year for which the Operator is managing the Leased Premises, the Operator will provide a report to the City Manager, which will include the following for the previous quarter:

1. An operating statement and balance sheet;
2. The number of members enrolled at the Facility;
3. Attendance statistics;
4. Rental Data; and
5. Any other additional information reasonably requested by the City Manager.

b) Annual Report.

Operator will provide an annual report to the City Manager, which details the outcomes and performance measures listed below. Operator will also make a presentation summarizing this report to the Board of Parks Commissioners.

1. A financial report containing the budgeted and actual Operating Revenues and Operating Expenses for the previous calendar year

2. Outcome and Performance Measures including, but not limited to, the following data points:

- A. The percent of members satisfied with the programs and services offered at the Facility.
- B. The percent of members satisfied with the Facility.

3. Inventory List of FF&E

4. A report providing the maintenance logs for all Capital Items for the previous year.

5. Any other additional information reasonably requested by the City Manager.

c) Inventory Report

The Operator shall conduct an initial inventory of all assets immediately following the Commencement Date. Said inventory shall include, but may not be limited to, any and all personal computers, furniture, fixture, and equipment, including office and maintenance equipment, and any other item utilized in the regular operations of the Leased Premises. The list shall not require paper products, office supplies, and general cleaning products. This initial inventory shall be submitted to the City Manager within forty-five (45) days of the Operational Date.

The Operator shall maintain a running inventory of City-owned Facility furniture, fixtures, and equipment, including those acquired or disposed of directly by the City, or any other party. The inventory shall be agreed to annually in writing and shall be available for inspection at any time by the City Manager or his designee. Unless otherwise agreed in writing such assets remain the sole property of the City. Upon termination of this Agreement, the City and the Operator shall mutually conduct an exit inventory. In the event the exit inventory reveals any discrepancy for which the Operator is responsible, the Operator shall perform an appropriate adjustment or payment to the City for the replacement value of the asset, less reasonable depreciation, to the satisfaction of the City Manager or his designee. Any adjustments and/or payments which may be required by the Operator as a result of any discrepancy resulting from such exit inventory shall be made within a reasonable amount of time, not to exceed sixty (60) days.

All Operator's equipment, supplies, and purchases are exempt from inventory reports.

4.4 Records and Audits

a) Record Retention

Operator shall keep and preserve the specified records pursuant to the Records Retention Schedule attached hereto as Exhibit D, or longer if required by law. Retention of any other records is left to the discretion of the Operator.

b) Audits

An authorized representative of the City, including but not limited to an Auditor engaged for such purpose, shall have the right to interview any current or former employee and shall have unrestricted access to books and records and any and all information, materials and data of every kind and character that may in the judgment of the City authorized representative have any bearing on, or pertain to, any matters, rights, duties or obligations under this Agreement during reasonable business hours after the provision of ten (10) days advanced notice, to the extent necessary to adequately permit evaluation and verification of Operator's compliance with terms of this Agreement.

The City shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of Operator relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes and invoices. Such audit shall be at no expense to the Operator and Operator shall be furnished copies of the final audit report and recommendations made because of the audit conducted.

c) Rights of the City Manager

The City Manager may, upon ten (10) calendar days' notice to Operator, suspend or modify any rule, policy, procedure or term that has resulted, or will result, in the ouster of the public from the Leased Premises. Ouster is defined as the wrongful exclusion of the public from the property. In addition, the City Manager may, from time to time, inspect the Facility and review the activities on, and use of, the Leased Premises, to confirm, to the City Manager's reasonable satisfaction, compliance with the provisions of this Agreement and the policies and procedures referenced herein.

ARTICLE V

Management of Leased Premises

5.1 Business Management

The Operator is organized as an Oklahoma not-for-profit corporation and agrees that it will meet all statutory requirements for operation as a not-for-profit corporation. Failure to comply with its obligation will be treated as material breach of this Agreement and despite any notice requirements herein, the City may terminate this Agreement immediately.

5.2 Employees and Volunteers

a) Operator's Employees

The Operator shall employ competent, qualified, and licensed, if necessary, employees. The positions listed below must be filled with an employee or qualified volunteer of Operator. Positions other than those listed below may be staffed as Operator deems necessary and appropriate. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with the Branch Manager, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

Branch Manager
Fitness Coordinator
Program Coordinator
Volunteer Coordinator
Maintenance (duties shall not include those items described in Section 6.1.d.2 and 6.1.d.3)

Operator employees shall not be considered employees of the City for any purpose. The sole responsibility for supervision, daily direction and control, training, and setting and paying compensation and any employee benefits, including workers' compensation benefits, shall be the obligation of the Operator. All costs related to employees shall be the responsibility of the Operator.

b) Background Checks

Operator is required to perform a background check, at Operator's expense, on all employees and volunteers working at least ten (10) hours per week at the Facility.

c) Employment Policies and Procedures

Operator must provide a copy of all employee policies and/or procedures to be used at the Leased Premises to the City Manager within 180 days of the Effective Date of this Agreement.

d) Non- Discrimination of Employee and Volunteers

The Operator shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. The Operator shall ensure that employees or applicants for employment are treated without regard to their race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The Operator will, in all solicitations or advertisements for employees placed by or on behalf of Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. In the event of Operator's noncompliance with this nondiscrimination clause, in addition to other remedies set forth in this Agreement, the City may immediately terminate this Agreement despite any requirement provided in Agreement.

Operator agrees to use its best effort include this nondiscrimination clause in any contracts and subcontracts connected with the performance of this Agreement. The above nondiscrimination clause is not required in rental agreements for the rental of space to parties not providing goods or services to the members of the Leased Premises.

5.3 Partners

Within 180 days after the Effective Date of this Agreement, the Operator agrees to provide to the City Manager a list of all Partners the Operator intends to engage to perform services related to this Agreement. The Operator is required to update this list as additional Partners are engaged to provide services at the Facility. Notwithstanding the approval of any Partner contracted with the Operator, the Operator shall be solely responsible for the collection or payment of any fees of such Partner, the services performed by such Partner, and monitoring such Partner.

The Operator shall contract with competent, qualified, and licensed, if necessary, Partners. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with a Partner, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and

Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

5.4 Subcontractors

Within 180 days after the Effective Date of this Agreement, the Operator agrees to provide to the City Manager a list of any Subcontractors the Operator intends to engage to perform services related to this Agreement. The Operator is required to update this list as additional Subcontractors are engaged to perform work or provide services at the Facility. Notwithstanding the approval of any Subcontractor hired by the Operator, the Operator shall be solely responsible for the fees of such Subcontractor, the services performed by such Subcontractor, and monitoring such Subcontractor.

All service-related subcontracts entered into by the Operator after the Effective Date of this Agreement for a term longer than one (1) year shall contain a clause that allows the City Manager, in the event that this Agreement is terminated, to terminate the subcontractor agreement, with or without cause, upon thirty (30) days written notice. The Parties agree that this termination provision is not required in any ticketing, telephone, HVAC maintenance or fire suppression systems agreement.

The Operator shall contract with competent, qualified, and licensed, if necessary, Subcontractors. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with a Subcontractor, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

5.5 Social Media and Website Use for Facility.

The parties acknowledge that the Operator has purchased a website domain for the Facility with the address of www.healthylivingnorman.com. Such domain shall only be used in furtherance of the purposes of the Facility as set forth herein. The Operator may also set up sites for the Facility on various social media platforms. In the event of termination of this Agreement, the Operator agrees to provide the current login and password, as well as all administrative privileges for such sites to the City Manager or his/her designee.

5.6 Rental of the Leased Premises

a) Rentals During Operating Hours.

The Operator may rent any portion of the Facility space during hours of operation on a first come, first serve basis according to the approved Facility Rental/Booking Policies provided previously scheduled programming or services are not reduced

as a result of such rental or booking. Operator may charge and collect a reasonable rental fee that is listed in the Fee Structure included in the approved Facility Rental/Booking Policies. The Operator may also charge a fee for parking during events at a rate not-to-exceed such amount as may be included on the approved Fee Structure for parking.

b) After Hours Rentals

The Operator may rent rooms, as well as any other location or amenity in the Facility or on the Leased Premises, after hours of operation on a first come, first serve basis according to the approved Facility Rental/Booking Policies. Operator may charge and collect a reasonable rental fee which is listed in the Fee Structure included in the approved Facility Rental/Booking Policies. Operator will have at least one staff person present for after-hour rentals.

c) General Requirements for Rental of the Facility

All rentals must be subject to completion of a Rental Agreement. The Facility Rental/Booking Policies of the Operator will not allow any reservations or bookings for the Facility or part of the Facility to be made more than one (1) year in advance from the date the reservation is made. Any reservation or booking made six months or more in advance will require a deposit that will become non-refundable if the reservation or booking is cancelled less than 90 days from the date of the reservation.

If the Facility, or parts of the Facility, is rented or leased for civic, cultural or educational purposes of any kind, the Facility Rental/Booking Policies will require that the Facility be made available for all types of civic, cultural, or educational purposes.

5.6 Vending, Catering, and Merchandise

Operator shall have exclusive right to manage and operate vending, catering, concession sales and merchandising within the Leased Premises.

5.7 Sponsorship Agreements

a) Naming Rights of the Facility

Naming rights of the Facility as a whole shall only be granted by the City in accordance with its Citizens Recognition Policy. Such policy shall not apply to naming rights for rooms, amenities, programs, or events inside the Facility, which shall be granted in accordance with the provisions in this Section 5.7.

b) Sponsorship Agreement for Naming Rights within the Facility or Operator Events

The Operator retains the ability to enter into sponsorship agreements for naming rights of rooms, amenities, or programs inside the Facility, as well as events held in the Leased Premises, subject to the approval of the City Manager, whose approval shall not be unreasonably withheld, and may retain all proceeds of such agreements.

c) Sponsorship Agreements for Advertising within the Facility

The Operator retains the ability to enter into sponsorship agreements for advertising inside the Facility subject to the approval of the City Manager, whose approval shall not be unreasonably withheld, and may retain all proceeds of such agreements.

d) The Parties agree that all exclusive advertising and sponsorship agreements entered into by Operator associated with the Leased Premises shall not prohibit advertising/signage for a competitor's products for a special event that is required to display such competitive temporary signage on the Leased Premises pursuant to a contractual obligation. Exceptions will be made for named areas of the facility.

5.8 Customer Service

The Operator shall deploy strategies and tactics to ensure a high quality customer service experience for all guests and members. Such tactics may include, but are not limited to, the utilization of a professional secret shopper, a queue management system, and guest feedback and customer survey systems.

ARTICLE VI

Maintenance, Replacement and Modifications

6.1 General Maintenance and Replacements

- a) Except and unless otherwise provided herein, the Operator shall be responsible for all routine maintenance, general repair, and replacement costs of the furniture, fixtures, and equipment in or on the Leased Premises. The Operator shall be responsible for the cost of any and all supplies necessary for the operation and maintenance of the Leased Premises.
- b) Routine maintenance shall include, but shall not be limited to, regular ground and lawn maintenance, regular custodial services, security, painting, repairs, periodic servicing and maintenance of the water features (including pumps, water quality, and related mechanical work), and all solid waste removal costs. Routine

maintenance shall not include maintenance and repair to electrical systems, the HVAC units, or plumbing systems.

- c) The Leased Premises is and at all times shall be accessible and compliant with the Americans with Disabilities Act of 1990.
- d) City Contribution to Operational and Maintenance Costs. Subject to annual appropriation, the City will contribute funding for the following operational and maintenance costs in an amount not to exceed \$125,000 in any given year:
 - 1. Utility Assistance: The City will pay 100% of all utility costs during the first 12 months after the Operational Date, 60% of all utility costs during the second 12 months after the Operational Date, and 30% of all utility costs during the third 12 months after the Operational Date, after which the Operator will be responsible for all utility costs.
 - 2. Janitorial Services: The City will provide for janitorial services for the Facility for the first 3 years after the Operational Date.
 - 3. Lawn and Landscaping Services: The City will provide all lawn and landscaping services during the first 5 years after the Operational Date.
 - 4. Pool Maintenance: The City will provide all pool maintenance during the first 5 years after the Operational Date.
 - 5. Repair and Replacement of Capital Items

The City will repair or replace any Capital Item, , provided the Operator has maintained such items according to the maintenance standards provided by the City. If funds are not immediately available, the City Manager or his or her designee will request an adequate appropriation of funds to repair or replace Capital Items as set forth herein.

The Operator shall submit any requests for Capital Item repairs or replacements to the City Manager and must include the estimated cost of repair and replacement cost of each Capital Item. The Operator must also include with the request, a copy of the maintenance record for each Capital Item included. The City Manager, or his designee, will decide whether a request for Capital Item repairs or replacements is approved and in what manner the repair or replacement may be conducted. This procedure shall also be used for any requests for repairs or replacement of items covered by any Facility related warranties held by the City.

6. Fitness Equipment. The City will select, in consultation with the Operator, and provide all fitness equipment in the Facility and will maintain such equipment in accordance with specifications provided by the manufacturer.

6.2 Additions, Modifications, or Renovations

- a) The Operator may only make additions, modify, or renovate the Leased Premises upon written approval of the City Manager.
- b) Upon receiving such approval and prior to beginning construction, the Operator shall submit all plans and specifications to the City Engineer for review and approval.
- c) After receipt of approval by the City Engineer of plans and specifications, the Operator shall also be required to obtain all building permits, other permits and licenses as required by municipal, state or federal law.
- d) The Operator shall submit the construction contract and bonds for the additions, modifications, or renovation of Leased Premises to the City Engineer for approval.
- e) The Operator must notify the City Engineer of the commencement of any construction at least ten (10) days before beginning of any construction. The Operator is responsible for and shall barricade or secure any unsafe area pending such construction. Within thirty (30) days of completion of any construction, the Operator shall obtain an unqualified Certificate of Completion from the Operator's licensed architect or engineer for each additions, modifications, or renovation of Leased Premises and provide such Certificate to the City Engineer with a request for a final inspection. Within forty-five (45) days of the completion of any construction, the Operator shall provide a complete set of "as- built" drawings to the City Engineer for approval, including, but not limited to, structures, plumbing, heating, ventilating, air conditioning, mechanical and electrical systems, as may be necessary to document all construction. Each addition, modification, or renovation of Leased Premises shall be submitted to the City Council for final acceptance after receipt of the "as- built" drawings and final inspection by the City Engineer.

All construction contracts with third-parties for any construction must require the above provision be followed. Nothing herein shall be deemed to affect or waive any obligation of the Operator or its agents, subleases, tenants, or employees to obtain approval of plans by the City Engineer or to obtain any required permits. Nothing herein shall be deemed to affect or waive any inspection of any activity, improvement or facility as required by City ordinances, or state law or federal law.

6.3 Emergency Repairs

The Operator may act, with the consent of the City Manager, in situations in which emergency supplies, materials, equipment or contractual services are necessary to maintain operations or are necessary for the immediate preservation of the peace, health, or safety of the general public, including spending and committing funds held in operating accounts, even if such expenses are not budgeted, provided funds are available in the accounts for any purpose.

The Operator shall, in the event of such emergency prepare and retain adequate documentation concerning the circumstances surrounding the emergency and any and all funds relating to said emergency. Any emergency repair must comply with the City of Norman Purchasing Policies and Procedures.

Immediately following such action, the Operator and the City Manager shall determine whether any funds expended related to the emergency should be reimbursed as payment for the repair or replacement of Capital Items. If reimbursement is necessary, such reimbursement shall be paid by the City within sixty (60) days of approval of the request for reimbursement.

ARTICLE VII

Additional Terms

7.1 Indemnity

The Operator hereby agrees to release, defend, indemnify, and save harmless the City, its officers, agents, and employees, from and against (i) any and all loss of or damage to property OR injuries to or death of any person or persons, OR any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way caused by, resulting from, or arising out of the Operator's negligent acts, operations, errors or omissions or the Operator's use and occupancy of any portion of the Leased Premises, and (iii) any and all loss of or damage to property OR injuries to or death of any person or persons, OR any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way caused by, resulting from, or arising out of the negligent acts, operations, errors and omissions of the Operator's officers, employees, representatives, suppliers, invitees, subcontractors, Tenants or agents in connection with this Agreement.

The minimum insurance requirements set forth below shall not be deemed to limit or define the obligations of the Operator hereunder.

This section shall survive the expiration of the Agreement. Provided, however, the Operator shall not be liable hereunder for any loss solely occasioned by the negligence of the City or its officers, agents, and employees. This Indemnity provision does not apply to

Workers' Compensation claims by City employees. The Parties agree to give the others prompt notice, in writing, of any claims, suits, actions or proceedings.

7.2 Insurance

The Operator shall obtain insurance coverage as provided below with coverage to begin no later than the Operational Date. The Operator must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the State of Oklahoma and are acceptable to the Norman, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Agreement under any other provision of this Agreement, including but not limited to any indemnification provision.

- a) Additional Insureds: All liability policies (except worker's compensation and employer's liability policies) shall provide that the City is named additional insureds without reservation or restriction.

All insurance coverage of the Operator shall be primary to any insurance or self-insurance program carried by the City.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

- b) Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Operator is stating a deductible does not exist and thus a deductible is not approved or accepted.

Self-insured retentions will not be accepted unless accompanied by a bond or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Operator's self-insured retention.

- c) Policy Limits: The insurance coverage and limits required of the Operator under this Agreement are designed to meet the minimum requirements of the City. Such coverage and limits are not designed as a recommended insurance program for the Operator. The

Operator alone shall be responsible for the sufficiency of its own insurance program. Should the Operator have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, the Operator should seek professional assistance.

All policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Operator shall also provide tail coverage that extends a minimum of one year from the expiration of this Agreement.

The minimum amounts of such insurance policies and continuing coverage shall be:

1. **Worker's Compensation and Employer's Liability Insurance.** The Operator shall provide and maintain, during the term of the Agreement, worker's compensation insurance as prescribed by the laws of the State of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the Facility and working on the Leased Premises, and in case any work is subcontracted, the Operator shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Operator. In the event any class of employees engaged in work/services performed at the Facility or on the Leased Premises is not protected under such insurance heretofore mentioned, the Operator shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
2. **Commercial General Liability Insurance.** The Operator shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Operator shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$2,000,000.
3. **Automobile Liability Insurance.** If the Operator provides transportation in connection with the operation of the Leased Premises, the Operator shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Operator shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$200,000.

4. Fidelity and Crime Insurance. Fidelity and Crime Insurance, which includes but is not limited to Burglary, Theft and Employee Dishonesty with a blanket limit of One Million Dollars (\$1,000,000), shall be provided. Such insurance shall also include coverage for money and securities, valuable papers. The City of Norman shall be named as loss payee to the extent damages to City property are covered under the policy.
- d) Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates must be provided to the City Manager prior to the Operational Date must be updated each year. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- e) Cancellation: There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Operator authorizes the City to confirm all information so furnished as to the Operator's compliance with its bonds and insurance requirements with the Operator's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Agreement is a breach of this Agreement for which the Operator shall be liable for damages, losses, and costs incurred by the City. Regardless of any termination clause included in this Agreement, the City may at its option suspend this Agreement until there is full compliance with this Section, or may cancel or terminate this Agreement and seek damages for the breach. The remedies in this paragraph shall not be deemed to waive or release any remedy available to the City. The City expressly reserves the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the Operator shall immediately notify the City and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit, the Operator hereby agrees to promptly authorize and have delivered such statement to the City.

- f) Duration of Coverage. All insurance coverage required under this Agreement shall be maintained in full force and effect for the term of this Agreement and any renewals.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Agreement.

- 7.3 Emergencies. In the event of a declared local, state, or national emergency, the City will have the right to use the Facility, in cooperation with Operator, to address community needs that may arise from such emergency until the state of emergency has ended.
- 7.4 Participation on Board of Directors. Upon execution of this Agreement, the City Manager or his/her designee shall serve on Operator's Board of Directors in an ex-officio capacity.
- 7.5 Termination

This Agreement may be terminated as follows:

a) Termination for Default.

Failure to perform any duty or obligation under this Agreement, through no fault of the other party, shall be considered an Event of Default resulting in termination of this Agreement. The non-defaulting party may initiate termination by providing sixty (60) days prior written notice which shall include thirty (30) days within which the defaulting party may correct the default. The remedies in this paragraph shall not be deemed to waive or release any remedy available to parties. The City expressly reserves the right to pursue and enforce any other cause or remedy in equity or at law.

b) Discretionary Termination.

In addition to, and cumulative of, the City's rights and remedies under other provisions of this Agreement, the City shall have the right to terminate this Agreement, and all the provisions hereof, at any time, with or without cause, upon 120 days prior written notice to Operator of the City's intention to exercise its right of discretionary termination under this Section. Such discretionary termination may only be exercised upon a majority vote of the City Council of The City of Norman.

The Operator shall have the right to terminate this Agreement, and all the provisions hereof, at any time, with or without cause, upon 120 days prior written notice to Operator of the City's intention to exercise its right of discretionary termination under this Section.

c) Assignment and Assumption of Certain Contracts Upon Termination.

In the event of expiration or early termination of this Agreement, regardless of the reason for said termination, Operator shall immediately assign to the City any unfulfilled contracts and future booking engagements, and the City may assume the obligation to perform such contracts and booking engagements thereafter.

7.6 Encumbrances, Liens, and Claims

At all times during the Term of this Agreement, the Operator shall pay for all labor performed, and all products, equipment and materials furnished for, the construction, alteration, renovation or maintenance of all the Leased Premises. The Operator is not responsible for issues resulting from defects in design or construction. The Operator shall keep the Leased Premises free and clear of any and all claims attaching to real property including but not limited to liens and encumbrances (collectively referred to in this Section as "liens" or "encumbrances"). Further, the Operator shall pay each and every judgment made or given against the Leased Premises, or any part thereof, or against the City, on account of any above described lien or encumbrance, unless otherwise stated to the contrary herein. The Operator shall, at its sole cost and expense, defend, indemnify and hold the City harmless from every lien or encumbrance, and every action on account of any and all such liens and encumbrances, or obligation for labor, products, equipment or materials incurred during any Term of this Agreement, whether by the Operator or any Tenant, including, by way of illustration and not of limitation, laborer's, mechanic's and materialman's liens, and any other liens and encumbrances not specifically enumerated herein, but which are not liens or encumbrances as a result of the City or Trust's action. Nothing contained herein shall, in any way, prejudice the Operator's right to contest any final judgment or decree prior to payment thereof.

As long as the Operator is using its best efforts and is actively pursuing, in good faith, the removal of claims, liens and encumbrances, the failure of the Operator to immediately remove liens and encumbrances from the Leased Premises shall not be deemed an Event of Default. Provided, however, should the Operator fail to "bond off," remove or challenge in a court of appropriate jurisdiction any lien or encumbrance within thirty (30) days of attachment, the City may pay and satisfy such lien or encumbrance and Operator, within thirty (30) days of demand, pay to the City the said sum in full.

Operator shall require a similar prohibition in all contracts, leases, and subleases to protect the City, Trust, and Leased Premises from liens and encumbrances.

This provision shall survive the termination, expiration, cancellation or nonrenewal of this Agreement.

7.7 Notices

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Addresses may be changed by either party giving ten days prior written notice thereof to the other party.

The City:
Darrel Pyle, City Manager
The City of Norman

201 W. Gray St.
Norman, Oklahoma 73069

With copy to:
Kathryn Walker, City Attorney
The City of Norman
201 W. Gray St.
Norman, Oklahoma 73069

The Operator:

Healthy Living Center Norman
Attn: Claire Dowers-Nichols, Executive Director
11501 N. Rockwell Avenue
Oklahoma City, Oklahoma 73162

7.8 Applicable Law

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oklahoma. The laws of the State of Oklahoma shall be applied to every interpretation, action, enforcement or other legal or equitable proceeding involving this Agreement, and any duty, right, interest, covenant, obligation and activity under this Agreement.

7.9 Compliance with Laws, Ordinances, Specifications and Regulations

The Operator shall comply with all federal, state, and local statutes, laws, standards, codes, ordinances, rules and regulations, and all subsequent amendments and additions thereto, pertaining, in any manner, to the operations, construction, maintenance, activities and/or services provided or permitted by this Agreement. The Operator shall protect, defend, indemnify and forever hold harmless the City from and against any penalty, fine, damage, expense, cost or charge imposed, assessed or incurred for any violation or breach of any such statutes, laws, standards, codes, ordinances, rules or regulations occasioned by the negligence, acts or omissions of the Operator or any Tenant, Subcontractor, Partner, or user of the Leased Premises, or any portion thereof.

7.10 Assignment

Inasmuch as this Agreement is a personal service agreement which relies on the personal integrity, financial standing and unique ability and expertise of the Operator to assist in the operation and management of the Leased Premises, it has been agreed by Parties that the Operator may not assign its interest or obligations in said Agreements without prior written consent of the City.

7.11 Severability

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

7.12 Amendment

This Agreement may only be amended in a writing approved by the Operator and the City Council of The City of Norman and the Trustees of the Norman Municipal Authority.

7.13 Execution in Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7.14 Descriptive Headings

The headings of the Sections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of said Section of this Agreement.

7.15 Survival of Representations

All written representations and covenants of the Parties contained in this Agreement shall survive the non-renewal, termination, cancellation or expiration of this Agreement.

7.16 Parties Bound

This Agreement shall be binding upon and inure to the benefit of all Parties. This Agreement is solely for the benefit of the Parties and their successors in interest, and none of the provisions hereof are intended to create a third-party beneficiary or benefit third parties.

7.17 Force Majeure

Except as otherwise herein expressly provided, if any Party shall be delayed or hindered in, or prevented from, the performance of any obligation hereunder, as a result of any Force Majeure, and, provided that the Party delayed, hindered or prevented from performing notifies the other Party both of the commencement and the expiration of such delay, hindrance or prevention (each notice being required within ten (10) business days of the respective event), then the performance of such obligation shall be excused for the period of such delays, hindrance or prevention and the period for the performance of such

obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Failure to so provide the foregoing notice will result in waivers of both excuse in performance and extension of time to perform under this paragraph with respect to any such delay, hindrance or prevention.

As used herein, a "Force Majeure event" shall mean a labor dispute, act of God, natural disaster, national emergency, civil disobedience or disturbance, riot, terrorism, threat of terrorism, restraint by court order, and similar occurrences beyond the reasonable control of the Party that makes the Party's material obligations under this Contract in a timely manner impractical or impossible and which, in all cases, are not foreseeable or a result of the negligence or willful misconduct of, or in the reasonable control of, the Party.

7.18 Construction and Enforcement

In the event of ambiguity in any of the provisions of this Agreement, this Agreement shall not be construed for or against any party on the basis that such party did or did not author the same.

7.19 Venue of Actions

The Parties agree that if any legal action is brought pursuant to this Agreement, such action shall be instituted in the District Court of Cleveland County.

7.20 No Partnership Created

The Parties expressly agree that the relationship hereby created is that of independent contractors and no other relationship is created or deemed to be created between the Parties. This Agreement specifically does not create any partnership or joint venture between the Parties, or render any party liable for any of the debts or obligations of any other party.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have caused this Lease and Management Agreement to be executed and effective as of the date set forth above.

HEALTHY LIVING CENTER NORMAN

BY: _____
Signature

Title

ATTEST: _____
Corporate Secretary

CITY OF NORMAN, OKLAHOMA

BY: _____
Mayor

ATTEST: _____
City Clerk

Approved as to form and legality this ____ day of _____, 2023.

City Attorney

EXHIBIT A

A tract of land being part of Lot 3A, LOT LINE ADJUSTMENT NO. 1103 recorded in Book 3168, Page 421 of Block 4 AND all of Lots 1 and 2, Block 4 AND part of Lot 22, all of Lots 23 and 24, Block 1, NORMAN HIGH SCHOOL ADDITION recorded in Book 1 of Plats, Page 32(57) AND all of Lots 1 through 12, part of Lots 13 through 24, Block 1, NORTHEAST ADDITION recorded in Book 1 of Plats, Page 92, together with part of the east-west alley lying in said Blocks as vacated by JOURNAL ENTRY OF JUDGEMENT Case No. C-88-1968T AND part of Rich Street as vacated by JOURNAL ENTRY OF JUDGEMENT Case No. CJ-2000-935-BH recorded in Book 3189, Page 918 and JOURNAL ENTRY OF JUDGEMENT Case No. CJ-2002-2210-L recorded in Book 3543, Page 379 AND an unplatted part of the Northwest Quarter of Section 29, Township 9 North, Range 2 West of the Indian Meridian, Cleveland County, being more particularly described as follows;

COMMENCING at the northwest corner of said Northwest Quarter;

THENCE South 00°09'01" East, along the west line of said Northwest Quarter, a distance of 1,681.19 feet to a point of intersection with the south line of said Block 4 extended;

THENCE North 89°26'27" East, along said extended line and the south line of said Block 4, a distance of 655.82 feet to the POINT OF BEGINNING;

THENCE North 00°33'33" West a distance of 408.84 feet;

THENCE North 89°26'27" East a distance of 27.51 feet;

THENCE North 44°26'27" East a distance of 92.14 feet;

THENCE North 89°26'27" East a distance of 282.90 feet to a point on the east line of said Block 1, NORTHEAST ADDITION, being a point on the west right of way line of Findlay Avenue;

THENCE South 00°09'01" East, along the east line of said Block 1, said line extended to the centerline of said vacated Rich Street and said west right of way line, a distance of 309.00 feet;

THENCE North 89°26'27" East, along said vacated Street centerline, a distance of 8.00 feet to a point on the west right of way line of said Findlay Avenue;

THENCE South 00°09'01" East, along said west right of way line, a distance of 165.00 feet to a point of intersection with the south line of said Block 4 extended;

THENCE South 89°26'27" West, along said extended line and the south line of said Block 4, a distance of 380.18 feet to the POINT OF BEGINNING.

Said described tract of land contains an area of 174,618 square feet or 4.0087 acres, more or less.

The basis of bearings for this legal description was the Oklahoma State Plane Coordinate System (NAD83 -South Zone) using a bearing of South 89°26'27" West as the south line of Block 4 of NORMAN HIGH SCHOOL ADDITION.

EXHIBIT B
PROGRAMMING AND SERVICE CATEGORIES

DRAFT

**EXHIBIT C
INITIAL FEE SCHEDULE**

DRAFT

EXHIBIT D RECORD RETENTION SCHEDULE

The purpose of this schedule is to define the retention period for documents vital to the operation of the Facility.

Records and documents of the Operator shall be retained as follows:

- | | |
|--|---------------------------|
| • Corporate Legal Documents | Permanently |
| • Financial Records – AP Vouchers, Bank Statements, etc. | 7 years |
| • Audit Reports & Tax Returns | Permanently |
| • Contracts, Notes and Leases | 7 years after expiration |
| • Payroll records | 7 years |
| • Employee personnel files | 7 years after termination |
| • Waivers | 7 years |
| • Incident Reports | 7 years |

LEASE AND MANAGEMENT AGREEMENT

This Lease and Management Agreement (hereinafter “Agreement”) is entered into on the ____ day of _____, 2023, (“Effective Date”) by and between the City of Norman, Oklahoma, a municipal corporation, referred to herein as the “City”, and Columbus Corporation of Oklahoma City, Inc., an Oklahoma not-for-profit corporation, hereinafter referred to as “Operator”, for the purpose of developing a contractual relationship related to the lease and management of the City’s planned multi-sport and indoor aquatic facility.

WHEREAS, Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, providing a one-half (1/2) percent sales tax dedicated to fund a number of Quality of Life projects, including \$22.5 million for a multi-sport and indoor aquatic facility; and

WHEREAS, the City adopted the Norman University North Park Amended and Restated Project Plan (O-1920-24) and the ancillary Amended and Restated Master Operating and Development Agreement (K-1920-82) in November 2019, which together provided for the donation of two (2) acres and the sale of an additional ten (10) acres for the multi-sport and indoor aquatic center (the “Facility”) to the City, funding for said purchase of land from existing tax increment revenues, and an additional \$2.7 million to be used as a construction enhancement for the multi-sport and indoor aquatic facility; and

WHEREAS, on June 18, 2020, the City entered into a Memorandum of Understanding (“MOU”) (K-1920-139) with the Trae Young Foundation, Inc. to provide for additional funding and an ongoing relationship related to the multi-sport and indoor aquatic facility; and

WHEREAS, in November 2020, after soliciting proposals pursuant to a Request for Proposals related to the operation of the Facility, and subsequent interviews, the City opted to enter into negotiations with Operator, for the ultimate lease and management of the multi-sport and indoor aquatic facility; and

WHEREAS, on December 1, 2020, the City entered into a purchase and sale agreement (K-2021-65) with University Town Center, LLC to accept the donation of two (2) acres and to purchase ten (10) acres on which the Facility is to be constructed (the “Land”);

WHEREAS, on February 9, 2021, the City entered into an MOU (K-2021-99) with Norman Regional Hospital Authority, an Oklahoma Public Trust d/b/a Norman Regional Health System (“NRHS”) to create a contractual relationship related to the construction funding and operation of the separate Sports and Human Performance Center (the “Center”); to be located within a designated portion of the Facility and

WHEREAS, on February 9, 2021, the City entered into an MOU (K-2021-93) with the Operator for the purpose of developing a contractual relationship related to the lease and management of the City’s planned multi-sport and indoor aquatic facility; and

WHEREAS, on July 13, 2021, the City entered into a Gift Agreement (K-2122-27) with the Trae Young Family Foundation providing for a gift totaling \$4,000,000 to supplement construction and establishing the name of the Facility as the Young Family Athletic Center (“YFAC”); and

~~WHEREAS, the Norman Municipal Authority and the Norman Tax Increment Finance Authority are authorized to enter into contractual arrangements for the benefit of its beneficiary, the City of Norman; and~~

WHEREAS, the City finds it appropriate, desirable, and in the public interest to enter into this Agreement in order to provide for the successful management, operation and administration of the Leased Premises to be managed and operated by Columbus Corporation of Oklahoma City, Inc.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Grant, Term of Lease and Certain Definitions

- 1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, the City does hereby lease, demise, and let unto Operator, and Operator does hereby take and lease from City, the Leased Premises, to have and to hold the Leased Premises, together with all the rights, privileges, easements, and appurtenances belong to or in any way pertaining to the Leased Premises, for the term and subject to the provisions hereinafter provided.
- 1.2 Term.
 - a) The initial term of this Lease shall be for a period commencing on the Effective Date and terminating on the 5th anniversary of the Operational Date, unless earlier terminated in accordance with the provisions of this Agreement.
 - b) The term of the Lease may be renewed for up to three (3) additional five-year terms upon written acceptance by the Parties.
- 1.3 Certain Definitions. The following terms and phrases shall have the meaning set forth in this Section.
 - a) Agreement. Refers to this document and all of its sections, signature page and exhibits.
 - b) Capital Item. Any furniture, fixture, or equipment on or in the Leased Premises that costs \$5,000 or more and has an expected life of more than one year.

- c) City Manager. The City Manager (or successor designation) of the City of Norman or such other City employee as may be designated by the City Manager to provide oversight and implementation of this agreement.
- d) Event of Default. Has the meaning set forth in Section 7.5.
- e) Facility. The various buildings and improvements located on the Land which comprise the multi-sport and indoor aquatic center, currently named the YFAC.
- f) Fee Schedule. Shall be the schedule of fees charged for the use of the Leased Premises which the Operator may assess in accordance with this Agreement's Initial Fee Schedule or any amendments thereto.
- g) Force Majeure. Any unforeseeable causes beyond a Party's control and without such Party's fault or negligence which renders that Party's ability to comply with any term(s) of this Agreement impossible or impractical, including, but not limited to, labor disputes, acts of God, acts of the public enemy, acts of any federal, state, or local government, natural disaster, declared national emergency, civil disobedience or disturbance, riot, terrorism, threat of terrorism, restraint by court or agency order, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation pursuant to federal, state, or local laws.
- h) Furniture, Fixtures and Equipment (hereinafter "FF&E"). Movable furniture, fixtures, or other equipment that have no permanent connection to the structure of a building. Furniture includes but is not limited to: tables, chairs, cabinets, desks, lamps, framed pictures/photographs. Fixtures includes but are not limited to: scoreboards, basketball backboards and support. Equipment includes but is not limited to: basketball rims, nets, basketballs, life jackets, ladders, pool covers, vacuums, scrubbers, lane markers, skimmers, pool filters, pool cleaner hoses, volleyballs, and the like.
- i) Healthcare. Healthcare as used in this Agreement is treatment and care for injuries occurring during tournaments and/or sporting events play.
- j) Land. The certain tract of land, upon which the Facility is constructed a portion of which relates to the Leased Premises, situated in the City of Norman, described in Exhibit A and made a part hereof for all purposes.
- k) Leased Premises. The Land, together with all buildings, fixtures, facilities and other improvements located on or affixed to the Land, with the exception of any such improvements that are funded and/or separately operated by or leased by the Norman Regional Hospital Authority.

- l) Member. An individual that utilizes the Leased Premises under the Fee Schedule.
- m) Operational Date. The date the Certificate of Occupancy is issued by the appropriate city agency to City and provided by City to Operator and upon which the Operator's operation and management duties and obligations provided hereinafter shall begin. Operator will be allowed access to the Leased Premises when the Temporary Certificate of Occupancy is issued by the appropriate city agency to City and provided by City to Operator.
- n) Parties. The City of Norman, ~~the Norman Municipal Authority, the Norman Tax Increment Finance Authority, and the Columbus Corporation of Oklahoma City, Inc.~~
- o) Partner. A business or entity that the Operator has contracted with to provide goods or services to benefit the users of the Facility.
- p) Programs and Services. Include the categories as shown on Exhibit B attached hereto.
- q) Project Manager. The Parks and Recreation Director of the City of Norman or such other City employee as may be designated by the Parks and Recreation Director to manage the construction and operation of the Facility.
- r) Open to Public. Open to the Public does not include those spaces of the Leased Premises in which private rentals are being held pursuant to the Rental/Booking Policies.
- s) Rental Agreement. The form which sets forth the terms and conditions for the renting of any part of the Leased Premises
- t) Subcontractor. Any business or entity that the Operator has contracted with to perform services for the Operator.
- u) Sublease. A lease and/or license granted by the Operator of all or any portion of the Operator's leasehold estate in the Leased Premises.
- v) Tenant. Any business or entity that has a sublease with the Operator.

ARTICLE II

Obligations During Planning and Construction

2.1 City Obligations during Planning and Construction

- a) The City will design and construct the Facility using funds made available for such purpose, including Norman Forward Sales Tax proceeds, tax increment finance district revenues, and other funding that may be made available for the project from time to time.
- b) The City will ensure Operator is provided the opportunity to participate in all planning and construction meetings as needed. City will provide Operator with sufficient prior notice of all such meeting dates.

2.2 Operator Obligations during Planning and Construction

- a) Operator will participate in all planning and construction meetings when requested by the Project Manager. City will provide Operator with sufficient prior notice of all such meeting dates.
- b) A representative with binding authority will attend City Council meetings, meetings of the Board of Park Commissioners, meetings of the Norman Forward Indoor Aquatic and Multi- Sport Facility Ad Hoc Advisory Group, and meetings of the Norman Forward Sales Tax Citizen's Financial Oversight board when requested by the Project Manager. City will provide Operator with sufficient prior notice of all such meeting dates.
- c) During planning and construction, Operator will use reasonable efforts to secure and contract with all Subcontractors, Tenants, and Partners it believes are necessary to manage and operate the Leased Premises as of the Operational Date.
- d) During planning and construction, Operator will use reasonable efforts to hire and train all staff and coordinate and train all volunteers necessary to manage and operate the Leased Premises as of the Operational Date.

ARTICLE III

Leased Premises

3.1 Demise

The City hereby leases and demises the Leased Premises to Operator, and the Operator hereby accepts the Leased Premises and agrees to be bound by the covenants, provisions, and terms set forth in this Agreement. Operator expressly acknowledges and warrants that neither Operator nor its Partners or Subcontractors shall prohibit or inhibit lawful public access, and use of, the Leased Premises except to the extent permitted by this Agreement.

3.2 Consideration

- a) The Parties agree that in consideration for the City's leasing the Leased Premises to the Operator, Operator will provide operation, management and maintenance of the Leased Premises pursuant to this Agreement and at no cost to the City except as expressly set forth herein.
- b) The Operator further agrees and consents to accept and bear sole financial responsibility for the proper and adequate funding of the start-up, management, and operation of the Leased Premises, which includes but is not limited to, utility bills, employee salaries and Leased Premises marketing unless otherwise provided herein.
- c) In consideration of the Operator's agreement to provide all necessary operating capital as well as acceptance of the financial risk, which the City acknowledges shall constitute substantial consideration of which the City is the beneficiary, the City agrees that Operator is entitled to receive and shall retain all net revenues including but not limited to: membership fees, food and beverage concessions, vending machines, catering, events, rentals, advertising, merchandising, special programs, sponsorship sales, and naming rights except for those provided for in the Gift Agreement, realized through the Operator's operation of Leased Premises in the manner and at the quality anticipated by this Agreement. . All such net revenues received by Operator shall be accounted for separately from any other facilities owned or managed by Operator. During the initial term of this Agreement, City shall pay and be responsible for the Leased Premises' water, sewer, trash and internet..
- d) Operator agrees to provide "scholarship programs to ensure there are not financial barriers for participation in sports offered at the Leased Premises."

3.3 "As-Is" Condition of Leased Premises

Upon the Operational Date of this Agreement, the Leased Premises shall be accepted by Operator in its "as-is" condition. "As-Is Condition" means in the condition to operate the Facility, including but not limited to the installation of all necessary permanent fixtures and striping to provide the activities listed in Exhibit B. Operator acknowledges that the City has not made any representations whatsoever in connection with the condition of the Leased Premises, or any portion thereof. Throughout construction of the Leased Premises, the City will conduct all necessary inspections and after completion, it will be inspected to ensure compliance with the plans and specifications and then presented to the City Council for final acceptance. City will provide Operator with copies of all inspection reports. The City shall not be liable for any latent, or patent defects in the Leased Premises, or any portion thereof. Any warranties provided to the City with the original construction of the Leased Premises, the FF&E, and other Capital Items will be held and maintained by the City; however the Operator may request repairs or replacements it believes are covered

under the warranty provisions pursuant to the procedures set forth in Section 6.2 herein. City will provide Operator with copies of all warranties mentioned herein.

3.4 Purpose and Use

The Leased Premises are to be used as the Young Family Athletic Center and shall be open and available to the public. The Leased Premises as a whole may not be converted for any other use, and restrictions or incompatible uses which would exclude its use as a multi-sport and indoor aquatics center are prohibited. It is understood by the Parties that it is permissible for Operator to rent or sublease some areas of the Leased Premises for temporary exclusive use pursuant to the terms of this Agreement.

The Parties agree that nothing in this Agreement shall be construed as preventing the City from entering the portion of the Leased Premises Open To Public at any time during the Term of this Agreement for the purpose of satisfying the obligations of the City or to ensure compliance with this Agreement. The City will provide 24-hours prior notice of any visit that may include access to administrative office areas in the Leased Premises and take all measures to not interfere with the operations and uses of the Leased Premises during any such visits. Nothing herein shall be interpreted to prevent City from entering the Leased Premises at any time for emergencies, including but not limited to, Leased Premises maintenance issues requiring an immediate response, law enforcement responses, etc. This provision does not grant the City the right to enter privately held events, except in situations of an emergency. **For purposes of this provision, City shall be defined as the following persons or their designee: the City Manager, Norman City Mayor, and the Norman Parks Board Chairperson.**

Additionally, the Leased Premises may be reserved for City functions or events, for the use of designated portions of the Leased Premises open and available to the public for up to eight (8) hours per event, at no cost to the City up to four (4) events per calendar year in accordance with the Rental/Booking Policies and Procedures. City's use of the Leased Premises as stated herein is on a per year basis only and shall not accumulate or accrue from year to year. City may schedule one of the 4 events for a weekend. The right of the City to reserve the Leased Premises shall be on a first come first serve basis with other events and uses. Operator shall not be required to move or reschedule an already scheduled event in order to accommodate a City function or event. City use herein will not prohibit Operator's use of those portions of the Leased Premises not being utilized by City.

3.5 Ownership of Assets

All property, improvements (including Operator Improvements), and membership data and information, associated with the operation and management of the Leased Premises are

solely the property of the City unless otherwise provided in this Agreement or any amendments thereto. Leased Premises equipment initially provided upon the Operational Date shall be considered the property of the City. Additional FF&E that is provided by the Operator, shall remain the property of the Operator. Upon termination or expiration of this Agreement all modifications or improvements to the Leased Premises that cannot be removed without damage to the Leased Premises, whether constructed by the City, Trust, or Operator shall become property of the City. Upon termination or expiration of this Agreement all modifications or improvements to the Leased Premises that can be removed without damage to the Leased Premises which were constructed and/or paid for by the Operator shall be considered the property of the Operator. Operator shall have thirty (30) days from the date of termination to remove all such property. Operator shall have access to membership data for legitimate business purposes for up to two (2) years after a termination or expiration of this Agreement. Notwithstanding the foregoing, the ownership of data processing programs and software and personal property purchased and owned by Operator shall remain with Operator. Additionally, any personal property or equipment provided by a Partner or Subcontractor of Operator shall remain with Operator or such Partner or Subcontractor, pursuant to any agreement regarding ownership between them.

3.6 Subleases

Operator shall be permitted to and is the only entity that can enter into subleases of the Leased Premises with one or more Tenants with written permission of the City Manager, whose approval shall not be unreasonably withheld, conditioned or delayed provided that Operator and Tenant fully comply with all provisions and requirements of this Agreement and the Leased Premises remains sufficiently open and available for its intended purpose and use. Operator shall cause all subleases to contain such provisions as may be necessary to cause said Tenant to abide by and conform to the requirements in this Agreement. Operator shall provide the City Manager with notice of any sublease including, but not limited to, the name, address, telephone number, fax number, email, and name of the contact person for purposes of notices or other communications. Termination of any sublease, other than for expiration of the sublease's term, shall require written approval by the City Manager, whose approval shall not be unreasonably withheld, conditioned, or delayed.

3.7 FF&E

The Leased Premises includes FF&E necessary for the operation of an indoor aquatic and multi-sport facility. A list of City FF&E placed in the Leased Premises will be provided to the Operator within thirty (30) days following the Operational Date of this Agreement. A list of Operator FF&E placed in the Leased Premises will be provided to the City within thirty (30) days following the Operational Date of this Agreement. Operator must maintain as a minimum, the same quantity of FF&E provided as of the Operational Date throughout the Initial Term and any Renewal Term of this Agreement. Operator must maintain an inventory list of all FF&E which includes who owns each item listed as further detailed in

Section 4.3(c). Operator is responsible for the maintenance of all FF&E in accordance with Section 6.1 of this Agreement and subject to 1.3(b).

3.8 Non-Discrimination for Use of the Leased Premises

- a) Operator agrees that it will not discriminate by segregation or otherwise on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex in furnishing or refusing to furnish, to such person or persons the use of the Leased Premises, and the improvements thereon, including any and all services, privileges, programs and activities provided thereby.
- b) Operator shall make its programs and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex; provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or programs customarily furnished by Operator solely to its employees, clients, and invitees.
- c) Operator is required to adopt and implement policies and procedures that prevent and discourage any staff, volunteer, agent, or tenant from discriminating against speech on the basis of viewpoint, including but not limited to proselytizing a particular religion, prohibiting advertising based solely upon the content, or only allowing artwork of one political view.
- d) In the event of Operator's noncompliance with this nondiscrimination clause, in addition to other remedies set forth in this Agreement, the City may treat it as an Event of Default under Section 7.5(a).
- e) Operator agrees to insert the above nondiscrimination clauses in any subleases, subcontracts or contracts by which said Operator grants a right or privilege to any person, firm, company, entity or corporation to render accommodations, work, product and/or services to the public on or from the Leased Premises. The above nondiscrimination clause is not required in Rental Agreements for the rental of space to parties not providing goods or services to the members on the Leased Premises.

ARTICLE IV

Operation

4.1 Agreed Conditions Relating to Leased Premises Operations

a) Days and Hours of Operation

The Parties agree that the Leased Premises will be open to the members at least sixty-five (65) hours a week, excluding weeks with federal holidays, and that those operating hours must include at least four (4) consecutive hours on one weekend day. The Operator has the discretion to determine the specific operating hours but shall make reasonable efforts to accommodate the needs of the community. This condition may be changed upon written approval of the Operator and the City Manager, which said approval will not be unreasonably withheld, conditioned or delayed.

b) Programming and Services

The Parties agree that Operator shall use its best efforts to offer the list of program and service categories included in Exhibit B at the Leased Premises. It is anticipated that the Operator will offer additional programs and services as the Operator deems appropriate to meet the needs of the members. The specific times, classes, or services offered shall be determined solely by the Operator. The Operator is responsible for all costs associated with the Programs and Services and any supplies necessary therefor.

c) Fees to Members

The Operator must establish a reasonable fee schedule for the members of the Facility. The Fee Schedule shall include a sliding scale that accounts for adjustments based upon the economic need of those members who would otherwise be unable able to use the Facility. ~~A copy of the initial Fee Schedule, which may be amended from time to time as needed per this Agreement, is attached hereto as Exhibit C.~~ A copy of the initial Fee schedule, which may be amended from time to time as needed per this agreement, will be delivered within 30 days of execution of this contract.

The Parties further agree that the fee schedule for members may only be increased once per calendar year. Operator's fee schedule shall provide for an up to 5% annual fee increase. Operator may assess an additional annual fee increase of up to 10% without City approval. Any increase, within the same calendar year, which exceeds the aforementioned increases are subject to City approval as provided herein. Proposed changes must first be presented to the Board of Parks Commissioners for its consideration. The Board of Parks Commissioners shall make a recommendation thereon, within the earlier of thirty (30) days of submission of said changes to it or its next regularly scheduled meeting, to the City Manager. Should The Board of Parks Commissioners not present its recommendation to the City Manager in said allotted time then the changes must be provided as submitted by Operator to the

City Manager for review and approval prior to implementation whose approval shall not be unreasonably withheld, conditioned or delayed.

d) Other Fees

All other fees for the use of or admittance to the Leased Premises shall be per the Fee Schedule.

e) Security for Leased Premises

Operator will provide all security measures necessary for the safe and secure operation, management, and maintenance of the Leased Premises. Operator is to determine what measures are necessary and must take all reasonable actions to ensure the Leased Premises is safe and secure.

4.2 Approval of Policies and Procedures

Operator must prepare and follow policies and/or procedures that address vital and routine functions associated with the management and operation of the Leased Premises. Within 90 days of the Operational Date, Operator will provide all policies or procedures pertaining to such subjects to the City Manager for review. Such policies or procedures must be approved by the City Manager, whose approval will not be unreasonably withheld, conditioned or delayed. The policies should include the following subject matters:

a) Leased Premises Use

b) Prohibition Against Abuse of Program Participants

c) Claims Reporting and Investigation - as relates to formal complaints and related incidents arising from providing services to members of the Leased Premises.

d) Leased Premises Rental/Booking Policies.

e) Finance and Accounting Procedures.

f) Safety Procedures - including but not limited to protocols for user safety, lifeguard staffing levels, emergency response procedures, communication, and other policies and procedures having an impact on the safety of members and staff.

All material changes in, additions to and other modifications of the approved Policies and Procedures, as from time to time proposed and presented by Operator, shall be subject to review by the City Manager.

4.3 Reporting Requirements

a) Quarterly Report.

On or before the 60th day after the end of the reporting quarter of any calendar year for which the Operator is managing the Leased Premises, the Operator will provide a report to the City Manager, which will include the following for the previous quarter:

1. An operating statement and balance sheet;
2. The number of members enrolled at the Leased Premises;
3. Attendance statistics;
4. Rental data; and
5. Any other additional information reasonably requested by the City Manager, which is reasonably available.

b) Annual Report.

Operator will provide an annual report, within 120 days after the end of the preceding calendar year, to the City Manager, which details the outcomes and performance measures listed below. Operator will also make a presentation summarizing this report to the Board of Parks Commissioners.

1. A financial report containing the budgeted and actual operating revenues and operating expenses for the previous calendar year
2. Outcome and performance measures including, but not limited to, the following data points:
 - A. The percent of members satisfied with the programs and services offered at the Leased Premises.
 - B. The percent of members satisfied with the Leased Premises.
3. A report providing the maintenance logs for all Capital Items for the previous year.
4. Any other additional information reasonably requested by the City Manager, which is reasonably available.

c) Inventory Report

The Operator shall conduct an initial inventory of all assets within thirty (30) days following the Operational Date. Said inventory shall include, but may not be limited to, any and all personal computers, furniture, fixture, and equipment, including office and maintenance equipment, and any other item utilized in the regular operations of the Leased Premises. The list shall not require paper products, office supplies, and general cleaning products. This initial inventory shall be submitted to the City Manager within forty-five (45) days of the Operational Date. The City shall provide to Operator an initial inventory of all assets within in forty-five (45) days following the Operational Date. Operator shall provide a combined list of all assets within sixty (60) days of the Operational Date, which Operator and City shall sign off on acknowledging its accuracy.

The Operator shall maintain a running inventory of Leased Premises FF&E, including those acquired or disposed of directly by the Operator, the City, or any other party, during the term of this Agreement and any renewal thereof. The inventory shall be agreed to annually in writing and shall be available for inspection with 48-hour notice by the City Manager or his/her designee. Upon termination of this Agreement, the City and the Operator shall mutually conduct an exit inventory. The exit inventory shall note whom owns each item of FF&E. Operator and City shall sign off on this inventory acknowledging its accuracy and noting any disagreements as to ownership. In the event the exit inventory reveals any discrepancy for which the Operator is responsible, the Operator shall perform an appropriate adjustment or payment, if any is due, to the City for the replacement value of the asset, less reasonable depreciation, to the satisfaction of the City Manager or his/her designee of any asset owned by it. Any adjustments and/or payments which may be required by the Operator as a result of any discrepancy resulting from such exit inventory shall be made within a reasonable amount of time, not to exceed sixty (60) days from the completion of the exit inventory.

4.4 Records and Audits

a) Record Retention

Operator shall keep and preserve the specified records pursuant to the Records Retention Schedule, attached hereto as Exhibit D, or longer if required by law. Retention of any other records is left to the discretion of the Operator.

b) Audits

An authorized representative of the City, including but not limited to an auditor engaged for such purpose, shall have the right to interview any current or former employee and shall have unrestricted access to books and records and any and all information, materials and data of every kind and character that may in the judgment of the City authorized representative have any bearing on, or pertain to,

any matters, rights, duties or obligations under this Agreement during reasonable business hours to the extent necessary to adequately permit evaluation and verification of Operator's compliance with terms of this Agreement provided 48 hours notice is given to Operator of City's intent to do so and shall not interfere with Operator's use or operations of the Facility. The City's rights granted herein are limited to the matter involving the Leased Premises, only.

The City shall have the right with 48-hour notice to cause nationally recognized independent auditors to audit all of the books of Operator relating to operating revenues and expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes and invoices related to transactions at, or on behalf of, the Leased Premises. Such audit shall be at no expense to the Operator and Operator shall be furnished copies of the final audit report and recommendations made because of the audit conducted. Any such audit shall not interfere with Operator's use or operations of the Leased Premises.

c) **Rights of the City Manager**

The City Manager may, upon ten (10) calendar days' notice to Operator, suspend or modify any rule, policy, procedure or term that has resulted, or will result, in the ouster of the public from the Leased Premises. This provision does not apply to the Rental/Booking Policies. Said action shall not take effect until such time as Operator has been afforded the opportunity to be heard and cure any such action before it takes effect. Ouster is defined as the wrongful exclusion of the public from the Leased Premises. In addition, the City Manager may, from time to time, enter the portion of the Leased Premises Open To Public at any time during the Term of this Agreement for the purpose of satisfying the obligations of the City or to ensure compliance with this Agreement. The City Manager will provide 24-hour notice of any visit that may include access to administrative office areas in the Leased Premises and will take all measures to not interfere with the operations and uses of the Leased Premises during any such visits. This provision does not permit the City Manager to have access to any private event being held at Leased Premises, absent an emergency. Nothing herein shall be interpreted to prevent the City Manager from entering the Leased Premises at any time for emergencies, including but not limited to, Leased Premises maintenance issues requiring an immediate response or law enforcement responses, etc.

ARTICLE V

Management of Leased Premises

5.1 Business Management

The Operator is organized as an Oklahoma not-for-profit corporation and agrees that it will meet all statutory requirements for operation as a not-for-profit corporation. Failure to comply with this obligation will be considered an Event of Default subject to termination under Section 7.5(a) herein. Should Operator lose its non-profit status solely due to a change in federal or state law, such loss of designation shall not be considered an Event of Default of this Agreement.

5.2 Employees and Volunteers

a) Operator's Employees

The Operator shall employ competent, qualified, and licensed, if necessary, employees. The positions listed below or similarly named role will be filled by Operator. Positions other than those listed below may be staffed as Operator deems necessary and appropriate. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with the Director of the Facility, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

Director
Assistant Director
Operations Director
Program Director

Operator employees shall not be considered employees of the City for any purpose. The sole responsibility for supervision, daily direction and control, training, and setting and paying compensation and any employee benefits, including workers' compensation benefits, shall be the obligation of the Operator. All costs related to employees shall be the responsibility of the Operator.

b) Background Checks

Operator is required to perform a background check, at Operator's expense, on all employees and volunteers working at least ten (10) hours per week at the Facility, as well as volunteer youth team coaches.

c) Employment Policies and Procedures

Operator must provide a copy of all employee policies and/or procedures to be used at the Leased Premises to the City Manager within 90 days of the Operational Date of this Agreement.

d) Non- Discrimination of Employee and Volunteers

The Operator shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. The Operator shall ensure that employees or applicants for employment are treated without regard to their race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The Operator will, in all solicitations or advertisements for employees placed by or on behalf of Operator, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex. In the event of Operator's noncompliance with this nondiscrimination clause, in addition to other remedies set forth in this Agreement, the City may treat such event as an Event of Default under Section 7.5(a).

Operator agrees to include this nondiscrimination clause in any contracts and subcontracts connected with the performance of this Agreement. The above nondiscrimination clause is not required in Rental Agreements for the rental of space to parties not providing goods or services to the members of the Leased Premises.

5.3 Partners

Within sixty (60) days after the Operational Date, the Operator agrees to provide to the City Manager a list of all Partners the Operator intends to engage to perform services related to this Agreement. The Operator is required to update this list as additional Partners are engaged to provide services at the Leased Premises. Notwithstanding the approval of any Partner contracted with the Operator, the Operator shall be solely responsible for the collection or payment of any fees of such Partner, the services performed by such Partner, and monitoring such Partner.

The Operator shall contract with competent, qualified, and licensed, if necessary, Partners. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with a Partner, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen (15) days of such notice, or as soon thereafter as is possible, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

5.4 Subcontractors

Within sixty (60) days after the Operational Date, the Operator agrees to provide to the City Manager a list of any Subcontractors the Operator intends to engage to perform services related to this Agreement. The Operator is required to update this list as additional Subcontractors are engaged to perform work or provide services at the Leased Premises. Notwithstanding the approval of any Subcontractor hired by the Operator, the Operator shall be solely responsible for the fees of such Subcontractor, the services performed by such Subcontractor, and monitoring such Subcontractor.

All service-related subcontracts entered into by the Operator after the Effective Date of this Agreement for a term longer than one (1) year shall contain a clause that allows the City Manager, in the event that this Agreement is terminated, to terminate the subcontractor agreement, with or without cause, upon thirty (30) days written notice. The Parties agree that this termination provision is not required in any ticketing, telephone, HVAC maintenance or fire suppression systems agreement.

The Operator shall contract with competent, qualified, and licensed, if necessary, Subcontractors. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with a Subcontractor, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

5.5 Rental of the Leased Premises

a) Rentals During Operating Hours.

The Operator may rent any portion of the Leased Premises space during hours of operation on a first come, first serve basis according to the approved Leased Premises Rental/Booking Policies provided previously scheduled programming or services are not reduced as a result of such rental or booking. The spaces where such rentals are held will not be considered Open To Public spaces. Operator may charge and collect a reasonable rental fee that is listed in the Fee Schedule included in the approved Leased Premises Rental/Booking Policies. The Operator may also

charge a fee for parking during events at a rate not-to-exceed such amount as may be included on the approved Fee Schedule for parking.

b) After Hours Rentals

The Operator may rent any portion of the Leased Premises after hours of operation on a first come, first serve basis according to the approved Leased Premises Rental/Booking Policies. The spaces where such rentals are held will not be considered Open To Public spaces. Operator may charge and collect a reasonable rental fee which is listed in the Fee Schedule included in the approved Leased Premises Rental/Booking Policies. The Operator may also charge a fee for parking on the Leased Premises during events at a rate not-to-exceed such amount as may be included on the approved Fee Schedule for parking.

Operator may enter into a separate Leased Premises Use Agreement with Norman Regional Hospital Authority for its use of the Leased Premises during or after hours, pursuant to the Rental/Booking Policies and the Fee Schedule

c) General Requirements for Rental of the Facility

All rentals must be subject to completion of a Rental Agreement. If the Facility, or parts of the Leased Premises, is rented or leased for civic, cultural or educational purposes of any kind, the Leased Premises Rental/Booking Policies will require that the Leased Premises be made available for all types of civic, cultural, or educational purposes. The parties acknowledge that sports/athletics that include civic, cultural, and/or educational aspects are exempted from this requirement.

5.6 Vending, Catering, and Merchandise

Operator shall have exclusive right to manage and operate vending, catering, concession sales and merchandising within the Leased Premises and retain all revenue therefrom.

5.7 Sponsorship Agreements

a) Sponsorship Agreement for Naming Rights within the Leased Premises or Operator Events

The Operator retains the ability to enter into sponsorship agreements for naming rights of rooms, amenities, or programs inside the Leased Premises, as well as events held in the Leased Premises, subject to the approval of the City Manager, whose approval shall not be unreasonably withheld, conditioned or delayed and may retain all proceeds of such agreements.

b) Sponsorship Agreements for Advertising within the Facility

The Operator retains the ability to enter into sponsorship agreements for advertising inside the Leased Premises subject to the approval of the City Manager, whose approval shall not be unreasonably withheld, conditioned or delayed, and shall retain all proceeds of such agreements.

c) Exclusive Partnership

1. The Operator agrees that the NRHS will be the exclusive healthcare partner of the Facility. For purposes of exclusivity healthcare services are limited to solely provided by a “covered entity” under HIPPA.
2. Marketing and Promotion Rights. NRHS, as the exclusive healthcare partner of the Facility, will, at its option, provide athletic training services for large tournaments and sporting events unless the tournaments and/or sporting events have their own training services, display banners and signage within basketball and volleyball court pursuant to Operator’s rates, ~~provide and promote VIP space within the Center for use by coaches, trainers, and schools,~~ indoor aquatics space and other areas of the Facility, provide and promote VIP space within the Center for use by coaches, trainers, and schools, sell (within the Center) medical equipment, clothing, and other merchandise consistent with the mission of the Center, promote facility and sports and human performance center activities and service using multi-media communication channels, and host health and wellness events within the Facility subject to the provisions of 5.7(c)(3) herein.
3. Use of the Facility. NRHS may have access to all or any portion of the Leased Premises during or after hours of operation on a first come, first serve basis according to the Leased Premises Rental/Booking Policies and at the current rental rates.

- d) Event Streaming: If transmission of events held at the Leased Premises are allowed under the terms of any event agreement, such events may be streamed in the Center using NRHS’ equipment, unless event agreement prohibits such. The Parties agree that all exclusive advertising and sponsorship agreements entered into by Operator associated with the Leased Premises shall not prohibit advertising/signage for competitor's products for a special event that is required to display such competitive temporary signage on the Leased Premises pursuant to a contractual obligation.

5.8 Customer Service

The Operator shall deploy strategies and tactics to ensure a high-quality customer service experience for all guests and members. Such tactics may include, but are not limited to, the utilization of a professional secret shopper, a queue management system, and guest feedback and customer survey systems.

ARTICLE VI

Maintenance, Replacement and Modifications

6.1 Maintenance, Repair and Replacement of Non-Capital Items

The Operator shall be responsible for all routine maintenance and general repair and replacement, of the FF&E, excluding Capital Items, in or on the Leased Premises, including landscaping. The Operator shall be responsible for the cost of any and all supplies necessary for the operation and maintenance of the Leased Premises. These obligations include, but are not limited to, maintenance of all components of the pool and repairs of components of the pool that are not considered Capital Items, and any supplies necessary for such.

Routine maintenance shall include, but shall not be limited to, ground and lawn maintenance, custodial services, security, and regular servicing, boiler maintenance and regular servicing, painting, repairs, periodic servicing and maintenance of the water features (including pumps, water quality, and related mechanical work) , and all solid waste removal costs. Any failure or delay to repair or replace Non-Capital Items shall not be considered a breach of this Agreement by Operator. If the City delays, or fails to repair or replace, than any damage which occurs to other property or item, regardless of nature, due to such delay or failure it will be the responsibility of the City to repair or replace said property or item damaged as a result thereof.

The Leased Premises is, and at all times shall be, accessible and compliant with the Americans with Disabilities Act of 1990.

6.2 Maintenance, Repair and Replacement of Capital Items

City shall provide Operator with a list of all Capital Items within thirty (30) days of the Operational Date. The City will repair or replace any Capital Item, subject to funds being available, if the Operator has maintained such items according to the maintenance standards provided by the City. Operator will provide City with a report providing the maintenance logs for all Capital Items for the previous year.

The Operator shall submit any requests for Capital Item repairs or replacements to the City Manager and must include the estimated cost of repair and replacement cost of each Capital Item. The Operator must also include with the request, a copy of the maintenance record for each Capital Item included. The City Manager will decide whether a request for Capital Item repairs or replacements shall be approved and in what manner the repair or replacement may be conducted. Any failure to repair, replace, or a delay to repair or replace such Capital Items that have been maintained by Operator in accordance with this Section 6 as a result of City's lack of funds, or refusal by City Manager to approve the repair or

replacement shall not be considered a breach of this Agreement on Operator's part. This procedure shall also be used for any requests for repairs or replacement of items covered by any Leased Premises related warranties held by the City. Said decision or approval shall not be unreasonably withheld, conditioned or delayed. If the City delays, or fails to repair or replace than any damage to other property due to such delay or failure will be the responsibility of the City to repair or replace said property or item damaged as a result thereof.

6.3 Additions, Modifications, or Renovations

- a) The Operator may only make additions, modify, or renovate the Leased Premises upon written approval of the City Manager which shall not be unreasonably withheld, conditioned or delayed.
- b) Upon receiving such approval and prior to beginning construction, the Operator shall submit all plans and specifications to the City Engineer for review and approval, which shall not be unreasonably withheld, conditioned or delayed.
- c) After receipt of approval by the City Engineer of plans and specifications, which shall not be unreasonably withheld, conditioned or delayed, the Operator shall also be required to obtain all building permits, other permits and licenses as required by municipal, state or federal law.
- d) The Operator shall submit the construction contract and bonds for the additions, modifications, or renovation of Leased Premises to the City Engineer for approval, which shall not be unreasonably withheld, conditioned or delayed.
- e) The Operator must notify the City Engineer of the commencement of any construction at least ten (10) days before beginning of any construction. The Operator is responsible for and shall barricade or secure any unsafe area pending such construction. Within thirty (30) days of completion of any construction, the Operator shall obtain an unqualified Certificate of Completion from the Operator's licensed architect or engineer for each additions, modifications, or renovation of Leased Premises and provide such Certificate to the City Engineer with a request for a final inspection. Within forty-five (45) days of the completion of any construction, the Operator shall provide a complete set of "as- built" drawings to the City Engineer for approval, including, but not limited to, structures, plumbing, heating, ventilating, air conditioning, mechanical and electrical systems, as may be necessary to document all construction. Each addition, modification, or renovation of Leased Premises shall be submitted to the City Council for final acceptance after receipt of the "as- built" drawings and final inspection by the City Engineer. Said acceptance and/or approval shall not be unreasonably withheld, conditioned or delayed.

All construction contracts with third-parties for any construction must require the above provision be followed. Nothing herein shall be deemed to affect or waive any obligation of the Operator or its agents, subleases, tenants, or employees to obtain approval of plans by the City Engineer or to obtain any required permits. Nothing herein shall be deemed to affect or waive any inspection of any activity, improvement or facility as required by City ordinances, or state law or federal law.

6.4 Emergency Repairs

The Operator may act in situations in which emergency supplies, materials, equipment or contractual services are necessary to maintain operations or are necessary for the immediate preservation of the peace, health, or safety of the general public, including spending and committing funds held in operating accounts, even if such expenses are not budgeted, provided funds are available in the accounts for any purpose. Operator is to notify the City Manager of any such action within 24 hours or as soon thereafter as is reasonable.

The Operator shall, in the event of such emergency prepare and retain adequate documentation concerning the circumstances surrounding the emergency and any and all funds relating to said emergency. Any emergency repair must comply with the City of Norman Purchasing Policies and Procedures. City will provide Operator with a copy of the Norman Purchasing Policies and Procedures within thirty (30) days of the Effective Date

Immediately following such action, the Operator and the City Manager shall determine whether any funds expended related to the emergency should be reimbursed as payment for the repair or replacement of Capital Items. If reimbursement is necessary, such reimbursement shall be paid by the City within sixty (60) days of approval of the request for reimbursement.

ARTICLE VII

Additional Terms

7.1 Indemnity

The Parties hereby mutually agree to release, defend, indemnify, and save harmless the other, its officers, agents, and employees, from and against (i) any and all loss of or damage to property OR injuries to or death of any person or persons, OR any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way caused by, resulting from, or arising out of the other's negligent acts, operations, errors or omissions or the other's use and occupancy of any portion of the Leased Premises, and (iii) any and all loss of or damage to property OR injuries to

or death of any person or persons, OR any and all claims, damages , suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way caused by, resulting from, or arising out of the negligent acts, operations, errors and omissions of the other's officers, employees, representatives, suppliers, invitees, subcontractors, Tenants or agents in connection with this Agreement.

The minimum insurance requirements set forth below shall not be deemed to limit or define the obligations of the either Party hereunder.

This section shall survive the expiration of the Agreement. Provided, however, that neither Party shall not be liable hereunder for any loss solely occasioned by the negligence of the Party or its officers, agents, and employees. This Indemnity provision does not apply to Workers' Compensation claims by City employees. The Parties agree to give the others prompt notice, in writing, of any claims, suits, actions or proceedings.

7.2 Insurance

- a) General Requirement. The Operator shall obtain insurance coverage for the Leased Premises as provided below with coverage to begin no later than the Operational Date. The Operator must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the State of Oklahoma and are acceptable to the City, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Agreement under any other provision of this Agreement, including but not limited to any indemnification provision.

- b) Additional Insureds: All liability policies (except worker's compensation and employer's liability policies) shall name the City as an additional insured without reservation or restriction.

All insurance coverage of the Operator shall be primary to any insurance or self-insurance program carried by the City.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

- c) Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Operator is stating a deductible does not exist and thus a deductible is not approved or accepted.

Self-insured retentions will not be accepted unless accompanied by a bond or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Operator's self-insured retention.

- d) Policy Limits: The insurance coverage and limits required of the Operator under this Agreement are designed to meet the minimum requirements of the City. Such coverage and limits are not designed as a recommended insurance program for the Operator. The Operator alone shall be responsible for the sufficiency of its own insurance program. Should the Operator have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, the Operator should seek professional assistance.

All policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Operator shall also provide tail coverage that extends a minimum of one year from the expiration of this Agreement.

The minimum amounts of such insurance policies and continuing coverage shall be:

1. Worker's Compensation and Employer's Liability Insurance. The Operator shall provide and maintain, during the term of the Agreement, worker's compensation insurance as prescribed by the laws of the State of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the Leased Premises and working on the Leased Premises, and in case any work is subcontracted, the Operator shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Operator. In the event any class of employees engaged in work/services performed at or on the Leased Premises is not protected under such insurance heretofore mentioned, the Operator shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
2. Commercial General Liability Insurance. The Operator shall provide and maintain commercial general liability insurance coverage, for the Leased Premises, sufficient to meet the maximum cumulative liability of all parties

to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Operator shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$2,000,000.

3. Automobile Liability Insurance. If the Operator provides transportation in connection with the operation of the Leased Premises, the Operator shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Operator shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$200,000.
 4. Fidelity and Crime Insurance. Fidelity and Crime Insurance, for the leased Premises, which includes but is not limited to Burglary, Theft and Employee Dishonesty with a blanket limit of One Million Dollars (\$1,000,000), shall be provided. Such insurance shall also include coverage for money and securities, valuable papers. The City of Norman shall be named as loss payee.
- e) Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates must be provided to the City Manager prior to the Operational Date must be updated each year. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- f) Cancellation: There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage, during any term of this Agreement.

The Operator authorizes the City to confirm all information so furnished as to the Operator's compliance with its bonds and insurance requirements with the Operator's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Agreement is a breach of this Agreement for which the Operator shall be liable for damages, losses, and costs incurred by the City. Regardless of any termination clause included in this Agreement, the City may at its option suspend this Agreement until there is full compliance with this Section, or may cancel or terminate this Agreement and seek damages for the breach. The remedies in this paragraph shall not be deemed to

waive or release any remedy available to the City. The City expressly reserves the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the Operator shall immediately notify the City and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit, the Operator hereby agrees to promptly authorize and have delivered such statement to the City.

- g) **Duration of Coverage.** All insurance coverage required under this Agreement shall be maintained in full force and effect for the term of this Agreement and any renewals and for a period of two (2) years after the expiration or conclusion of this Agreement.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Agreement.

- 7.3 **Emergencies.** In the event of a declared local, state, or national emergency, the City will have the right to use the ~~Facility~~ Leased Premises, in cooperation with Operator, to address community needs that may arise from such emergency until the state of emergency has ended.

- 7.4 **Participation on Board of Directors.** Upon execution of this Agreement, the City Manager or his/her designee shall serve on Operator's Board of Directors in an ex-officio capacity. He or she may take part in discussions but shall not have any authority to vote on any matter before the Board. Additionally, the Operator will appoint three Norman residents to serve on its Board of Directors for Facility.

- 7.5 **Termination**

This Agreement may be terminated as follows:

- a) **Termination for Default.**

Failure to perform any duty or obligation under this Agreement, through no fault of the other party, shall be considered an Event of Default resulting in termination of this Agreement. The non-defaulting party may initiate termination by providing sixty (60) days prior written notice. The defaulting party shall be provided a reasonable opportunity to be heard by the Norman Parks Board which shall render its decision. Either party may seek mediation if they are not satisfied with the decision of the Board. Operator may cure any such default prior to action being taken by the City. The remedies in this paragraph shall not be deemed to waive or release any remedy available

to parties. Either party expressly reserves the right to pursue and enforce any other cause or remedy in equity or at law.

b) Assignment and Assumption of Certain Contracts Upon Termination.

In the event of expiration or early termination of this Agreement, regardless of the reason for said termination, Operator shall immediately assign to the City any unfulfilled contracts and future booking engagements, and the City may assume the obligation to perform such contracts and booking engagements thereafter. The change of a party's name or title designation shall have no effect on this Agreement, its terms, its legality, or its binding effect on or of the current Parties.

7.6 Successors -In- Interest

Either party may have a successor in interest take over its responsibilities and obligations in this Agreement. Operator may form a subsidiary entity to handle the management and operation of the Leased Premises and/or duties and obligations herein of Operator. Any such entity shall be fully bound by the terms and conditions of this Agreement.

7.7 Encumbrances, Liens, and Claims

At all times during the Term of this Agreement the Operator shall pay for all labor it performs, or contracts with another party to perform, and all products, equipment and materials furnished for, the construction, alteration, renovation or maintenance of all the Leased Premises after the Operational Date and as authorized herein. The Operator shall keep the Leased Premises free and clear of any and all claims attaching to real property including but not limited to liens and encumbrances (collectively referred to in this Section as "liens" or "encumbrances"). Further, the Operator shall pay each and every judgment made or given against the Leased Premises, or any part thereof, or against the City, on account of any above described lien or encumbrance, unless otherwise stated to the contrary herein. The Operator shall, at its sole cost and expense, defend, indemnify and hold the City harmless from every lien or encumbrance, and every action on account of any and all such liens and encumbrances, or obligation for labor, products, equipment or materials incurred during any Term of this Agreement, whether by the Operator or any Tenant, including, by way of illustration and not of limitation, laborer's, mechanic's and materialman's liens, and any other liens and encumbrances not specifically enumerated herein, but which are not liens or encumbrances as a result of the City or Trust's action. Nothing contained herein shall, in any way, prejudice the Operator's right to contest any final judgment or decree prior to payment thereof. This provision shall only apply to labor hired by Operator, or contracts entered into by it, and products, equipment, materials furnished for, the construction, alteration, renovation, or maintenance conducted by Operator.

As long as the Operator is using its best efforts and is actively pursuing, in good faith, the removal of claims, liens and encumbrances, the failure of the Operator to immediately remove liens and encumbrances from the Leased Premises shall not be deemed an Event of Default. Provided, however, should the Operator fail to "bond off," remove or challenge in a court of appropriate jurisdiction any lien or encumbrance within thirty (30) days of attachment, the City may pay and satisfy such lien or encumbrance and Operator, within thirty (30) days of demand, pay to the City the said sum in full.

Operator shall require a similar prohibition in all contracts, leases, and subleases to protect the City, Trust, and Leased Premises from liens and encumbrances.

This provision shall survive the termination, expiration, cancellation or non-renewal of this Agreement.

7.8 Notices

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Addresses may be changed by either party giving ten days prior written notice thereof to the other party.

The City:

Darrel Pyle, City Manager
The City of Norman
201 W. Gray St.
Norman, Oklahoma 73069

With copy to:

Kathryn Walker, City Attorney
The City of Norman
201 W. Gray St.
Norman, Oklahoma 73069

The Operator:

Matthew Bond, Executive Director
Columbus Corporation of Oklahoma City, Inc.
6300 N. Santa Fe Avenue
Oklahoma City, Oklahoma 73118

7.9 Applicable Law

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oklahoma. The laws of the State of Oklahoma shall be applied to every

interpretation, action, enforcement or other legal or equitable proceeding involving this Agreement, and any duty, right, interest, covenant, obligation and activity under this Agreement.

7.10 Compliance with Laws, Ordinances, Specifications and Regulations

The Parties shall comply with all federal, state, and local statutes, laws, standards, codes, ordinances, rules and regulations, and all subsequent amendments and additions thereto, pertaining, in any manner, to the operations, construction, maintenance, activities and/or services provided or permitted by this Agreement. The Parties shall protect, defend, indemnify and forever hold harmless the other from and against any penalty, fine, damage, expense, cost or charge imposed, assessed or incurred for that Party's violation or breach of any such statutes, laws, standards, codes, ordinances, rules or regulations occasioned by the negligence, acts or omissions of it that Party's Tenant, Subcontractor, Partner, or user of the Leased Premises, or any portion thereof.

7.11 Assignment

Inasmuch as this Agreement is a personal service agreement which relies on the personal integrity, financial standing and unique ability and expertise of the Operator to assist in the operation and management of the Leased Premises, it has been agreed by Parties that the Operator may not assign its interest or obligations in said Agreements without prior written consent of the City. The change of its name by any Party shall have no effect on this Agreement, its terms its legality or its binding effect on the currently named Parties. The City shall provide 24-hour notice to Operator before it assigns this Agreement to another and any entity to whom it is assigned shall be bound by and subjected to the terms of this Agreement.

7.12 Severability

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

7.13 Amendment

This Agreement may only be amended in a writing approved by the Operator and the City Council of The City of Norman ~~and the Trustees of the Norman Municipal Authority.~~

7.14 Execution in Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7.15 Descriptive Headings

The headings of the Sections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of said Section of this Agreement.

7.16 Survival of Representations

All written representations and covenants of the Parties contained in this Agreement shall survive the non-renewal, termination, cancellation or expiration of this Agreement.

7.17 Parties Bound

This Agreement shall be binding upon and inure to the benefit of all Parties. This Agreement is solely for the benefit of the Parties and their successors in interest, and none of the provisions hereof are intended to create a third-party beneficiary or benefit third parties.

7.18 Force Majeure

Except as otherwise herein expressly provided, if any Party shall be delayed or hindered in, or prevented from, the performance of any obligation hereunder, as a result of any Force Majeure (as defined in Section 1.h of this Agreement), and, provided that the Party delayed, hindered or prevented from performing notifies the other Party both of the commencement and the expiration of such delay, hindrance or prevention (each notice being required within ten (10) business days of the respective event), then the performance of such obligation shall be excused for the period of such delays, hindrance or prevention and the period for the performance of such obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Failure to so provide the foregoing notice will result in waivers of both excuse in performance and extension of time to perform under this paragraph with respect to any such delay, hindrance or prevention.

7.19 Construction and Enforcement

In the event of ambiguity in any of the provisions of this Agreement, this Agreement shall not be construed for or against any party on the basis that such party did or did not author the same.

7.20 Venue of Actions

The Parties agree that if any legal action is brought pursuant to this Agreement, such action shall be instituted in the Twenty-third Judicial District, District Court of Cleveland County State of Oklahoma.

7.21 No Partnership Created

The Parties expressly agree that the relationship hereby created is that of independent contractors and no other relationship is created or deemed to be created between the Parties. This Agreement specifically does not create any partnership or joint venture between the Parties, or render any party liable for any of the debts or obligations of any other party.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the Parties have caused this Lease and Management Agreement to be executed and effective as of the date set forth above.

COLUMBUS CORPORATION OF OKLAHOMA CITY, INC.

BY: _____
Signature

Title

ATTEST: _____
Corporate Secretary

CITY OF NORMAN, OKLAHOMA

BY: _____
Mayor

ATTEST: _____
City Clerk

Approved as to form and legality this ____ day of _____, 202__.

City Attorney/General Counsel

EXHIBIT A

A tract of land lying in the Northwest Quarter (NW/4) of Section Twenty-four (24) AND the Northeast Quarter (NE/4) of Section Twenty-three (23), Township Nine (9) North, Range Three (3) West of the Indian Meridian, Cleveland County, Oklahoma and being more particularly described as follows:
Commencing at the Northeast Corner of the Northeast Quarter (NE/4) of Section Twenty-three (23), Township Nine (9) North, Range Three (3) West, of the Indian Meridian, Cleveland County, Oklahoma;
Thence South 89°06'20.0" West along the North line of said Northeast Quarter (NE/4) a distance of 112.35 feet;
Thence South 1°02'48.00" West a distance of 414.90 feet to the point of beginning;
Thence South 88°58'04.67" East a distance of 478.59 feet;
Thence South 00°38'00.09" East a distance of 1049.00 feet;
Thence North 70°25'58.00 West a distance of 401.10 feet to a point non-tangent curvature;
Thence Northeasterly along a non-tangent curve to the left having radius of 300.00 feet said curve subtended by a chord which bears N 07°49'15.0" E a distance of 19.41 feet for an arc distance of 19.41 feet;
Thence North 70°25'58.00" West a distance of 201.75 feet;
Thence North 01°02'48.0" East a distance of 837.64 feet;
Thence South 88°58'04.67" East a distance of 60.00 feet to the point of beginning.

EXHIBIT B

Programming and Service Categories

1. Basketball: youth and adult basketball leagues, opportunities for organized team practices, rentals, camps and recreational open play.
2. Volleyball: youth and adult volleyball leagues, opportunities for organized team practices, rentals, camps and recreational open play.
3. Indoor Aquatics: swim lessons and coaching, club swim practices, lap swim opportunities, and open swim time.
4. Pickleball: consistent daily indoor pickleball court time.
5. Adaptive Sports: year-round, consistent adaptive sports programing for people with disabilities for the youth and adult population.
6. Other sports: includes providing the opportunity for other sports as demand dictates including dodgeball, ultimate Frisbee, table tennis, gymnastics, dance and cheerleading.
7. Local, State, Regional and National Sports Competitions: this includes hosting larger scale tournaments for basketball, volleyball, swimming, pickleball, futsal, badminton and wrestling.

**EXHIBIT C
INITIAL FEE SCHEDULE**

DRAFT

EXHIBIT D RECORD RETENTION SCHEDULE

The purpose of this schedule is to define the retention period for documents vital to the operation of the Facility Leased Premises.

Records and documents of the Operator shall be retained as follows:

- Corporate Legal Documents 7 years
- Financial Records – AP Vouchers, Bank Statements, etc. 7 years after the termination of this Agreement
- Audit Reports & Tax Returns 7 years
- Contracts, Notes and Leases 7 years after expiration of Each
- Payroll records 7 years
- Employee personnel files 7 years after termination of employment
- Waivers 7 years
- Incident Reports 7 years