

MANAGEMENT AGREEMENT
(Authority Facility)

This **MANAGEMENT AGREEMENT**, including any and all exhibits attached hereto (the “**Management Agreement**”), is entered into as of the 23rd day of May, 2019 (“**Effective Date**”), by and between **WHEATLANDS PARK AND RECREATION AUTHORITY**, a political subdivision of the State of Colorado (the “**Authority**”), and **THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF METROPOLITAN DENVER D/B/A YMCA OF METROPOLITAN DENVER**, a Colorado non-profit corporation (the “**YMCA**”). The Authority and the YMCA are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, the Authority was created pursuant to the Colorado Constitution, Article XIV, Section 18(2) and Sections 29-1-203, C.R.S. and 29-1-203.5, C.R.S., upon the mutual execution of that certain Establishment Agreement by and between the Wheatlands Metropolitan District (the “**District**”) and the High Plains Metropolitan District, dated January 19, 2016 (the “**Establishing Agreement**”); and

WHEREAS, in accordance with Section 1.02 of the Establishing Agreement, the Authority was created for the purpose of providing certain park and recreation services and improvements, specifically including the phased construction, financing, and operation of an approximately 67,000 square foot recreation center and gym with an aquatic center (with Land, as defined below, and the entire proposed project being called the “**Facility**”) with an approximate 40,525 square foot recreation center and aquatic center comprising “**Phase One**” and the remainder of the proposed project called “**Phase Two.**” For purposes of this Agreement, the term “**Recreation Center**” will refer to the then-operational portion of the Facility; and

WHEREAS, the Authority has been working towards obtaining senior construction financing for the Recreation Center from a senior lender (the “**Bank**”) and anticipates entering into that certain Loan Agreement by and between the Authority and the Bank (the “**Senior Loan Agreement**”); and

WHEREAS, the Authority is also intending to obtain subordinate financing from one or more subordinate lenders (collectively the “**Subordinate Lenders**”) and anticipates entering into separate loan agreements with each of the Subordinate Lenders (each a “**Subordinate Loan Agreement**”); and

WHEREAS, the closing of the separate loans from the Bank and the Subordinate Lenders is called the “**Loan Closing**”; and

WHEREAS, the Authority intends to construct the Facility on real property to be acquired from the District contemporaneously with the Loan Closing and legally described as Lot, 1, Block 5, Wheatlands Subdivision Filing No. 6, City of Aurora, State of Colorado (called, the “**Land**”), and the Authority wishes to operate the Recreation Center economically and to provide a high level of safety, security and quality of service for users of the Recreation Center; and

WHEREAS, pursuant to Section 3.02 of the Establishing Agreement, the Authority is empowered to enter into contracts and agreements affecting the affairs of the Authority, including for the purpose of operating and managing the Facility; and

WHEREAS, the YMCA has the requisite experience with respect to the purposes of this Management Agreement, and the Authority desires to engage the YMCA to oversee the overall management of the Recreation Center, including the provision of certain recreational services and other programs at the Recreation Center (the “**Services**”); and

WHEREAS, the YMCA has contributed, or will contribute, both financial support and the time of its agents to assist in the construction of the Facility; and

WHEREAS, the Parties desire to set forth the intentions, understandings, and agreement between the Parties regarding the terms and conditions for management, operation and maintenance of the Recreation Center.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **SUMMARY.** The Parties now desire to enter into this Management Agreement for the management and operation of the Recreation Center, which obligations will commence following the phased completion of its construction. The Facility is expected to include a recreation building, wellness center, aquatic facilities, family interactive center and outdoor children’s playground facilities, all of which will be constructed in one or more phases. The Parties agree that the YMCA (in consultation with the Authority and subject to the right of the Authority to request additional services under Section 13) has the right to approve the programs, usages and services to be operated at the Recreation Center, which will be implemented and managed by the YMCA. An initial (but not exclusive) list of approved programs, usages and services that the YMCA may provide is included in **Exhibit A**, which is attached to this Management Agreement. The Authority shall maintain ownership of and control over the Recreation Center as set forth in this Management Agreement and in other agreements between the Parties. The YMCA will provide all materials, certain equipment, and employees related to program offerings, and the YMCA may consult with the Authority prior to posting and/or distribution. Nothing in this Management Agreement will restrict or affect the YMCA’s ability and authority to operate any portion of the Facility the YMCA leases or owns.

2. **SCOPE OF SERVICES/MANAGEMENT RESPONSIBILITIES.** The YMCA shall be responsible for the management and operation of all areas of the Recreation Center, its programs and services. The YMCA shall perform the services offered in the Recreation Center: (a) in a first-class manner, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) pursuant to the Services specified in said **Exhibit A**, which may be implemented based on the needs of the membership and modified from time to time upon written consent of the Parties; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees of neighboring properties; and (d) in compliance with all applicable federal, state, county and local or municipal

body or agency statutes, ordinances and regulations, including, without limitation, any licensing, bonding, and permit requirements, and including without limitation, any such laws relating to storage, use or disposal of hazardous wastes, substances or materials. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Management Agreement and terms set forth in **Exhibit A**, the terms in the body of this Management Agreement will govern. The YMCA shall have no right or authority, express or implied, to expend any sum, incur any obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Management Agreement or as approved by the Authority in accordance with Section 13. This Management Agreement does not constitute a lease of the Recreation Center to the YMCA, and the Parties agree that the Management Agreement does not convey any “right to control” the use of the Recreation Center, as that phrase is used in FASB Accounting Standards Codification 842-10-15-3 and 842-10-15-4.

3. HOURS OF OPERATION. The hours of operation of the Recreation Center will be mutually agreed upon by the Authority and YMCA and will generally be consistent with the hours of operation at other similar facilities that are managed by the YMCA. Hours of operation of the Recreation Center may be changed upon thirty (30) days written notice from the YMCA to the Authority or by agreement of the Parties. Prior to implementation of such changes, the YMCA will prepare a revised budget detailing the estimated cost of such changes.

4. SIGNAGE, ADVERTISING, AND FUNDRAISING. All signage in, on or adjacent to the Recreation Center and all advertising regarding any aspect of the Recreation Center will be as determined by the YMCA, subject to the YMCA’s consultation with the Authority. Signage and advertising will indicate that the Recreation Center is owned by the Authority and may indicate that the Recreation Center is managed by the YMCA. The YMCA logo may be included in and on the Facility and on promotional materials including newsletters, punch cards, and informational items distributed to the community. Notwithstanding any other provision of this Management Agreement, the YMCA may contact the members of the Recreation Center to solicit donations as part of fundraising campaigns. Any fundraising proceeds or donations raised by the YMCA, other than fundraising proceeds or donations raised as part of the annual campaign for scholarships and programs related to the Facility, will remain the property of the YMCA, and such proceeds and donations will not be subject to any liens or other security interest of any lenders to the Authority. Fundraising proceeds or donations raised by the YMCA as part of the annual campaign for scholarships and programs related or dedicated to the Facility, as well as any other fundraising proceeds or donations designated by the YMCA for use with respect to the Facility, will be referred to as “**YMCA Campaign Revenues**” for purposes of this Management Agreement and may be subject to any liens or other security interest of any lenders to the Authority.

5. EQUIPMENT. The Authority agrees to provide the fitness and other program-specific equipment necessary to carry out the approved programs. However, the YMCA may provide YMCA-owned-and-purchased equipment for use in the Authority’s recreational programs (called, “**YMCA Equipment**”), and any such YMCA Equipment will remain the property of the YMCA and, if properly identified to the Applicable Current Lenders and not purchased with the proceeds of the Loan Closing, will not be subject to any liens or other security interest of any lenders to the Authority, during and after the Term of this Management Agreement. The Authority

may be obligated under Section 29 below to reimburse the YMCA for usage of the YMCA Equipment.

6. INFORMATION SYSTEMS. All computer systems will be supplied by the Authority. The YMCA will have administrator rights to load the YMCA network for day-to-day operations that will track member management, reporting, card access, member security, and informational statistics. The specific system to be used and the payment of both the initial and on-going costs of that system will be as agreed to by the Parties.

7. REVENUES. All revenues generated through initiation or membership fees (other than the District Fees described below) and by other programs, usages, services and facilities to be managed by the YMCA at the Recreation Center will constitute “**Operational Revenues**” for purposes of this Management Agreement and will be the property of the Authority. Membership and program fees and terms of access to the Recreation Center shall be set by the YMCA, in consultation with the Authority, subject to certain agreements, including, but not limited to, the Intergovernmental Agreement Regarding Wheatlands Recreation Center dated February 4, 2019 (“**District IGA**”) as entered into by and between Wheatlands Metropolitan District and the Authority, governing membership fees charged to households within the Wheatlands Metropolitan District and the High Plains Metropolitan District. The “**District Fees**” are those fees payable to the Authority under the District IGA. The Parties expressly agree that the Wheatlands Metropolitan District is a third-party beneficiary to this Management Agreement for the limited purpose of ensuring that all households within the Wheatlands Metropolitan District are able to obtain access and memberships to the Recreation Center consistent with the provisions of the District IGA.

8. RENTAL OF RECREATION CENTER. The YMCA may rent to third parties available portions of the Recreation Center on such terms and conditions as determined by the YMCA and consistent with all applicable state and federal laws and the tax-exempt nature of the Authority’s tax-exempt obligations to finance the Recreation Center and subject to the consent of the Authority, which consent shall not be unreasonably withheld. The YMCA is permitted to use portions of the Recreation Center for its own administrative uses (e.g., board meetings).

9. EMERGENCIES. In the case of an emergency, or unforeseeable shortages of equipment or supplies, or unusual experience with theft or breakage, or if the failure to undertake such action would result in the suspension of operations of the Recreation Center or would expose the Authority or YMCA to the imminent danger of liability other than the payment of fines of less than \$1,000, the YMCA is authorized to do or cause to be done such acts or things as YMCA deems reasonably necessary or appropriate under the circumstances without regard to the limitations set forth in this Management Agreement. Security issues in the Recreation Center will be referred to the Aurora Police Department.

10. PROPERTY MAINTENANCE, PROFESSIONAL SERVICES AND UTILITIES. At no cost to the YMCA, the Authority is responsible for payment of all expenses for the Facility other than those set forth in Section 17 (“**Authority Expenses**”), which include expenses for Land maintenance responsibilities including ongoing upkeep of landscaping, snow removal, and trash collection services; expenses for providing for adequate utilities, including telephone, janitorial,

computer, HVAC, and other mechanical services, necessary to operate the Recreation Center; and expenses associated with ensuring that the Authority remains in existence as a legally compliant entity.

11. HAZARDOUS SUBSTANCES. The YMCA shall not allow hazardous substances to be stored on the premises of the Recreation Center. Notwithstanding anything to the contrary in this Section, nothing in this Management Agreement will prohibit the storage of reasonable amounts of hazardous substances used in the ordinary course of operating the Recreation Center.

12. TERM. This Management Agreement will become effective as of the date of the Loan Closing (the “**Effective Date**”) and will terminate at midnight thirty years after substantial completion of the construction of Phase One (substantial completion shall be determined in accordance with the terms of Section 9.8.1 of the AIA A201-2007 General Conditions of Contract for Construction entered into by and between the Authority and Barker Rinker Seacat Architecture), unless otherwise earlier terminated in accordance with Section 29 (“**Completion Date**”). For an avoidance of doubt, the YMCA’s management obligations under this Management Agreement will also commence on the Completion Date. If the YMCA ever purchases the entirety of the Facility, this Management Agreement will terminate upon the closing of such purchase.

13. ADDITIONAL SERVICES. The Authority may, in writing, request the YMCA to provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services will be subject to the mutual agreement of the YMCA and the Authority pursuant to a written service/work order executed by authorized representatives of the Authority and the YMCA. Authorization to proceed with additional services will not be given unless the Authority has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section, the terms and conditions of this Management Agreement relating to Services will also apply to any additional services rendered.

14. REPAIRS/CLAIMS. The YMCA shall notify the Authority immediately of any and all damage caused by the YMCA to Authority property or to property of third-parties within the Recreation Center. The YMCA will promptly repair or, at the Authority’s option, reimburse the Authority for the repair of any damage to such property caused by the YMCA or its employees, agents or equipment. In addition, the YMCA shall promptly notify the Authority of all potential claims relating to the Recreation Center it becomes aware of. The YMCA further agrees to take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim relating to the Recreation Center, while maintaining public safety, and to grant to the Authority the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The YMCA shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the YMCA or any of its subcontractors.

15. GENERAL PERFORMANCE STANDARDS.

a. The YMCA has by careful examination ascertained the nature of the Services and all other matters that may affect the performance of the Services by the YMCA. YMCA enters into this Management Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Authority or any agent of the Authority and not contained in this Management Agreement. The YMCA represents that it has the capacity and the professional experience and skill to perform the Services and that the Services will be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Management Agreement.

b. The Services of the YMCA will be undertaken and completed to ensure their expeditious completion in light of the purposes of this Management Agreement. If performance of the Services by the YMCA is delayed due to factors beyond the YMCA's reasonable control, or if conditions of the scope or type of services are expected to change, the YMCA shall give timely notice to the Authority of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

c. The Services provided under this Management Agreement will be adequate and sufficient for the intended purposes and will be completed in a good and workmanlike manner.

d. The YMCA declares that it will comply with all Federal, State and local laws, rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses that are required to provide the Services under this Management Agreement.

e. The responsibilities and obligations of the YMCA under this Management Agreement will not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant or employee of the Authority. Acceptance of the Services or any documents performed or prepared by the YMCA by the Authority will not relieve the YMCA of any responsibility for deficiencies, omissions or errors in said Services or documents.

16. MONTHLY STATUS REPORT. Commencing on the Completion Date, the YMCA shall provide to the Authority, at the Authority's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed since the last invoice and the Services anticipated to be performed prior to issuing the next invoice. At the YMCA's request on or before the 10th of each month, the Authority shall provide to the YMCA on or before the 25th of the same month a report regarding revenues, expenses, and expenditures of funds (including but not limited to payment of Direct Program Costs and Authority Expenses) relating to the Facility through the last day of the previous month.

17. EXPENSE PAYMENT AND COMPENSATION. For and in consideration of the Services to be performed hereunder by the YMCA, the Authority shall pay Direct Program Costs (as defined herein) relating to the Facility. The Authority shall pay Direct Program Costs directly. "**Direct Program Costs**" means such reasonable and necessary current costs incurred by the

YMCA to implement and manage the programs, usages and services outlined in **Exhibit A**, including the following as from time to time established in an annual operating budget.

a. Contractual services, professional services, salaries, recruitment expenses, and costs of labor for personnel directly responsible for conducting the specific activities outlined in **Exhibit A**. Costs of labor include payroll taxes, workers' compensation insurance, and health insurance, life insurance and retirement benefits commonly provided to employees of the YMCA;

b. Office supplies, program supplies and membership supplies used directly for the management of the Authority's fitness and recreational programs;

c. Printing, advertising, other promotional costs, and postage and delivery costs incurred in connection with fundraising relating to the Recreation Center and programs provided through the Recreation Center;

d. Training, certification and meeting costs for personnel included in Section 17.a above, including mileage costs;

e. Allocable portion of computer network and software support costs for the system described in Section 6 above, using an allocation method agreed to by the Parties;

f. Cellular telephone charges for personnel included in Section 17.a above that are typically provided to employees of the YMCA;

g. Cost to maintain insurance coverage required under this Management Agreement; and

h. 4% of the of the Operational Revenues and YMCA Campaign Revenues to cover overhead and administrative costs of the YMCA associated with the Facility and performance of the Services (e.g., salaries and other expenses associated with the YMCA running payroll for the salaries of YMCA employees providing the Services, providing accounts-payable operations for other Direct Program Costs, and providing human resource functions relating to hiring and firing employees providing the Services) (collectively called the "**Administrative Charges**").

"Direct Program Costs" do not include:

i. Any allowance for depreciation of the computer system described in Section 6 above;

j. Any accumulation of reserves for capital replacements of the YMCA;

k. Any debt service incurred in the acquisition of the computer system described in Section 6 above; and

l. YMCA administrative overhead costs not associated with the Recreation Center.

18. INVOICES. Invoices for the Direct Program Costs will be submitted monthly, by the 10th day of each month. Each invoice must contain the following information:

a. An itemized statement of the Services performed and Direct Program Costs incurred; and

b. Any other reasonable information required by the Authority to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order. The YMCA will provide to the Authority a full accounting of the actual costs incurred for that month. Records of the YMCA substantiating such costs will be made available for inspection by the Authority at any reasonable time, with reasonable notice provided by the Authority in order to enable the YMCA to have sufficient time to accumulate the appropriate documentation requested.

19. TIME FOR PAYMENT. Subject to Section 17, the Authority shall authorize payment of the Direct Program Costs within twenty (20) days of receipt of a timely, satisfactory and detailed invoice in accordance with the requirements of Section 18 of this Management Agreement. In the event an Authority Board of Directors (the “**Board**”) meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services and Direct Program Costs, so long as any payment required to be made does not exceed the amounts appropriated for such Services and Direct Program Costs as set forth in the Authority’s approved budget. Such payment will be subject to ratification at the next succeeding Board meeting.

20. INDEPENDENT CONTRACTOR. The YMCA is an independent contractor and nothing herein will constitute or designate the YMCA or any of its employees or agents as employees or agents of the Authority. The YMCA has full power and authority to select the means, manner and method of performing its duties under this Management Agreement, without detailed control or direction from the Authority, and shall be responsible for supervising its own employees or subcontractors. The Authority is concerned only with the results to be obtained. The Authority is not obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the YMCA or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers’ compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The YMCA shall be responsible for the safety of its employees, the public and the work site in general and shall comply with all applicable provisions of local, state and federal laws, regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970 (OSHA). All personnel furnished by the YMCA will be deemed employees or agents of the YMCA and will not for any purpose be considered employees or agents of the Authority, and the YMCA will comply with all employment laws relative to such employees, including but not limited to wage and hour, workers’ compensation, immigration and OSHA-type laws. Neither the YMCA nor its employees is entitled to workers’ compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the YMCA or some other entity other than the Authority.

And the YMCA is obligated to pay, as applicable, federal and state income taxes on moneys earned pursuant to this Management Agreement.

21. EQUAL OPPORTUNITY; EMPLOYMENT ELIGIBILITY. This Management Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment, and the YMCA represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The YMCA hereby states that it does not knowingly employ or contract with illegal aliens and that the YMCA has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The YMCA affirmatively makes the follow declarations:

a. The YMCA shall not knowingly employ or contract with an illegal alien who will perform Services and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform Services.

b. The YMCA shall not knowingly enter into a contract with a subcontractor that fails to certify to the YMCA that the subcontractor will not knowingly employ or contract with an illegal alien to perform Services.

c. The YMCA has confirmed the employment eligibility of all employees who are newly hired for employment to perform Services through participation in either the E-Verify Program or the Department Program.

d. The YMCA is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Management Agreement is being performed.

e. If the YMCA obtains actual knowledge that a subcontractor performing the services under this Management Agreement knowingly employs or contracts with an illegal alien, the YMCA shall:

i. Notify the subcontractor and the Authority within three (3) days that the YMCA has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the YMCA shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

- iii. Comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

f. If the YMCA violates a provision of this Management Agreement pursuant to §8-17.5-102, C.R.S., the Authority may terminate the Management Agreement. If the Management Agreement is so terminated, the YMCA shall be liable for actual and consequential damages to the Authority from the violation of this provision, not from the termination.

22. YMCA'S INSURANCE.

a. The YMCA shall acquire and maintain, at its cost and expense but subject to reimbursement as set forth in Section 17, during the entire Term of this Management Agreement, insurance coverage in the minimum amounts set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Authority, its directors, officers, employees and agents is required for each coverage provided. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Bank, the Authority, and the Authority's managers, members, officers, directors, partners and employees, as additional insured. All coverage provided pursuant to this Management Agreement will be written as primary policies, not contributing with and not supplemental to any coverage that the Authority may carry, and any insurance maintained by the Authority will be considered excess. The Authority shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein.

b. Prior to commencing any work under this Management Agreement, the YMCA shall provide the Authority with a certificate or certificates evidencing the policies required by this Management Agreement, as well as the amounts of coverage for the respective types of coverage. If the YMCA subcontracts any portion(s) of the Services, said subcontractor(s) shall furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Authority and the YMCA. If the coverage required expires during the term of this Management Agreement, the YMCA or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The YMCA's failure to purchase the required insurance will not release it from any obligations contained herein; nor will the purchase of the required insurance limit the YMCA's liability under any provision herein. The YMCA is responsible for the payment of any deductibles on issued policies.

23. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. During the performance of this Management Agreement, if the YMCA is notified that certain information is to be considered confidential (and is indeed non-public and consists of a trade secret or other proprietary or personal information), the YMCA,

on behalf of its employees, agrees to maintain the confidential nature of such information. Any such confidential information that is either given to the YMCA by the Authority or developed by the YMCA as a result of the performance of a particular task under the Management Agreement, will remain confidential. In addition, the YMCA shall hold in strict confidence, and shall not use in competition, any such confidential information.

b. Conflicts. Prior to the execution of this Management Agreement, during the performance of this Management Agreement, and prior to the execution of future agreements with the Authority, the YMCA agrees to notify the Authority of conflicts that impact the Services to the Authority.

24. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the YMCA pursuant to this Management Agreement and relating to the Recreation Center, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, are the property of the Authority under all circumstances, upon payment by the Authority to the YMCA of the invoices representing the work by which such materials were produced. All documents that are property of the Authority, as a governmental entity, are subject to all Colorado laws governing public documents, including, but not limited to, the Colorado Open Records Act, Sections 24-27-200.1, *et seq.*, C.R.S. The YMCA shall maintain and may use electronic and reproducible copies on file of any such documents, shall make them available for the Authority's use and shall provide such copies to the Authority upon request at no cost.

25. LIENS AND ENCUMBRANCES. Other than as explicitly set forth herein, the YMCA shall not have any right or interest in any Authority real property or tangible personal property, nor any claim or lien with respect thereto, arising out of this Management Agreement or the performance of the Services contemplated herein. The YMCA, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Authority's property or any improvements thereon in connection with any Services performed under or in connection with this Management Agreement, and the YMCA shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the YMCA to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The YMCA further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers, and materialmen hired by or performing services for the YMCA, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Authority; provided nothing herein shall prevent the YMCA from contesting in good faith any such lien. The YMCA will provide indemnification against all such liens for labor performed and materials supplied or used by the YMCA and/or its agents in connection with the Services undertaken by the YMCA.

26. INDEMNIFICATION.

a. The YMCA shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants, for, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including reasonable legal expenses and attorneys' fees, arising directly or indirectly, in whole or in part, out

of the negligence, willful misconduct, or any criminal or tortious act or omission of the YMCA or any of its subcontractors, officers, agents or employees, in connection with this Management Agreement and/or the YMCA's performance of the Services pursuant to this Management Agreement. The YMCA is not obligated to indemnify the Authority for the Authority's own errors or omissions, negligence, willful misconduct, or criminal or tortious act or omission. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the YMCA under workers' compensation acts, disability acts or other employee benefit acts.

b. Insurance coverage requirements specified herein will in no way lessen or limit the liability of the YMCA under the terms of this indemnification obligation. The YMCA shall obtain, at its own expense, any additional insurance that it deems necessary for the Authority's protection in the performance of this Management Agreement. This defense and indemnification obligation will survive the expiration or termination of this Management Agreement.

c. To the extent permitted by applicable law, the Authority shall defend, indemnify and hold harmless the YMCA and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including reasonable legal expenses and attorneys' fees, arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Authority or any of its subcontractors, officers, agents or employees, in connection with this Management Agreement and/or the Authority's ownership of the Recreation Center. The Authority is not obligated to indemnify the YMCA for the YMCA's own errors or omissions, negligence, willful misconduct, or criminal or tortious act or omission. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Authority under workers' compensation acts, disability acts or other employee benefit acts.

27. ASSIGNMENT. Except for the senior loan assignment to the Bank under the Senior Loan Agreement described above and except as provided in Section 8 above, neither Party may assign this Management Agreement, or any right or privilege granted hereunder, or lease all or any portion of the Recreation Center, or permit any business to be operated in or from the Recreation Center by any licensee or concessionaire, without the prior written consent of the other Party, which consent may be withheld or denied for any reason. Any transfer of either Party's interest in this Management Agreement by operation of law, regardless of whether the same is characterized as voluntary or involuntary, will be construed as an "**assignment**" prohibited by this Section. Upon a permitted assignment, assignee shall assume all obligations of the assigning Party under this Management Agreement provided that any assignee has first executed an assumption agreement as provided herein. Further, one Party's written consent to any one assignment will not act as a waiver of the requirements of consent with respect to any subsequent assignment.

28. SUB-CONTRACTORS. The YMCA is solely and fully responsible to the Authority for the performance of all Services under this Management Agreement, whether performed by the YMCA or a subcontractor engaged by the YMCA. The YMCA agrees that each and every agreement of the YMCA with any subcontractor to perform Services under this Management Agreement must contain an indemnification provision identical to the one contained

herein holding the Authority harmless for the acts of the subcontractor. The YMCA further agrees that any such subcontract must be terminable for cause or convenience and that, unless directed otherwise by the Authority, the YMCA shall immediately terminate all such subcontracts immediately upon termination of this Management Agreement. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Authority. The YMCA further agrees that all such subcontracts must provide that they may be terminated immediately without further cost upon termination of this Management Agreement. Neither the Authority's approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such parties, will relieve, release or affect in any manner any of the YMCA's duties, liabilities or obligations under this Management Agreement, and the YMCA will at all times be and remain fully liable. The YMCA agrees that each of its employees, and any subcontractors, suppliers and materialmen, will be properly qualified and will use reasonable care in the performance of their duties.

29. TERMINATION. This Management Agreement may be terminated for cause by the YMCA upon delivery of ninety (90) days prior written notice to the Authority, and this Management Agreement may be terminated for cause by the Authority upon delivery of ninety (90) days prior written notice to the YMCA. Upon mutual written agreement, and written consent by the Bank, which will not be unreasonably withheld, the Parties may terminate this Management Agreement, without cause, upon ninety (90) days' written notice. Such notice will not be required for automatic expiration under Section 12 hereof. If this Management Agreement is terminated, the Authority shall (a) pay the YMCA for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due, (b) reimburse the YMCA for the value of any fitness and other program-specific equipment provided by the YMCA for use in the Authority's recreational programs during the Term up through the termination date, based on the actual monthly rental costs to the YMCA (for any equipment rented by the YMCA) and on the market rate on which the Authority would have had to rent equipment (for any equipment owned by the YMCA), (c) purchase from the YMCA at fair-market value any equipment owned by the YMCA that is at the Recreation Center on the termination date, which payment will be made in the normal course of business, and take over the lease for any equipment leased by the YMCA that is at the Recreation Center on the termination date, and (d) not solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment, directly or indirectly, of any employee of the YMCA for the period of 12 months following the termination of the Management Agreement. Should either Party to this Management Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Management Agreement in the view of the other Party, said other Party will be excused from rendering or accepting any further performance under this Management Agreement. In the event of termination by either Party, the YMCA shall cooperate with the Authority to ensure a timely and efficient transition of all work and work product to the Authority or its designees. Such transition will be complete and all time, fees and costs associated with such transition will not be billed by the YMCA to the Authority. Upon termination of this Management Agreement, the YMCA shall remove itself from possession of the Recreation Center in a prompt and orderly fashion. The provisions of this Section will survive the expiration of the Term of this Management Agreement or the earlier termination hereof, as herein provided.

30. DEFAULT. If either Party fails to perform in accordance with the terms, covenants and conditions of this Management Agreement, or is otherwise in default of any of the terms of this

Management Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of the default, at the address specified below, and the defaulting Party will have fifteen (15) days from and after receipt of the notice (“**Cure Period**”) to cure the default. If the default is not of a type which can be cured within the Cure Period and the defaulting Party gives written notice to the non-defaulting Party within the Cure Period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the Cure Period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Management Agreement is not cured as described above, the non-defaulting Party will, in addition to any other legal or equitable remedy, have the right to terminate this Management Agreement “for cause,” as set forth in Section 29 hereof, and to enforce the defaulting Party’s obligations pursuant to this Management Agreement by an action for injunction or specific performance. For the avoidance of doubt, any failure by the Authority to pay Direct Program Costs incurred by the YMCA, whether or not such costs are able to be paid directly by the Authority or otherwise, constitutes a failure to perform and the YMCA may, in its sole discretion, choose to treat such failure to pay as a default by the Authority under this Section 30. Notwithstanding anything in this section or in Section 29, if the Authority defaults by failing to pay, as set forth in this Management Agreement, any invoices sent in compliance with this Management Agreement, and fails to cure such default within the fifteen (15) day Cure Period as set forth above, the YMCA will have the right to terminate this Management Agreement upon delivery of only fifteen (15) days prior written notice to the Authority.

31. NOTICES. Any notice or communication required under this Management Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of (i) one business day after being deposited with a nationally recognized overnight air courier service or (ii) delivery to the Party to whom it is addressed. Any Party may at any time, by giving written notice to the other Party as provided herein, designate additional persons to whom notices or communications will be given and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

Authority: Wheatlands Park and Recreation Authority
c/o WHITE BEAR ANKELE TANAKA & WALDRON, PC
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attn: Blair M. Dickhoner
(303) 858-1800 (phone)
(303) 858-1801 (fax)
bdickhoner@wbapc.com

and for the county in which the Authority is located. The Parties expressly and irrevocably waive any objections or rights that may affect venue of any such action, including, but not limited to, *forum non-conveniens*. At the Authority's request, the YMCA shall carry on its duties and obligations under this Management Agreement during any legal proceedings and the Authority shall continue to pay for the Services performed under this Management Agreement until and unless this Management Agreement is otherwise terminated. In the event of any litigation between the Authority and the YMCA to enforce any provision of this Management Agreement or any right of either Party, the Parties agree that the court shall award costs and expenses to the prevailing Party, such costs and expenses to include reasonable attorneys' fees. Otherwise, each Party shall pay its own costs and fees for litigation, notwithstanding anything to the contrary in Section 26. At the Authority's request, the YMCA will consent to being joined in litigation between the Authority and third parties, but such consent will not be construed as an admission of fault or liability. The YMCA shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Authority to furnish timely information or to approve or disapprove of Services in a timely manner. In no event will the YMCA be liable to the Authority for any punitive or consequential damages (whether foreseeable or not).

37. GOOD FAITH OF PARTIES. In the performance of this Management Agreement, or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously, and will not unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Management Agreement.

38. GOVERNMENTAL IMMUNITY. Nothing in this Management Agreement will be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Authority and, in particular, governmental immunity afforded or available to the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

39. NEGOTIATED PROVISIONS. This Management Agreement will not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

40. SEVERABILITY. If any portion of this Management Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision will not affect the validity of any remaining portion of this Management Agreement, which will remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there will automatically be added as part of this Management Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

41. NO THIRD-PARTY BENEFICIARIES. Except as set forth in Section 7, the Parties understand and agree that enforcement of the terms and conditions of this Management Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the

Parties and nothing contained in this Management Agreement will give any such claim or right of action to any other third party; and the Parties intend that any person receiving services or benefits under this Management Agreement, other than Parties, will be deemed to be an incidental beneficiary only.

42. WARRANTY AND PERMITS. The YMCA warrants that the Services will conform to all requirements of the Management Agreement and to all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Services. The Authority warrants that the Recreation Center will be constructed in accordance with the plans and specifications and free from defects. Such warranties set forth herein are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

43. TAX EXEMPT STATUS. The Authority is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the Authority is exempt will not be included in any invoices submitted to the Authority. The Authority shall, upon request, furnish the YMCA with a copy of its certificate of tax exemption. The YMCA and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase any materials tax free. Pursuant to Section 39-26-114(1)(a)(XIX)(A), C.R.S., the YMCA and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

44. COUNTERPART EXECUTION. This Management Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and upon receipt, will be deemed originals and binding upon the signatories hereto and will have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

45. LENDER PROTECTIONS. The Facility and its various phases may be financed from time to time through various lending sources (each a “**Lender**”). The Bank is currently providing a senior construction loan to the Authority to construct Phase One. Additional funds may be provided from time to time from various subordinate lenders. For purposes of this Agreement, the term: (i) “**Applicable Current Lenders**” means the Lenders that, as of the date and time in question, have secured liens on all or any part of the Facility; (ii) “**Current Loans**” means the then-applicable loans of the Applicable Current Lenders affecting the Facility; and (iii) “**Applicable Loan Documents**” means all documents that evidence, secure, and/or guaranty the Current Loans. The YMCA acknowledges that the rights and obligations of the Authority may be pledged or assigned to one or more of the Applicable Current Lenders pursuant to the terms and conditions of a separate pledge/assignment. For so long as the Facility is subject to any outstanding Current Loans, no amendment, modification, or supplement to this Management Agreement will be effective without the approval of all Applicable Current Lenders. Each of the Authority and YMCA agree to promptly provide each Applicable Current Lender with notice (“**Lender Notice**”) of any claimed default or alleged breach of this Management Agreement, and each Applicable Current Lender will have the same rights as the Authority to cure any claimed default or alleged breach during the Cure Period, as set forth in Section 30 above. If the YMCA terminates the Management Agreement for cause and if the Management Agreement is assigned to the Bank

under the Senior Loan Agreement, the Bank has the option to avoid termination of the Management Agreement either by curing the claimed default or alleged breach or by promising in writing to cure the claimed default or alleged breach (together with prompt payment of any amounts due), during the applicable written-notice-of-termination period.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Management Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Management Agreement.

AUTHORITY:

**WHEATLANDS PARK AND RECREATION
AUTHORITY**, a political subdivision of the State of
Colorado



President of the Authority

ATTEST:



APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law



General Counsel to the Authority

Authority's Signature Page to Management Agreement (Authority Facility)

EXHIBIT A
SCOPE OF SERVICES

Programs

- i) General membership services
- ii) Group training
- iii) Fitness (exercise classes)
- iv) Family programs
- v) Kids programs- Art, Fitness, and Free play
- vi) Aquatic programs –
 - Lessons – youth and Adults
 - Swim Teams
 - Water Fitness
 - Family programming
 - Aquatic Certification
- vii) Sports youth and adult
- viii) Wellness for All Ages
 - (1) Personal training
 - (2) Nutrition
- ix) Teen programs
- x) Fundraising relating to the Recreation Facility
- xi) Other Programs
 - Senior socials
 - Stroller walking group
 - Ultimate Frisbee
 - Massage
 - Group Outing to a Play
 - Teen Scavenger Hunt
 - Book Exchange
 - Mini-Golf Tournament

- Ice Cream Sundays
- S'mores Night
- Cookie Exchange
- Drop-n-Shop
- Christmas Present Wrapping

EXHIBIT B
INSURANCE REQUIREMENTS

1. Standard Workers' Compensation and Employer's Liability Insurance covering all employees of YMCA involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
2. Commercial General Liability Insurance with minimum limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and will include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
 - a. premises operations;
 - b. personal injury liability without employment exclusion;
 - c. blanket contractual;
 - d. broad form property damages, including completed operations;
 - e. medical payments;
 - f. products and completed operations;

This policy must include coverage extensions to cover the indemnification obligations contained in this Management Agreement to the extent caused by or arising out of bodily injury or property damage.

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Management Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. YMCA shall secure and maintain a fidelity bond or crime coverage insurance in favor of the Authority covering the YMCA and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Authority. Such bond or insurance must protect the Authority against any fraudulent or dishonest act that may result in the loss of money, securities, or other property belonging to or in the possession of the Authority. Said insurance or bond will be in an amount of not less than \$25,000, from a surety acceptable to the Authority.