

CONEJO RECREATION & PARK DISTRICT

GENERAL MANAGER
Jim Friedl

BOARD OF DIRECTORS
George M. Lange, Chair
Susan L. Holt, Vice Chair
Mark H. Jacobsen, Director
Michael D. Berger, Director
Joe Gibson, Director

TO: Board of Directors

FROM: Jim Friedl, General Manager 

DATE: March 6, 2008

GENERAL MANAGER EMERITUS
Tex Ward

SUBJECT: Ground Lease and Joint Use Agreement & Construction Management Agreement for Community Pool at California Lutheran University

RECOMMENDATION

Authorize General Manager to execute Lease & Joint Use Agreement and Construction Management Agreement for Community Pool at California Lutheran University (CLU). District funds of \$1.9 million and City grant funds of \$1.5 million are budgeted in capital account number 13 803 853 80802 001.

DISCUSSION

The attached Ground Lease and Joint Use Agreement and the Construction Management Agreement represent years of cooperative discussions between CLU, the City and the Conejo Recreation and Park District (District) to bring a community swimming pool to the Conejo Valley. A visual perspective of the community pool in relation to the Samuelson Aquatics Complex and Gilbert Hall at CLU is attached as Exhibit 1.

Over the past year, several important decisions and Agreements have been made to get to this point. The District entered into a Memorandum of Understanding (MOU) with CLU on February 1, 2007, setting forth the basic understandings between the parties (See Exhibit 2). Shortly thereafter, the City awarded a \$1.5 million grant toward the project. On June 11, 2007, the City's Planning Commission approved the negative declaration and entitlements for the pool facility. On Friday, February 22, 2008, the Board of Regents of CLU approved a resolution accepting the terms of the ground lease and joint use agreement, and gave the university president authority to enter into the agreement once the agreement is finalized.

Per the Ground Lease and Joint Use Agreement and Construction Management Agreement between CLU and District, CLU will use its construction management expertise to build the community pool on its property. The District will fund all project costs in consideration for District use of the community pool for thirty years.

Once the agreements are executed, CLU indicates that it can put the project out to bid within three weeks with a bid award anticipated approximately five weeks later. The time table anticipates a one-year construction schedule.

Both the Lease and Joint Use Agreement and Construction Management Agreement are substantially complete and attached as Exhibits 3 and 4.


STRATEGIC PLAN COMPLIANCE

2.0 Facilities. Provide and maintain recreational facilities that meet the needs of the community. Effectively plan and allocate resources to implement the District's Master Plan.

3.2.5 Finances. Continue to seek partnerships, collaborations and sponsorships to offset capital facility and recreation programming costs.

4.6 Partnerships. Maintain and build relationships with local non-profit organizations engaged in activities consistent with the District's mission. Look for collaborative opportunities to expand services and fill unmet needs.

Respectfully submitted by:



Jim Friedl
General Manager

- Exhibit 1 Photo Simulation of Site
- Exhibit 2 MOU Between CLU and District Concerning the Future Planning, Construction, Operation, Maintenance and Use of a Community Pool at Samuelson Aquatics Center at CLU
- Exhibit 3 Ground Lease and Joint Use Agreement Between CLU and District
- Exhibit 4 Construction Management Agreement

Clupool3-08

Exhibit 1




M E M O R A N D U M

City of Thousand Oaks • Thousand Oaks, California

City Manager's Office

TO: City Council

FROM: Linda Pappas Díaz, Assistant City Manager 

DATE: April 3, 2007

SUBJECT: **Renderings of Proposed California Lutheran University (CLU)
Samuelson Aquatics Center Warm-Up Pool**

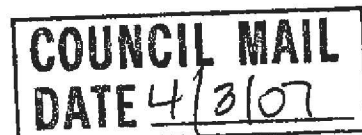
Attached are the latest renderings of the proposed warm-up/community pool at CLU. These renderings were provided by the University's architect, Amador Whittle Architects, Inc. Amador Whittle is also preparing three larger versions as well as night versions of the area.

As a reminder, the CLU Community Meeting will be held this Wednesday, April 4, at 7 p.m. at the Lunding Center, and I plan to attend.

Attachments

c: John Prescott, Community Development Director
Amy Albano, City Attorney
Jim Friedl, CRPD General Manager

cmo:515-50/lpd/dmg/CLU warm-up pool renderings



Attn: Linda Pappas-Diaz

Scott -
I will also be

attending this

You are invited to a Neighborhood Meeting

meeting to get
info & to help
with any
answers -if
necessary. Also,
we have worked
out parking study
and moving
ahead with
city, CRPD
& city agreeing
to share cost -
P.D.

for an update and discussion of
the Community Pool project proposed by
Conejo Recreation and Parks District and
California Lutheran University.

Wednesday, April 4, 2007
7:00 p.m.

Linda

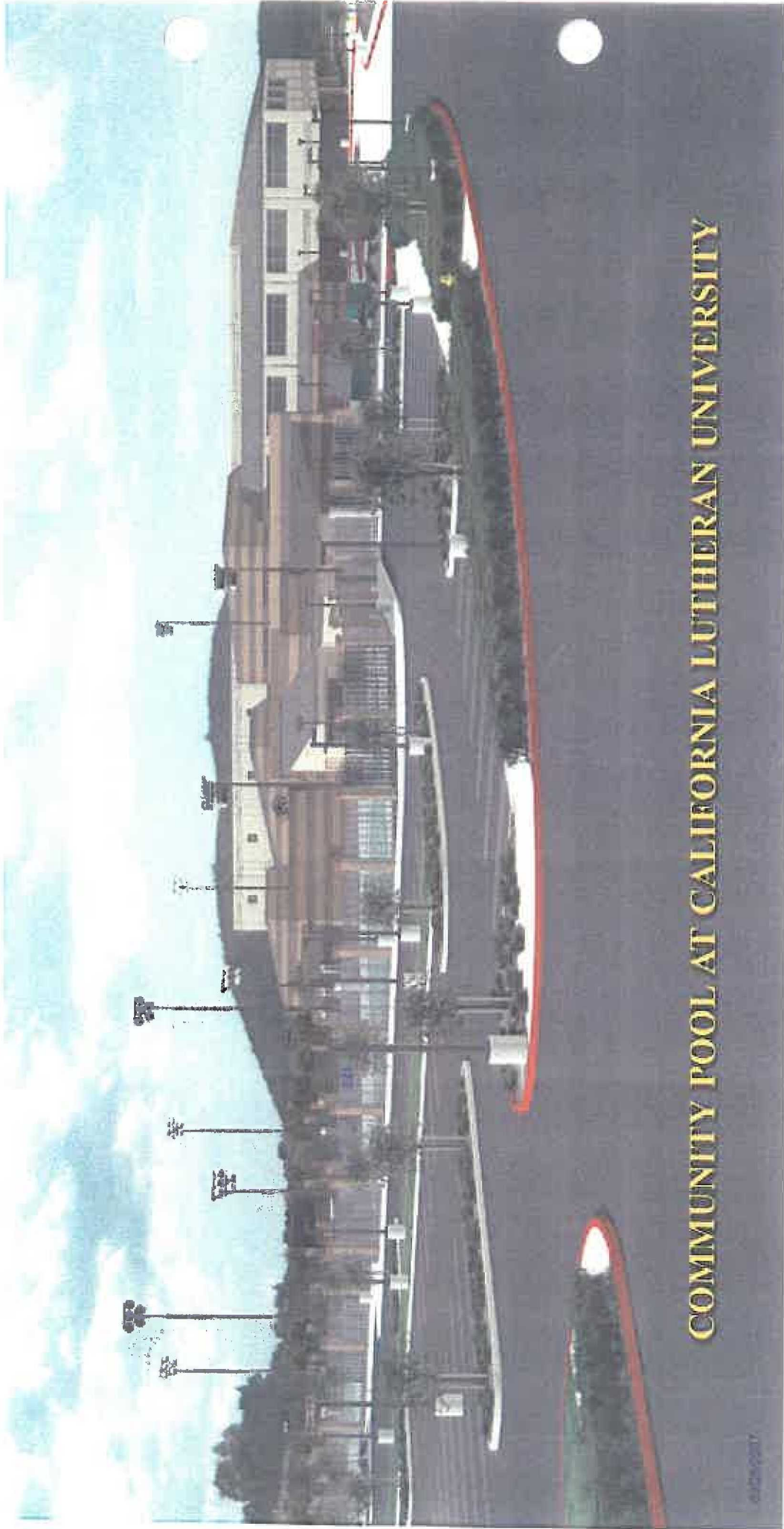
Lundring Event Center

Located in the SW corner of the Gilbert Sports and Fitness Center. Park in the large lot on the North side of Olsen Road and Mountclef Boulevard.

Representatives will include:

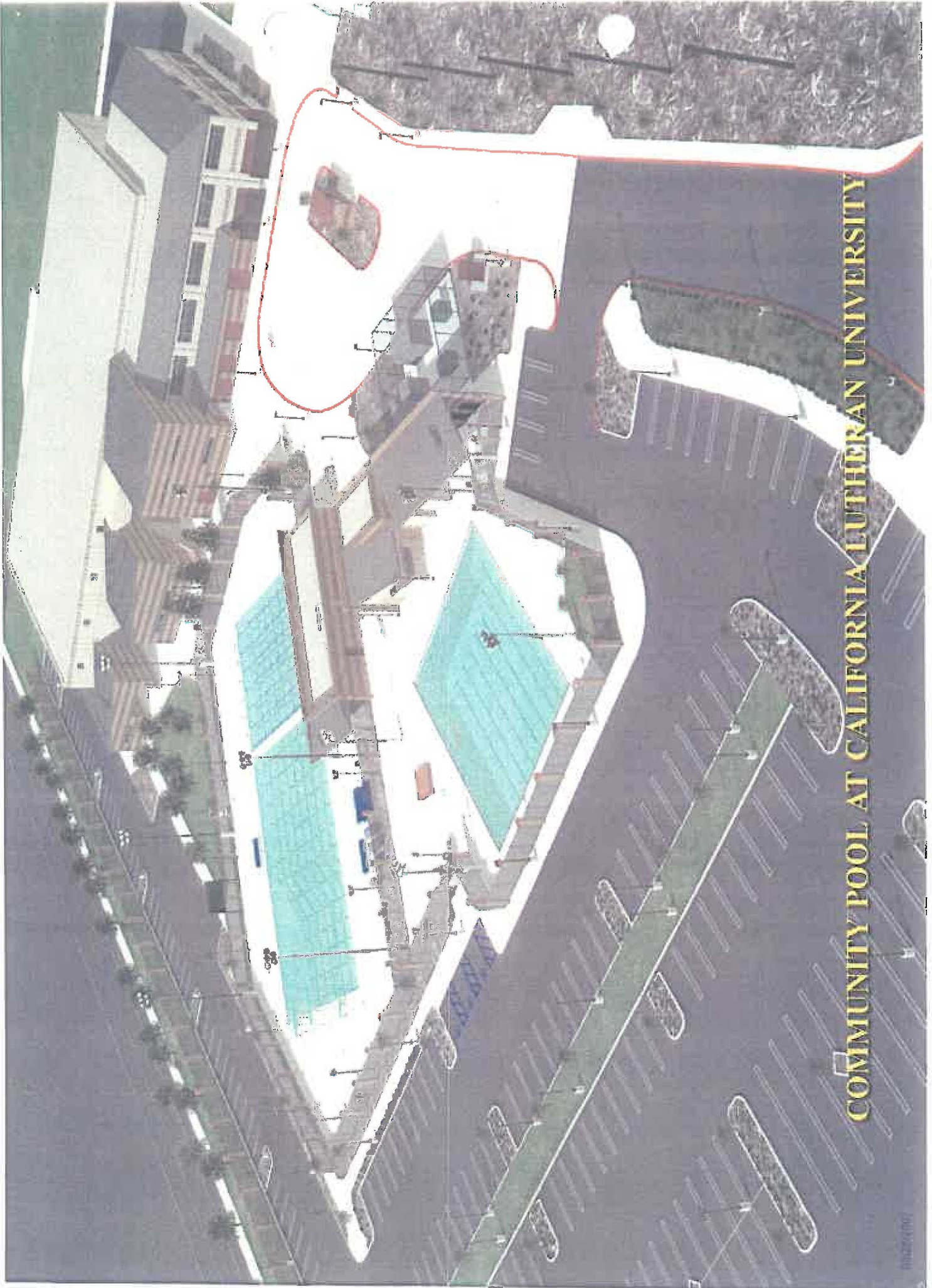
- Bob Allison, Vice President of Administration and Finance, CLU
- Ryan Van Ommeren, Associate Vice President of Facilities, CLU
- Valerie Crooks, Senior Project Manager, CLU
- Jim Friedl, General Manager, Conejo Recreation and Parks District

COUNCIL MAIL
DATE 3/28/07

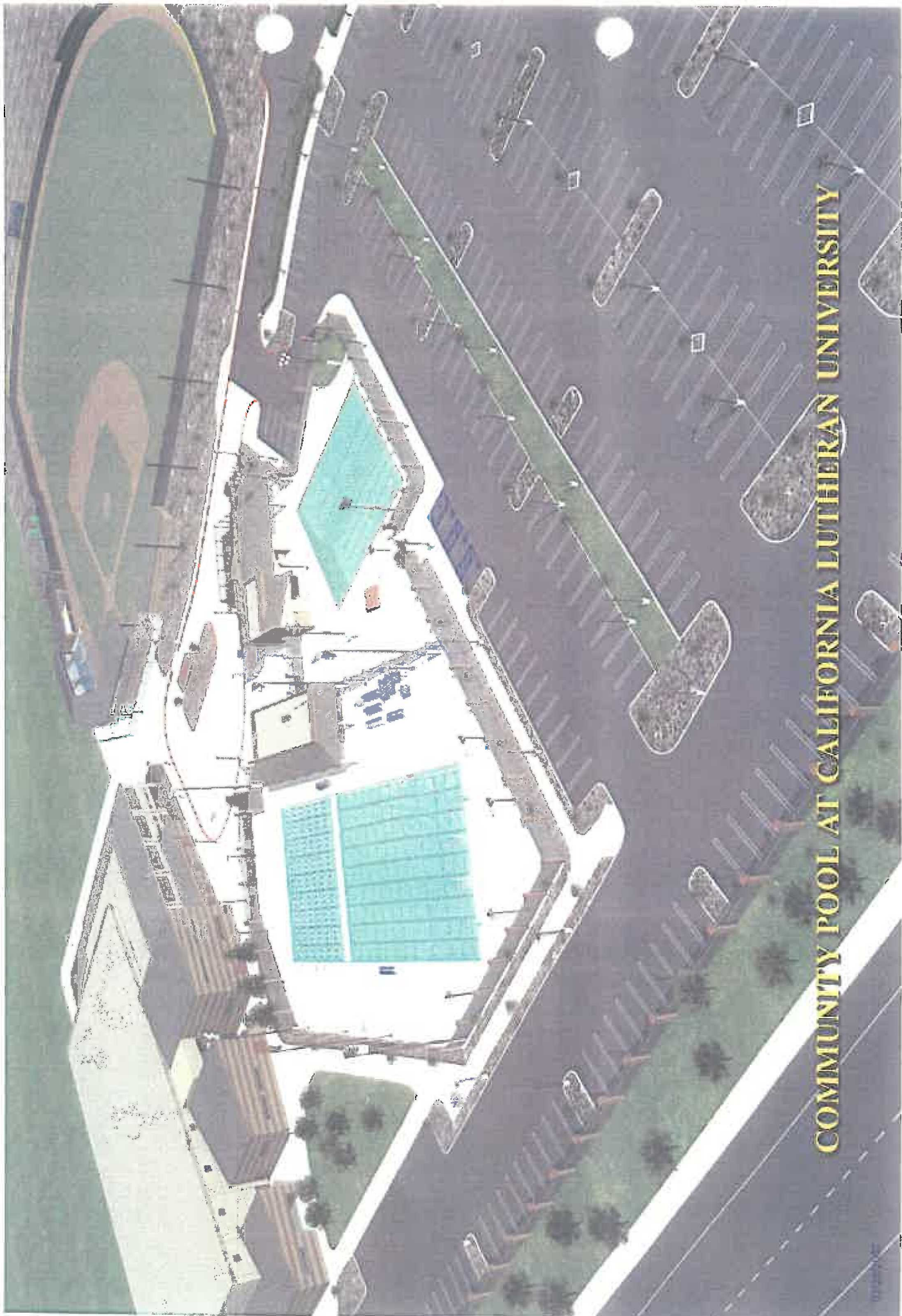


COMMUNITY POOL AT CALIFORNIA LUTHERAN UNIVERSITY

012502017

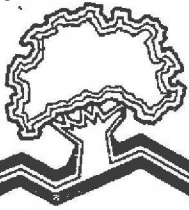


COMMUNITY POOL AT CALIFORNIA LUTHERAN UNIVERSITY



COMMUNITY POOL AT CALIFORNIA LUTHERAN UNIVERSITY

Exhibit 2



CONEJO RECREATION & PARK DISTRICT

GENERAL MANAGER
Jim Friedl

BOARD OF DIRECTORS
Mark H Jacobsen, Chair
George M. Lange, Vice Chair
Michael D. Berger, Director
Susan L. Holt, Director
Joe Gibson, Director

To: Board of Directors

From: Jim Friedl

GENERAL MANAGER EMERITUS
Tex Ward

Date: February 1, 2007

Subject: Memorandum of Understanding Between Conejo Recreation and Park District and California Lutheran University for Planning, Funding, Construction, Operation, Maintenance and Use of Community Pool at the Samuelson Aquatics Center at CLU

ISSUE:

Should the Conejo Recreation and Park District (CRPD) and California Lutheran University (CLU) enter into a Memorandum of Understanding (MOU) for the planning, funding, construction, operation, maintenance and use of a community pool at the new Samuelson Aquatics Center at CLU's North Campus Athletic Complex?

RECOMMENDATION:

Authorize General Manager to execute MOU and add \$500,000 to existing \$1,400,000 allocated in fiscal year 2006/07 capital improvement project budget.

BACKGROUND:

The District's Master Plan has long identified a "Major Swimming Complex" as a needed special-recreational facility for our community. As CLU's North Campus Athletic Complex (including the Samuelson Aquatics Center) has evolved, the idea of a cooperative private/public aquatics complex has emerged as the most cost-effective and realistic way to meet our community's aquatics needs. Consequently, approximately one year ago, the Board of Directors authorized staff to enter into discussions with representatives of the City of Thousand Oaks (City) and CLU to attempt to reach an agreement which would allow public access into this new major swimming complex. Those discussions resulted in the attached MOU (Attachment 1).

Salient Terms of MOU

The MOU sets forth the understandings for a new community pool, decking, lighting, support building, shade structure, fencing and landscaping to be added adjacent to the existing 50 meter Olympic-sized pool. The community pool as conceptually designed is

75 x 64 feet with a "rim-flow" design¹. One side of the pool would have side entry stairs running the entire 75-foot length of the pool entering into a shallow 3-foot depth. The deepest portion of the pool is 5 feet. This design supports both learn to swim instructional programs as well as seven lanes for lap swimming and competitive aquatics warm ups.

The support building is 1,350 square feet and includes the pump, equipment and chemical room, storage, an administrative office and both men's and women's restrooms. Attached to the structure is a 675-foot shade structure. The facility, including the community pool and Olympic-sized pool, would be lighted for extended programming opportunities. A conceptual site plan, pool layout, building plan and elevations are included in Exhibit C to the MOU.

The salient terms of the MOU are as follows:


- The parties to the MOU are CLU and CRPD (although the City was involved throughout the discussions).
- The estimated total project cost (hard, soft and contingency is \$3.4 million) with the City providing a \$1.5 million grant to CRPD and CRPD contributing \$1.9 million.
- Upon approval of City grant funds, CLU and CRPD will begin final design, construction drawings and apply for entitlement and development permits from City. Simultaneously, CRPD and CLU will draft a lease and joint use agreement for locating and operating the pool on CLU's property.
- The lease term is 30 years. CLU may exercise an early termination clause effective as early as the 10th year per the schedule attached as Exhibit D to the MOU.
- Use of each other's facility. CLU will have priority use of its 50-meter pool; CRPD will have priority in scheduling the community pool. A method for reciprocal use and trading of pool hours will be developed in the lease and joint use agreement.
- Parking for CLU's entire campus may become fee or permit based. The MOU acknowledges CLU's intentions in this regard and will develop an equitable program to accommodate community pool related parking under the campus' paid parking program.
- Each party may charge user and permit fees for its respective pool at its discretion and is responsible for its own maintenance, utility and staffing costs.

Attachment 2 is a memorandum from CRPD's recreation division setting forth the current aquatics needs in the community and touches on the planned programming in the new pool. The addition of a year-round community pool will generate the need for additional staff to support and maintain a growing aquatics program. The new community pool is estimated to cost \$302,000 to operate and maintain while generating \$236,000 in revenue under the current user fee and permit fee structure. Staff has carefully examined our current aquatics operations and projected programming in the

¹ The rim-flow design has the water level flush with the pool deck surface. Compared with a traditional gutter design, the rim flow allows better visibility into the pool and is easier to exit the pool.

new community pool. By expanding programming opportunities and adjusting the current fee and permit structure, staff is confident that over three years, we can grow aquatics in the Conejo Valley and meet our direct maintenance and operational expenses of this new community pool which will serve as the hub of the growing recreational, instructional, therapeutic and competitive aquatics program.

Respectfully submitted,



Jim Friedl
General Manager

Attachments 1, 2

Pool-clu2-01

**MEMORANDUM OF UNDERSTANDING
BETWEEN CALIFORNIA LUTHERAN UNIVERSITY AND CONEJO
RECREATION AND PARK DISTRICT CONCERNING THE FUTURE
PLANNING, CONSTRUCTION, OPERATION, MAINTENANCE AND USE
OF A COMMUNITY POOL AT SAMUELSON AQUATIC CENTER, AT
CALIFORNIA LUTHERAN UNIVERSITY**

This Memorandum of Understanding (MOU) is made and entered into this ___ day of February, 2007 between CALIFORNIA LUTHERAN UNIVERSITY, (CLU), a private educational institution and CONEJO RECREATION AND PARK DISTRICT, (CRPD), an independent special district. CLU and CRPD are collectively referred to herein as "**The Parties.**"

WHEREAS, CLU is a private university located within the City of Thousand Oaks, (City). As part of university programs and activities, CLU offers classes and programs in swimming, diving and water polo, and recognizes the importance of offering students a sports program conveniently located on campus. CLU is currently building its approved North Campus Athletic Facility. As part of the North Campus Athletic Facility, CLU is constructing the Samuelson Aquatics Center.

WHEREAS, the Samuelson Aquatics Center includes a 51 meter Olympic size swimming pool with a diving well (the "Olympic Pool) and bulkhead. This pool is classified as a "Special Use Pool" having a minimum depth of 7 feet and shall be used for only one purpose at a time, per applicable Code regulations. The Samuelson Aquatics Center provides portable bleacher seating for up to 500 spectators. (**Samuelson Aquatic Center**) There is nearby access to the Gilbert Sports and Fitness Center which provides necessary support facilities such as showers, locker rooms, and restrooms;

WHEREAS, a long-term goal of the City and CRPD has been the addition of an Olympic-sized competitive pool available for public use. In addition, aquatics programs offered to the public could be greatly enhanced by an additional smaller, warmer, shallow recreational pool to be used for lessons and recreational programs. This Community Pool (**Community Pool**) would complement the Olympic Pool if sited in close proximity to that pool and would be approximately 75 feet by 64 feet and located near the Olympic Pool. The **Community Pool** would be a public pool which will be made available to CLU on an "as-available" basis at CRPD standard lease rates for warm-up/cool down during major competitive swim events. Design funding, constructions, maintenance, and operation of this **Community Pool** shall constitute the "**Project;**"

WHEREAS, the **Parties** concur that a cooperative effort to locate the Community Pool at the **Samuelson Aquatics Center** will benefit both **CLU** and the general public by improving the quality of life of the community residents by making aquatics more accessible to the community, minimizing the need to travel outside the City of Thousand Oaks to an equivalent facility, and providing local aquatic organizations access to safe and convenient swim/dive/polo facilities; and upgrading the utility of the **Samuelson Aquatics Center** for major competitive swim meets;

WHEREAS, the **Parties** have exchanged letters of intent to pursue the siting and development of a Community Pool at the North Campus Athletic Facility, and such letters are included in Exhibit "B" and hereby incorporated by reference.

WHEREAS, **CLU** and **CRPD** each believe that their respective high use dates and times will not unduly conflict with the other's high use dates and times. **CRPD** agrees that it shall establish public use times to avoid the anticipated high use time periods of **CLU**. **CLU**'s high use period is generally during the university school year and the **CRPD** high use period is primarily during the summer months.

WHEREAS, **CLU** and **CRPD** desire to pursue the development, construction, joint use, operation and maintenance of the **Community Pool** for future use by residents and local organizations; and

WHEREAS, the **Parties** have developed a conceptual design, and developed anticipated use for the Project.

NOW THEREFORE, it is hereby agreed between the **Parties** that in consideration of the above-referenced recitals, which are incorporated herein, the promises, terms and covenants contained herein and other valuable consideration, of which receipt is acknowledged, the **Parties** agree as follows:

1. Cost Allocation

CRPD agrees that **CRPD** in conjunction with the **City** shall fully fund the planning, permitting, construction, and operation and maintenance, set forth in this MOU, (the Development) of the Community Pool. **CRPD** agrees to contribute the sum of at least Three Million Four Hundred thousand Dollars (\$3,400,000) towards the **Project**, with at least One Million Five Hundred Thousand Dollars (\$1,500,000) coming from the **City** and the balance of One Million Nine Hundred Thousand Dollars (\$1,900,000) coming from **CRPD**. In consideration of **CLU**'s significant experience and expertise in design, permitting and construction of projects of a similar nature, and **CLU**'s concern regarding the conduct of construction on **CLU**'s property, **CRPD** will retain **CLU** to contract, conduct and manage the Development of the Community Pool project. All costs of the **Project**, including **CLU** staff time, at an hourly rate set forth in Exhibit A, which is updated annual as of June 1 and in

an amount not to exceed 10%, and CLU costs for legal fees or separate consultants required for review of environmental documents, entitlement conditions and processing before the City, incurred in the conduct of the **Project** by **CLU** on behalf of **CRPD**, shall be fully reimbursed by **CRPD** in a timely fashion, upon presentation of an invoice. **CLU** shall provide **CRPD** with copies of all consultant agreements and all contractor and subcontractor agreements, project cost tracking, and all such supporting documentation that **CRPD** may reasonably require and request, if it is in the possession of **CLU**. **CLU** shall be solely responsible for its own legal fees and any preliminary design work preceding the date of the letters of intent included as Exhibit "B."

It is expressly understood that the **Samuelson Aquatics Center**, currently under construction by **CLU** and is a separate independent project undertaken and funded solely by **CLU**. The **Samuelson Aquatic Center** construction costs shall not be considered to form any part of this **Project** and is separately funded by **CLU**.

2. Approvals Precedent to Development

The **Parties** to this **MOU** agree and recognize that this **MOU** shall not take effect or be binding on the **Parties** until and unless this **MOU** has been (1) approved by the Board of Regents of California Lutheran University through a formal resolution authorizing signature of the **MOU** by the President of the University; (2) **CRPD's** Board of Directors have approved this **MOU** and authorized its General Manager to execute the **MOU**; and (3) a funding agreement by and between **CRPD** and **City** is approved and executed with each party contributing at a minimum the amount set forth in paragraph 1. Upon execution by the **Parties** of the **MOU** and the conditions precedent occurring, **CLU** will cause the consultants and architects to commence the development of the documents required for processing the various entitlement and other development applications through the **City**.

The **Parties** agree that a Lease and Joint Use Agreement shall be negotiated, developed and executed by the **Parties**, prior to **CLU** moving forward with construction of the **Project**. The Lease and Joint Use Agreement shall be void and of no force unless it has been approved by the Board of Regents of **CLU** through a formal resolution authorizing signature of the Lease and Joint Use Agreement by the President of the University and formal action by the Board of Directors of **CRPD** authorizing its designated official to execute the Lease and Joint Use Agreement. If the **Parties** cannot agree on mutually acceptable terms for the Lease and Joint Use Agreement, and agree to the City imposed entitlement conditions, the **Parties** may agree to abandon the project, in which case **CRPD** shall reimburse **CLU** for all expenditures made prior to the date of abandonment for the **Project** and the **Parties** shall have no further obligations to each other.

3. Capital Contribution

The development, construction, operation and maintenance of the **Community Pool** are contingent upon the following capital contributions.

a. **CRPD's** receipt of Grant Funds from the **City** the sum of at least One Million Five Hundred Thousand Dollars (\$1,500,000) for development and construction of the **Community Pool**.

b. **CRPD's** contribution of approximately of at least One Million Four Hundred Thousand Dollars (\$1,400,000) for development and construction of the **Community Pool**.

c. **CRPD** shall authorize a budget appropriation of an additional \$500,000 toward the current estimate total project cost to **CLU** for development and entitlement processing, design and construction of the **Community Pool**.

d. **CRPD** shall allocate the expenditure of these aggregate funds once assembled as noted above in the approximate sum of Three Million Four Hundred Thousand Dollars (\$3,400,000), which shall be used to fund the design, construction, maintenance, and operation, as set forth in this MOU of the **Community Pool**.

e. As noted above, should the "Total Construction Cost" of the Project exceed \$3,400,000 **CRPD** shall have the authority and power to declare this MOU void and of not further force or effect except to reimburse **CLU** as set forth in Section 1. Total Construction Costs means the lowest responsible construction bid, plus all soft costs, including but not limited to permits, environmental, fees, **CLU** project management costs, plus a ten percent (10%) contingency overall.

4. Community Pool Design

The **Parties** have jointly developed together a conceptual design for the **Community Pool**, related office, equipment and storage facilities, shade areas, and deck areas as reflected on Exhibit "C" and incorporated herein by reference. The **Parties** acknowledge this is only a conceptual design and that there may be modifications and revisions as the result of the **Project** and its development and entitlement applications being processed by the **City**. Any modifications and revisions shall be mutually agreed to by **CLU** and **CRPD**. Any major modifications to the conceptual design, in **CLU's** sole judgment, shall require approval by the **CLU** Board of Regents prior to implementation.

5. Construction

When the **Community Pool** receives all required development and entitlement permits from all applicable agencies, which are acceptable to **CLU** and **CRPD** and the Lease and Joint Use Agreement is approved and entered into by the **Parties** as described in (2) above, **CLU** will undertake and manage the

construction of the **Community Pool** on behalf of **CRPD**. **CLU** represents that it shall use its best efforts to cause the construction to occur in the most expeditious and cost-effective manner; however, **CLU** shall not be held liable for any increases in the cost of construction of the **Project**, beyond its control or not caused by **CLU's** gross negligence. **CRPD** shall appoint a representative to attend regular construction meetings and shall jointly approve all construction change orders for the **Project**.

The **CRPD** or its designee shall provide **CLU** with the applicable Department of Labor Wage Determination for the **Community Pool** project, conduct any labor audits, as may be required, and shall verify the accuracy of all certified payrolls submitted for the **Project**. **CRPD** shall defend, hold harmless, and indemnify **CLU** of any and all liability resulting from for incorrect payments of prevailing wages or other claims of a similar nature arising from the construction project. **CRPD** may retain, at its own cost, a prevailing wage monitor.

6. Ownership

CLU shall retain ownership in fee simple of the underlying land subject to the Lease and Joint Use Agreement. No provision of this MOU or the Lease and Joint Use Agreement shall be deemed any transfer any interest in land ownership, either express or implied, other than possessory leasehold interest, as set forth in the Lease. **CLU** shall also own the capital improvements constructed or erected upon the land in the **Project** following termination of the Lease and Joint Use Agreement.

7. Use of Community Pool and Samuelson Aquatics Center

The **Community Pool** and **Samuelson Aquatics Center** are separate facilities. The primary use of the **Community Pool** shall be community recreational use. The primary use of the **Samuelson Aquatics Center** shall be for **CLU** varsity sports, intramural programs, and academic purposes. The **Parties** shall agree to develop schedules, protocols, and such other programs, as required, to facilitate mutual use of these facilities, **CLU** and **CRPD** agree to use their best efforts to develop the joint anticipated use of the **Community Pool** and **Samuelson Aquatics Center**. The following is the preliminary anticipated use of each pool by **CLU** and **CRPD**, to be used in developing the Lease and Joint Use Agreement:

- a. **CRPD** shall have priority use of the **Community Pool**.
- b. **CRPD** may schedule use of the **Samuelson Aquatics Center** for instructional programs and competitive swim team meets. It is anticipated that the scheduled use may include daily practice time and up to four meets per year held during the school year. The dates and times must be approved by **CLU**, in advance, to avoid any conflicts with **CLU** use; such approval shall

not be unreasonably withheld. **CRPD** understands that **CLU's** varsity use of the **Samuelson Aquatics Center** shall always be prioritized over **CRPD** competitive swim team practice time. **CLU** reserves the right to withhold approval of **CRPD** competitive swim team use of the **Samuelson Aquatics Center**, at its sole discretion.

CRPD may schedule use of the **Samuelson Aquatics Center** for community swim. The dates and times must be approved by **CLU**, in advance, to avoid any conflicts with **CLU** use, such approval shall not be unreasonably withheld. **CLU** reserves the right to withhold approval of **CRPD** community swim use of the **Samuelson Aquatics Center**, at its sole discretion.

c. **CLU** shall have priority use of the **Samuelson Aquatics Center**.

d. **CLU** may schedule use of the **Community Pool** for competitive swim team meets. The dates and times must be approved by **CRPD**, in advance, to avoid any conflicts with **CRPD** use; such approval shall not be unreasonably withheld.

e. The **Parties** agree to cooperate in scheduling use time in each other's facility. Subject to availability, use hours may be traded. The Parties agree to develop a method for calculation of traded hours that is equitable and reasonable based upon, including but not limited to maintenance costs, insurance, staff costs etc.

8. Scheduling

CLU shall be responsible for all reservations and scheduling of the **Samuelson Aquatics Center** and **CRPD** shall be responsible for all reservations and scheduling of the **Community Pool**. Both **CLU** and **CRPD**, and their respective staff, agree to work together cooperatively to develop an annual master schedule for both facilities. The schedule shall not conflict with major **CLU** events on Campus. Any and all scheduling changes to the **CRPD** pool shall be approved by **CLU** in advance. No **CRPD** use of the **Community Pool** shall be scheduled on the day of **CLU Commencement**, typically on or about May 15 of each year.

9. Lighting

CRPD anticipates use of the **Community Pool** until 10:00 pm in the evening. To accommodate the need for security, and safety, as well as, required State and local code requirements, there shall be lighting installed in conjunction

with the **Community Pool** to provide the required light levels for the anticipated usage. **CRPD** anticipates installing Musco Lighting, and light poles may be in the range of up to 40 ft. in height.

To accommodate the enhanced use of the **Samuelson Aquatics Center**, **CLU** shall process through the City an entitlement, as part of the **Community Pool** entitlement, to allow for increased lighting levels on the pool to facilitate competitive swimming, diving and water polo occurring in the evening up to 10:00 pm. **CLU** anticipates using Musco Lighting or equivalent, and light poles may be up to 60 ft. in height.

The ultimate lighting plans and designs shall direct all lighting to the pool and decking and associated areas, as required to satisfy all security, safety, and required State and local code requirements.

10. Parking/ Parking Fees

Due to the anticipated opposing peak usage times for the pools, the **Parties** expect there will be adequate and sufficient parking for normal operations of the two pools. However, when Special Events do occur at **CLU**, such as Commencement and the Scandinavian Festival, there may be a shortage of parking, and street parking on Olsen Road will be required. The **Parties** acknowledge and agree that there are 349 parking spaces in the main parking lot on **CLU's** North Campus, and that the proposed construction of the **Community Pool** will result in the loss of 33 spaces. The **Parties** agree that the loss of parking shall not require the construction or addition of any new parking spaces in the **CLU** campus. This determination is based upon actual usage figures rather than parking formulas normally used by the City. **CRPD** anticipates the following projected parking is suitable and appropriate for **Community Pool** use: Summer 50 spaces, Fall 30 spaces, Winter 30 spaces, Spring 30 spaces.

CLU and **CRPD** anticipate that competitive swim meets will require approximately 200 spaces but such usage will normally occur on weekends and non-peak parking times for **CLU**.

CLU is in the process of developing a comprehensive Parking Management Plan to address and control parking at **CLU**. The Parking Management Plan will implement a paid parking program on the campus. **CRPD** acknowledges that **CLU** intends to charge for parking and has no objection to the charging of parking fees for users. **CLU** and **CRPD** agree to work together to develop an equitable program to accommodate **CRPD** parking under the campus paid parking program. **CLU** shall retain all funds received from the parking program to defray **CLU's** maintenance costs on the parking spaces utilized.

CLU shall have the ability to reserve all parking spaces for Graduation, Scandinavian Festival, and three additional times each calendar year, with the actual dates and times established during normal scheduling as provided in Section 8 above. .

The **Parties** agree that if, through the development and entitlement process, the City does not approve the parking conditions or other entitlement conditions, which are agreeable to **CLU** and **CRPD** or the **Parties** and the City cannot agree upon a modification that is acceptable to all Parties and the City, then at that time, any **Party** to this MOU may seek not pursue this Project. Such decision shall be communicated in writing to all interested Parties.

11. Conditions Precedent

This MOU is contingent upon the City of Thousand Oaks providing grant funding to **CRPD** in the sum of \$1,500,000.

12. Usage Fees

Both **CLU** and **CRPD** may charge usage fees for their programs and respective users. Each **Party** shall retain all user fees received for their respective pool.

13. Maintenance and Operation

a. Utilities.

CLU shall be responsible for all utility expenses, including gas, electricity, power, telephone, cable or internet service, and water associated with the **Samuelson Aquatics Center**. **CRPD** shall be responsible for all utility expenses, including gas, electricity, power, telephone, cable or internet service, and water associated with the **Community Pool**. The **Parties** agree that separate meters for utilities shall be installed in association with development of the **Community Pool**. A cost-sharing arrangement for trash shall be developed as part of the Lease and Joint Use Agreement.

b. Maintenance

CLU shall provide, at it's own expense, the maintenance and operation of the **Samuelson Aquatics Center** and all associated infrastructure around the **Samuelson Aquatics Center** and the **Community Pool**,

including parking, lighting, landscaping, walkways, and related facilities in the Gilbert Sports and Fitness Center necessary for the operation of the **Community Pool**. **CLU** shall, at **CRPD**'s request, provide maintenance and operation of the Community Pool and **CRPD** shall reimburse **CLU** at cost plus an agreed upon administrative fee for all maintenance and operation of the **Community Pool**.

c. **Staff**

CRPD shall be responsible to fund and staff all operational positions, including lifeguards, instructors and security for the **Community Pool** and their scheduled use of the **Samuelson Aquatics Center**. **CLU** shall be responsible to fund and staff all operational positions, including lifeguards, instructors and security for the **Samuelson Aquatics Center** and their scheduled use of the **Community Pool**.

14. **Entitlement Processing**

CRPD shall be responsible for all costs associated with development and entitlement processing with all applicable public agencies, and any California Environmental Quality Act Compliance (CEQA), including any necessary studies, reports, and consultants. **CRPD** shall also reimburse **CLU** at cost for its staff time involved in all development and entitlement processing. **CRPD** has agreed to expend Seventy-Five Thousand Dollars (\$75,000), prior to the execution of this **MOU**, for conceptual design and preliminary site planning, and this obligation shall continue as part of the completed **MOU** and shall survive any termination of the **MOU** as set forth in Section 1 above.

15. **No Warranty or Guarantee on Probable Construction Cost or Final Project Completion Cost**

CRPD hereby agrees and acknowledges that all cost estimates provided to date by **CLU**, and those to be provided in the future, represent **CLU**'s best estimate and determination of the estimated probable cost of construction. **CRPD** agrees to fully accept all responsibility for any increases in actual bid or construction costs over the estimates of probable construction costs, and agrees that **CLU** and its officers, directors, employees, agents, contractors and/or invitees are not responsible for or liable for any contribution towards any actual construction cost and **CRPD** agrees to defend, hold harmless **CLU** and its officers, directors, employees, agents, contractors and/or invitees from any and all claims, damages, causes of action, or liabilities arising from or in any way connected with these opinions of probable construction cost.

CRPD acknowledges and agrees that **CLU** has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that **CLU's** opinions of probable construction costs are made on the basis of **CLU's** previous experience and professional judgment. **CLU** makes no warranty, express or implied, that the bids or the final cost of the **Community Pool** will not increase above **CLU's** estimate of probable construction cost.

The **Parties** acknowledge that should responsive bids exceed the estimated budget for the **Project**, that **CRPD** may withdraw from the **Project** and shall reimburse, as set forth in Section 2

CRPD understands that Change Orders to the Construction Contract may arise during the course of construction, which may cause the final completion cost of the contract to increase. **CRPD** agrees that it shall fully accept all responsibility and liability for any change orders approved by **CRPD** during construction, and shall defend, hold **CLU** and its officers, directors, employees, agents, contractors and/or invitees harmless and indemnify from any and all claims, damages, causes of action, or liabilities arising from or in any way connected with these change orders to the construction contract, unless such Change Orders are caused by the gross negligence of **CLU**.

In the event that a Change Order is not approved by **CRPD**, **CLU** and **CRPD** shall prior to disapproval meet and confer, and determine the basis for disapproval. **CLU** and **CRPD** shall work cooperatively in disapproving the Change Order; however, final determination of whether change orders are approved or not shall be in the sole discretion of **CRPD**. All documentation substantiating the disapproval shall be shared among **CLU** and **CRPD**. In the event that a claim, action, mediation, arbitration or litigation is made or commenced, **CRPD** shall defend, indemnify and hold harmless **CLU** and its officers, directors, employees, agents, contractors and/or invitees except for gross negligence of **CLU**.

16. Defense, Indemnity and Hold Harmless

CRPD shall indemnify, defend (including attorney's fees and costs) protect and hold **CLU** and its officers, directors, employees, agents, contractors and/or invitees harmless from any and all claims, damages, causes of action, or liabilities arising from or in any way connected with **CRPD's** obligations under this **MOU**, other than gross negligence of **CLU**.

CLU shall indemnify, defend (including attorney's fees and costs) protect and hold **CRPD** and its officers, directors, employees, agents, contractors and/or invitees harmless from any and all claims, damages, causes of action, or liabilities arising

from or in any way connected with **CLU's** obligations under this **MOU** other than gross negligence of **CRPD**.

17. Insurance

CRPD shall procure and maintain during the term of this **MOU**, at **CRPD's** expense, a comprehensive general liability policy insuring **CLU** and **CRPD** and covering the Property, and the use, condition and occupancy thereof, with limits of ^{up to} Twenty-five Million Dollars consisting of not less than Five Million Dollars (\$5,000,000) for bodily injury or death as the result of any one occurrence and not less than One Million Dollars (\$1,000,000.00) for damage to property as the result of any one occurrence and automobile insurance in these same amounts for property damage and bodily injury and the balance of ^{up to} Twenty Million Dollars may be provided as an umbrella and excess coverage. In addition, **CRPD** shall procure and maintain, at **CRPD's** expense, a comprehensive general liability policy covering the **Community Pool** and common areas, and the use, condition and occupancy thereof, with limits that are determined by **CLU's** independent insurance agent or broker and as shall be agreed on as part of the negotiation of the Lease and Joint Use Agreement. Such policy shall be placed with an insurer satisfactory to **CLU** (approval not to be unreasonably withheld), shall name **CLU**, its officers, directors, employees, agents, and lenders as an additional insured, pursuant to a separate additional insured endorsement, thereunder, and shall provide that they may not be cancelled without thirty (30) days' written notice to **CLU**. A certificate of the policies evidencing such insurance and such separate additional endorsement shall be delivered to **CLU**, as well as a separate endorsement to the policy reflecting the **CLU**, as an additional insured. The policies shall be automatically renewed or replaced each year of the term of the lease, and new certificates of insurance and additional insured endorsements evidencing coverage shall be provided to **CLU** prior to the expiration. The indemnity obligations of **CRPD** hereunder shall survive the expiration and/or earlier termination of this **MOU**.

CLU will maintain in force its current insurance policies with coverage equal to or better than current policies with respect to the common areas of the North Campus utilized by the **Community Pool** project.

18. Term

The **Parties** intend to negotiate a Lease and Joint Use Agreement. The maximum term of the Lease and Joint Use Agreement will be 30 years, commencing ninety days after issuance of the first building permit by the City, with an early termination provision, as set forth in this **MOU**.

19. Early Termination

CLU may initiate early termination of the Lease and Joint Use Agreement as follows. The annual early termination/buyout provision shall begin at year ten, based upon the schedule provided in Exhibit "D." CLU shall be able to initiate early termination/buyout of the lease for any reason, beginning at year ten. Written notice of the intent to buyout the lease shall be provided to CRPD two years prior to the proposed exercise date of the buyout provision, with the accompanying payment of the early termination/buyout sum, pursuant to Exhibit "D". For example only, at year eight CLU may provide written notice of its desire to exercise the buyout in year ten. Based upon the schedule, set forth in Exhibit "D," CLU at the time of exercising the early termination/buyout shall pay to CRPD the sum of \$3,400,000.

20. Status of Parties

Nothing in this MOU or in carrying out the provisions of this MOU shall create any partnership or joint venturers between the Parties.

21. Severability

Invalidation of any of the terms, conditions, covenants, or other provisions contained herein by judgment or court order shall in no way affect any of the other terms, conditions, covenants or provisions hereof, and the same shall remain in full force and effect.

22. Assignment

This Agreement may not be assigned by any Party without the written consent of the other party, which consent shall not be unreasonably withheld.

23. Governing Law

This MOU shall be governed by and construed in accordance with the laws of the State of California and it is agreed that this MOU has been executed in Ventura County, California.

24. Notices

Notices, consents, requests and other communications required or permitted in this Agreement shall be in writing and shall be deemed duly given by one party and received by the other party when (a) personally served; or (b) (i) sent by U.S.

mail, postage prepaid, certified mail, return receipt requested, and actually received by, or rejected by, the party to whom it is addressed; and (ii) addressed to the applicable party at the respective address set forth below:

To **CRPD**: General Manager
Conejo Recreation and Park District
Hillcrest Center
403 W. Hillcrest Drive
Thousand Oaks, CA 91360

To **CLU**: Vice President for Administration and Finance
California Lutheran University
60 West Olsen Road, MC 1200
Thousand Oaks, CA 91360-2700

25. Integration, Amendments and Interpretation

This **MOU** may not be amended or modified in any respect whatsoever except by an instrument in writing signed by, **CRPD**, and **CLU**.

The provisions of this **MOU** should be liberally construed to effectuate its public purposes. The language of all parts of this **MOU** shall be construed according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this document and had the opportunity to have their counsel review it. Whenever the context and construction so required, all words used "I" the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa. The captions, headings and index of this **MOU** are for convenience only and have no force and effect in the interpretation or construction of this Agreement. All addenda and exhibits attached hereto are hereby incorporated by reference as though fully set forth in the Agreement.

26. No Third Party Rights

Nothing in this **MOU**, whether express or implied, is intended to confer any rights or remedies under or by reason of this **MOU** to any persons other than the **Parties** hereto and their respective successors, nor is anything in this **MOU** intended to relieve or discharge the obligations of liability of any third person to any party to this agreement, nor shall any provision give any third person any right or subrogation action over or against any party to this **MOU**.

27. Entire Agreement.

This MOU constitutes the entire agreement between the Parties. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement, including all addenda and exhibits, are of no force and effect.

28. Binding Effect. This MOU shall be binding on and shall inure to the benefit of the principals, heirs, executors, administrators, successors in interest and assigns of CLU and CRPD.

29. Counterparts

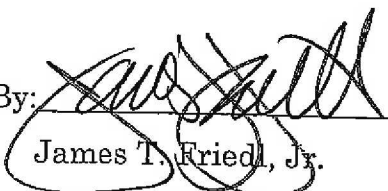
This MOU may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this MOU, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate delivery of original signature pages.

IN CONCURRENCE AND WITNESS WHEREOF, this agreement has been executed by the parties effective on the date first above written.

CONEJO RECREATION
AND PARK DISTRICT

CALIFORNIA LUTHERAN
UNIVERSITY

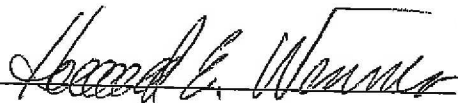
By:


James T. Friedl, Jr.

General Manager

Conejo Recreation and Parks District

By:



~~Dr. John R. Sladek, Jr.~~ Rev. Dr. Howard E. Wenfle
~~President~~ Interim President

California Lutheran University

Exhibits A - D

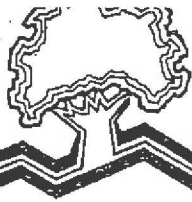
EXHIBIT "A"

CALIFORNIA LUTHERAN UNIVERSITY HOURLY STAFF RATES

CLU staff time shall be reimbursed at the following hourly rates:

Senior Project Manager	\$80/hour
Project Assistant	\$36/hour

Hourly rates shall be re-established on June 01 of each year based upon CLU's cost of living increase, which historically has ranged from 5 to 10%.



CONejo RECREATION & PARK DISTRICT

GENERAL MANAGER
Tex Ward

April 5, 2006

Mr. Robert P. Allison
Vice President, Administration & Finance
California Lutheran University
60 West Olsen Road
Thousand Oaks, CA 91360

BOARD OF DIRECTORS
Joe Gibson, Chair
Mark H. Jacobsen, Vice Chair
Michael D. Berger, Director
George M. Lange, Director
Susan L. Holt, Director

**Subject: Letter of Intent to Fund Design and Cost Estimation for Instructional/
Recreational Pool Adjacent to Samuelson Aquatics Complex 50 Meter
Pool**

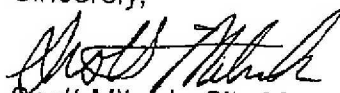
Dear Mr. Allison:

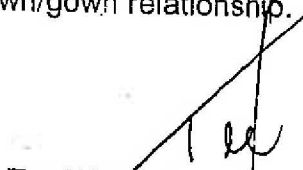
Over the years, officials from California Lutheran University, the City of Thousand Oaks and the Conejo Recreation and Park District have contemplated the possibility of a private/public partnership for an aquatics facility to meet the needs of CLU's intercollegiate athletic program while also offering a venue for public access and use of a quality aquatics complex. Over the past year, with the help and hard work of your staff, various alternatives and configurations for a second pool at the Samuelson Aquatic Complex have been explored.

On March 30, 2006, an ad hoc committee of City and CRPD officials met to discuss the conceptual design for a second pool and cost sharing plan. At the conclusion of the meeting, the public agencies determined to fund the next step in design and cost estimation work by Aquatic Design Group necessary to prepare a detailed site plan and reliable construction cost estimation data for the second pool and related amenities. The ad hoc committee intends to reconvene, review the specific design and construction cost estimates and bring a recommendation to each elected body to appropriate the funds necessary to proceed with construction of a second pool. By that time, our respective staffs should reach some form of agreement covering such things as maintenance responsibilities, cost sharing, and use scheduling.

Please allow this letter to serve as an expression of both public agency's intent to fund the design and cost estimation of the second pool from existing funds appropriated toward this project. We appreciate California Lutheran University's willingness to pursue this important community asset and to further strengthen the town/gown relationship.

Sincerely,


Scott Mitnick, City Manager
City of Thousand Oaks


Tex Ward, General Manager
Conejo Recreation and Park District

c: Thousand Oaks City Council
Conejo Recreation and Park District Board of Directors
HILLCREST CENTER • 403 WEST HILLCREST DRIVE • THOUSAND OAKS, CALIFORNIA 91360-4223
(805) 495-6471 • FAX: (805) 497-3199 • E-MAIL: parks@crpd.org • www.crpdp.org



City of Thousand Oaks

SCOTT MITNICK
INTERIM CITY MANAGER

July 27, 2005

Tex Ward, General Manager
Conejo Recreation and Park District
403 W. Hillcrest Drive
Thousand Oaks, CA 91360

Re: California Lutheran University Joint Use Aquatics Facility –
Statement of Intent

Dear Mr. Ward: *Tex*

The purpose of this letter is to formally advise you of the Council's actions at their July 26, 2005 meeting relative to the concept of a joint use aquatics facility on the California Lutheran University (CLU) campus.

The Council unanimously voted to authorize this letter, which is intended to be a Statement of Intent conveying the City's interest in further exploring the possibility of a joint use facility. The Council also appropriated \$500,000, which will be placed in a holding account for use at a later date for the intended purpose of contributing toward the construction of the joint use facility.

On behalf of the Council, I would like to express the City's appreciation for the openness shown by both CLU and Conejo Recreation and Park District to explore this concept. I am confident our continuing discussion will result in the development of an acceptable joint use agreement, which will have substantial community benefits.

As always if you have any questions or wish to discuss the matter in greater detail, please feel free to contact either myself or Don Nelson at 449-2121.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Mitnick".

Scott Mitnick
Interim City Manager

c: City Council
Don Nelson, Acting Assistant City Manager

cmo:515-50\sm\mitnick\dmg\jointuseaquaticsfacility\crpd
cno:100-35\sm\mitnick\dmg\jointuseaquaticsfacility\ref#7428

2100 Thousand Oaks Boulevard • Thousand Oaks, California 91362-2903 • (805) 449-2121 • (805) 449-2125



City of Thousand Oaks

SCOTT MITNICK
INTERIM CITY MANAGER

July 27, 2005

Dr. Luther Luedtke, President
California Lutheran University
60 W. Olsen Road
Thousand Oaks, CA 91362

**Re: California Lutheran University Joint Use Aquatics Facility –
Statement of Intent**

Dear Dr. Luedtke:

The purpose of this letter is to formally advise you of the Council's actions at their July 26, 2005 meeting relative to the concept of a joint use aquatics facility on the California Lutheran University (CLU) campus.

The Council unanimously voted to authorize this letter, which is intended to be a Statement of Intent conveying the City's interest in further exploring the possibility of a joint use facility. The Council also appropriated \$500,000, which will be placed in a holding account for use at a later date for the intended purpose of contributing toward the construction of the joint use facility.

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Sincerely,

A handwritten signature in black ink that reads "Scott Mitnick".

Scott Mitnick
Interim City Manager

c: City Council
Don Nelson, Acting Assistant City Manager

cmo:515-50\smitnick\dmg\jointuseaquaticsfacilityclu
cno:100-35\smitnick\dmg\jointuseaquaticsfacilityref#7428

2100 Thousand Oaks Boulevard • Thousand Oaks, California 91362-2903 • (805) 449-2121 • (805) 449-2125

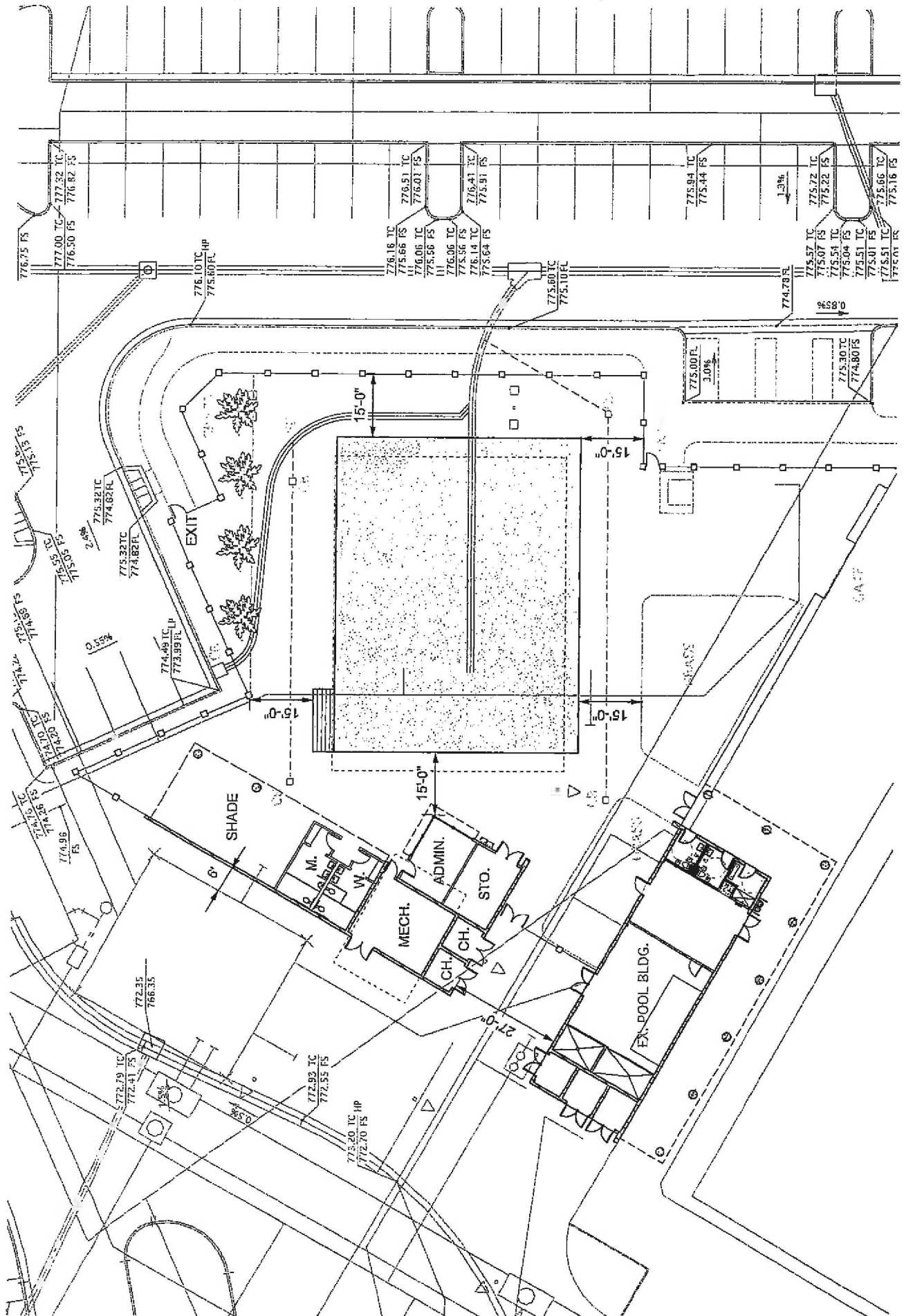
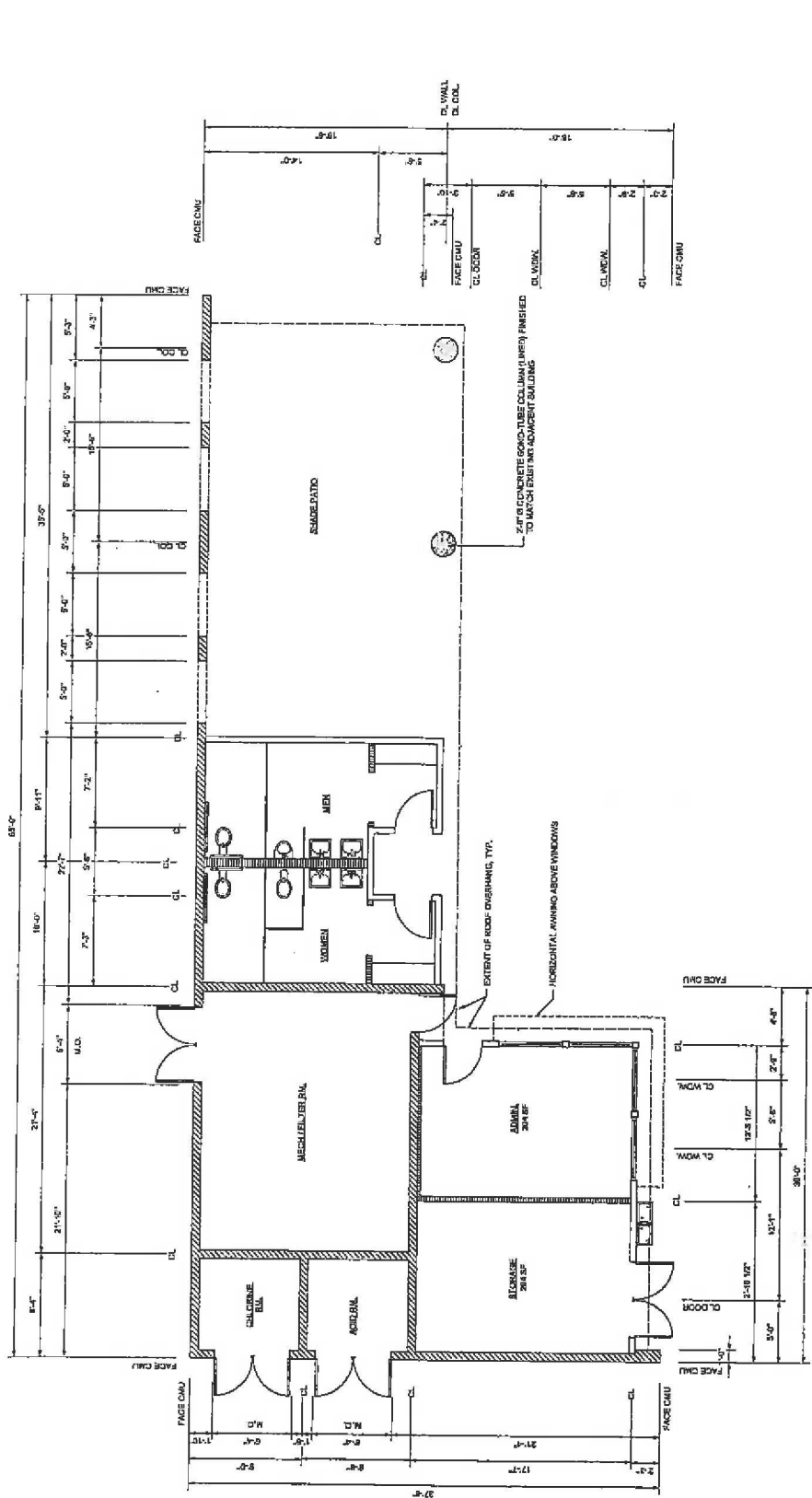


Exhibit C

No.	Description	Date

Scale	1/8" = 1'-0"
DATE	08/2008
JOB	1617
Drawn by	JAC
Check	



WALL LEGEND

- CONCRETE MASONRY BLOCK
- CONCRETE MASONRY BLOCK
- 2" x 4" CONCRETE GROUND-TUBE COLUMN (UNFINISHED) FINISHED TO MATCH EXISTING ADJACENT BUILDING
- 2" x 4" STUDS AT 24" O.C. WITH 5/8" THICK TYPE "X" GYP. BLK. PARTITION RESISTANT WOODIE ROOF, AND GIBBSWALL, GIBBSWALL PARTITION SYSTEM.
- 2" x 4" STUDS AT 24" O.C. WITH 5/8" THICK TYPE "X" GYP. BLK. SHEET ROOF AT PLUMBING

BUILDING PLAN
 80'-0" x 70'-0"

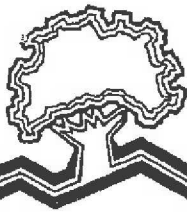
WALLS = 4.00 SF
 PARTITION = 217.00 SF
 TOTAL = 221.00 SF

CLU COMMUNITY POOL BUY OUT EXHIBIT D

Initial Cost \$3,400,000.00

YEAR	DEPRECIATION	ACCUMULATED DEPRECIATION	BUY OUT
1	\$0.00	\$0.00	N/A
2	\$0.00	\$0.00	N/A
3	\$0.00	\$0.00	N/A
4	\$0.00	\$0.00	N/A
5	\$0.00	\$0.00	N/A
6	\$0.00	\$0.00	N/A
7	\$0.00	\$0.00	N/A
8	\$0.00	\$0.00	N/A
9	\$0.00	\$0.00	N/A
10	\$0.00	\$0.00	\$3,400,000.00
11	\$170,000.00	\$170,000.00	\$3,230,000.00
12	\$170,000.00	\$340,000.00	\$3,060,000.00
13	\$170,000.00	\$510,000.00	\$2,890,000.00
14	\$170,000.00	\$680,000.00	\$2,720,000.00
15	\$170,000.00	\$850,000.00	\$2,550,000.00
16	\$170,000.00	\$1,020,000.00	\$2,380,000.00
17	\$170,000.00	\$1,190,000.00	\$2,210,000.00
18	\$170,000.00	\$1,360,000.00	\$2,040,000.00
19	\$170,000.00	\$1,530,000.00	\$1,870,000.00
20	\$170,000.00	\$1,700,000.00	\$1,700,000.00
21	\$170,000.00	\$1,870,000.00	\$1,530,000.00
22	\$170,000.00	\$2,040,000.00	\$1,360,000.00
23	\$170,000.00	\$2,210,000.00	\$1,190,000.00
24	\$170,000.00	\$2,380,000.00	\$1,020,000.00
25	\$170,000.00	\$2,550,000.00	\$850,000.00
26	\$170,000.00	\$2,720,000.00	\$680,000.00
27	\$170,000.00	\$2,890,000.00	\$510,000.00
28	\$170,000.00	\$3,060,000.00	\$340,000.00
29	\$170,000.00	\$3,230,000.00	\$170,000.00
30	\$170,000.00	\$3,400,000.00	\$0.00
TOTAL	\$3,400,000.00		

NOTE: Initial cost defined as final construction costs plus final soft costs
Buy out amount due at time early termination clause is exercised



CONEJO RECREATION & PARK DISTRICT

GENERAL MANAGER
Jim Friedl

BOARD OF DIRECTORS
Mark H Jacobsen, Chair
George M. Lange, Vice Chair
Michael D. Berger, Director
Susan L. Holt, Director
Joe Gibson, Director

GENERAL MANAGER EMERITUS
Tex Ward

To: Steve Wiley
From: Kevin Lukes
Date: February 4, 2007
Subject: California Lutheran University Pool
Demand for Additional Community Aquatics Facility

The proposed recreational pool at California Lutheran University would be an important asset for the community. New residents to our District are often surprised when they inquire where the public pool is, and are informed that except for summer months there isn't one. Construction of this new pool would correct this shortcoming for our community of 120,000 plus people. The site at CLU brings the additional benefits of the brand new Olympic size competition pool, Gilbert Sports and Fitness Center, parking, infrastructure, and visibility on a heavily traveled road.

The CLU Pool would allow more flexible scheduling in the summer and weekday aquatic programs that don't exist now. Recreation offerings could include:

- swim instruction
- Therapeutic recreation use
- public/private rental
- lap swimming
- USA Masters
- exercise
- on-going water training for staff
- home school classes
- water polo
- birthday and scout parties
- boating safety
- senior swim

HILLCREST CENTER 403 WEST HILLCREST DRIVE, THOUSAND OAKS, CALIFORNIA 91360-4223
(805) 495-6471 FAX: (805) 497-3199 E-MAIL: parks@crpd.org

- water basketball and volleyball
- rehab
- swim meets
- camps
- inner tube water polo
- snorkeling, scuba, water running
- tri-athlete training
- diving
- Red Cross Certification
- junior life-guarding
- swim team

Cooperative programming with CLU would allow access to both the recreational and competition pools. CRPD Aquatics would have a year round home base.

A survey of swim instruction registration; winter, spring, and fall of 2006 shows a significant number of patrons were not accommodated. Seventy-two of 79 classes offered were full, 39% of CRPD residents' names on the waiting list were not accommodated. Out-of-district residents were not a factor, with less than 1% of the total names attempting to register.

In the summer, 549 of 849 classes were full, 2,988 patrons enrolled, with 2,481 names on the waiting lists.

An after school "learn to swim" program in the spring and fall at CLU would accommodate residents who are unable to attend Saturday classes. During the school year, high school programs use the high school pools after school and CRPD aquatic programs are only offered on Saturdays. In addition, preschool age children, seniors, and adults who are available weekdays during normal school hours would now have a public swimming option.

The new pool would complement the Olympic pool next to it. We anticipate advantages to the university setting, including recruiting college students as lifeguards. A warm up pool is important for the university and swim clubs in bidding for major swim meets. Working cooperatively with the CLU Staff will benefit both organizations and the public. Building the recreational pool at CLU would fill a major void in our aquatics community. The Conejo Valley lacks a year-round community pool. There is demand and a need.

Current CRPD Aquatics Budget

As currently configured, the Aquatic Section's budget is approximately \$250,000 for fiscal year 2006/07.

Current Aquatic Programs

Within its current \$250,000 annual budget, CRPD offers a wide range of classes and programs primarily at Thousand Oaks and Newbury Park High Schools and to a lesser degree at Westlake High School and the Conejo YMCA:

Red Cross Certification

Swim instruction - Newbury Park, Thousand Oaks, and Westlake High Schools

Parent & Child

Tiny Tot Seals

Polliwogs (new)

Seals

Dolphins

Otters

Stingrays

Barracudas

Shards

Adult Beginner

Private Instruction

Adult Lap Swim - NPHS & TOHS

Swim Camp - NPHS, TOHS, & WHS

Swim Team - NPHS, TOHS, & WHS

Diving (contingent on instructor availability) - NPHS, TOHS, & WHS

Junior Lifeguards - NPHS & TOHS

Lifeguard Training – NPHS

Water Safety Instruction – NPHS

Recreation Swim - NPHS & TOHS
CPR – Hillcrest Center
First Aid – Hillcrest Center
Water Polo Camp - NPHS & TOHS
Deep Water Conditioning - NPHS & TOHS
Teen Center Programs - NPHS & TOHS
Senior Water Exercise - NPHS & TOHS
Therapeutic Recreation Classes - NPHS & TOHS
Permit Groups - NPHS & TOHS
Conejo Creek Condos “Learn to Swim,” summers, 2-3 times a week

CRPD currently conducts swim lessons on Saturdays in the spring and fall at Newbury High School Pool. The ability of CRPD to continue to reliably offer a winter program at the indoor Conejo YMCA Pool is extremely limited due to the successful increase in YMCA aquatic programming. (Fortunately, a pending CRPD/YMCA loan agreement, once executed, will provide additional indoor aquatics programming opportunities for CRPD at YMCA facilities with the completion of the Miller Family YMCA in Dos Vientos). During the summer CRPD staff manages a full program at Thousand Oaks and Newbury Park High School Pools, mornings at Westlake High School Pool, and a two-day-a-week learn to swim program at Conejo Creek Condominiums.

The current summer schedule at TOHS and NPHS Pools is at capacity with long-standing community organizations relying on these CPRD-scheduled pools at the high schools. Historically, Class One permit groups have been able to utilize those pools at no charge early morning and at 7:00 p.m., Monday-Thursday, with the exception of recreation swim Monday nights at TOHS and Wednesday nights at NPHS. This 7:00 p.m. time slot would otherwise be profitable for District programs.

Current Aquatics Staffing

Fall, winter, and spring staffing normally consists of the Aquatic Specialist, an assistant pool manager, and six to nine instructor guards/lifeguards. In the summer, there are

three pool managers (NPHS, TOHS, WHS,) three assistant managers (NPHS, TOHS, Conejo Creek Condominiums,) two cashiers (NPHS, TOHS,) two attendants (NPHS & TOHS,) and 50-60 instructor guards/lifeguards. There are also percentage contractors directing swim camps, water polo camps, swim teams, diving, and deep-water conditioning.

Projected Staffing Needs and Estimated Cost of CLU Pool Operation

A year-round operation, whether at CLU or elsewhere, would require increased staffing. A full time Aquatics Coordinator (a position which was eliminated during the early 1990's due to the State property tax shift), would be needed. The position is projected at 50% cost charged to the community pool at CLU, and 50% at the other pools. The estimated total cost of this new position is \$63,000. A specialist and assistant manager would manage on site, along with the coordinator. Lifeguards and swim instructors are planned for rec swim, lessons, water exercise, swim camps, water polo camps, and private parties spanning the four seasons. A staff of nine lifeguards/swim instructors is estimated, all contract hourly workers. The estimated total additional staffing cost (including the aforementioned positions) is \$177,000. While maintenance and utilities are projected to cost \$125,000 annually, the total estimated operations and maintenance cost of the Community Pool at CLU is \$302,000. Using current class and permit fee costs, the estimated revenue from operation of the Community Pool at CLU is \$226,000 – resulting in an estimated net annual operating deficit of \$76,000 in the first year.

Recommended Three-Year Fee Adjustment Plan

A three-year plan to increase aquatic revenue district-wide includes 10% annual fee increases. By the end of the third year, staff estimates that the direct net annual operation and maintenance costs of the aquatics program would break even. A recent staff survey of aquatics classes in the community indicate that current CRPD class fees are well below market and would remain comparatively competitively priced even

following the three year fee adjustment plan.¹ The estimates take into account a much slower winter session in an outdoor facility. Staff also intends to recommend fee adjustments for permit groups including those paying no fees at all.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin". The letters are cursive and fluid.

Kevin Lukes

Recreation Supervisor/Sports

¹ CRPD currently offers the lowest priced instructional classes among the Rancho Simi Recreation and Park District, Pleasant Valley Recreation and Park District, Daland Swim School, and Conejo Valley YMCA.

Exhibit 3

**GROUND LEASE AND JOINT USE AGREEMENT
BETWEEN
CALIFORNIA LUTHERAN UNIVERSITY,
LANDLORD
AND
CONJEO RECREATION AND PARK DISTRICT,
TENANT**

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GROUND LEASE AGREEMENT

THIS GROUND LEASE (the "Lease"), is made as of March _____, 2008 (the "Effective Date"), between CALIFORNIA LUTHERAN UNIVERSITY, a private educational institution ("CLU") and CONEJO RECREATION AND PARK DISTRICT, an independent special district ("CRPD") (the "Parties", and each being a "Party").

For good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. Basic Lease Terms. This Section 1 states certain basic terms of this Lease (the "Basic Lease Terms") and the additional capitalized terms used herein are defined in Schedule 1.

1.1 "Premises" means (1) all of that certain Community Pool Facility, which shall include CRPD's Office Building, equipment and storage facility, shade areas and deck areas, to be depicted on and shall be substantially the same as the Site Plan (defined below) with any changes of Olsen Road and Montclef Blvd. in the City of Thousand Oaks, County of Ventura, State of California, and more particularly described in the legal description set forth in Exhibit A hereto (the "Land"). The Premises are shown on the proposed Site Plan attached hereto as Exhibit B.

1.2 "Building" means the building that CRPD shall occupy, which shall include areas at least 1350 square feet of ground floor area designated office equipment and storage and 675 square feet shade structure, as depicted on the Site Plan attached as Exhibit B, and on the elevations attached hereto as Exhibit C.

1.3 "Samuelson Aquatics Center" means the existing 51 meter pool, decking, and associated office, equipment and storage buildings, fencing and lighting, located at the northwest corner of Olsen Road and Montclef Blvd. in the City of Thousand Oaks, County of Ventura, State of California, the legal description of which is set forth in Exhibit D, including all buildings, improvements, rights, easements, rights of way and appurtenances, and which includes the Premises.

1.4 "Early Termination" shall mean the right of CLU to terminate the Lease and Joint Use Agreement as set forth in Section 3.5.

1.5 "Outside CLU Entitlements Date" means on or before 26 months after the Effective Date. (See Section 5.3)

1.6 "Outside Delivery Date of Premises" means the date by which CLU must deliver the Premises to CRPD, which date shall be no later than one hundred eighty days (180) after issuance of grading permit.

1.7 "Permits and Construction Period" shall commence on the Date of Term Commencement and shall end 365 days thereafter.

1.8 “Date of Term Commencement” means one hundred eighty (180) days after issuance of grading permit by the City for the Community Pool Facility or any portion thereof.

1.9 “Date of Rent Commencement” means one hundred eighty (180) days after issuance of the grading permit by City for the Community Pool Facility.

1.10 “Rent” means (a) Fixed Rent, (b) CRPD’s Pro Rata Share of Real Estate Taxes, if the Premises are not separately assessed (*see* Section 13.3).

1.11 “Fixed Rent” means the rent for the Premises calculated and paid annually at \$10.00 per year.

1.12 “Parking Spaces” means the number of approved automobile parking spaces shown on the Site Plan.

1.13 “City” means the City of Thousand Oaks.

1.14 “Date of Possession” is defined in Section 4.1.

1.15 Exhibits and Schedules. The following Exhibits and Schedules are attached hereto and made a part hereof:

Schedule 1 – Definitions

Exhibit A – Legal Description of Premises

Exhibit B – Site Plan

Exhibit C – Elevation Plans

Exhibit D – Legal Description for Samuelson Aquatics Center

Exhibit E – Lease Commencement Agreement

Exhibit F – Memorandum of Ground Lease

Exhibit G – Subordination, Nondisturbance and Attornment Agreement

Exhibit H – Permitted Title Exceptions

Exhibit I – Restrictions and Exclusives

Exhibit J – Mortgages and Deeds of Trust (none)

Exhibit K – Buy Out Schedule

Exhibit L – Intentionally Omitted

Exhibit M – Shared Parking Analysis

Exhibit N – CLU Information Statement

Exhibit O – CRPD Information Statement

Exhibit P – Estoppel Certificate

Exhibit Q- Title Policy Endorsements

Exhibit R-Entitlement Conditions.

Any reference in this Lease to any Exhibit or Schedule shall mean the referenced Exhibit or Schedule attached hereto, or to such Exhibit or Schedule as it may be modified with CRPD's and CLU's prior written approval, neither of which shall be unreasonably withheld, conditioned or delayed. Any reference in this Lease to this Lease shall mean this Lease and all Exhibits and Schedules incorporated by this reference.

Section 2. Lease of Premises; Site Plan.

2.1 Premises. CLU leases the Premises to CRPD, and CRPD hereby leases the Premises from CLU, for the Term and on the conditions stated herein.

2.2 Rights to Ingress and Egress and Certain Common Areas. CRPD and CRPD's employees, suppliers, vendors, customers, licensees and other invitees shall have the nonexclusive rights to use and freely access, without charge for the entire Term, all Common Areas, if any, of the North Campus and areas of ingress to and egress from the Premises, Common Areas of the North Campus and private and public streets, including each street access existing on the Date of Term Commencement or shown on the Site Plan.

2.3 Site Plan for North Campus.

2.3.1 CLU represents and agrees that, at CLU's sole cost, CLU shall develop, operate and maintain to the best of CLU's ability the Samuelson Aquatics Center as shown on Exhibit C (the "Site Plan").

2.3.2 CRPD shall be responsible for funding development and construction of the Community Pool Facility and its associated improvements, including, but not limited to, decking, lighting support offices, storage and equipment buildings, shade structures, fencing and landscaping.

Section 3. Term of Lease; Renewal Options; Memorandum of Lease.

3.1 Term Commencement. The Initial Term shall commence on the Date of Term Commencement.

3.2 Memorandum of Lease Term Commencement. Upon demand by either Party, the other Party shall promptly join in the execution of a document amending this Lease, in

recordable form, in substantially the form set forth as Exhibit E, evidencing the Date of Term Commencement and the expiration date of the Initial Term of this Lease, and early termination right of CLU. CLU shall record such Memorandum of Lease Term Commencement and shall provide to CRPD, within 30 days from date of recordation, a conformed copy of the Memorandum of Lease Term Commencement showing the recording confirmation.

3.3 Memorandum of Ground Lease. Within 5 business days after either Party's demand, and not later than 3 business days prior to the day CLU delivers possession of the Premises to CRPD as set forth herein, the Parties shall execute a memorandum of ground lease ("Memorandum") in the form of Exhibit F. CRPD shall record such Memorandum and shall provide to CLU, within 5 business days from the date of recordation, a conformed copy of the Memorandum showing the recording confirmation.

3.4 Lease Year.

3.4.1 For the purposes hereof, the term "Lease Year" shall mean a period of 12 consecutive calendar months; provided however that the first Lease Year shall commence on the Date of Term Commencement and shall end on the last day of the month which includes the one-year anniversary of the Date of Rent Commencement. Each successive Lease Year (other than the first Lease Year) shall begin on the day following the last day of the prior Lease Year and shall end 12 calendar months thereafter.

3.4.2 All amounts payable by CRPD hereunder for any fractional month at the beginning or end of the Term shall be prorated on a daily basis based on the actual number of days in such month.

3.4.3 The "term" of this Lease is thirty (30) years, subject to early termination as set forth in Section 3.5.

3.5 Early Termination. CLU shall have the right to initiate early termination of the Lease and Joint Use Agreement as follows:

The annual early termination/buyout provision shall begin at year ten, based upon the schedule provided in Exhibit K. CLU shall be able to initiate early termination/buyout of the lease for any reason, beginning at year ten. Written notice of the intent to buyout the Lease shall be provided to CRPD two years prior to the proposed exercise date of the buyout provision, with the accompanying payment of the early termination/buyout sum, pursuant to Exhibit K. For example only, at year eight, CLU may provide written notice of its desire to exercise the buyout in year ten. Based upon the schedule set forth in Exhibit K, CLU, at the time of exercising the early termination/buyout, shall pay to CRPD the sum of \$3,400,000.

Section 4. Delivery of Premises.

4.1 Notice to CRPD.

4.1.1 CLU agrees to deliver possession of the Premises 365 days after Date of Term of Commencement or at such time as the Community Pool Facility is completed, which is beyond the control of CRPD and CLU.

4.1.2 At all times prior to the anticipated date of delivery of the Premises to CRPD, CRPD and CRPD's contractors, engineers, surveyors, agents and vendors shall have the right to enter the Premises to measure, survey and inspect the Premises in order to ensure that the Premises will be delivered in accordance with this Section 4; provided, however, that CRPD and its representatives and agents shall not interfere with the work of CLU's representatives and agents, and shall make any inquiries of CLU's professionals and agents through CLU's representative, Valerie Crooks, or such other representative who is designated by CLU in writing.

4.2 CLU's Delivery. CLU agrees to deliver the Premises in a clean, finished, usable state at time of delivery.

4.3 CRPD's Acceptance of Premises. Upon CLU's delivery of possession of the Premises to CRPD in conformance with all of the terms of this Lease, CRPD shall give written notice of its acceptance or non-acceptance of the Premises. If CRPD accepts possession of the Premises, then CRPD's acceptance of possession of the Premises shall be determined. If CRPD does not accept possession of the Premises, then CRPD shall send written notice to CLU specifically setting forth the reasons of CRPD's non-acceptance of the Premises.

Section 5. Conditions Precedent to Delivery; Rights to Terminate.

5.1 Delivery of Possession. CLU shall deliver exclusive possession of the Premises to CRPD subject to the Terms, set forth in this Agreement, and the entitlement conditions approved by the City of Thousand Oaks, which are attached as Exhibit R hereto and incorporated herein by reference as set forth in full.

5.2 Intentionally Omitted.

5.3 CLU Acquisition of Entitlements.

5.3.1 Pursuit of Entitlements. CLU and CRPD have both approved the elevations of the buildings in the Community Pool Facility, including CRPD's Building, from those shown on Exhibit C, which shall include, but not be limited to building colors, prior to CLU submitting requests for Entitlements with the applicable governing authorities. CLU and CRPD have approved the Entitlements for SUM 2007-70082, Planning Commission Resolution No. 22-2007 PC. A copy of the entitlement conditions is attached as Exhibit R.

5.4 Title Insurance and Survey. CLU acknowledges that, upon the establishment of the Date of Term Commencement and the recordation of the Memorandum of Lease, CRPD may obtain a leasehold title insurance policy from the Title Company insuring CRPD's leasehold estate in the Premises. CRPD shall pay for any costs related to the issuance of such title insurance coverage lessee's policy if CRPD elects to obtain such coverage. To help CRPD in obtaining Title Insurance, each of CLU and CRPD shall complete and deliver to the other Party and to the Title Company, Exhibit N or Exhibit O, as applicable.

Section 6. Construction Obligations.

6.1 Work. CLU and CRPD have jointly developed together a design plan and specification for the Community Pool Facility and its associated improvements, including, but not limited to swimming pool decking, lighting, support offices, storage and equipment building, shade structures, fencing and landscaping. Pursuant to a separate Construction Management Agreement and this Lease, CLU shall perform the work required for construction of the Community Pool Facility, as depicted on Exhibits B and C ("**Work**"). All rights, responsibilities, liabilities, defense, indemnity and hold harmless and any additional insurance provisions shall be addressed in the Construction Management Agreement. CLU shall own the improvements however, CRPD shall reimburse CLU for such constructions costs, including but not limited to permits, licenses necessary for the development, and construction of the Community Pool Facility and related facilities on the Premises, which shall be subject to CRPD's reasonable approval.

Section 7. Rent. CRPD shall pay in full the annual Fixed Rent for the entire lease term at the Date of Commencement of the Lease Term. Should the lease be terminated early, CLU shall be entitled to keep any remaining rent previously paid in advance.

7.1 Construction Costs.

7.1.1 "Construction Costs" is the cost to complete Work, shall be the actual cost of construction, which is currently estimated to be \$3,400,000.00.

Section 8. Utilities.

8.1 Service to the Premises. CLU shall provide, at the location on the Premises reasonably approved by CRPD, the facilities necessary to enable CLU to construct for the Premises water, sanitary sewer, gas, telephone service, internet data service and electricity.

8.1.1 Payment for Utilities. On and after the Date of Term Commencement, CRPD shall pay directly prior to delinquency for all water, sanitary sewer, waste disposal service, gas, electricity, power, telephone service, data service and similar services, and heating, ventilating and air conditioning used by CRPD in the Building and Community Pool Facility. Community Pool Facility and CRPD shall pay all utility costs associated with construction of the Community Pool Facility, as billed as a result of construction. If CRPD approves the same in advance, and subject to Sections 8.1.2 CLU may supply any or all of the above-named services, and CRPD agrees to purchase same from CLU in accordance with the terms of this Section provided that CLU shall not charge more than the consumer rate that would be charged by the public service corporation or municipal authority supplying such services in the area.

(a) With respect to all utility services which can be separately and directly metered or submetered and charged by, and paid directly by CRPD to, the utility company or CLU, when applicable, serving the Community Pool Facility.

(b) Utilities that cannot be metered or submetered. Any utilities that cannot be separately metered or submetered shall be paid in the following pro rate basis: 25% CRPD and 75% CLU, except sanitary sewer shall be based upon water consumption.

CRPD agrees to provide copies of its water bills or provide authorization to the water purveyor to provide such water bills to CLU for computation of sewer costs.

8.1.2 Telephone and Internet. Notwithstanding anything to the contrary contained in this Lease, CRPD shall have the right to choose its own telephone service provider, internet service provider, data line service provider and provider for any other similar services. CLU shall permit the company chosen by CRPD to provide such services to have access to the lines, cables, conduits and the like within the Building and Community Pool Facility to provide such services to CRPD. CLU shall not enter into any contract which will prevent CRPD from receiving such services from the carriers, suppliers or the like chosen by CRPD in its sole discretion unless necessary in order for CLU to fulfill its obligation under this Lease to provide utility service. CRPD may also elect to use the existing telephone and communication lines already existing at CLU's property. If such election is made as part of the construction activities for the Community Pool Facility, a connection box will be installed at the property line between the Premises and CLU property. CRPD will be responsible for all costs and maintenance of the telephone and communication line from this connection box to the Premises.

8.2 Solid Waste Disposal. CRPD shall be responsible to pay for one day a week solid waste removal of one trash bin and one recycle bin pick up.

8.3 Interruption of Service. CLU shall not be liable for any interruption in utility service to the Building or Community Pool Facility unless any such interruption results from the willful or grossly negligent acts or omissions of CLU or its agents, employees or contractors. If any utility service to the Building or Community Pool Facility is interrupted as a result of any willful or grossly negligent act or omission of CLU or its agents, employees or contractors, and as a result CRPD cannot operate its Premises for its intended use, the term of the Lease shall be extended on a pro rata basis for the time period that the Premises cannot be operated due to interruption of service. CRPD acknowledges that if power outages occur as a result of electricity purveyor, currently Southern California Edison that CLU does not have a back up generator for the North Campus and that CLU is not responsible for such interruption in service.

Section 9. Maintenance and Repairs.

9.1 Maintenance and Repairs.

9.1.1 All obligations of CLU pursuant to this Section 9.1 shall be performed by CLU, subject to the cost thereof being reimbursed by CRPD for extraordinary wear due to or caused by CRPD to Common Area. CLU shall maintain (including painting and cleaning), repair, and replace, as necessary to keep the same in good condition and repair, the Common Areas and each of the exterior portions of the buildings owned by CLU outside the Premises.

9.2 CRPD's Maintenance and Repairs. On and after the Date of Possession, CRPD shall, at its sole cost and using its own vendors, shall keep the Premises in good condition and repair, including, without limitation, to the extent part of Work, the fixtures and equipment therein or related thereto, any Building, and Community Pool Facility and the heating,

ventilation and air-conditioning systems exclusively serving the Building, the roof and floor supports, flashings, gutters, downspouts, footings, foundations, structural supports, columns, decking, exterior walls, bearing walls, retaining walls, floor slab, utility meters, fire protection sprinkler systems (if any), exterior canopies or shade areas, loading docks, fencing, landscaping, lighting, underground and otherwise concealed sewage, plumbing, conduit, electrical, and other utility systems of the Premises. Without limiting the foregoing, CRPD (i) shall keep all exterior and interior surfaces clean and shall maintain the rest of the Building and Community Pool Facility in a clean and orderly condition and free of insects, rodents, vermin and other pests; (ii) shall not permit accumulations of any refuse, but shall remove the same and keep such refuse in odor-proof, rat-resistant containers within the interior of the Premises shielded from the view of the general public until removed; (iii) shall not cause or permit unreasonably objectionable odors to emanate or be dispelled from the Premises; and (iv) shall not use the plumbing facilities for any other purpose than that for which they are constructed.

9.3 Responsibility of Parties for Their Own Negligence. Except as expressly otherwise stated herein, neither Party shall be obligated to perform any maintenance, repair or replacement, the necessity of which shall have arisen solely due to the negligence or fault of the other, or of the other's employees, contractors or agents; and the Party which shall have caused the need for such maintenance, repair or replacement shall be responsible for the same, at its sole cost.

Section 10. Compliance With Laws.

10.1 CRPD Compliance with Laws. At CRPD's sole cost, CRPD shall comply with all Laws relating to the Building and Community Pool Facility from and after the Date of Term Commencement. The foregoing covenant of CRPD shall not impose any liability for the presence of Hazardous Substances on the Premises beyond the express liability of CRPD set forth in Sections 16.1.

Section 11. Insurance.

11.1 CRPD's Insurance.

11.1.1 Commercial General Liability Insurance. From the Date of Possession, CRPD shall maintain commercial general liability insurance coverage on an occurrence basis, in combined policy limits of not less than \$5,000,000.00 per occurrence and \$20,000,000 in the aggregate, with such reasonable deductibles as CRPD may carry in conducting its business, insuring CRPD (as named insured) and CLU, its officers, directors, employees, agents and lenders (as an additional insured) against all claims, liability, demands or actions for bodily injury, personal injury, death, and property damage made by or on behalf of any person, firm or corporation, occurring in or upon the Premises, or arising from any acts or omissions of CRPD or any of CRPD's agents, employees or contractors.

11.1.2 All Risks Property Insurance. From and after the Date of Term Commencement and at its sole cost, CRPD shall keep all buildings and improvements erected on the Land within the CLU's North Campus at any time insured for the benefit of CLU and CRPD, as their respective interests may appear, against loss or damage by fire or other casualty except

for earthquake and customary extended coverage in a minimum amount equal to 90% of the reasonable replacement value thereof. All proceeds payable at any time and from time to time by any insurance company under such policies, or to CRPD, and CLU shall not be entitled to, and shall have no interest in, such proceeds or any part thereof. Any proceeds paid directly to CRPD shall be held by CRPD for the purpose of paying the expenses of complying with its rights and obligations under Section 15 hereof. During the Term and at its sole cost, CRPD shall provide and maintain, or cause to be provided or maintained, All Risks, except for earthquake property insurance covering all of CRPD's personal property in the Premises, including inventory, trade fixtures, floor covering, furniture and other property removable by CRPD under the provisions of this Lease, and all leasehold improvements installed in the Premises by, or on behalf of, CRPD.

11.1.3 Additional Insured Endorsement, Cancellation and Automatic Renewal. A separate additional insured endorsement naming CLU, its officers, directors, employees, agents and lenders shall be provided and such policy shall be placed with an insurer satisfactory to CLU, whose approval shall not be unreasonably withheld and may not be cancelled without thirty (30) days written notice to CLU. The policies shall automatically renew or replace each year of the term of this Lease and a new certificate of insurance and additional insured endorsements evidencing coverage shall be provided to CLU prior to the expiration.

11.1.4 Blanket Coverage. Notwithstanding the provisions stated in Section 11.3, CRPD may include any of the insurance coverage set forth above in general or blanket policies of insurance provided that the coverage afforded will not be reduced or diminished by use of such general or blanket policies.

11.2 CLU's Insurance.

11.2.1 Commercial General Liability Insurance. Throughout the Term, CLU shall maintain in force its currently insurance policies with coverage equal to or better than current policies with respect to the common areas on the North Campus. CLU currently maintain: **[need info from CLU]** _____.

11.2.2 Rental Interruption Insurance. CLU may elect to carry rental interruption insurance for the Community Pool Facility, in amounts not to exceed 12 months' worth of Rent.

11.2.3 CRPD's Payment of Pro Rata Share of CLU's Insurance Costs. From and after the Date of Rent Commencement, CRPD shall pay to CLU CRPD's Pro Rata Share of the cost of increased insurance required to be maintained under Sections 11.2.1, as a result of the Community Pool Facility and during the Term ("Insurance Charge"). Any sum payable to CLU hereunder shall be paid by CRPD within 30 days after receipt from CLU of demand therefor, which shall not be made more than once annually, and shall be accompanied by a computation of CRPD's Pro Rata Share, copies of receipted insurance bills, copies of the declaration pages of the applicable policies, with determinations of premium allocations, and any endorsements and exclusions, and by a certificate of all of CLU's insurance naming CRPD as an additional insured with respect to CLU's general liability policy. CLU agrees to send to CRPD CLU's estimate of the annual insurance cost hereunder at least 30 days prior to (a) the

commencement of the Term, and (b) the commencement of each and every Lease Year thereafter.

11.2.4 Credits from Insurance. If CLU shall receive a credit for any amount of the insurance premium paid by CLU for the insurance required or permitted hereunder, then CLU shall notify CRPD of such credit within 15 days after its receipt; and CRPD's Pro Rata Share of said amount shall be credited to CRPD for the next succeeding insurance payment required to be paid by CRPD hereunder, except that, at the expiration or termination of the Term, CRPD's Pro Rata Share of said amount will be refunded to CRPD. CLU shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by CRPD hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under CRPD's insurance.Insurance Requirements.

11.3.1 Licensed and Rated Companies. All insurance coverage required to be carried hereunder shall be carried with insurance companies that are (a) licensed to do business in the state in which the Premises are located; and (b) rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better.

11.3.2 Standard Forms; Notifications. All insurance policies required to be carried hereunder shall (a) be effected under standard form policies and (b) require the insured's insurance carrier to notify the other Party hereto (and any Leasehold Mortgagee) at least 30 days prior to any cancellation or material modification of such insurance.

11.3.3 Increased Amounts. Upon the commercially reasonable request of either Party, the other Party shall increase the limits of insurance carried by it pursuant hereto and carry types of insurance in addition to the types required to be carried by it pursuant hereto.

11.3.4 Certificates of Insurance. Prior to the date either must maintain insurance hereunder, CRPD and CLU shall furnish the other with certificates of insurance evidencing the insurance coverage required herein. Current certificates of insurance for any insurance policy required hereunder shall be delivered to CLU or CRPD, as the case may be, at least 10 days prior to the expiration of any policy.

11.3.5 Contractual Indemnity, Cross-liability and Severability of Interests. All commercial general liability insurance policies shall insure for contractual indemnity and contain a cross-liability endorsement. All property insurance policies shall contain a severability of interests clause.

11.4 Waiver of Subrogation of Insured Claims Against CLU and CRPD. CLU and CRPD mutually agree that the one carrying such insurance and suffering such a loss of a type intended to be covered thereby hereby releases the other of and from any and all claims with respect to such a loss; and CLU and CRPD further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. Notwithstanding anything in this Lease to the contrary, CLU and CRPD each waives and releases any rights of action for negligence against the other Party, which may arise during the

Term for damage to the Premises or CLU's Property therein to the extent it results from any such loss.

Section 12. Mutual Indemnities of CLU and CRPD.

12.1 CLU's Indemnity. CLU shall indemnify, defend and hold CRPD, its officers, directors, employees, and agents harmless from and against any and all claims, suits, proceedings, actions, causes of action, responsibility, damages, liability, demands, judgments, and executions (including reasonable Attorneys' Fees and costs incurred at trial and with respect to appellate or bankruptcy proceedings incurred by CRPD) (each hereinafter referred to as a "Claim" and collectively as "Claims") which Claims (i) arise from or in connection with any willful, negligent or tortious act or omission of CLU, or its employees, agents or contractors; (ii) result from any CLU Default or any condition that gives rise to such a default; or (iii) result from occurrences of injury to or death of any person or damage to property arising out of any work, construction, reconstruction, restoration, maintenance or other work to be done hereunder by CLU, unless such Claims are caused solely by the act or omission of CRPD or its employees, agents or invitees.

12.2 CRPD's Indemnity. CRPD shall indemnify, defend and hold CLU, its officers, directors, employees, and agents harmless from and against any and all Claims which Claims (i) arise from or in connection with any willful, negligent or tortious act or omission of CRPD, or its employees, agents or contractors in connection with CRPD's due diligence on, or use or occupancy of, the Premises; (ii) result from any CRPD Default or any condition that gives rise to such a default; or (iii) result from occurrences of injury to or death of any person or damage to property arising out of any due diligence investigations conducted by CRPD, work, construction, reconstruction, restoration, maintenance or other work to be done hereunder by CRPD, unless such Claims are caused solely by the act or omission of CLU or its employees, agents or invitees, or resulted from conditions that existed on the Premises prior to the Effective Date.

12.3 Limitations on Indemnities. The liability of either Party to indemnify the other shall not extend to any matter against which the indemnified Party shall be effectively protected by insurance; provided, however, that if any such liability shall exceed the amount of the effective and collectible insurance in question, said liability of the indemnifying Party shall apply to such excess.

12.4 Notices Needed for Indemnification. In case any action or proceeding is brought against an indemnified Party by reason of any such claim hereunder, the indemnifying Party, upon written notice from the indemnified Party, shall, at the indemnifying Party's sole cost, resist or defend such action or proceeding, but the indemnifying Party may make or cause to be made such investigation and such settlement of any suit, claim or demand as the indemnifying Party or its insurers shall deem expedient.

12.5 Subrogation Pursuant to Indemnification. To the extent of any payment made hereunder, the indemnifying Party, or if applicable, its insurer, shall be subrogated to all the indemnified Party's rights of recovery therefor, against any person or organization and the

indemnified Party shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights, and shall do nothing after loss to prejudice such rights.

Section 13. Real Estate Taxes and Public Entity Assessments.

13.1 Real Estate Taxes - If the Premises Constitute a Separate Tax Parcel. If the Premises constitute a separate tax parcel, as approved during the Feasibility Period, then (a) from and after the Date of Rent Commencement, CRPD shall timely and fully pay all Real Estate Taxes, including possessory taxes, if any, levied against the Premises and (b) CLU shall timely and fully pay or cause to be paid all Real Estate Taxes levied against the remainder of the Property, excluding the Premises.

13.2 Real Estate Taxes - If the Premises Do Not Constitute a Separate Tax Parcel. If the Premises do not constitute a separate tax parcel and therefore the Real Estate Taxes are not separately assessed solely to the Premises, then (i) CLU shall timely and fully pay or cause to be paid all Real Estate Taxes, including any possessory taxes, levied against the Property (including the Premises) and (ii) CRPD shall pay to CLU within 15 days of being billed (but not sooner than 30 days before delinquency), along with a copy of the tax bill (1) CRPD's Pro Rata Share of the Real Estate Taxes levied on account of the assessed value of the Property and (2) all the Real Estate Taxes levied on account of the assessed value of the improvements on the Premises for the period commencing on the Date of Rent Commencement and continuing for the duration of the Term or until the taxes for the Premises are separately assessed. For the first and last partial calendar year of the Fixed Rent period, CRPD shall pay said Real Estate Taxes for the entire year multiplied by a fraction, consisting of the number of days in the calendar year subsequent to the Rent Start Date or prior to the Lease Termination Date, as the case may be, and divided by 365.

13.3 CRPD's Tax Obligations. CRPD agrees to pay to all tax authorities all personal property taxes which may be levied against CRPD's fixtures, and other personal property in and about the Building and related improvements, all sales taxes, all taxes required as a result of its hiring employees and all license fees and taxes assessed only against CRPD, and not as a result of CLU's operations.

13.4 Parcel Number. CLU hereby represents to CRPD that the parcel number for the Property parcel including the Premises as reflected on the real estate tax billings from the local governmental entity as of the Effective Date is as follows: _____.

13.5 Right to Contest Taxes. At CRPD's sole cost, CRPD shall have the right to contest the validity, amount or rate of such Real Estate Taxes, or any factor used in the determination thereof, provided that CRPD first shall satisfy any requirement of Laws that such Real Estate Taxes be paid in full before being contested. CLU agrees to render to CRPD all assistance reasonably possible in connection therewith, including the joining in, and signing of, any application, protest or pleading which CRPD may deem it advisable to file. Should CRPD obtain any rebate of Real Estate Taxes, then, after first deducting from any such rebate received by CRPD all reasonable costs incurred by CRPD pursuant to this Section, CRPD shall pay to CLU CLU's Pro Rata Share of the remaining amount. "**Pro Rata Share**" shall mean 100% of the applicable sum described, less CRPD's Pro Rata Share.

13.6 CLU to Minimize Taxes. CLU agrees to use its reasonable efforts to minimize Real Estate Taxes and to notify CRPD of any increase in Real Estate Taxes on the Community Pool Facility within 30 days after receipt of the tax bill or other evidence of such increase.

13.7 Personal Property Taxes. CRPD shall be responsible for and shall pay before delinquency all local, municipal, county or state taxes, levies and fees of every kind and nature, including, but not limited to, general or special assessments assessed during the term of this Lease against CRPD's leasehold interest or CRPD's personal property of any kind.

13.8 Public Entity Assessments. CRPD shall be responsible for any public entity assessments for the Premises and its pro rata share as such assessment pertain to common areas, owned and maintained by CLU. CLU shall be responsible for all public entity assessments attributable to its real and personal property.

Section 14. Samuelson Aquatics Center Operation and Maintenance of Common Areas.

14.1 Operation of Samuelson Aquatics Center. CLU shall at all times during the Term operate the Samuelson Aquatics Center, and shall not permit any CRPD or occupant in the Samuelson Aquatics Center to create or continue any nuisance, disturbance or other condition in the Samuelson Aquatics Center, which may adversely affect CRPD or its enjoyment of the Premises or the Common Areas. CLU shall use commercially reasonable efforts to enforce this Section 14.1.

14.2 CLU's Maintenance and Operation of Samuelson Aquatics Center Common Areas. CLU shall operate and maintain the Samuelson Aquatics Center Common Areas and all associated infrastructure around the Samuelson Aquatics Center and Community Pool Facility, including parking, lighting, landscaping, walkways and related facilities in the Gilbert Sports & Fitness Center necessary for the operation of the Community Pool Facility, in a manner commensurate with acceptable standards of maintenance, and provide therefor all such services as are reasonably required, including repairing, resurfacing, repaving, restriping, and resealing, of the parking areas; repairing all curbing, sidewalks and directional markers; cleaning and sweeping each applicable morning; provision of adequate lighting during all hours of darkness that CRPD shall be open for business; installing, maintaining and replacing landscaping as needed, and any other required maintenance, including inspection, testing or monitoring of any fire sprinkler system or alarm system serving more than one CRPD's Premises in the Samuelson Aquatics Center. CLU shall adopt and implement a regular program of pest control as may be necessary to keep the areas adjoining the Premises free of pests and rodents. CLU.

14.2.1 Common Area Charges. CLU shall pay all of the costs and expenses related to the maintenance of the Common Areas. From and after the Date of Rent Commencement, CRPD shall reimburse CLU for extraordinary wear due to or caused by CRPD to Common Areas (hereinafter referred to as the "Common Area Charges"), real and possessory taxes, if any, public entity assessments and any utilities not already addressed in the Lease.

14.3 Failure to Maintain. If CLU shall fail to perform any of its obligations under this Section 14 within 30 days after receipt of written notice from CRPD of the need therefor or such reasonable period of time necessary, provided CLU is diligently proceeding the same to completion (except that no notice shall be required in the event of an emergency, other event or natural disaster requiring removal of debris), then CRPD may do so on CLU's behalf and charge CLU for the reasonable cost thereof. If CLU shall not pay CRPD within 30 days after receipt of an invoice therefor with supporting documentation, CRPD may deduct the reasonable cost thereof from Fixed Rent and other charges due hereunder.

Section 15. Damage and Destruction. If, at any time during the Term, the buildings and improvements on the Land are destroyed or damaged in whole or in part by fire or other cause within the extended coverage of the property insurance policies required to be carried by CRPD in accordance with this Lease, then, to the extent the same is fully insured (excluding deductibles) and CRPD receives the net proceeds, CRPD shall commence re-construction as soon as is reasonably possible and diligently pursue the repair, replacement or rebuilding of the same to completion.

Section 16. Environmental Matters.

16.1 CRPD's Use of Hazardous Substances. CRPD shall not use, store or dispose of any Hazardous Substances except for those substances required for operation of the Community Pool. CRPD may use household cleaners and chemicals to maintain the Building. Storage of such chemicals shall also be permitted. CLU and CRPD expressly acknowledge that any or all of the cleaners and chemicals described in this Section 16 may constitute Hazardous Substances. Notwithstanding any other provision of this Lease, provided that CRPD complies with Laws in doing so, CRPD may use and store same as herein set forth, but shall not dispose of same on the Premises, except for empty household cleaning containers.

16.2 CRPD's Remediation Obligations. With regard to the presence or release of any Hazardous Substances caused by CRPD, its employees, agents or invitees, CRPD shall remove or remediate same to the extent required by Laws, in compliance with Laws, and at CRPD's sole cost. CRPD agrees to defend, indemnify and hold CLU harmless from and against any and all Claims which CLU may suffer as a result of any Claim regarding any such Hazardous Substances (whether alleged or real), and/or regarding the removal and remediation of same.

16.3 Survival of Environmental Obligations. Each of CLU's and CRPD's obligations pursuant to this Section 16 shall survive any expiration or termination of the Term for 2 years.

Section 17. Eminent Domain.

17.1 Taking of the Premises.

17.1.1 If the Premises shall be taken under the power of eminent domain, the Lease shall automatically terminate as of the date the condemning authority takes title.

17.1.2 All awards for the taking of any part of the Premises or payment made under the threat or the exercise of the power of eminent domain, shall be the property of the party entitled to such award.

17.1.3 CRPD shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by CRPD in its own right on account of the taking of any or all of its leasehold improvements, furniture, fixtures and equipment.

Section 18. Use.

18.1 Intended Use of Premises. CRPD intends to use the Premises for the operation of a Community Pool Facility. CRPD shall not use the Premises for any use prohibited by Section 18.3 hereof.

18.2 Use.

18.2.1 Except as set forth herein, throughout the Term, CLU shall not lease, nor permit the assignment, sublease, license or other use of, any portion of the Community Pool Facility, other than the Premises, except as follows:

(a) The Community Pool Facility shall be for community recreational activities. The Community Pool and Samuelson Aquatics Center are separate facilities. The primary use of the Samuelson Aquatics Center shall be for CLU's various sports, intramural purposes and academic purposes. The CRPD and the CLU agree to use their best efforts to develop schedules, protocols and such other programs as required to facilitate mutual use of these facilities. The following is the anticipated use of each facility by CLU and CRPD:

(i) CRPD shall have priority use of the Community Pool. CRPD reserves the right to withhold approval of CLU's use of the Community Pool, at its sole discretion.

(ii) CRPD may schedule use of the Samuelson Aquatics Center for instructional programs and competitive swim team meets. It is anticipated that the scheduled use may include daily practice time and up to four meets per year held during the school year. The dates and times must be approved by CLU, in advance, to avoid any conflicts with CLU's use; such approval shall not be unreasonably withheld. CRPD understands that CLU's varsity use of the Samuelson Aquatics Center shall take precedence over CRPD's competitive swim team practice time. CLU reserves the right to withhold approval of CRPD's use of the Samuelson Aquatics Center, at its sole discretion.

(iii) CLU shall have priority use of the Samuelson Aquatics Center.

(iv) CLU may schedule use of the Community Pool for competitive swim team meets. The dates and times must be approved by CRPD, in advance, to avoid any conflicts with CRPD's use; such approval shall not be unreasonably withheld.

(v) The parties agree that use hours may be traded or be purchased for the scheduled lease amounts at each facility.

(b) CLU shall be responsible for all reservations and scheduling of the Samuelson Aquatics Center and CRPD shall be responsible for all reservations and scheduling of the Community Pool Facility. Both CLU and CRPD, and their respective staff and employees, agree to work together cooperatively to develop an annual master schedule for both facilities. The Community Pool Facility and use of the Samuelson Aquatics Center by CRPD shall not conflict with any major CLU events at the University. No CRPD use of the Community Pool Facility shall be scheduled for the dates of commencement, typically May 15 of each year.

(c) CRPD agrees, at all times, that egress from the double gates on the northeastern side of the Samuelson Aquatics Center which adjoins the two facilities will not be blocked or restricted in any manner.

18.3 Restrictions and Exclusives. CLU warrants and represents that Exhibit I attached hereto is a complete list of all use restrictions that affect the use of the Premises except for the matters set forth in Exhibit I, there are no other exclusives or use restrictions outstanding which would in any manner impair CRPD's right to use the Premises for lawful purposes as set forth in Sections 18.1. For such period of time as the restrictions set forth in Exhibit I shall be outstanding, CRPD agrees that its operations in the Premises shall not violate the restrictions or exclusives set forth in Exhibit I.

18.4 Violation of Exclusives. If CLU shall violate any of the provisions of this Section 18 and shall not cure such violation within 30 days after receipt of CRPD's notice thereof, CRPD, at any time thereafter, upon 10 days prior notice to CLU, may, in addition to any and all other remedies available at law or in equity: (i) terminate this Lease; or (ii) other available legal remedies, as appropriate.

Section 19. Alterations; Improvements.

19.1 CRPD Alterations. Any further changes proposed to be made shall be made with CLU's and CRPD's prior approval, which approval may be withheld in good faith business judgment, and, if required, any applicable public agency approval and all additional public agency entitlements required for the change or modification. Any such alterations, changes, additions or replacements shall be in compliance with all applicable building and zoning codes and ordinances, and in the event of any such removal of the improvements (and not due to a casualty or condemnation, in which event the provisions of Section 15 or Section 17, respectively, shall govern), the same shall be replaced with improvements of at least equal quality to the improvements so demolished or removed. CRPD shall provide CLU with at least 15 days notice prior to any construction, alteration, or renovation of the Building so that CLU may have the opportunity to place any nonresponsibility notices on the Premises.

Section 20. Intentionally Omitted.

Section 21. Signs.

21.1 CRPD's Signs. Subject to any CLU and City of Thousand Oaks approved master sign program for CLU and/or Community Pool Facility, CRPD shall have the right provided the sign is in conformance with the CLU approved Master Sign Program and identified design standards, at all times and from time to time to install and maintain, replace and relocate one or more signs in conformity with applicable Laws, affixed anywhere in or on the exterior of the Building, or any building in the Premises. CRPD shall obtain and pay for all Permits related to such signs or required in connection therewith. CRPD's installations and removals of such signs shall be made in compliance with applicable law.

21.2 Restrictions on CLU. During the Term, CLU shall not install any structure, sign or landscaping on any part of the Premises whatsoever, or take any other action on land owned or controlled by CLU outside the Premises, which will materially obstruct or interfere with the visibility or legibility of any of CRPD's signs.

Section 22. Parking.

22.1 Shared Parking. Throughout the Term, CRPD, its staff, invitees and users, shall have the full shared right to use all of the parking spaces in the University. Parking use will be in compliance with the 2007 Shared Parking Analysis by Associated Transportation Engineers. A copy is attached as Exhibit M.

22.2 Covenant Concerning Parking. CLU covenants that there is no legal impediment to the use of or access to the parking areas of the University or Premises for operation parking.

22.3 Parking. CRPD acknowledges that CLU is in the process of developing a comprehensive Parking Management Plan to address and control parking at the University. The Parking Management Plan will implement a paid parking program at the University. CRPD acknowledges that CLU intends to charge for parking and waives any objection to the charging of parking fees for users. CLU and CRPD agree to work together to develop an equitable program to accommodate CRPD's parking pursuant to the paid parking program. CLU shall retain all funds received by CRPD for the paid parking program to defray CLU's parking maintenance costs. CLU shall have the ability to reserve all parking spaces of Graduation, Scandinavian Festive and three (3) additional times each calendar year with the dates established during the normal scheduling as set forth in Section 19.2.2.

22.4 Usage Fees. Both CLU and CRPD may charge usage fees for their programs and respective uses of the Samuelson Aquatics Center and Community Pool Facility. Each party shall retain all user fees received by that party.

Section 23. Quiet Enjoyment. CLU covenants and agrees that, contingent on paying the Rent due hereunder and performing all of CRPD's other obligations pursuant to this Lease, CRPD shall, during the Term, quietly hold, occupy and enjoy the Premises without hindrance, ejection or molestation by CLU or any other person, subject to the terms of this Lease.

Section 24. Intentionally Omitted.

Section 25. Assignment by CRPD.

25.1 Assignment. CRPD shall not assign this Lease, except (i) with the prior written approval of CLU which shall not be unreasonably withheld, and (ii) only to a public entity.

Section 26. Assignment or Transfer by CLU.

26.1 Transfer Of Title. If any transfer(s) of the title to the fee estate in the Land or the University occurs, CLU (and in the case of any subsequent transfer, the then grantor) automatically shall be relieved from and after the date of such transfer, of all liability with respect to the performance of any obligations on the part of said CLU contained in this Lease thereafter to be performed; provided that any amount then due and payable to CRPD by CLU (or the then grantor), and any other obligation then to be performed by CLU (or the then grantor) under this Lease, either shall be paid or performed by CLU (or the then grantor) or such payment or performance shall be assumed by the transferee. The covenants, conditions and agreements contained in this Lease on the part of CLU shall, subject to the foregoing, be binding on CLU, its successors and assigns, only during and with respect to their respective successive period of ownership. Any such sale, assignment or transfer by CLU shall be made expressly subject to the terms and conditions of this Lease.

26.2 Intentionally omitted.

26.3 Estoppel Certificate. At any time, and from time to time, upon the written request of either Party to this Lease, the other Party, within 30 days of the date of such written request, agrees to execute and deliver to the requesting Party, without charge, a written statement (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the Term; (c) certifying to the CRPD's actual knowledge without any duty of inquiry that CRPD is in occupancy of the Premises and that this Lease is in full force and effect and has not been modified or assigned, except by such modifications as shall be stated therein; (d) certifying that the requesting Party is not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by the requesting Party or stating the defaults and/or defenses claimed by the certifying Party; (e) reciting the amount of advance Rent, if any, paid by CRPD and the date to which such Rent has been paid; and (f) reciting the amount of security deposited with CLU, if any, in a form substantially similar to Exhibit P attached hereto.

26.4 Subordination. This Lease shall be subject and subordinate to the lien of any bank or institutional or other mortgage or mortgages now or hereafter in force against the fee estate in the University, and to all advances made upon the security thereof, provided that the holder of any such mortgage shall execute and deliver to CRPD an agreement ("SNDA Agreement"), substantially in the form attached hereto as Exhibit G. CRPD agrees, upon receipt of such SNDA Agreement, to execute such further reasonable instrument(s) as may be necessary to subordinate this Lease to the lien of any such mortgage. The term "mortgage" shall include deeds of trust or any other similar hypothecations. Even if an SNDA Agreement has not been provided to CRPD, if any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by CLU encumbering the Premises, or a deed in lieu of foreclosure is granted by CLU, or if a lease in which CLU is the lessee is terminated, then provided that the purchaser or lessor shall give CRPD written notice prior to or within 30 days after the effective date of such foreclosure, power of sale, deed in lieu

or termination of master lease that such purchaser or master lessor shall acquire and accept the Premises subject to this Lease, CRPD shall attorn to the purchaser or lessor under such lease upon any foreclosure, sale or lease termination and recognize the purchaser or lessor as CLU under this Lease.

26.5 Access to Premises. Upon reasonable notice to CRPD, and during CRPD's operation hours, CLU may show the Premises to mortgagees and potential mortgagees. Upon reasonable notice to CRPD, CLU may, any time during the last 365 days of the Term, all without rebate of rent or liability to CRPD, provide a sign regarding availability of lease, which is reasonably acceptable to CRPD, as to size and location.

Section 27. Default by CRPD; Remedies of CLU.

27.1 Events of Default. Each of the following shall be deemed an event of default by CRPD (a "CRPD Default") and a breach of this Lease:

27.1.1 Default in the performance of any other covenant or condition of CRPD pursuant to this Lease, or the accuracy of the representations or warranties made by CRPD hereunder shall prove not to be true, for a period of 30 days after notice from CLU of such default. However, notwithstanding the foregoing sentence, if the nature of the CRPD Default is such that more than 30 days are required for its cure, then CRPD shall not be in default if CRPD commences to cure within said 30 days, and thereafter diligently prosecutes the same to completion.

27.1.2 The making by CRPD of any general assignment for the benefit of creditors; the filing by or against CRPD of a petition to have CRPD adjudged bankrupt or of a petition for reorganization or arrangement under any federal or state bankruptcy law (unless, in the case of a petition filed against CRPD, the same is dismissed within 90 days after filing); the appointment of a trustee or receiver to take possession of all or substantially all of CRPD's assets located at the Premises or of CRPD's interest in this Lease and possession is not restored to CRPD within 90 days thereafter; or the attachment, execution or other judicial seizure of substantially all of CRPD's assets located at the Premises or of CRPD's interest in this Lease and possession is not restored to CRPD within 90 days thereafter.

27.2 CLU's Remedies. Upon the occurrence of any CRPD Default and the expiration without cure of any applicable notice and cure periods, CLU may, at its option and in addition to any other rights and remedies given hereunder or by law, do any of the following:

27.2.1 CLU shall have the right at any time thereafter to give notice of termination to CRPD; and on the date specified in such notice (which shall not be less than 30 days after the giving of such notice) this Lease shall, subject to Section 27.3, terminate and come to an end as fully and completely as if such date were the day herein definitely fixed for the expiration of this Lease; and CRPD shall then surrender the Premises pursuant to Section 28 but shall remain liable as hereinafter provided. If any such termination of this Lease occurs, CLU may then or any time thereafter re-enter the Premises by summary proceedings or otherwise, remove therefrom all persons and property, and repossess and enjoy the Premises, without

prejudice to any other remedies that CLU may have by reason of CRPD's Default or of such termination.

27.2.2 CLU shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover Rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations).

27.2.3 CLU shall have the right, without terminating this Lease, to re-enter the Premises by summary proceedings or otherwise if allowed by applicable Laws and remove all persons and property, and CRPD shall remain liable as hereinafter provided. No commencement and prosecution of any action by CLU in unlawful detainer, ejectment or otherwise, or execution of any judgment or decree obtained in any action to recover possession of the Premises, nor any re-entry by CLU, shall be construed as an election to terminate this Lease, unless CLU shall give notice to CRPD of such intention. No such re-entry by CLU shall constitute an election to terminate this Lease unless and until CLU thereafter gives CRPD notice of CLU's election to terminate.

27.2.4 All deposits, security, letter of credit proceeds or other amounts held by CLU or made available by or for the account of CRPD as assurance to CLU for the performance by CRPD of its obligations hereunder shall, if applied by CLU, be applied only to the satisfaction of amounts then owing to CLU hereunder which are Fixed Rent, Insurance, Real Estate Taxes, Utilities or other amounts which are not disputed by CRPD; as to such amounts disputed by CRPD, Section 27.2.5 shall control. Any excess over such amounts due shall be held by CLU only as a deposit, and any amount remaining after application to the obligations of CRPD hereunder shall be returned to CRPD following satisfaction in full of all such obligations. Should CRPD have provided CLU with a letter of credit to secure CRPD's obligations hereunder, CLU shall be entitled to draw upon such letter of credit only after (i) the expiration of all applicable notice and cure periods provided herein without cure by CRPD, and (ii) CLU's giving CRPD 10 days' notice after the expiration of all applicable notice and cure periods that CLU intends to make a draw on the letter of credit, together with a true, correct and complete copy of all of the draft documents and statements of CLU which CLU plans to present to the bank which issued the letter of credit in order to draw on the letter of credit.

27.2.5 Notwithstanding anything to the contrary stated elsewhere in this Lease, if CRPD disputes whether or not CRPD must cure an alleged CRPD Default (other than for the payment of Fixed Rent) after notice thereof from CLU, and any court of competent jurisdiction subsequently determines that CLU is entitled to a final unappealed judgment of possession due to CRPD's failure to timely cure the alleged CRPD Default, then CRPD shall have such cure period provided in this Lease in which to cure such CRPD Default, commencing from the date of entry of judgment. However, if such CRPD Default cannot be cured within such period, the cure period will be extended by the reasonable period required to cure such CRPD Default; provided that CRPD has, prior to the expiration of the cure period, begun to cure, and thereafter diligently prosecutes the curing of, such CRPD Default. CLU shall stay the warrant of eviction or other execution of judgment during the cure period. If CRPD completes such cure in a timely fashion, CLU waives any rights it may have to execute on the warrant of eviction or other execution of judgment, and CRPD may apply to the court for a permanent stay

of execution of the warrant of eviction or other execution of judgment based upon the curing of such CRPD Default. Notwithstanding any notice of termination given by CLU hereunder, neither this Lease nor CRPD's leasehold estate in the Premises shall terminate pursuant to this Section, unless all the following events have taken place: (1) a court of competent jurisdiction determines that CLU is entitled to a final judgment of possession due to CRPD's failure to timely cure the alleged CRPD Default; (2) CRPD has exhausted its appeals therefrom (including failure to timely file a notice of appeal); and (3) CRPD has thereafter failed to timely cure the CRPD Default pursuant to the provisions of this Section.

27.3 Damages. Should CLU terminate this Lease for default pursuant to Section 27.2, CLU shall be entitled, at CLU's election, to damages as provided by law, including those set forth in California Civil Code Section 1951.2. Such damages shall include, subject to the limitations provided in said section 1951.2:

(a) The worth at the time of award of the unpaid Rent and other sums owing by CRPD to CLU under this Lease that had been earned at the time of termination of this Lease;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such loss of Rent that CRPD proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term, specifically excluding any unexercised Extension Periods, after the time of award exceeds the amount of such loss of Rent that CRPD proves could be reasonably avoided;

(d) Any other amount necessary to compensate CLU for all detriment proximately caused by CRPD's failure to perform CRPD's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including but not limited to attorneys fees and costs; and

(e) The "worth at the time of the award" of the amounts referred to in clauses (a) and (b) above is computed by allowing interest at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%. The "worth at the time of the award" of the amount referred to in clause (c) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%.

27.4 Mitigation of Damages. In the event of any re-entry or termination finally occurs under this Section 27, CLU agrees to use its best commercially reasonable efforts to relet the Premises at a commercially reasonable rent. CLU may execute any lease made pursuant to the terms of this Section in CLU's own name and CRPD shall have no right or authority whatsoever to collect any rent from such subtenant.

Section 28. Surrender of Premises and Removal of Property.

28.1 Surrender. At the expiration or other termination of this Lease, CRPD shall surrender the Premises to CLU in its as is condition. On or before the expiration or other termination of this Lease, CRPD shall remove all its personal property and trade fixtures from the Premises and repair all damage incurred in such removal. Other than such items removed by CRPD, all alterations, additions, and improvements in or upon the Premises made by either Party (except the items excluded below), shall become the property of CLU and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term. The following items shall be excluded from the surrender of the Premises and retained by CRPD: CRPD's installed equipment, cabinets, shelving, loose equipment or counters, all other loose equipment, any electronic equipment, CCTV monitors and cameras, telephones, computers, computer systems, printers, fax machines, radio frequency equipment, satellite dishes, furniture, fixtures, satellite communications dishes and related equipment, signs, security systems, safe(s), storage equipment and shelving, floor coverings, decorative wall panels (but not walls), and all internal and external signage. It is agreed that the foregoing list shall not be construed to include the heating, air conditioning, and cooling system for the Building or any security system wiring, control boxes, cameras or other security equipment which is integrated into and attached to the Building construction.

Section 29. Intentionally Omitted.

Section 30. CLU's Warranties, Representations, and Covenants.

30.1 Warranties and Representations. CLU warrants, represents, covenants and agrees as follows:

30.1.1 CLU is the sole owner of the entire fee simple estate in the Premises and the University and by this instrument conveys a good leasehold interest in the Premises to CRPD in accordance with the terms and conditions hereof. CLU's title to the Premises and the University is good and marketable, free and clear of any claims of other parties, encumbrances, mortgages, deeds of trust or other liens, restrictions, reservations or defects in title, other than those set forth in Exhibit H and Exhibit I, if any, none of which will or could interfere with or impair or result in any interference with or impairment of CRPD's use, occupancy and enjoyment of the Premises or with CRPD's rights hereunder.

30.1.2 CLU has not entered and shall not enter into any exclusive use restrictions, restrictive covenants or other agreements, which would prevent CRPD from occupying the Premises for the purposes provided in Section 18.1, or prevent the full use of the parking areas shown on the Site Plan.

30.1.3 On the date of delivery of possession of the Premises to CRPD, to CLU's actual knowledge, the Premises and the North Campus shall have been constructed in compliance with all Laws, shall be free and clear of all violations, orders, or notices of violations of Laws.

30.1.4 To CLU's actual knowledge, there are no restrictions or other legal impediments either imposed by Laws, (including applicable zoning and building ordinances) or by any contracts or other instrument and no exclusive use restrictions in other CRPDs' leases,

restrictive covenants or other agreements, which would prevent (i) the use of the North Campus, including the Premises, in the manner contemplated by this Lease; (ii) the use of the parking facilities, access roads, and other Common Areas in the manner contemplated by this Lease; or (iii) CLU's full performance of its obligations hereunder. If at any time during the Term any applicable law enacted after the Feasibility Period shall not permit the use of the Premises as permitted under this Lease, then without waiving any other rights it may have, CRPD may terminate this Lease by giving CLU notice thereof.

30.1.5 The North Campus shall have on the Date of Possession, full pedestrian and vehicular access from Monteclef Blvd. and Campus Drive.

30.1.6 As of the date on which CLU shall deliver possession of the Premises to CRPD, the Premises and the North Campus shall be free from contamination by Hazardous Substances, except those required for pool maintenance at the Samuelson Aquatics Center.

30.1.7 To the CLU's actual knowledge, there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to CLU's knowledge, threatened against the Premises or CLU in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, including, without limitation, any condemnation or eminent domain proceedings.

30.1.8 No person, firm, corporation or other legal entity whatsoever (other than CRPD) has any right or option whatsoever to acquire or lease the Premises or any portion or portions thereof or any interest or interests therein.

30.1.9 To CLU's actual knowledge, on the Effective Date, the Premises are not and will not be subject to or affected by any special assessments, whether or not presently a lien thereon, except as shown on the title policy. .

30.1.10 To CLU's actual knowledge, there is no existing non-compliance or breach of any ordinance, code, law, rule, requirement or regulation applicable to the Premises.

30.1.11 To CLU's actual knowledge, there are no actions, suits, proceedings or proposals of any kind or nature whatsoever pending or being considered relating to any proposed changes to the highways, roadways and/or access ways adjoining or adjacent to the University, including without limitation, the widening thereof, proposed or pending construction of road medians, proposed or pending construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts, proposed or pending installation or removal of traffic lights or any other changes or proposed changes in traffic patterns or management of traffic flow.

30.1.12 CLU shall, as expeditiously as possible and in no event later than 60 days prior to the CLU's delivery of the Premises, obtain all consents and approvals required to be obtained (if any) from all non-governmental third parties including CRPDs, occupants and lenders for the use permitted under this Lease, the construction, repair and maintenance (as applicable) of a building on the University Property in accordance with this Lease and the

granting of any and all the easements provided for in this Lease. CLU shall provide evidence of such consents and all other information reasonably requested by CRPD and its title insurer within 20 days following the Effective Date of this Lease.

30.1.13 CLU has not used, operated or permitted the use of the University Property in any manner for the storage, use, treatment, manufacture or disposal of any Hazardous Substances (as hereinafter defined), and to the best of CLU's actual knowledge, the University Property has not ever been used or operated for the storage, use, treatment, manufacture or disposal of any Hazardous Substances.

30.1.14 This Lease does not violate the provisions of any instrument heretofore executed by CLU, and the execution of this Lease has been duly and validly authorized on behalf of CLU.

30.1.15 On the Date of Term Commencement, the water lines, gas mains, electric power lines, and sanitary and storm sewers located on the University shall be adequate for CRPD's physical connection and use for the Community Pool Facility.

30.1.16 CLU is a private educational institution duly organized, validly existing and in good standing under the laws of the State of California. CLU has the limited power and authority to execute, deliver and perform this Lease and to carry on its business as it is currently being conducted. This Lease has been duly authorized by all necessary action on the part of CLU and has been duly executed and delivered by CLU. This Lease does not violate the provisions of any agreement, instrument or document to which CLU is a party or by which CLU or its properties are bound.

30.1.17 Each person executing and delivering this Lease on behalf of CLU has been duly authorized to do so.

30.1.18 This Lease constitutes the legal, valid and binding obligation of CLU enforceable against CLU in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting Parties generally.

30.1.19 CLU is not bankrupt or insolvent under any applicable Federal or state standard. CLU has not filed for protection or relief under any applicable bankruptcy or creditor protection statute. CLU has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. CLU is not entering into the transactions described in this Lease with an intent to defraud any creditor or to prefer the rights of one creditor over any other.

30.2 CRPD's Remedies for Breach. If any of the foregoing representations proves to be inaccurate, or if CLU breaches any of the foregoing warranties, covenants or agreements, CLU shall indemnify and hold harmless CRPD from and against any loss and cost, including reasonable Attorneys' Fees and consequential damage incurred by CRPD as a result thereof, and if CRPD gives CLU notice of any such loss or cost arising due to such an inaccuracy or breach of any of the foregoing warranties, covenants or agreements, then CLU shall pay to

CRPD the amount of such loss or cost in immediately available and unencumbered funds to such bank account as CRPD shall hereafter direct by notice to CLU.

Section 31. CRPD's Warranties and Representations.

31.1 Warranties and Representations. As a material inducement to the CLU to enter into this Lease, CRPD warrants, represents, covenants and agrees as follows:

31.1.1 CRPD is a special district duly incorporated, validly existing and in good standing under the laws of the State of California. CRPD has the power and authority to execute, deliver and perform this Lease and to carry on its business as it is currently being conducted. This Lease has been duly authorized by all necessary action on the part of CRPD and has been duly executed and delivered by CRPD. This Lease does not violate the provisions of any agreement, instrument or document to which CRPD is a party or by which CRPD or its properties are bound.

31.1.2 This Lease constitutes the legal, valid and binding obligation of CRPD enforceable against CRPD in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

31.1.3 Each person executing and delivering this Lease on behalf of CRPD has been duly authorized to do so.

31.1.4 CRPD by this instrument accepts the leasehold estate conveyed herein in accordance with the terms, conditions and provisions hereof.

31.2 CLU's Remedies for Breach. If any of the foregoing representations proves to be inaccurate, or if CRPD breaches any of the foregoing warranties, covenants, or Leases, CRPD shall indemnify and hold harmless CLU from and against any and all losses and cost, including reasonable Attorneys' Fees and consequential damage incurred by CLU as a result thereof, and CLU may, at its option, terminate this Lease upon notice to CRPD and be released of and from all further liability hereunder.

Section 32. Equal Employment Opportunity. The Parties also agree that they shall not discriminate against any employee, applicant, or user because of race, color, religion, sex, national origin, age, or any other characteristic protected by federal, state or local law.

Section 33. Unavoidable Delays; Force Majeure. Except as otherwise provided in this Lease, if either Party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, inclement weather, terrorism, earthquake, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a similar or dissimilar nature not the fault of such Party, then performance of any such act shall be extended for a period equivalent to the period of such delay, provided the Party prevented, delayed or stopped shall have given the other Party notice thereof within 30 days of such event causing the prevention, delay or stoppage. The foregoing, however, shall not operate to excuse either Party from

securing necessary financing to meet its obligations or from the payment of any monetary sums due under the terms of this Lease.

Section 34. Reasonable Consent. Except as otherwise expressly provided herein, if the consent, approval or permission of CLU or CRPD is required hereunder, CLU and CRPD agree that they shall not unreasonably or arbitrarily withhold, delay or condition such consent, approval or permission. If CLU or CRPD fails to respond to any request for consent, approval or permission within 15 days (or such longer or shorter period as is herein specified) after receipt of such request, then said consent, approval or permission shall be conclusively deemed to have been granted and the other party may proceed without further action, approval or permission. If any such consent, approval or permission is specifically withheld, CLU or CRPD shall set forth in writing its reasons for such withholding, which reasons must be reasonable under the circumstances presented.

Section 35. Effect of Termination of Lease. Should either Party terminate this Lease pursuant to any express right to terminate this Lease stated elsewhere herein, then upon such termination, this Lease shall be of no further force or effect and neither CLU nor CRPD shall have any further rights or obligations hereunder (except for any rights or obligations that expressly survive termination hereof).

Section 36. Submission of Lease. The submission by CRPD to CLU of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, and shall not confer any rights or impose any obligations upon either Party until the execution thereof by CLU and the delivery of any executed original copy thereof to CRPD.

Section 37. Miscellaneous.

37.1 Governing Law, Costs. This Lease shall be governed by and construed in accordance with the laws of the State of California.

37.2 Integration, Modification, Waiver. This Lease constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous communications. This Lease may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one lease agreement. Counterparts may be delivered by facsimile, provided the original executed counterparts are delivered to the recipient within 5 business days after delivery of the facsimile, using any of the methods for giving notice under Section 37.5. No addition to or modification of any term hereof shall be effective unless set forth in writing and signed by both CLU and CRPD. No waiver of a covenant, condition or time period set forth herein shall be deemed a waiver of any other covenant, condition or time period.

37.3 Parties, Successors. All of the provisions of this Lease shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties, except as otherwise provided in Section 25 or Section 26. The relationship of the Parties is that of Landlord and Tenant, and nothing contained herein shall make either Party the fiduciary, agent or delegate of the other for any purpose. This Lease shall not be deemed to create any form of

business organization between the Parties. If CLU is comprised of more than one person or entity, the obligations of the persons and/or entities comprising CLU are joint and several.

37.4 Severability, Further Assurances. Should any one or more provisions of this Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective. The exercise of any remedy under this Lease shall not be a waiver of any remedy provided by law or in equity. Provisions for any remedy herein shall not exclude any other remedies unless they are expressly excluded. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Lease.

37.5 Notices. All notices or demands shall be in writing and shall be delivered personally, electronically, or by overnight or certified mail. Delivery shall be deemed conclusively made on the soonest to occur of any of the following: (A) at the time of delivery if personally delivered, (B) immediately in the event notice is delivered by transmittal over electronic or telephonic transmitting devices, such as telecopy or e-mail, provided, the party to whom the notice is delivered has a compatible device and electronically or by other written document confirms receipt thereof, or such party otherwise confirms actual receipt thereof, and provided further that a hard copy of said notice is sent by certified mail in accordance with this Section 37.5 within twenty-four hours thereof, or (C) one day after deposit thereof if served by overnight mail or 5 business days after deposit thereof if served by certified mail in the United States mail, properly addressed and postage prepaid, return receipt requested.

In all cases, notices or other communications must be addressed to the respective addresses listed below:

To CLU:

California Lutheran University
60 West Olsen Road
Thousand Oaks, CA 91360
Attn: Vice President of Finance
Tel: 805-493-3182
Fax: 805-493-3886

With copies to:

Nordman Cormany Hair & Compton, LLP
1000 Town Center Drive, Sixth Floor
Oxnard, CA 93036-1132
Attn: Nancy Kierstyn Schreiner
Tel: 805-988-8318
Fax: 805-988-7718
E-mail: nschreiner@nchc.com

To CRPD:

Conejo Recreation and Park District
403 West Hillcrest Drive
Thousand Oaks, CA 91360
Attention: General Manager
Tel: 805-495-6471
Fax: 805-497-3199

37.6 Time. Time is of the essence of each provision of this Lease. If any date or time period herein is or ends on a day that is not a business day, then such date or period shall automatically be extended to the next business day. "Business Day" or "business day" means any day that is not a Saturday, Sunday or federal, state or legal holiday observed in the State. All references to "days" in this Lease that do not expressly specify business days mean calendar days. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or holiday, then such time for performance shall be automatically extended to the next business day.

37.7 Interpretation, Construction. Each Party and its respective attorneys have participated equally in the drafting, preparation and negotiation of this Lease, which shall be construed accordingly. All schedules and exhibits to this Lease are incorporated in this Lease by this reference.

37.8 No Precedential Value. CLU and CRPD expressly acknowledge and agree that this Lease is being entered into in connection with CRPD's establishment of a new Community Pool Facility, and as a result, the terms stated in this Lease shall be of no precedential value should CLU and CRPD negotiate any other Lease at any time hereafter.

37.9 Notice of Premises. CLU must give CRPD at least 30 days' prior notice of any anticipated sale of the Premises.

37.10 Plats and Riders. Clauses, plats, riders and addenda, if any, affixed to this Lease are a part hereof.

37.11 Paragraph Headings. The paragraph titles and headings of this Lease are not a part of this Lease and are not intended to be full and accurate descriptions of the contents of the paragraph and shall have no effect upon the construction or interpretation of any part of this Lease.

37.12 Interest. In the event either party fails to pay any rent or any other sum due to the other party under the terms of this Lease on the due date, the sum due shall earn interest ("Interest Rate") at the lesser of (a) the Bank of America prime rate (reference rate) plus 1% and (b) the maximum rate permitted by applicable Laws and such interest shall be due and payable by CRPD as additional rent..

37.13 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

37.14 Sale of Premises by CLU. In the event of any sale of the Premises by CLU, CLU shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors-in-interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of CLU under this Lease.

37.15 Choice of Forum. Any dispute that arises under or relates to the Premises or the Lease shall be resolved in Ventura County, California, or in the Superior Court in Ventura County or in the federal court for the Central District of California in Los Angeles County.

37.16 Authority. Each individual executing this Lease represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of their respective party.

37.17 Relationship. This Lease does not create any agency, partnership, franchise, employment or joint venture relationship between CLU and CRPD.

37.18 No Third-Party Rights. The covenants, agreements and other terms of this Lease are for the exclusive benefit of the parties to this Lease, and no other person, including the creditors of any party, is entitled to any right or claim against CLU or CRPD by reason of any of the terms of this Lease or is entitled to enforce any of these terms against CLU or CRPD.

37.19 Other Tenancies. Subject to the limitations of Section 18, CLU reserves the absolute right to affect such other tenancies in the University owned by it as CLU shall determine, in the exercise of its sole business judgment to best promote CLU's interests. CRPD does not rely on the fact, nor does CLU represent, that any specific CRPD, type of CRPD or number of CRPDs shall during the Term occupy any space in the University, regardless of what is shown on any drawing. Save and except as set forth in Section 18, nothing contained in this Lease shall be deemed to give CRPD an express or implied exclusive right to operate any particular type of operation, or require that CLU obtain or retain any number, percentage or type of CRPDs in the Shopping Center, or any particular CRPD or CRPDs.

37.20 Survival of Obligations. In the event of any early termination of this Lease under and pursuant to any of the terms and provisions hereof or the normal expiration of the Term, all obligations of CLU and CRPD accruing prior to such termination or expiration, and all obligations of CLU and CRPD to be performed after such termination or expiration as set forth in this Lease, shall be fully performed by CLU or CRPD, as the case may be, regardless of whether or not such performance is required to take place or does in fact take place subsequent to the date of expiration or termination. No early termination nor the normal expiration of this Lease shall release CLU or CRPD from any liabilities or obligations accruing prior to the date of termination or expiration, or obligations to be performed by each after the normal expiration or earlier termination of this Lease, nor shall the indemnity obligations of CLU or CRPD as set forth in this Lease be released or terminated as to acts or omissions occurring prior to the termination date.

37.21 Further Documents. Each party shall execute and deliver all such further instruments, documents and papers, and shall perform any and all acts necessary, to give full force and effect to all of the terms and provisions of this Lease.

37.22 No Warranties. CRPD acknowledges that except as expressly provided in this Lease neither CLU nor CLU's agents or employees have made any representation or warranty, express or implied, including but not limited to the suitability of the Premises for the conduct of CRPD's business.

Section 38. Attorneys' Fees. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceedings shall be entitled to recover his court costs and reasonable out of pocket expenses not limited to taxable costs, including but not limited to phone calls, photocopies, expert witness, travel, etc. and reasonable attorney expenses and attorney fees on appeal, if any.

The court shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. If either party is reasonably required to incur such out of pocket expenses and attorney fees as a result of any claim arising out of or concerning this Agreement or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out of pocket expenses and attorney fees whether or not an action is filed.

Section 39. Equal Participation in Drafting. No inference, assumption, or presumption shall be drawn from the fact that a party or his attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that all parties participated equally in the preparation and/or drafting of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Ground Lease on the day and year first set forth above.

CLU:

CALIFORNIA LUTHERAN UNIVERSITY,

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

CRPD:

CONEJO RECREATION AND PARK DISTRICT,
a Special District

By: _____

By: _____

SCHEDULE 1

DEFINITIONS

“Attorneys’ Fees” is defined in Section 40.

“Building” is defined in Section 1.2.

“Business Address” is the principal place of business for each party.

“Business Day” is defined in Section 37.6.

“Certificate of Occupancy” is a certificate of occupancy or any equivalent documentation which confirms that the Premises are available for CRPD to take possession, fixture, and open for operation.

“Claim” and “Claims” are defined in Section 12.1.

“Common Area Charges” is defined in Section 14.

“Common Areas” means all areas used on a nonexclusive basis by the CRPDs of the University and their employees, customers, users and other invitees, including without limitation, paved parking areas, paved service areas, sidewalks, ramps, roadways, driveways, curbs, curb cuts and all similar facilities and areas of the University now or hereafter existing in the University. As used herein, the term “Common Areas” shall mean all areas within the exterior boundaries of the University which are now or hereafter made available for general use, convenience and benefit of CRPDs and their customers, including automobile parking areas, if any, driveways, sidewalks and landscaped and planted areas as reflected in Exhibit L.

“Date of Rent Commencement” is defined in Section 1.8.

“Date of Term Commencement” is defined in Section 1.8.

“Early Termination” is defined in Section 1.4.

“Effective Date” is defined in the first paragraph of this Lease.

“Entitlements” means all approvals, authorizations and entitlements relating to land use from the City and other authorities deemed necessary or appropriate by CLU and CRPD, including without limitation zone change, general and/or specific plan amendments, tentative tract map(s), conditional use permits, and site plan approval, to improve the Community Pool Facility as contemplated by CLU and CRPD, but excluding any building permits, all in form approved by CRPD, which approval shall be withheld on through the exercise of CRPD’s good faith business judgment and Exhibit R.

“Environmental Hazard” means any of the following: (a) discovery in the Premises or the Shopping Center of asbestos or asbestos-containing materials, or of any condition or substance that violates any applicable environmental, health or hazardous waste law or

regulation, including without limitation, the Occupational Safety and Health Act, or any hazardous or toxic substances, wastes or materials, including oil and petroleum derivatives and products, asbestos, lead paint and radon (collectively "Hazardous Substances"); (b) issuance of any clean-up order by any governmental agency as a result of any event described in clause (a); (c) issuance by any court or governmental agency of any order or judgment permanently or temporarily closing down the Premises or any other part of the Shopping Center as a result of any event described in clause (a) or (b); or (d) the performance of any work for the purpose of remedying or complying with any of the foregoing.

"Fixed Rent" is defined in Section 1.10.

"Including" shall mean including without limitation.

"CLU" is defined in the first paragraph of this Lease.

"CLU Default" is defined in Section _____.

"CLU's Business Address" is defined in Section 37.5.

"Laws" means all applicable laws, statutes, ordinances, and regulations of local, municipal, state and federal governmental authorities including those relating to public health and safety, access for disabled and handicapped people, sprinkler systems, building codes, and hazardous substances.

"Lease" is defined in the first paragraph of this Lease.

"Lease Year" is defined in Section 3.4.1.

"Memorandum" is defined in Section 3.3.

"North Campus" shall mean the portion of the University north of Olsen Road on the University Property in Thousand Oaks, California.

"Outside Delivery Date of Premises" is the date by which CLU must deliver Premises or CRPD shall be entitled to exercise its remedies and is specified in Section 1.6.

"Outside CLU Entitlements Date" is defined in Section 1.5.

"Parking Spaces" is defined in Section 1.12.

"Parties" and "Party" are defined in the first paragraph of this Lease.

"Permits and Construction Period" is defined in Section 1.7.

"Permits and Licenses" shall mean any and all permissions, permits, licenses and other indicia of governmental approvals from the City and other Authorities deemed necessary or appropriate by CRPD excluding Alcoholic Beverage Permits.

"Premises" is defined in Section 1.1.

“Real Estate Taxes” shall mean all real estate taxes, assessments (excluding assessments levied for the period prior to the Date of Rent Commencement), water and sewer rates and charges, and other governmental levies and charges, general and special, ordinary and extraordinary, foreseen as well as unforeseen, which are assessed, levied, imposed or become a lien upon the University as shall be finally determined after deducting abatements, refunds, rebates or credits, if any (less the reasonable cost of obtaining the same), to be payable with respect to the University for such period but expressly excluding any and all increases to such taxes and assessments due to any reassessment triggered by any transfer of all or any portion of the CLU’s right, title or interest in the University. If any such Real Estate Tax is payable at the option of the taxpayer in installments, Real Estate Taxes for each Lease Year shall be deemed to include only the installments which become due in such Lease Year. Nothing herein shall be construed to include in Real Estate Taxes any inheritance, estate, succession, transfer, gift, franchise, corporation, income, sales, net profit tax or capital levy that is or may be imposed on CLU, nor any penalty for late payment of Real Estate Taxes imposed on CLU nor any interest thereon provided that CRPD has timely paid its Pro Rata Share of all such Real Estate Taxes. Real Estate Taxes shall in no event include penalties imposed by the taxing authority for late payment (except for a late payment by CRPD) or for any Real Estate Tax or assessment levied with respect to periods prior to the commencement of the Term.

“Rent” is defined in Section 1.10.

“Samuelson Aquatics Center” shall mean the Olympic pool, locker rooms, and restrooms on the University North Campus as defined in Section 1.3.

“Site Plan” is defined in Section 2.3.1.

“SNDA Agreement” is defined in Section 26.4.

“Substantially Completed” shall mean that a clear final inspection report for CLU’s Work shall have been issued and that CLU’s Work shall have been fully completed except for minor incomplete items or deficiencies, provided that any such incomplete items or deficiencies shall not (1) hinder CRPD’s work in or about the Premises, or (2) prevent CRPD from obtaining a Certificate of Occupancy, or opening for business, or both.

“CRPD” is defined in the first paragraph of this Lease.

“CRPD Alteration” is defined in Section 19.1.

“CRPD Default” is defined in Section 27.1.

“CRPD’s Business Address” is defined in Section 37.5.

“CRPD’s Construction Costs” is defined in Section 7.3.1.

“CRPD’s Pro Rata Share” of costs shall mean a fraction, the numerator of which is the leasable ground floor area of the Building and the denominator of which is the leasable ground floor area of all buildings within the Shopping Center.

“CRPD’s Work” is defined in Section 6.1.

“Term” is defined in Section 3.4.3.

“Title Company” means TBD Title Company, Attention: _____.

“Undisputed Amount” means, as to any amount of Rent due other than the Fixed Rent, such amount due, minus any amount which the CRPD has certified to CLU in writing as being disputed in good faith (and as to which no final adjudication has been made).

“University” shall mean the entire campus of California Lutheran University located in Thousand Oaks, California.

EXHIBIT A

**LEGAL DESCRIPTION OF
PREMISES**

This exhibit shall be completed after CRPD obtains a metes and bounds description of the Premises.

EXHIBIT "A"
(COMMUNITY POOL LEASE AREA)

Those portions of Lots 1, 2 and 3, Fractional Sections 21 and 28, Township 2 North, Range 19 West, Rancho El Conejo, in the City of Thousand Oaks, County of Ventura, State of California, according to that certain repartition map recorded in Book 5 Page 14 of Miscellaneous Records (Maps) in the office of the Recorder of said County, and as shown on the map filed in Book 20 at Page 28 of Records of Survey of said County described as follows:

That portion of Parcel 2, of LLA 2003-425, recorded as Document Number 20040123-016528 of Official Records in the Office of the County Recorder of said county described as follows:

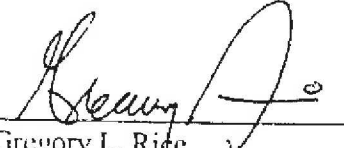
Commencing at a the southeast corner of said Lot 2; thence along the easterly of said Parcel 2, North $00^{\circ}06'41''$ West, a distance of 193.42; thence at right angles, South $88^{\circ}53'19''$ West, distance of 320.86 feet to the **Point of Beginning**; thence,

- 1st North $57^{\circ}59'32''$ West, a distance of 88.15 feet; thence,
- 2nd North $31^{\circ}13'59''$ East, a distance of 5.49 feet; thence,
- 3rd North $59^{\circ}59'42''$ West, a distance of 47.91 feet; thence,
- 4th North $28^{\circ}53'27''$ East, a distance of 24.60 feet; thence,
- 5th North $60^{\circ}32'34''$ West, a distance of 22.62 feet; thence,
- 6th North $29^{\circ}21'33''$ East, a distance of 88.12 feet to the beginning of a tangent curve concave southeasterly with a radius of 2.00 feet; thence along said curve,
- 7th Northeasterly an arc distance of 1.29 feet through a central angle of $37^{\circ}03'08''$; thence,
- 8th North $66^{\circ}24'41''$ East, a distance of 3.85 feet to the beginning of a tangent curve concave southwesterly with a radius of 2.00 feet; thence along said curve,
- 9th Southeasterly an arc distance of 3.12 feet through a central angle of $89^{\circ}22'31''$; thence,
- 10th South $24^{\circ}12'48''$ East, a distance of 28.92 feet; thence,
- 11th South $68^{\circ}35'19''$ East, a distance of 6.77 feet; thence,
- 12th North $66^{\circ}15'25''$ East, a distance of 72.15 feet to the beginning of a tangent curve concave southerly with a radius of 5.20 feet; thence along said curve,

- 13th Easterly and southeasterly an arc distance of 6.12 feet through a central angle of 67°27'53"; thence,
- 14th South 46°16'42" East, a distance of 7.93 feet to the beginning of a tangent curve concave westerly with a radius of 5.50 feet; thence along said curve,
- 15th Southeasterly and southerly an arc distance of 4.44 feet through a central angle of 46°16'42"; thence,
- 16th South, a distance of 106.69 feet to the beginning of a tangent curve concave northwesterly with a radius of 6.00 feet; thence along said curve,
- 17th Southwesterly and westerly an arc distance of 9.42 feet; through a central angle of 90°00'00"; thence,
- 18th West, a distance of 20.44 feet; thence,
- 19th South, a distance of 63.27 feet to the **Point of Beginning**.

Contains: 17,557 Square Feet

The above described parcel of land is delineated on the attached Exhibit "B".


Gregory L. Rice
LS 8201 (Exp. 03/31/09)

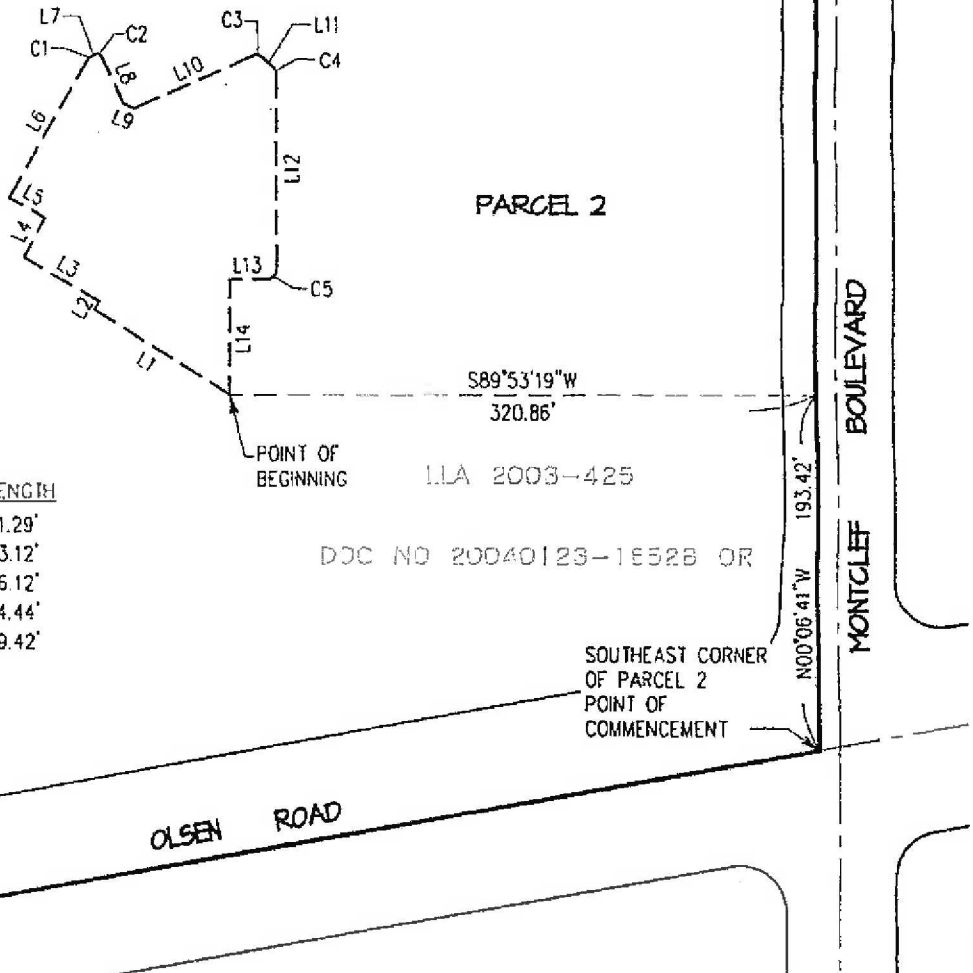
2/8/08
Date



EXHIBIT "A2"

ONE SHEET ONLY

(COMMUNITY POOL LEASE AREA)

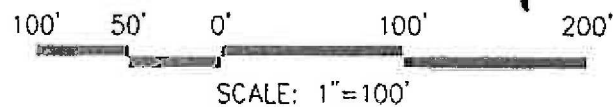


CURVE DATA

NO	DELTA	RADIUS	LENGTH
C1	37°03'08"	2.00'	1.29'
C2	89°22'31"	2.00'	3.12'
C3	67°27'53"	5.20'	6.12'
C4	46°16'42"	5.50'	4.44'
C5	90°00'00"	6.00'	9.42'

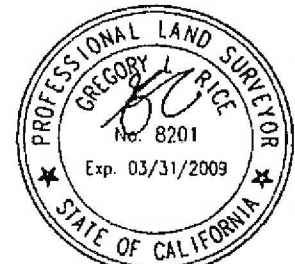
LINE DATA

NO	BEARING	DISTANCE
L1	N57°59'32"W	88.15'
L2	N31°13'59"E	5.49'
L3	N59°59'42"W	47.91'
L4	N28°53'27"E	24.60'
L5	N60°32'34"W	22.62'
L6	N29°21'33"E	88.12'
L7	N66°24'41"E	3.85'
L8	S24°12'48"E	28.92'
L9	S68°35'19"E	6.77'
L10	N66°15'25"E	72.15'
L11	S46°16'42"E	7.93'
L12	SOUTH	106.69'
L13	WEST	20.44'
L14	SOUTH	63.27'



SHADED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "A"

Greg L. Rice
 GREG L. RICE
 LS 8201 (EXP. 03-31-09)
 DATE: 2/8/08



L:\24\74161\Survey\Exhibits\4161 Ex A2 Comm Plat.dwg Feb 07, 2008 2:22pm cpl/lon

EXHIBIT B

SITE PLAN

EXHIBIT C
ELEVATION PLANS

EXHIBIT D

**LEGAL DESCRIPTION FOR
SAMUELSON AQUATICS CENTER**

EXHIBIT E

**GROUND LEASE COMMENCEMENT
AGREEMENT**

THIS GROUND LEASE COMMENCEMENT AGREEMENT, is made as of _____, 20__, by and between CALIFORNIA LUTHERAN UNIVERSITY, a private educational institution ("CLU"), and CONEJO RECREATION AND PARK DISTRICT, a special district ("CRPD").

RECITALS

A. CRPD leased from CLU, and CLU leased to CRPD, certain premises located at California Lutheran University, in the city of Thousand Oaks, County of Ventura, State of California, pursuant to that certain Ground Lease Agreement dated as of _____, 2008 (hereinafter the "Lease", capitalized terms being used herein as therein defined).

B. The Parties hereto desire to amend the Lease to state with particularity certain key dates described in the Lease but not established as of the Effective Date of the Lease.

NOW, THEREFORE, in consideration of the mutual promises and representations made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLU and CRPD hereby agree as follows:

AGREEMENT

1. The Date of Term Commencement as defined in the Lease means _____, 20__.
2. The Date of Rent Commencement as defined in the Lease means _____, 20__.
3. The first Lease Year as defined in the Lease shall end on _____, 20__.
4. The scheduled expiration date for the Initial Term is _____, 20__.
5. Except as hereinabove otherwise set forth, all terms, provisions, covenants and conditions contained in the Lease shall remain the same and in full force and effect.
6. This Memorandum may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one Memorandum.
7. The Parties to this Agreement intend to be legally bound hereby.

IN WITNESS WHEREOF, CLU and CRPD have duly executed this Lease Commencement Agreement as of the day and year first above written.

CLU:

CALIFORNIA LUTHERAN UNIVERSITY,

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

CRPD:

CONEJO RECREATION AND PARK DISTRICT,

a _____

By: _____

EXHIBIT F

**MEMORANDUM OF GROUND
LEASE**

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

[Add documentary transfer tax provision.]

(Space above this line for Recorder's use.)

MEMORANDUM OF GROUND LEASE

This MEMORANDUM OF GROUND LEASE ("Memorandum") is made as of _____, 200__, by and between CALIFORNIA LUTHERAN UNIVERSITY, a private educational institution ("CLU"), and CONEJO RECREATION AND PARK DISTRICT, a special district ("CRPD").

RECITALS

A. CLU and CRPD have entered into that certain unrecorded Ground Lease dated as of _____, 200__ ("Lease"). All capitalized terms not otherwise defined herein shall have the meaning assigned thereto in the Lease.

B. CLU and CRPD desire to provide notice that CRPD has the right to lease certain land located at the northwest corner of Olsen Road and Monteclef Blvd. in the City of Thousand Oaks, County of Ventura, State of California and legally described on Exhibit A attached hereto (the "Premises") and shown on the map attached hereto as Exhibit B, on the terms and conditions as more fully set forth in the Lease.

NOW, THEREFORE, in consideration of mutual promises and representations made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLU and CRPD hereby agree as follows:

AGREEMENT

1. Demise of Premises. CLU leases to CRPD, and CRPD leases from CLU, the Premises, subject to the terms and conditions set forth in the Lease. The Date of Term Commencement shall be as set forth in the Lease, and the term of the Lease (the "Term") shall expire thirty (30) years from the Date of Rent Commencement, unless subject to early termination.

2. Use. CLU has granted CRPD the right to operate a Community Pool Facility described in The Site Plan during the Term, in accordance with the terms and conditions set forth in the Lease. CRPD's exclusive right is intended to "run with the land" and be binding upon all successors-in-interest of CLU or any portions thereof, whether or not the various parcels making up the University are held together or in separate or multiple ownerships.

3. Incorporation by Reference; No Modification of Lease. The terms and conditions of the Lease are incorporated herein by this reference. This Memorandum is prepared and recorded for the purpose of putting the public on notice of the Lease, and this Memorandum in no way modifies the terms and conditions of the Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

4. Cancellation of Memorandum of Lease. Upon the request of CLU following the expiration or termination of the Lease, CRPD shall promptly execute and deliver to CLU an appropriate release and/or cancellation instrument acknowledging the expiration or termination of the Lease and releasing any and all right, title and interest of CRPD in and to the Premises under the Lease. Such release and/or cancellation instrument shall be executed in proper form for recordation in the Official Records of Ventura County.

5. Counterparts. This Memorandum may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one Memorandum.

IN WITNESS WHEREOF, CLU and CRPD have duly executed this Memorandum of Lease as of the day and year first above written.

CLU:

CALIFORNIA LUTHERAN UNIVERSITY,
a _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

CRPD:

CONEJO RECREATION AND PARK DISTRICT,
a Special District

By: _____

By: _____

EXHIBIT A TO MEMORANDUM TO LEASE

LEGAL DESCRIPTION

This exhibit shall be completed after CRPD obtains a metes and bounds description of the Premises.

EXHIBIT B TO MEMORANDUM TO LEASE

SITE PLAN

Please see attached Site Plan.

EXHIBIT C TO MEMORANDUM TO LEASE

LEGAL DESCRIPTION OF SAMUELSON AQUATICS CENTER

STATE OF _____)
) ss.
COUNTY OF _____)

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

My commission expires:

EXHIBIT G

**SUBORDINATION,
NONDISTURBANCE AND
ATTORNMEN T AGREEMENT**

This SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT ("Agreement") is made as of _____, 20__, by and among CONEJO RECREATION AND PARK DISTRICT, a special district ("CRPD"), CALIFORNIA LUTHERAN UNIVERSITY, a private educational institution ("CLU") and _____ ("Lender"), having its office and notice address at _____.

RECITALS

A. As security for a loan (the "Loan") made by Lender, CLU has given to Lender (a) a [Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing] dated _____, 20__ (the "Security Instrument"), which constitutes a first lien against the real property described on Exhibit A attached hereto (the "Property"), and (b) an [Absolute Assignment of Leases and Rents] dated _____, 20__ (the "Assignment of Leases"), which among other things assigns all of CLU's right, title and interest as lessor under the Lease (defined below) to further secure the indebtedness described in the Security Instrument], [and (c) _____,] each made by CLU for the benefit of Lender, and each to be recorded in the official public records of the County of _____, State of _____.

B. CRPD has entered into that certain Ground Lease dated _____, 20__ (the "Lease") covering all or a portion of the Property (the "Leased Premises"). As a condition to making the loan, Lender has required that the Lease be subordinated to the Security Instrument. CRPD is willing to attorn to the purchaser of the Property in connection with foreclosure of the Security Instrument (or similar event), if Lender will recognize CRPD's rights under the Lease as, and subject to the terms and conditions that are, hereinafter provided.

In consideration thereof and subject to the terms hereof, Lender, CLU and CRPD agree as follows:

AGREEMENT

1. **Subordination of Lease.** The Lease is and shall be subject and subordinate to the provisions and lien of the Security Instrument and all other security documents now or hereafter securing payment of any indebtedness of CLU to Lender (hereinafter referred to as the "Security Documents"), and to all increases, renewals, modifications, extensions, consolidations, replacements and extensions thereof, to the full extent of the principal amount and other sums secured thereby and interest thereon, as if the Lease had been executed and delivered after the execution, delivery and recording of the Security Documents. The foregoing subordination shall remain in effect regardless of any release or modification of any security or obligation arising thereunder or security therefor and any settlement or compromise of any claim with respect thereto.

2. Attornment. CRPD agrees that CRPD will attorn to and recognize Lender, whether as mortgagee in possession, transferee in lieu of foreclosure or otherwise; or any purchaser at a foreclosure sale or sale under a power of sale pursuant to the Security Instrument, or any other transferee who acquires possession of or title to the Property, or any successors and assigns of such purchasers and/or transferees (each, a "Successor") as its CLU for the unexpired balance (and any extensions, if exercised) of the term of the Lease upon the terms and conditions set forth therein. Such attornment shall be effective and self-operative without the execution of any further instruments by any party hereto other than a written notice to CRPD of such election by Lender or any Successor.

3. Non-Disturbance and Quiet Enjoyment. So long as CRPD complies with CRPD's obligations under this Agreement and is not in default under the Lease beyond any applicable grace or cure periods applicable provided therein, (a) Lender (and any other Successor claiming rights hereunder) will not disturb CRPD's use, possession and quiet enjoyment of the Leased Premises, nor will CRPD's rights under the Lease be impaired in any foreclosure action, sale under a power of sale, or transfer in lieu of the foregoing, except to the extent of the rights of the CLU, under the Lease, would have had such right if the Security Instrument or the Assignment of Leases had not been made; and (b) Lender (and any other Successor claiming rights hereunder) will, if it succeeds to the rights of CLU under the Lease, recognize CRPD as the lessee thereunder and will be bound by the obligations of the CLU thereunder that accrue from and after such succession, but excluding (i) any liability for the acts or omissions of a prior CLU (other than any continuing CLU default then remaining uncured), (ii) any rent, deposit or other amounts paid to a prior CLU but not actually received by Lender or such Successor, and (iii) any amendment or modification to the Lease of which Lender or such Successor has not received actual written notice.

4. Assignment of Leases. CRPD consents to the Assignment of Leases. CRPD agrees that if, pursuant to the Assignment of Leases, Lender (or its Successor) shall give notice to CRPD that it has elected to require CRPD to pay to it the rent and other charges payable under the Lease, CRPD shall thereafter pay to it all such amounts in lieu of payment to CLU, until Lender (or such Successor) shall have canceled such election by notice to CRPD. CLU agrees that CRPD may rely exclusively on any such notice from Lender (or such Successor).

5. Right to Cure Defaults. CRPD agrees to give notice to Lender of any default by CLU under the Lease, specifying the nature of such default, and thereupon Lender shall have the right (but not the obligation) to cure such default, and CRPD shall not terminate the Lease or abate the rent payable thereunder by reason of such default until it has afforded Lender fifteen (15) calendar days after Lender's receipt of such notice to cure such default.

6. CRPD's Agreements. CRPD hereby covenants and agrees that: (a) CRPD shall not subordinate the Lease to any lien or encumbrance (other than the Security Instrument) without Lender's prior written consent [except as expressly allowed pursuant to Section ___ of the Lease]; and (b) CRPD shall promptly deliver to Lender, from time to time, but not more frequently than twice in any calendar year, a certificate regarding the status of the Lease, stating (or specifying why not): (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications of the Lease, (v) the presence and status of any

options to purchase the Leased Premises and (vi) what defaults, or facts which with the passage of time or notice or both could constitute a default, if any exist under the Lease.

8. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement constitutes the entire agreement among Lender, CLU and CRPD pertaining to the subject matter hereof and supersedes all prior and contemporaneous communications. No addition to or modification of any term hereof shall be effective unless set forth in writing and signed by Lender, CLU and CRPD. All of the provisions of this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Lender and CRPD.

9. Any notice to be given hereunder shall be in writing and given either by express mail, reputable courier service[, telefacsimile, email, or by registered or certified mail with return receipt requested and postage prepaid, and addressed to Lender at the address first set forth below (or to such substitute address as Lender or its Successor may subsequently notify to the other parties hereto), or to CRPD or CLU at the address then specified in the Lease for notices to such Party. Any such notice shall be deemed delivered upon receipt or, if earlier, the second attempt at delivery as documented by the person or entity attempting delivery.

To CLU:

To CRPD:

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

EXECUTED as of the date first written above.

CRPD:

CONEJO RECREATION AND PARK DISTRICT,

a _____

By: _____

By: _____

LENDER:

By: _____

Name: _____

Its: _____

CLU:

CALIFORNIA LUTHERAN UNIVERSITY,

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

EXHIBIT H

PERMITTED TITLE EXCEPTIONS

This exhibit shall be as set forth in a title commitment letter issued by TBD Title Company prior to execution of Lease.

EXHIBIT I

RESTRICTIONS AND EXCLUSIVES

1. CRPD shall not permit any skateboarding within the perimeter of the lease area, and, to the best of their ability, shall prevent their patrons from skateboarding, grinding, and otherwise causing damage to the Common Areas and generally to CLU's property.
2. CRPD shall not permit the use of any type of tobacco product within the perimeter of the lease area.
3. There shall be no glass containers permitted within the perimeter of the lease area.
4. CRPD shall be solely responsible for obtaining any and all permits and licenses required for food service within the perimeter of the lease area.
5. CRPD shall not permit any alcoholic beverages within the perimeter of the lease area, other than beer and wine, which shall only be allowed subject to CRPD obtaining any and all permits and licenses required for the service and/or consumption of beer and wine on the premises.
6. CRPD shall not mount any additional equipment on the roof of the pool equipment building that projects above the building parapet.
7. No additional mechanical equipment, lighting, sound systems and speakers, or additions of any type shall be installed by CRPD on the pool equipment building and shade structure, existing light standards, fence, CLU's pool equipment building, or anywhere on the pool deck, without the prior written approval of CLU. CRPD shall be responsible for obtaining any and all permits, entitlements, and approvals required from the applicable agencies with jurisdiction (City of Thousand Oaks and County of Ventura).
8. CRPD shall not change, modify, or alter the external appearance of the buildings, pool deck, fencing, landscaping within the perimeter of the lease area, or lighting improvements.
9. The use of public address system speakers and other amplified sound devices shall be prohibited between the hours of 10:00 pm and 9:00 am daily. Sound speakers shall be directed away from adjacent residential areas. The use of air horns is prohibited. The public address system and sound system shall be reduced in volume to the minimum level necessary.
10. The community pool facility shall be limited to daily operating hours from 5:00 am to 10:00 pm. Between the hours of 5:00 am and 8:00 am daily, use of the pool is limited to lap swimming activities or other quiet uses.
11. All lighting, except for emergency or security lighting, shall be turned off every evening at 10:00 pm.
12. CRPD shall staff on the premises at all times the Community Pool is in operation, and shall supply additional staff as necessary for larger functions and parties.

13. CRPD shall designate a community liaison lead person who shall be accessible on a continuous basis to the general public and who has the authority to address general questions and community concerns such as noise and traffic, relating to CRPD activities or events at the Community Pool. The name and contact telephone number of the designee shall be posted on the CLU website. CRPD shall notify CLU 10 working days in advance of any change in the community liaison person.

14. CRPD shall comply with all Best Management Practices with respect to stormwater management, and shall comply with the requirements of the CLU Phase I North Campus Maintenance Plan, as it pertains to the Community Pool.

15. CRPD shall not modify, alter or otherwise change any drainage within the perimeter of the lease area.

16. CRPD shall allow the pool water to sit, without treatment, for a period of not less than 24 hours, to fully dechlorinate prior to discharge to the parking lot and the storm drain system. CRPD shall coordinate the discharge of any pool water to the on-site storm drain system with CLU 5 working days prior to the discharge.

EXHIBIT J
MORTGAGES AND DEEDS OF
TRUST

None.

EXHIBIT K
BUY OUT SCHEDULE

EXHIBIT L
CLU'S WIRING INSTRUCTIONS
TBD

EXHIBIT M
SHARED PARKING ANALYSIS

EXHIBIT N

CLU INFORMATION STATEMENT

CLU and CRPD agree and acknowledge that under Section 110 of the Internal Revenue Code of 1986, as amended, (the "Code") and Treasury Regulation Section 1.110 1(c)(3), each of them must furnish certain information with their respective tax returns. In that regard, CLU hereby furnishes the following information to CRPD, to the best of CLU's knowledge:

CLU's name: California Lutheran University (if CLU is part of a consolidated group under the Code, the parent of such group is provided).

CLU's address: 60 West Olsen Road
 Thousand Oaks, CA 91360

CLU's employer identification number: _____.

Location of the Premises:

Signature of authorized employee of CLU:

Name: _____
Title: _____

EXHIBIT O

CRPD INFORMATION STATEMENT

CLU and CRPD agree and acknowledge that under Section 110 of the Internal Revenue Code of 1986, as amended, (the "Code") and Treasury Regulation Section 1.110 1(c)(3), each of them must furnish certain information with their respective tax returns. In that regard, CRPD hereby furnishes the following information to CLU, to the best of CRPD's knowledge:

CRPD's name: Conejo Recreation & Park District (if CRPD is part of a consolidated group under the Code, the parent of such group is provided).

CRPD's address: 403 West Hillcrest Drive
Thousand Oaks, CA 91360-4223

CRPD's employer identification number: 95-2265201.

Location of the Premises:

Project Name:	_____
Street Address:	_____
Premises City:	Thousand Oaks
Premises State:	California

Signature of authorized employee of CRPD:

Name: _____
Title: _____

EXHIBIT P

ESTOPPEL CERTIFICATE

The undersigned, _____, whose address is _____ represents and warrants as follows:

1. The undersigned is the CRPD ("CRPD") under that certain ground lease ("Lease") dated _____ with _____ covering the premises commonly known as _____ ("Premises").

2. The Lease constitutes the only agreement (either written or oral) the undersigned has with respect to the Premises and any right of occupancy or use thereof.

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended except as follows: _____.

4. The undersigned presently occupies the Premises and is paying rent on a current basis. All obligations of CLU under the Lease required to be performed to date, including any improvements to be constructed by CLU (or its predecessors), or the granting of any free rent, rent credit, offset, deductions, building allowance or rent reduction have been completed or fulfilled to the satisfaction of the undersigned except as follows: _____.

5. No rent has been paid by CRPD in advance except for the monthly rental that became due on _____, and a security deposit in the sum of \$ _____ now held by CLU in accordance with the terms of the Lease.

6. The monthly rental is the sum of _____ Dollars (\$ _____).

7. The present Lease term expires on _____ and there are no options to renew except: _____.

8. To the CRPD's actual knowledge without making any inquiry or investigation, there are no defaults under the Lease by CLU or any events which with the passage of time or giving of notice or both will result in any such default except as follows: _____.

9. The undersigned does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease except as follows: _____.

10. The undersigned has no purchase option and no rights of first refusal to acquire the Premises or the Shopping Center in which it is located or any part thereof, and there is no cancellation or termination rights, except as specifically set forth in the Lease.

11. The undersigned is aware that third parties intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on the undersigned.

12. The undersigned and the persons executing this Certificate on behalf of the undersigned have the power and authority to execute and deliver this Certificate.

DATED: _____

Exhibit 4



AIA[®] Document B801[™] CMa – 1992

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is NOT a Constructor

AGREEMENT as of the Sixth day of March in the year of Two Thousand and Eight
(In words, indicate day, month and year)

BETWEEN:

Conejo Recreation & Park District
403 West Hillcrest Drive
Thousand Oaks, CA 91360-4223

(CRPD)

and:

California Lutheran University
60 West Olsen Road
Thousand Oaks, CA 91360-2700

(CLU), collectively the Parties to the Agreement,

for the following
(Paragraphs deleted)

Community Pool, 100 Overton Court, Thousand Oaks, CA 91360
The project is to be located adjacent to the existing Samuelson Aquatics Center on the California Lutheran University North Campus. The project consists of the construction of a new 75 ft. by 64 ft. "rim-flow" design community use pool; decking; lighting; support building with administration office, restrooms, storage, and pool equipment room; shade structure; fencing; landscaping; hardscape; paving; and utility improvements on the California Lutheran University North Campus (Community Pool or the Project).

The Architects are

Pool :
Aquatic Design Group, Inc.
2226 Faraday Avenue
Carlsbad, CA 92008

(Paragraphs deleted)
Pool Equipment/Administration/Shade Structure Building:
JDO+Associates, Inc.
5376 N. Sterling Center Drive
Westlake Village, CA 91361

(Paragraph deleted)

BACKGROUND:

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with the 1992 editions of AIA Documents B141/CMa, A101/CMa and A201/CMa.

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A long-term goal of the City of Thousand Oaks and CRPD has been the addition of an Olympic-sized competitive pool available for public use. CLU has recently constructed and is operating a 51-meter competitive pool facility on its North Campus, known as the Samuelson Aquatic Center. Aquatics programs offered to the public could be greatly enhanced by an additional smaller, warmer, shallow recreational pool to be used for lessons and recreational programs. The Community Pool would complement the existing Samuelson Aquatics Center if it were sited in close proximity to that pool. The Community Pool planning, permitting, design, and construction (the Project) shall be fully funded by CRPD in conjunction with the City of Thousand Oaks. The Parties concur that a cooperative effort to locate the Community Pool at the Samuelson Aquatic Center will be of benefit to both CLU and CRPD, therefore, the Parties have executed a Memorandum of Understanding Between California Lutheran University and Conejo Recreation and Park District Concerning the Future Planning, Construction, Operation, Maintenance and Use of a Community Pool at Samuelson Aquatic Center, at California Lutheran University, dated February 1, 2007. The Parties have also concurrently executed a Ground Lease and Joint Use Agreement for the Project. The Project will be constructed on California Lutheran University (CLU) property, and CLU shall retain ownership in fee simple of the underlying land subject to the Lease and Joint Use Agreement. No provision of the Memorandum of Understanding, the Lease and Joint Use Agreement, or this Agreement shall be deemed any transfer of any interest in land ownership, either express or implied, other than the possessory leasehold interest, as set forth in the Lease. CLU shall also own the capital improvements constructed upon the land and funded by CRPD following termination of the Lease and Joint Use Agreement. No term of this agreement for Construction Management shall be construed to alter any term of any other agreement between the parties.

The Parties therefore agree as summarized below and as specifically described later:

In consideration of CLU's significant experience and expertise in design, permitting, and construction of CLU's projects of a similar nature, CLU's concern regarding the conduct of construction on CLU's property and impact upon CLU's existing facilities, CRPD will retain CLU to contract for, and to manage the Development and Construction of the Project. All costs of the Project, including CLU staff time, at an hourly rate set forth in Exhibit A, which is updated annually as of June 1 and in an amount not to exceed 10%, and CLU costs for legal fees, or separate consultants required for development of the Project and paid by CLU on behalf of CRPD, shall be fully reimbursed by CRPD within 15 days of the date of invoice, upon presentation of an invoice and acceptable cost backup.

CLU has obtained the necessary entitlements for the Project (City of Thousand Oaks Resolution No. 22-2007 PC). CLU shall perform as the responsible party for the Project, and shall obtain in its name the grading, paving, building, electrical, mechanical, plumbing, sewer, County of Ventura or other public entity permits for the project, in accordance with this Agreement as set out in Articles 12 and 13. CLU shall pay all fees assessed by the regulatory agencies for this project, subject to the reimbursement agreement with CRPD. CLU shall make all necessary arrangements for and obtain the water meter required for the Project from California American Water, and CRPD shall sign the Service Request Application to place the billing for the water in its name. CLU shall obtain competitive bids for the Project from a pre-qualified short list of bidders, and shall issue a Construction Contract(s) to the technically qualified lowest bidder. It is agreed that, in the event the construction bids received for the Project exceed CRPD's budget for the Project, that CRPD may abandon and terminate the Project, and shall reimburse CLU for all expenses incurred on its behalf to the date of termination, or reduce the scope of the Project or revise the Project pursuant to Article 2.2.6 and rebid the project to attempt to reduce the cost of the final project. CLU shall administer the Construction Contract, manage the General Contractor's and other Contractor's work for the Project, make progress and final payments to the General Contractor and other Contractor's, oversee the work performed, resolve construction issues and questions, coordinate with the General Contractor to obtain a final Certificate of Occupancy for the Project, and provide all other necessary services to deliver a complete and operational project in accordance with the approved Construction Plans and Specifications, and the program documents jointly developed by CLU and CRPD. The General Contractor for the Project shall supply and maintain the Builders Risk Insurance for the Project.

CLU and CRPD shall each provide their own separate insurance coverage for their own employees and operations for the duration of the Project, and as specified in the separate Lease and Joint Use Agreement. CLU and CRPD shall mutually indemnify, defend (including attorney's fees and costs) protect and hold harmless each other and their elected officials, officers, directors, employees, agents, contractors, and/or invitees harmless from any and all claims, damages, causes of action, or liabilities arising from or in any way connected with either CLU or CRPD's obligations under this Agreement, other than the gross negligence of the indemnified party.

ARTICLE 1 CLU'S RESPONSIBILITIES

(Paragraph deleted)

§ 1.1 CLU'S SERVICES

§ 1.1.1 CLU's services consist of those services performed by CLU, CLU's employees and CLU's consultants, as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 14.

§ 1.1.2 CLU's services shall be provided in conjunction with the provision of services of the Architects and other consultants listed above. CRPD acknowledges that the services of the Architects and other consultants are contracted through CLU, and that the costs of the Architects shall be fully reimbursed by CRPD upon presentation of an invoice and appropriate billing backup to the CRPD.

§ 1.1.3 CLU shall provide it's existing staff and organization to carry out the requirements of this Agreement in the most expeditious and cost-effective manner in CRPD's best interests; however, CLU shall not be held liable for any increases in the cost of construction or delays in the construction schedule of the Project beyond it's control or not caused by CLU's gross negligence. CRPD shall appoint a representative to attend regular construction meetings and shall jointly approve all construction change orders for the Project.

§ 1.1.4 Payment for the services covered by this Agreement are subject to the time limitations contained in Section 13.5.1.

ARTICLE 2 SCOPE OF CLU'S BASIC SERVICES

(Paragraph deleted)

§ 2.1 DEFINITION

§ 2.1.1 CLU's Basic Services consist of those described in Sections 2.2 and 2.3 and any other services identified in Article 14 as part of Basic Services.

§ 2.2 PRE-CONSTRUCTION PHASE

§ 2.2.1 CLU has jointly consulted with and developed the program for the Project with CRPD during the design and entitlement portion of this Project. On behalf of CRPD, CLU has processed a Major Modification to its Special Use Permit for the University to allow the construction of the Project on its property (City of Thousand Oaks Resolution No. 22-2007 PC).

§ 2.2.2 CLU has provided a preliminary evaluation of CRPD's program, schedule and construction budget requirements, each in terms of the other.

§ 2.2.3 Based on early schematic designs and other design criteria prepared by the Architects and other consultants, CLU has prepared preliminary estimates of Construction Cost for program requirements based on previous construction costs for the Samuelson Aquatic Center. CLU represents that it has used its best efforts to develop the preliminary estimate of Construction Cost; however, CLU shall not be held liable for any increases in the cost of construction of the Project, beyond its control or not caused by CLU's gross negligence. CRPD hereby agrees and acknowledges that all cost estimates provided to date by CLU, and those to be provided in the future, represent CLU's best estimate and determination of the estimated probable cost of construction. CRPD agrees to fully accept all responsibility for any increases in actual bid or construction costs over the estimates of probable construction costs, and agrees that CLU and its officers, directors, employees, agents, contractors, and/or invitees are not responsible for or liable for any contribution towards any actual construction cost and CRPD agrees to defend, hold harmless CLU and its officers, directors, employees, agents, contractors, and /or invitees from any and all claims, damages, causes of action, or liabilities arising from or in any way connected with these opinions of probable construction cost.

CRPD acknowledges and agrees that CLU has no control over the cost or availability of labor, equipment, or materials, or over market conditions or the Contractor's method of pricing, and that CLU's opinions of probable construction costs are made on the basis of CLU's previous experience and professional judgment. CLU makes no warranty, express or implied, that the bids or the final costs of the Project will not increase above CLU's estimate of probable construction cost.

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§ 2.2.4 CLU has expeditiously reviewed design documents during their development and advised on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery, consistent with CLU's prior experience with the Samuelson Aquatic Center. CLU has used its best efforts to coordinate all Project design documents one with the other; however, CLU shall not be held liable for any errors, failure of coordination, or other defects later found during construction in the Project documents prepared by the various Architects and Consultants. CLU has submitted, or caused to be submitted, all required plans and calculations to the appropriate regulatory agencies for the Project, for plan check and approval prior to permit issuance. CLU shall not be held liable for any schedule delays resulting from delays in plan check by the agencies, or corrections by any of the consultants and Architects, or any delays in other necessary review by the agencies.

§ 2.2.5 CLU has prepared and periodically updated a Project Schedule for CRPD's review and information, and shall continue to periodically update the Project Schedule during construction, and provide updates to CRPD

§ 2.2.6 CLU shall consult with CRPD regarding potential corrective action and value engineering strategies if the lowest cost and technically responsive bid received exceeds CRPD's \$3.4 million budget for the construction of the Project, inclusive of design, permitting, fees, and CLU's other reimbursed costs.

§ 2.2.7 CLU shall consult with CRPD and provide direction to the Architects regarding the Construction Documents and make recommendations, and direct changes to the plans, whenever design details adversely affect constructability, cost or schedules.

§ 2.2.8 CLU shall assign responsibilities for the provision of temporary Project facilities and equipment, materials and services for common use of the Contractors. CLU shall verify that such requirements and assignment of responsibilities are included in the appropriate Contract Documents.

§ 2.2.9 CLU shall provide recommendations and information to CRPD regarding the allocation of responsibilities for safety programs among the Contractors.

§ 2.2.10 CLU, in conjunction with CRPD, shall decide on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, CLU shall prepare the Construction Documents and give direction as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 2.2.11 CLU shall direct the General Contractor to prepare a detailed project schedule including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of CRPD. CLU shall require the General Contractor to provide schedule updates at the weekly construction meetings.

§ 2.2.12 CLU shall use its best efforts to ensure that the General Contractor is expediting and coordinating the ordering and delivery of materials requiring long lead time.

§ 2.2.13 CLU shall be responsible to select, contract with and coordinate the professional services of surveyors, special consultants and testing laboratories required for the Project. CRPD shall fully reimburse all charges incurred by CLU for these consultants.

§2.2.14 Article Intentionally Omitted

(Paragraphs deleted)

§ 2.2.15 CRPD shall provide CLU with the applicable Department of Labor Wage Determination for the Project, the bidding documents, and the contract(s).

§ 2.2.16 Following CRPD's approval of the Construction Documents, and upon completion of the second plan check of the Project through the City of Thousand Oaks and the County of Ventura, and once all required design plans are available in a reasonably finalized and fully coordinated condition, then CLU shall prepare the Project documents for bidding.

§ 2.2.17 CLU and CRPD shall jointly prepare the list of prospective bidders for the Project.

§ 2.2.18 CLU shall confirm bidders' interest in the Project and establish bidding schedules. CLU shall put the Project out to bid. CLU, with the assistance of the Architect, and in coordination with CRPD, shall issue bidding documents to bidders and conduct prebid conferences with prospective bidders. CLU shall direct the Architects with regard to questions from bidders and with the issuance of addenda, and shall coordinate responses with CRPD, as appropriate.

§ 2.2.19 CLU shall receive all bids, prepare bid analyses, and make recommendations for award to CLU's Administration for approval. CLU shall decide on the award of the Contract(s) for the Project with input from CRPD. CLU and CRPD agree that should responsive bids exceed the estimated budget for the Project, that CRPD may terminate and withdraw from the Project, and CRPD shall fully reimburse CLU for all costs and expenditures on the Project to the date of Termination and arising from the Termination of the Project and shall indemnify, defend and hold CLU, its officers, directors, employees, agents and contractors harmless from and against all liability arising out of the Termination.

§ 2.2.20 CLU shall prepare and issue the Construction Contracts and necessary Purchase Order(s) for the Project. CLU shall ensure that the Construction Contracts include a clause requiring the submittal of Unconditional Waiver and Release Upon Progress Payment forms for each and every subcontractor, contractor, materialman and supplier who has filed a 20-day preliminary notice of mechanics lien rights on the property with CLU. The contracts shall also require the submission of Unconditional Waiver and Release Upon Progress Payment forms for the major subcontractors and the General Contractor, whether or not they have filed 20-day preliminary notice of mechanics lien rights. The contract shall clearly indicate that the Unconditional Waiver forms must be submitted with the current Application for Payment for the prior billing period, and that all required Unconditional Waiver forms must be submitted with the current Application for Payment prior to the Application being processed for payment. CLU shall maintain a current list of the firms that have filed 20-day preliminary notices of mechanics lien and shall track and verify, on a monthly basis, that each required Unconditional Waiver and Release Upon Progress Payment has been received. The contract shall also provide that CLU may, at its sole discretion and at any time, make payment by joint check to the General Contractor and any and all subcontractors. CRPD shall fully reimburse CLU for all cost incurred in the preparation, issuance and administration of the Construction Contracts.

§ 2.2.21 CLU shall request and receive two (2) copies of the certificates of insurance from the General Contractor and other Contractors and shall forward one copy to CRPD and retain one copy. CLU shall ensure that a duly executed and acceptable binder of insurance coverage is obtained from the General Contractor for the Project, evidencing the following coverages, and (except for Workers Compensation) naming CLU, its officers, directors, employees, and agents, and CRPD, its elected officials, officers, directors, employees, and agents as additional insureds:

1. Workers Compensation – statutory limits for the State of California
2. Comprehensive General Liability/Property Damage - \$1,000,000 per occurrence, \$2,000,000 aggregate (claims made policy is acceptable)
3. Automobile Liability - \$1,000,000 (claims made policy is acceptable)
4. Builder's All Risk Insurance – bid amount for total contract plus 10% (claims made policy is acceptable)

The insurance coverage and certificate shall be in the form, and meet the requirements of the following: The Contractor shall purchase and maintain the insurance required under this Section. Such insurance shall include the specific coverages set forth herein and shall be written for not less than the limits of liability and coverages provided in the Supplementary General Conditions, or required by law, whichever is greater. All insurance shall be maintained continuously during the life of the Agreement up to the date of Notice of Completion, as applicable, pursuant to acceptance of the Work by CLU, but the Contractor's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required. The Contractor shall furnish CLU and CRPD with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies for each of the following listed insurance coverages. In addition, each party named as an additional insured shall be provided with an original copy of the policy and additional insured endorsement naming them as an additional insured under the Contractor's policies of insurance required under the Contract. A general accord form is not acceptable. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 30 days' prior written notice has been given to CLU and CRPD by Certified Mail. All such insurance shall remain in effect until the date of Notice of Completion and at all times thereafter when the Contractor

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may be correcting, removing, or replacing defective work. In addition, the Insurance required herein (except for Worker's Compensation and Employer's Liability) shall name CLU, CRPD, and their Consultants and Subconsultants for the project and their officers, agents, and employees as "additional insureds" under the policies:

1. Worker's Compensation Insurance
2. Comprehensive General Liability
3. Comprehensive Automobile Liability
4. Builder's Risk

Policy Requirements: The insurance provided by the Contractor hereunder shall be (1) with companies licensed to do business in the State of California, (2) with companies with a Best's Financial Rating of XI or better, and (3) with companies with a Best's General Policy Policyholders Rating of not less than B, except that in case of Worker's Compensation Insurance, participation in the State Fund, where applicable, is acceptable.

§ 2.2.22 At such time as the plans for the project have been approved by all the appropriate governmental authorities having jurisdiction over the project; and the Lease and Joint Use Agreement has been duly executed by all Parties; then the building permits, grading permits, and special permits required for the permanent improvements shall be obtained by CLU. CLU shall not be liable for inability to obtain such permits unless such inability results from CLU's gross negligence. The Terms and Conditions of said permits shall be reviewed and approved by CLU prior to issuance by the City of Thousand Oaks or County of Ventura. CRPD shall fully and promptly reimburse CLU for the cost of all permit fees disbursed on their behalf. CLU may, at its sole discretion, obtain the permits required to be obtained directly by the various subcontractors, if said subcontractors provide a suitable letter of authority to CLU to act on their behalf. CRPD shall fully and promptly reimburse all such fees disbursed on their account within 15 days. CLU shall file all documents required for the approvals of governmental authorities having jurisdiction over the Project. All expenses associated with these filings shall be fully reimbursed by CRPD.

§ 2.3 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.3.1 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with CLU's obligation to provide Basic Services under this Agreement, will end 30 days after final payment to all Contractors is due and a certificate of occupancy is issued.

§ 2.3.2 CLU shall provide administration of the Construction Contracts in cooperation with CRPD as set forth below and as provided in the Construction Contract with the General Contractor.

§ 2.3.3 CLU shall provide administrative, management and related services to oversee scheduled activities and responsibilities of the General Contractor and will use its best efforts to manage the Project in accordance with the Project budget, the Project Schedule and the Contract Documents.

§ 2.3.4 CLU shall schedule and conduct a weekly construction meeting to discuss such matters as project construction status, procedures, progress and scheduling. CLU shall prepare and promptly distribute minutes of the meeting to CRPD, the Architects and Contractors. CRPD's Representative(s) shall attend the regular weekly construction meeting and provide input as necessary.

§ 2.3.5 CLU shall review the construction schedule and updates obtained from the General Contractor, and shall advise CRPD if the update indicates that the Project schedule may not be met. CLU shall consult with CRPD regarding potential corrective action, and shall provide direction accordingly to the General Contractor.

§ 2.3.6 Consistent with the various bidding documents, and utilizing information from the Contractors, CLU shall work with the General Contractor to coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work. CLU shall assign laydown areas, parking and materials storage areas on its campus outside the Project area for use by the General Contractor and its subcontractors. CLU shall inspect the Project site and laydown/storage areas for the implementation of appropriate trash management practices, storm water

management compliance, provision of suitable perimeter security and other items of interest to CLU in its dual roles as property owner and construction manager.

§ 2.3.7 CLU shall endeavor to obtain satisfactory performance from the General Contractor and his/her subcontractors. CLU shall confer with CRPD regarding courses of corrective action, and shall implement those courses of action when requirements of the Contract are not being fulfilled.

§ 2.3.8 CLU shall monitor the approved estimate of Construction Cost. CLU shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

§ 2.3.9 CLU shall develop forecasts for the Project and shall advise CRPD as to variances between actual and budgeted or estimated costs. CLU shall provide updates to the Construction Cost Budget and Forecast to CRPD at periodic intervals, to be agreed on with CRPD.

§ 2.3.10 CLU shall maintain appropriate accounting records in accordance with CLU's established procedures, on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 2.3.11 CLU shall process and pay the Application for Payment submitted by the General Contractor for progress and final payments, based on CLU's observations and evaluations of the Application for Payment. A copy of the Application for Payment shall be provided concurrently to CRPD for their review. CLU shall verify that all required Unconditional Waiver and Release Upon Progress Payment forms required from the General Contractor, major subcontractors, and all subcontractors, suppliers and materialmen have been received with the current Application for Payment, prior to making payment, and shall verify the releases as to format and execution. CRPD shall fully reimburse CLU for all payments made to the General Contractor and other Contractors retained by CLU for the construction of the Project within 15 days.

The approval of an Application for Payment and issuance of Payment shall not be a representation that CLU has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by CRPD to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.3.11.1 CRPD shall have provided CLU with the applicable Department of Labor Wage Determination for the Project, and CRPD shall conduct any labor audits, as may be required, and shall verify the accuracy of all certified payrolls submitted for the Project. CLU shall collect from the Contractor and Subcontractors, on a monthly basis in conjunction with the Application for Progress Payment, the weekly certified payrolls separately reflecting wages and benefits provided by the Contractor and Subcontractors. CLU shall provide its best efforts to determine and assess whether all payrolls required to be submitted have been submitted, but shall not be responsible for any missing payrolls. CRPD shall verify the accuracy of all certified payrolls submitted for the Project. CRPD shall defend, hold harmless, and indemnify CLU against any and all liability resulting from or in connection with any incorrect payments of prevailing wages or other claims of a similar nature arising from the construction of the Project. CRPD may retain, at its own cost, a prevailing wage monitor. CLU will provide the prevailing wage monitor with full and unrestricted access to the Project site, unless it is unsafe to do so.

§ 2.3.11.2 CRPD recognizes and takes full responsibility for, and assumes all liability resulting from, changes to the applicable Building codes or ordinances of any regulatory agency with jurisdiction over this Project, during the course of construction and prior to issuance of the Certificate of Occupancy for the Project. CRPD shall be responsible for all cost increases, schedule delays and other adverse effects of any such changes to the Building codes or ordinances.

(Paragraphs deleted)

§ 2.3.12 In accordance with its customary and standard practices, CLU shall review the safety programs developed by each of the Contractors for the sole purposes of coordinating the safety programs with those of the other Contractors.

CLU's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any

other persons performing portions of the Work and not directly employed by CLU. CLU shall not be responsible for any deficiencies in the safety program of any person or entity not directly in the employ of CLU or for any act or omission of such person or entity.

§ 2.3.13 CLU shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard against defects and deficiencies in the Work. As appropriate, CLU shall require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. CLU, in consultation with the Architect(s), may reject Work which does not conform to the requirements of the Contract Documents.

§ 2.3.14 CLU shall oversee the General Contractors scheduling and coordinating of the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.

§ 2.3.15 With respect to the General Contractor and each Contractor's own Work, CLU shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's responsibility or the General Contractor's responsibility, under the Construction Contract. CLU shall not be responsible for a Contractor's failure to carry out the Work in accordance with the Contract Documents. CLU shall not have control over or charge of acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by CLU.

§ 2.3.16 CLU shall transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise from the Contractors.

§ 2.3.17 CLU shall review requests for Change Orders with the Architect(s) or consultants, and CRPD's representative, and CLU shall take the lead in negotiating Contractors' proposals with the assistance and concurrence of CRPD, shall submit recommendations to CRPD, and, upon finalization and approval of the change order, shall prepare written Change Orders and Construction Change Directives.

§2.3.18 CRPD understands that Change Orders to the Construction Contract may arise during the course of construction, which may cause the final completion cost of the contract to increase. CRPD agrees that it shall fully accept all responsibility, liability and costs incurred for any change orders approved by CRPD during construction, and shall defend, hold CLU and its officers, directors, employees, agents, contractors and/or invitees harmless and indemnify from any and all claims, damages, causes of action, or liabilities arising from or in any way connected with these change orders to the Construction Contract, unless such Change Orders are caused by the gross negligence of CLU.

§2.3.19 In the event that a Change Order is not approved by CRPD, CLU and CRPD shall, prior to disapproval, meet and confer, and determine the basis for disapproval. CLU and CRPD shall work cooperatively in disapproving the Change Order; however, final determination of whether Change Orders are approved or not shall be in the sole discretion of CRPD. All documentation substantiating the disapproval shall be shared among CLU and CRPD. In the event a Change Order is disapproved, CRPD shall fully participate in a meeting with CLU and the Contractor to communicate and discuss the disapproval of the Change Order. Following the meeting, CLU shall issue a letter to the Contractor documenting the grounds for disapproval of the Change Order. In the event that a claim, action, mediation, arbitration or litigation is made or commenced, CRPD shall defend, indemnify, and hold harmless CLU and its officers, directors, employees, agents, contractors and/or invitees against all liability, cost or expense, except that arising solely from the gross negligence of CLU.

(Paragraphs deleted)

§ 2.3.20 In collaboration with the Architect, other consultants and General Contractor, CLU shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals (collectively "the submittals"). CLU shall provide a cursory review only of all Shop Drawings, Product Data, Samples and other submittals from the Contractors. The General Contractor shall coordinate submittals with information contained in related documents and shall transmit to the Architect(s) or other consultants those which have been approved by the General Contractor. Once the submittals have been reviewed and processed by the Architect(s), the reviewed submittals shall be returned to CLU for its cursory review for compliance. CLU shall return

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the reviewed submittals to the General Contractor. CLU's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of General Contractor or Contractors. CLU shall provide CRPD with the submittal schedule as soon as it is received by CLU from the General Contractor. Submittals identified by CRPD as of interest to them shall be forwarded to CRPD for its review prior to return of the submittal to the General Contractor or contractor.

§2.2.21 Intentionally Omitted

(Paragraphs deleted)

§ 2.3.22 The General Contractor shall maintain at the Project site, one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. CLU shall maintain its own record copies of all contract documents, change orders, other modifications, and shall also maintain records (in accordance with its standard practices) of principal building layout lines, elevations of the bottom of footings, floor levels, key site elevations certified by a qualified surveyor or professional engineer, Requests for Information, approved submittals, and other similar documents. Upon completion of the project, all Project documents either retained by CLU directly or retained by the General Contractor, shall be retained by CLU with copies provided upon request to CRPD.

§ 2.3.23 CLU will arrange for the storage, protection and security of CRPD-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

§ 2.3.24 With the Architect, and CLU's maintenance personnel, and CRPD's representative, CLU will observe the Contractors' final testing and start-up of utilities, operational systems and equipment.

§ 2.3.25 When CLU considers each Contractor's Work or a designated portion thereof substantially complete, CLU shall, jointly with the Architect(s) and CRPD, prepare for the General Contractor a list of incomplete or unsatisfactory items and request a schedule for their completion. CLU shall conduct inspections with the General Contractor to determine whether the Work or designated portion thereof is substantially complete.

§ 2.3.26 CLU shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, CLU shall evaluate the completion of the Work of the Contractors and determine when the Work will be ready for final inspection by CLU, CRPD and the Architect(s). CLU shall lead the final inspection, and shall compile the master "punch list" for corrective work.

§ 2.3.27 CLU shall receive and retain all warranties and similar submittals required by the Contract Documents for delivery and shall retain all keys, manuals, record drawings and maintenance stocks, pursuant to the Agreement for Maintenance and Operation to be executed by CLU and CRPD. CLU and CRPD shall jointly review the final Project Application for Payment upon receipt for compliance with the requirements of the Contract Documents.

§ 2.3.28 Duties, responsibilities and limitations of authority of CLU as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of CRPD and CLU.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 GENERAL

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 14, and they shall be paid for by CRPD as provided in this Agreement, in addition to the compensation for Basic Services. The Optional Additional Services described under Section 3.3 shall only be provided if authorized or confirmed in writing by CRPD and CLU. If services described under Contingent Additional Services in Section 3.2 are required due to circumstances beyond CLU's control, CLU shall notify CRPD prior to commencing such services. If CRPD deems that such services described under Section 3.2 are not required, CRPD shall give prompt written notice to CLU. If CRPD indicates in writing that all or part of such Contingent Additional Services are not required, CLU shall have no obligation to provide those services.

§ 3.2 CONTINGENT ADDITIONAL SERVICES

§ 3.2.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or CRPD's schedule.

§ 3.2.2 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.2.3 Providing services made necessary by the termination or default of the Architect(s) or General Contractor, or a Contractor, by major defects or deficiencies in the Work of a Contractor, or by failure of performance of either CRPD or Contractor under a Construction Contract.

§ 3.2.4 Providing services in evaluating an extensive number of claims submitted by a Contractor or others in connection with the Work.

§ 3.2.5 Providing services in connection with a public hearing, arbitration or a mediation proceeding or legal proceeding except where CLU is party thereto.

§ 3.3 OPTIONAL ADDITIONAL SERVICES

§ 3.3.1 Providing services relative to future facilities, systems and equipment.

§ 3.3.2 Providing services to investigate existing CRPD facilities or to provide measured drawings thereof.

§ 3.3.3 Providing services to verify the accuracy of drawings or other information furnished by CRPD.

§ 3.3.4 Providing services required for or in connection with CRPD's selection, procurement or installation of furniture, furnishings and related equipment.

§ 3.3.5 Providing services for tenant improvements.

§ 3.3.6 Providing any other services not otherwise included in this Agreement.

ARTICLE 4 CRPD'S RESPONSIBILITIES

(Paragraph deleted)

§ 4.1 CRPD shall provide full information regarding requirements for the Project, including a program which shall set forth CRPD's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

§ 4.2 CRPD shall, in conjunction with CLU, establish and update an overall budget for the Project based on consultation with CLU and Architect, which shall include the Construction Cost, CRPD's other costs and reasonable contingencies related to all of these costs.

§ 4.3 If requested by CLU, CRPD shall furnish evidence that financial arrangements have been made to fulfill CRPD's obligations under this Agreement.

§ 4.4 CRPD shall designate a representative authorized to act on CRPD's behalf with respect to the Project. CRPD, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by CLU in order to avoid unreasonable delay in the orderly and sequential progress of CLU's services.

§ 4.5 CRPD shall authorize CLU to retain an architect whose services, duties and responsibilities are described in contract executed between CLU and Architect(s). Although retained by CLU, CLU shall not be responsible for actions taken by the Architect, or Architect's own Errors and Omissions in the preparation of Project plans, drawings and specifications.

§ 4.6 CRPD shall authorize CLU to obtain, and shall reimburse the costs for such structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

Init.

§ 4.7 CRPD shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services CRPD may direct CLU to employ to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by CLU.

§ 4.8 CRPD shall fully reimburse the reproduction of a sufficient quantity of Construction Documents.

§ 4.9 The services, information and reports required by Sections 4.5 through 4.8 shall be furnished at CRPD's expense, and obtained by CLU, and CLU shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.10 Prompt written notice shall be given by CRPD to CLU and Architect(s) if CRPD becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

§ 4.11 CRPD reserves the right to perform tenant improvements of a limited nature within the administration and storage spaces only of the Project with CRPD's own forces, and to award contracts for these two spaces only in connection with the Project which are not part of CLU's responsibilities under this Agreement. CLU shall notify CRPD if any such independent action will interfere with CLU's ability to perform CLU's responsibilities under this Agreement, or if such action will violate any permits or entitlements obtained for the Project. When performing construction or operations related to the Project, CRPD agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 4.12 Information or services under CRPD's control shall be furnished by CRPD with reasonable promptness to avoid delay in the orderly progress of CLU's services and the progress of the Work.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost to CRPD of all elements of the Project designed or specified by the Architect(s), and other consultants retained for the Project.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the General Contractor and CLU and equipment designed, specified, selected or specially provided for by the Architect(s), plus a reasonable allowance for the Contractors' overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Except as provided in Section 5.1.3, Construction Cost shall also include the compensation of CLU and CLU's consultants and architects.

§ 5.1.3 Construction Cost does not include the costs of the land, rights-of-way, financing or other costs which are the responsibility of CRPD as provided in Article 4.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 Evaluations of the Project budget, preliminary estimates of Construction Cost and any detailed estimates of Construction Cost prepared by CLU represent CLU's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither CLU nor CRPD has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, CLU cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by CRPD, or from any cost estimate or evaluation prepared by CLU, and CLU shall have no liability as a result of any such variance.

§ 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, CLU shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Architect(s) to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction.

Init.

§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after submittal of the Construction Documents to CRPD, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to CRPD and the date on which proposals are sought.

§ 5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the sum of the lowest bona fide bids or negotiated proposals plus CLU's estimate of other elements of Construction Cost for the Project, CRPD shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Section 9.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 5.2.5 If CRPD chooses to proceed under Section 5.2.4.4, CLU shall cooperate with CRPD and Architect(s) as necessary to bring the Construction Cost within the fixed limit, if established as a condition of this Agreement.

ARTICLE 6 CONSTRUCTION SUPPORT ACTIVITIES

§ 6.1 Construction support activities shall be provided by CLU, and shall consist of the following:

§6.1.1. Site Meetings. CLU shall conduct a weekly construction site meeting with the General Contractor, CRPD representative, and Architect, and shall prepare and distribute meeting minutes.

§6.1.2 Requests for Information (RFIs). CLU shall receive RFIs from the Contractor, and shall distribute them to the appropriate Architect and/or consultant, obtain and coordinate the response, and verify that the response has been transmitted to the Contractor.

§6.1.3 Submittals. CLU shall receive submittals from the Contractor, distribute the submittals for review by the appropriate Architect or consultant, ensure that the review copies of the submittals are returned to the Contractor, follow up to ensure that resubmittals are promptly provided, and retain a copy of all approved submittals for the Project records.

§6.1.4 Submittal Log. CLU shall request from, and receive, submittal logs from the Architect(s) and consultants, and shall develop a master Submittal Log. CLU shall maintain the master Submittal Log, and shall provide updated copies to CRPD periodically.

§6.1.5 Shop Drawings. CLU shall direct that the Architect(s) provide written shop drawing review with five (5) working days of receipt.

§6.1.6 Evaluation of the Work. CLU shall ensure that the Architect(s) and consultants retained for the Project visit the site as necessary to perform their services hereunder and at intervals appropriate to the stage of the Contractor's operations.

§6.1.7 CLU shall report to CRPD known deviations from the Contract Documents.

§6.1.8 CLU shall provide a final written evaluation of the Project, evaluating the Project for compliance with the Project Documents, and shall coordinate the final written evaluation of the Project from the Architect(s) and other consultants, and shall prepare a Master written Punch List for the Project.

§6.1.9 CLU shall compile and retain a complete as-built record copy of drawings for the project, and shall provide one full copy of the drawings to CRPD.

§ 6.2 Reimbursable expenses listed in Article 14 for construction support activities may be subject to trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment which shall accrue to CRPD, and CLU shall make provisions so that they can be secured.

ARTICLE 7 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 7.1 The Drawings, Ownership, copyright, use of electronic files, and license and reproduction rights associated with all specifications and other documents prepared by the Architect(s) are described in the separate contracts executed with those Architects.

(Paragraph deleted)

ARTICLE 8 DISPUTE RESOLUTION

(Paragraph deleted)

§ 8.1 Mediation. CLU and CRPD agree to mediate any dispute or claim between them arising out of this Agreement before resorting to litigation. The mediation will be conducted before a mutually agreeable mediator and any fees or costs associated with any mediation will be divided equally between CLU and CRPD. If either party commences a litigation proceeding without first attempting to resolve the dispute through mediation, or refuses to mediate after a written request for mediation is made, then that party shall not be entitled to attorney's fees, even if they would otherwise be recoverable.

§ 8.2 Attorneys' Fees and Costs. In addition to any damages awarded, the prevailing party in any litigation proceeding shall be awarded its costs and expenses incurred. "Costs and expenses" means all reasonable pre-award and post-award expenses of the litigation, including reasonable attorneys' fees, the mediator's fees and disbursements, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone charges, court costs, witness fees and the administrative fees of the litigation as well as any preceding mediation.

(Paragraphs deleted)

ARTICLE 9 TERMINATION, SUSPENSION OR ABANDONMENT

§ 9.1 This Agreement may be terminated by either party in the Pre-Construction Phase of Work and subject to the provisions of the Memorandum of Understanding and the Lease and Joint Use Agreement, upon not less than seven business days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.2 If the Project is suspended by CRPD for more than 30 consecutive days, CLU shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, CLU's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the CLU's services.

§ 9.3 This Agreement may be terminated by CRPD in the Pre-Construction Phase of Work, upon not less than seven business days' written notice to CLU in the event that the Project is permanently abandoned. If the Project is abandoned by CRPD for more than 90 consecutive days, CLU may terminate this Agreement by giving written notice. This Agreement may not be terminated by CRPD once construction of the Project has commenced, except as provided in Article 9.8.

§ 9.4 Failure of CRPD to make payments to CLU in accordance with this Agreement shall be considered substantial nonperformance and cause for legal action.

§ 9.5 If CRPD fails to make payment when due CLU for services and expenses, CLU may, upon seven business days' written notice to CRPD, suspend performance of CLU, its consultants and architects, and the Contractors' services under this Agreement. Unless payment in full is received by CLU within seven business days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, CLU shall have no liability to CRPD for delay or damage caused to CRPD because of such suspension of services. In the event the suspension of services leads to a termination of services by CLU, then CLU shall be compensated for services performed prior to the termination, and shall be compensated for the Termination Expenses as defined in Section 9.7.

§ 9.6 In the event of termination in the Pre-Construction Phase of Work which is not the fault of CLU, CLU shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

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§ 9.7 Termination Expenses are those costs directly attributable to termination for which CLU is not otherwise compensated, including, but not limited to, the cost of restoration of the property, and cost of completion of the project, which shall be determined in the sole discretion of CLU.

§ 9.8 In the event that CRPD determines that it is in the Public's best interest to terminate this Agreement after construction has started, then CRPD shall the ability to terminate this Agreement and shall compensate CLU for the Termination Expenses as described in Article 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 Unless otherwise provided, this Agreement shall be governed by the law of the State of California.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager -Adviser Edition, current as of the date of this Agreement.

§ 10.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.

§ 10.4 Waivers of Subrogation. CRPD and CLU waive all rights against each other and against the Contractors, Architect, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, current as of the date of this Agreement. CRPD and CLU each shall require similar waivers from their Contractors, Architect, consultants, agents, and persons or entities awarded separate contracts administered under CRPD's own forces.

§ 10.5 CRPD and CLU, respectively, bind themselves, elected officials, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither CRPD nor CLU shall assign this Agreement without the written consent of the other, and CRPD may only assign to another public entity.

§ 10.6 This Agreement represents the entire and integrated agreement for Construction Management Services between CRPD and CLU and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CRPD and CLU. This agreement shall not supersede, alter, or negate the separate Lease and Joint Use Agreement executed by the Parties.

§ 10.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CRPD or CLU.

§ 10.8 Unless otherwise provided in this Agreement, CLU and CLU's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

§ 10.9 CLU shall not be responsible for damages arising, directly or indirectly, from any delays for causes beyond it's immediate control. Such causes shall include, but not be limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; power outages; fires; riots; war or other national emergencies; Acts of God; failure of any governmental agency to act in a timely manner; failure of performance by CRPD or CLU's contractors, consultants and architects; or discovery of any hazardous substances or material variances in the site conditions.

ARTICLE 11 INSURANCE

§ 11.1 CLU'S LIABILITY INSURANCE

§ 11.1.1 CLU shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect CLU from claims set forth below which may arise out of or result from CLU's operations under this Agreement and for which CLU may be legally liable.

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- .1 claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of CLU's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than CLU's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by CLU, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in Article 14 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of operations under this Agreement until date of final payment and termination of any coverage required to be maintained after final payment.

ARTICLE 12 PAYMENTS TO CLU

(Paragraph deleted)

§ 12.1 DIRECT PERSONNEL EXPENSE

§ 12.1.1 Direct Personnel Expense is defined as the direct salaries of CLU's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 12.2 REIMBURSABLE EXPENSES

§ 12.2.1 Reimbursable Expense are in addition to compensation for Basic and Additional Services and include expenses incurred by CLU and CLU's employees and consultants in the interest of the Project, as identified in the following Clauses.

§ 12.2.1.1 Expenses of transportation in connection with the Project, expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

§ 12.2.1.2 Expense of reproductions, postage, express deliveries, electronic facsimile transmissions and handling of Drawings, Specifications and other documents.

§ 12.2.1.3 If authorized in advance by CRPD, expense of overtime work requiring higher than regular rates.

§ 12.2.1.4 Expense of additional insurance coverage or limits requested by CRPD in excess of that normally carried by CLU.

§ 12.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

(Paragraphs deleted)

§ 12.3.2 Payments for Basic Services shall be made monthly and, shall be a direct reimbursement of CLU personnel time and contractor/vendor payments made on CRPD's behalf by CLU, as set forth in Section 13.2.1.

§ 12.3.3 If and to the extent that the time initially established in Section 13.5.1 of this Agreement is exceeded or extended through no fault of CLU, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 13.3.1.

(Paragraphs deleted)

§ 12.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

§ 12.4.1 Payments on account of CLU's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of CLU's statement of services rendered or expenses incurred.

§ 12.5 PAYMENTS WITHHELD

§ 12.5.1 No deductions shall be made from CLU's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work except as determined by a court of law.

§ 12.6 CLU'S ACCOUNTING RECORDS

§ 12.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to CRPD or CRPD's authorized representative at mutually convenient times.

ARTICLE 13 BASIS OF COMPENSATION

CRPD shall compensate CLU as follows:

(Paragraphs deleted)

§ 13.2 BASIC COMPENSATION

§ 13.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 14 as part of Basic Services, Compensation shall be made as follows:

For Pre-Construction Phase and Construction Phase Services:

(Paragraph deleted)

CRPD will fully reimburse CLU for all costs of the Project, including CLU staff time at an hourly rate set forth in Exhibit A, which is updated annually as of June 1 and in an amount not to exceed 10%, and CLU costs for legal fees or separate consultants required for review of environmental documents, entitlement conditions and processing before the City, incurred in the conduct of the Project by CLU on behalf of CRPD. Invoicing will be on a direct cost reimbursable basis with 0% markup for contractor, consultant, architect and vendor invoices. Invoicing for CLU personnel time will be per the rate schedule in Exhibit A.

(Paragraphs deleted)

§ 13.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 13.3.1 FOR ADDITIONAL SERVICES OF CLU, as described in Article 3, and any other services included in Article 14 as Additional Services, compensation shall be made as described in Article 13.2.1.

§ 13.4 REIMBURSABLE EXPENSES

§ 13.4.1 REIMBURSABLE EXPENSES, as described in Section 12.2, and any other items included in Article 14 as Reimbursable Expenses, will be compensated as described in Article 13.2.1 at 0% markup.

§ 13.5 ADDITIONAL PROVISIONS

§ 13.5.1 The term of this agreement shall be limited to 6 months following the later of i) issuance of a certificate of occupancy for the Project or ii) release of the final payments (retention) due the contractors.

(Paragraphs deleted)

§ 13.5.2 Payments are due and payable within (15) days from the date of the CLU's invoice. Amounts unpaid Fifteen (15) days after the invoice date shall bear interest at a rate of 5% per annum, or at the legal rate prevailing from time to time at the principal place of business of CLU.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the CRPD's and CLU's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 13.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted as of June, in accordance with normal salary review practices of the CLU.

§ 13.5.4 Any notices, demands, requests or other communications related to this Agreement shall be personally delivered as follows:

To CLU:
Vice President for Administration and Finance
California Lutheran University
60 West Olsen Road, MC 1200
Thousand Oaks, CA 91360
-with copy to-
Nancy Kirsten Schreiner
Nordman Cormany Hair & Compton
1000 Town Center Drive, Sixth Floor
Oxnard, CA 93036

To CRPD:
General Manager
Conejo Recreation and Park District
Hillcrest Center
403 W. Hillcrest Drive
Thousand Oaks, CA 91360

§ 13.5.5 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

ARTICLE 14 OTHER CONDITIONS OR SERVICES

(Paragraph deleted)

All the Contingent Services as outlined in Article 3.2 are hereby included in the Basic Services to be provided by CLU pursuant to this Agreement.

§ 14.1 LIMITS ON INSURANCE

CLU shall maintain in force its current insurance policies with coverage equal to or better than current policies for the direction of the Project. (Insert the specific dollar amounts for the appropriate insurance limits of liability.)

(Table deleted)

This Agreement entered into as of the day and year first written above.

Conejo Recreation and Parks District

California Lutheran University

(Row deleted)

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

EXHIBIT "A"

CALIFORNIA LUTHERAN UNIVERSITY HOURLY STAFF RATES

CLU staff time shall be reimbursed at the following hourly rates:

Senior Project Manager	\$80/hour
Project Assistant	\$36/hour

Hourly rates shall be re-established on June 01 of each year based upon CLU's cost of living increase, which historically has ranged from 5 to 10%.