

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 JOINT USE AGREEMENT

2 (Parking Lot at Whaley Park)

3 **31634**

4 THIS JOINT USE AGREEMENT is made and entered, in duplicate, as of  
5 December 11, 2009 for reference purposes only, pursuant to a minute order adopted by  
6 the City Council of the City of Long Beach at its meeting on MAR 16 2010, 2010, by and  
7 between the CITY OF LONG BEACH, a municipal corporation ("City"), and the YOUNG  
8 MEN'S CHRISTIAN ASSOCIATION OF GREATER LONG BEACH, a 501(c)(3) California  
9 nonprofit corporation for public benefit ("YMCA").

10 WHEREAS, the City is the legal owner of Parkland located at 5620 East  
11 Atherton Street, partially reflected in Exhibit "A", also known as Whaley Park; and

12 WHEREAS, YMCA owns land located at 1720 North Bellflower Boulevard  
13 which is adjacent to City's Whaley Park; and

14 WHEREAS, the parties desire to expand the parking lot depicted in Exhibit  
15 "A" that sits on City property; and

16 WHEREAS, YMCA has agreed to develop and construct the new expanded  
17 parking lot which shall also serve to accommodate the YMCA's building expansion;

18 NOW, THEREFORE, in consideration of the mutual terms and conditions of  
19 this Agreement, the parties agree as follows:

20 1. Term. The term of this Agreement shall commence on February 1,  
21 2010 and shall terminate on February 28, 2025. YMCA may extend the term of this  
22 Agreement for two (2) additional periods of five (5) years each by giving written notice to  
23 City not less than ninety (90) days prior to the expiration of the Original Term or Renewal  
24 Term. Notwithstanding the foregoing, the YMCA may terminate this Agreement at any  
25 time during a Renewal Term by providing one hundred eighty (180) days written notice to  
26 the other party.

27 2. Site. The Site which is the subject of this Agreement is currently  
28 eighteen thousand (18,000) square feet of parkland located within Whaley Park located

1 at 5620 East Atherton Street which shall be reconfigured and partially reconstructed to  
2 provide fifty-one (51) new parking spaces (the "Site"). A depiction is attached as Exhibit  
3 "A".

4           3.     Costs. YMCA shall be solely responsible for all costs associated  
5 with construction of the parking lot; relocation of the children's tot lot; re-painting, re-  
6 striping and mending all existing fencing at all remaining game courts contiguous to the  
7 Site; re-sealing and re-striping the existing parking lot at Whaley Park to match the Site.

8           4.     Use. YMCA shall have use of the Site, or any portion thereof, every  
9 day, from six o'clock (6:00) A.M. to eleven o'clock (11:00) P.M. The Site shall be  
10 available to both parties, their employees, guests and patrons on a first come, first serve  
11 basis.

12           5.     Utilities/Maintenance. Following construction of the Site by YMCA,  
13 City shall provide, and pay for all water, electrical, gas and sewer service to the Site.  
14 Thereafter, City shall be solely responsible for all maintenance.

15           6.     Signs. City may erect a sign advising patrons at Whaley Park that  
16 they may park at the Site during the hours and days described above. City shall maintain  
17 the sign in good condition and shall have access to the sign at all reasonable times.

18           7.     Indemnification.

19           A.     YMCA shall defend, indemnify and hold harmless the City, its  
20 officials, employees and agents for all claims, demands, damage, losses, liability, causes  
21 of action, costs and expenses (including attorney's fees and court costs) for damage to  
22 property and injury to or death of persons arising from the negligence or willful  
23 misconduct of YMCA, its officers, employees and agents in connection with the  
24 reconfiguration of the Site and its subsequent use by YMCA, its officers, employees,  
25 agents, and invitees.

26           B.     The City shall defend, indemnify and hold harmless YMCA, its  
27 officers, employees and agents for all damage, losses, liability, causes of action, costs  
28 and expenses (including attorney's fees and court costs) for damage to property and

1 injury to or death of persons arising from the negligence or willful misconduct of the City,  
2 its officials, employees and agents in connection with use of the Site by the City, its  
3 officials, employees, agents and invitees.

4           8.     Plans. City shall have the right to review and approve all plans to  
5 reconfigure the Site for parking in its capacity as a party to this Agreement, separate from  
6 and in addition to its right as a municipality acting through its Department of Planning and  
7 Building to review and approve those plans. YMCA shall also provide City with keys to  
8 any gate used for access to the Site while under construction or the plans shall include a  
9 separate entrance with access controlled solely by the City.

10           9.     Nondiscrimination. In connection with performance of this  
11 Agreement and subject to applicable rules and regulations, YMCA shall not discriminate  
12 against any employee or applicant for employment because of race, religion, national  
13 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or  
14 disability. YMCA shall ensure that applicants are employed, and that employees are  
15 treated during their employment, without regard to these bases. These actions shall  
16 include, but not be limited to, the following: employment, upgrading, demotion or  
17 transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other  
18 forms of compensation, and selection for training, including apprenticeship.

19           It is the policy of City to encourage the participation of Disadvantaged,  
20 Minority and Women-owned Business Enterprises in City's procurement process, and  
21 YMCA agrees to use its best efforts to carry out this policy in the hiring of Contractors to  
22 the fullest extent consistent with the efficient performance of this Agreement. YMCA  
23 may rely on written representations by Consultants and Subcontractors regarding their  
24 status. YMCA shall report to City in May or in December or, in the case of short-term  
25 agreements, prior to invoicing for final payment, the names of all subconsultants and  
26 contractors hired by YMCA for this Project and information on whether or not they are a  
27 Disadvantaged, Minority or Woman-owned Business Enterprise, as defined in Section 8  
28 of the Small Business Act (15 U.S.C. Section 637).

1           10. Integration. This Agreement constitutes the entire understanding  
2 between the parties and supersedes all other agreements, oral or written, pertaining to  
3 the subject matter herein.

4           11. Amendment. This Agreement shall not be amended, nor any  
5 provision or breach hereof waived, except in writing signed by the parties which expressly  
6 refers to this Agreement.

7           12. Governing Law. This Agreement shall be governed by and  
8 construed pursuant to the laws of the State of California.

9           13. Insurance.

10           A. The parties acknowledge that the City is self-insured for  
11 general liability, and the City will provide a certificate of self-insurance to YMCA, on  
12 request.

13           B. As a condition precedent to the effectiveness of this  
14 Agreement YMCA shall procure and maintain at its expense for the duration of the  
15 Agreement from insurance companies that are admitted to write insurance in California or  
16 from authorized non-admitted insurance companies that have ratings of or equivalent to  
17 A:VIII by A.M. Best Company:

18                   (a) Commercial general liability insurance (equivalent in  
19 scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One  
20 Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00)  
21 general aggregate. Such coverage shall include but not be limited to broad form  
22 contractual liability, cross liability, independent contractors liability, and products and  
23 completed operations liability. The City, its officials, employees and agents shall be  
24 named as additional insureds by endorsement (on the City's endorsement form or on an  
25 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and  
26 this insurance shall contain no special limitations on the scope of protection given to the  
27 City, its officials, employees and agents.

28                   (b) Workers' compensation insurance as required by the

1 California Labor Code and employer's liability insurance in an amount not less than One  
2 Million Dollars (\$1,000,000.00) per accident.

3 (c) Commercial automobile liability insurance (equivalent in  
4 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount  
5 not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per  
6 accident.

7 Any self-insurance program, self-insured retention, or deductible  
8 must be separately approved in writing by City's Risk Manager or designee and shall  
9 protect the City, its officials, employees and agents in the same manner and to the same  
10 extent as they would have been protected had the policy or policies not contained  
11 retention or deductible provisions. Each insurance policy shall be endorsed to state that  
12 coverage shall not be reduced in coverage, nonrenewed, or canceled except after thirty  
13 (30) days prior written notice to City, and shall be primary and not contributing to any  
14 other insurance or self-insurance maintained by the City, its officials, employees and  
15 agents. YMCA shall notify the City within five (5) days after any insurance required  
16 herein has been voided by the insurer or cancelled by the insured.

17 YMCA shall require that all contractors which YMCA uses in the work  
18 to reconfigure the Site shall maintain insurance in compliance with this Section unless  
19 otherwise agreed in writing by City's Risk Manager or designee.

20 Prior to the start of performance of work on the Site, YMCA shall  
21 deliver to City certificates of insurance and required endorsements, including any  
22 insurance required of YMCA's contractors for approval as to sufficiency and form. The  
23 certificates and endorsements shall contain the original signature of a person authorized  
24 by that insurer to bind coverage on its behalf. In addition, YMCA shall, at least thirty (30)  
25 days prior to expiration of the insurance required hereunder, furnish to the City  
26 certificates of insurance and endorsements evidencing renewal of such insurance. City  
27 reserves the right to require complete certified copies of all policies of YMCA and  
28 YMCA's contractors at any time. YMCA and YMCA's contractors shall make available to

1 the City all books, records and other information relating to the insurance coverage  
2 required herein during normal business hours.

3 Any modification or waiver of the insurance requirements herein shall  
4 only be made with the written approval of the City's Risk Manager or designee. Not more  
5 frequently than once a year, the City's Risk Manager or designee may require that YMCA  
6 change the amount, scope or types of coverages required herein if, in his or her sole  
7 opinion, the amount, scope, or types of coverages herein are not adequate.

8 The procuring or existence of insurance shall not be construed or  
9 deemed as a limitation on liability relating to YMCA's performance of services or as full  
10 performance of or compliance with the indemnification provisions herein.

11 14. Notice. Any notice hereunder shall be in writing and personally  
12 served or deposited in the U.S. Postal Service, first class, postage prepaid to City at 333  
13 West Ocean Boulevard, Long Beach, CA 90802 Attn: City Manager, and to YMCA at  
14 P.O. Box 90995, Long Beach, California 90809 Attn: President and Chief Operating  
15 Officer, with a copy to 3605 Long Beach Boulevard, Suite 210, Long Beach, California  
16 90807 Attn: Chief Operating Officer. Notice of change of address shall be given in the  
17 same manner as other notices. Notice shall be deemed given on the date personal  
18 service is obtained or on the date deposited in the mail, whichever first occurs.

19 15. Assignment. Neither party shall assign this Agreement or any part of  
20 it or any interest in it.

21 16. Damage. Each party shall repair, at its sole cost, damage to the Site  
22 which is attributable to that party's use of the Site. If the cause of damage to the Site  
23 cannot be determined or if there is a dispute regarding the cause of the damage, then the  
24 parties shall share equally the cost of repair.

25 17. Joint Effort and Relationship of the Parties. This Joint Use  
26 Agreement is created as a joint effort between the parties and fully negotiated as to its  
27 terms, covenants, and conditions. It shall not be construed against either party as the  
28 drafter. The parties agree that nothing in this Joint Use Agreement shall be deemed or

1 construed as creating a partnership, joint venture, principal-agent relationship,  
2 association, or employer-employee relationship between them or between City and any  
3 third person or entity.

4 18. American with Disabilities Act. YMCA shall have sole responsibility  
5 for providing access to and at the Site as required by the Americans with Disabilities Act  
6 of 1990 ("ADA") and for complying with the ADA. YMCA shall defend, indemnify and  
7 hold City, its officials and employees harmless from and against all claims of failure to  
8 provide access or comply with the ADA.

9 19. Prevailing Wage Rates. YMCA is directed to the prevailing wage  
10 rates. YMCA shall forfeit, as a penalty to the City, Fifty Dollars (\$50.00) for each laborer,  
11 worker or mechanic employed for each calendar day, or portion thereof, that such  
12 laborer, worker or mechanic is paid less than the prevailing wage rates for any work done  
13 by YMCA, or any subcontractor, under this Contract.

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1 IN WITNESS WHEREOF, the parties have executed this Joint Use  
2 Agreement with all formalities required by law as of the date shown below.

3 YOUNG MEN'S CHRISTIAN ASSOCIATION  
4 OF GREATER LONG BEACH, a 501(c)(3)  
5 California nonprofit corporation for public  
6 benefit

7 04/01, 2010

8 By Alan Hostrup

9 President and CEO

10 Alan HOSTRUP

11 Type or Print Name

12 04/02, 2010

13 By Noble J. Dillard

14 Chairman of the Board

15 Noble J. Dillard

16 Type or Print Name

17 "YMCA"

18 CITY OF LONG BEACH, a municipal  
19 corporation

20 Assistant City Manager

21 5.14, 2009/10

22 By [Signature]

23 City Manager EXECUTED PURSUANT  
24 TO SECTION 301 OF  
25 THE CITY CHARTER.

26 "City"

27 This Joint Use Agreement is approved as to form on

28 April 19, 2010.

ROBERT E. SHANNON, City Attorney

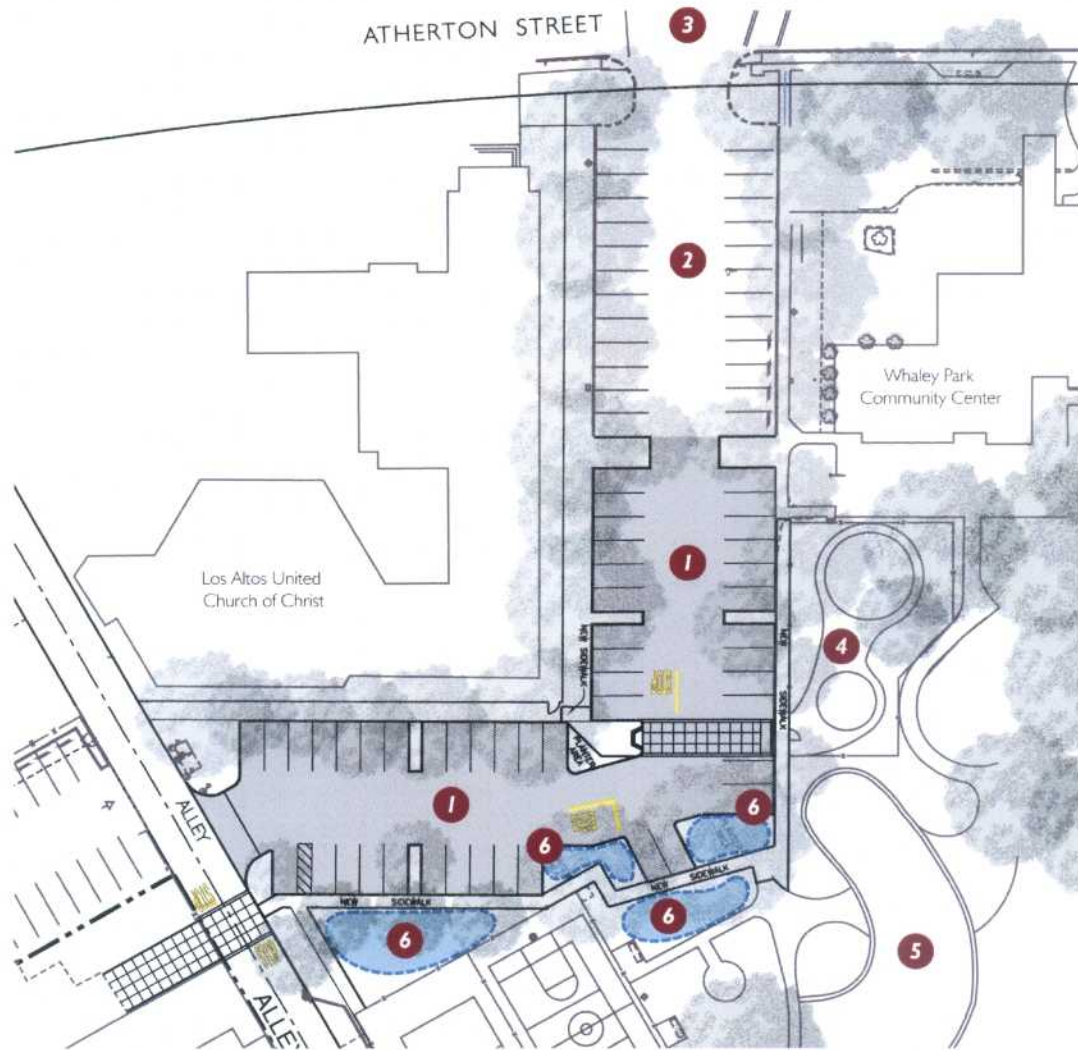
By [Signature]

Deputy

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# EXHIBIT A: WHALEY PARK



## KEYNOTES

- 1** Proposed parking lot
- 2** Existing parking lot
- 3** Signalized intersection
- 4** Relocated tot lot
- 5** Existing play area
- 6** Potential bioswale location

