

**LEASE AND SHARED USE AGREEMENT**

Dated: \_\_\_\_\_, 2000

BY AND BETWEEN

INDEPENDENT SCHOOL DISTRICT No. 625

AND

YMCA OF GREATER SAINT PAUL

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**LEASE AND  
SHARED USE AGREEMENT**

This Lease and Shared Use Agreement (hereinafter referred to as the "Lease") made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2000, by and between INDEPENDENT SCHOOL DISTRICT No. 625 (hereinafter referred to as "District 625") and YMCA OF GREATER SAINT PAUL (hereinafter referred to as "YMCA").

**PRELIMINARY RECITALS**

A. District 625 is a public corporation organized and existing under the laws of the State of Minnesota existing pursuant to Laws 1965 Chapter 705, as amended.

B. YMCA is a 501(c)(3) non-profit corporation organized and existing under the laws of the State of Minnesota.

C. District 625 is the owner of certain real property around and including a school building formerly known as Johnson High School (hereinafter referred to as "the Original Building"), which is located within the corporate limits of the City of St. Paul and is legally described on Exhibit "A" attached and made a part hereof (hereinafter referred to as the "District 625 Land").

D. The Original Building is being substantially remodeled to serve as a district elementary school (hereinafter referred to as the "New School Building"), which New School Building and related improvements are located on a portion of the District 625 Land which is legally described on Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as the "New School Land").

E. The New School, as remodeled, does not have a gymnasium, a swimming pool or other such area to provide for educational and recreational use.

F. The YMCA is in need of a building in the St. Paul East Side area in which to conduct YMCA programs.

G. District 625 and the YMCA have agreed that District 625 shall construct an additional new building adjacent to the New School Building (hereinafter referred to as the "YMCA Building") on a portion of the District 625 Land which is legally described on Exhibit "C" attached hereto and made a part hereof (hereinafter referred to as the "YMCA Building Land").

H. The YMCA Building will be constructed for the joint purpose of serving both as a full service YMCA and as an education and recreation annex for the New School Building.

I. District 625 will be the fee owner of both the YMCA Building Land and the YMCA Building.

J. A portion of the YMCA Building shall be leased to the YMCA, on an exclusive basis, which leased area of the YMCA Building is more particularly set forth in Exhibit “D” attached hereto and made a part of this Lease (hereinafter referred to as the “Leased Building Area”).

K. In addition, the YMCA shall be given (i) the right to use the remaining unleased portion of the YMCA Building on a joint basis with District 625 for the purpose of YMCA programs and services which joint use area consists of the gymnasium, the boys and girls locker rooms, the learning readiness space, the shared play area and the child watch area, and is more particularly set forth in Exhibit “D” attached hereto and made a part of this Lease (hereinafter referred to as the “Joint Use Area”) and (ii) the right to use the YMCA Building Land in accordance with the terms of this Lease.

L. The New School Building and the YMCA Building will jointly be known as the “East Side Achievement Plus Community Facility” and is being developed as a joint effort by the Achievement Plus Partners (which is comprised of District 625, the Wilder Foundation, the County of Ramsey and the City of St. Paul), the YMCA and the Department of Children, Families and Learning.

M. The underlying purpose of the Achievement Plus Partners is the improvement of student achievement through the focused, coordinated, integrated and innovative delivery of educational, recreational, environmental and family services, which purpose the Achievement Plus Partners deem to be furthered by the construction and operation of the New School Building and the YMCA Building.

N. District 625 and the YMCA are entering into this Lease in order to provide for the development, leasing and shared use of the YMCA Building which both parties deem to be to their mutual advantage.

I. Leased Premises, Shared Use Area and Playfields.

1.1 Leased Premises. District 625, for and in consideration of the rental herein promised to be paid by the YMCA and the other covenants, conditions and agreements herein contained on the part of the YMCA to be paid, kept and performed, does hereby lease and rent to the YMCA and the YMCA, as tenant of District 625, does hereby take and lease for the term and at the rental and upon the terms and conditions hereinafter set forth the following:

- a) The Leased Building Area. The Leased Building Area.
- b) Appurtenant Easements. The following appurtenant easements: (i) an exclusive easement, subject to the rights of District 625 set forth in Section 3.1 below, to use the YMCA Building Land for all purposes necessary for the use and operation of the YMCA in the Leased Building Area including but not limited to parking, landscaping, sidewalks, driveways, ingress and egress, parking and utility line use, (ii) a non-exclusive easement to use all ingress and egress points of access from public roads, all driveways, all sidewalks and all parking lots which are now or hereafter located on the New School Building Land, and (ii) a non-exclusive easement to install, maintain and use utility lines over portions of the New School

Building Land other than the portion of the New School Building Land on which the New School Building is located (hereinafter collectively referred to as the “Appurtenant Easements”). All costs associated with the installation and maintenance of any utility lines by the YMCA on the New School Building Land after the initial construction of all improvements contemplated hereunder shall be borne by the YMCA unless such lines are being installed for the joint use of the YMCA and District 625 in which case the cost thereof will be apportioned on an equitable basis. The YMCA shall have the obligation to restore all areas of the New School Building Land after completing such installation and repair.

The Leased Building Area and the Appurtenant Easements are hereinafter collectively referred to as the “Leased Premises”.

1.2 Covenants. District 625 covenants and warrants that District 625 is seised in fee simple of the Leased Premises, that District 625’s title thereto is free of all encumbrances, restrictions, liens, or adverse claims of any kind, or character, except as otherwise set forth on Exhibit “E” attached hereto and made a part hereof.

1.3 Quiet Enjoyment. District 625 warrants that, subject to the terms and provisions herein, the YMCA shall quietly hold, occupy and enjoy the Leased Premises and all rights relating thereto during the term hereof, without hindrance, ejection, or molestation by District 625 or any party claiming by, through, or under District 625.

1.4 Shared Use Area. As additional consideration for this Lease, the YMCA and its customers, members, licensees and invitees shall also have the right to jointly use the Joint Use Area with District 625 in accordance with the terms and conditions set forth in this Lease.

1.5 Playfields. As additional consideration for this Lease, the YMCA and its customers, members, licensees and invitees shall also have the right to utilize the playfields from time to time which are located on the New School Building Land on a permit basis in accordance with District 625’s Policy on Community Use of Buildings.

## II. Term.

The term of this Lease shall be for a period of ninety-nine (99) years commencing on the Date of Completion as defined in Section 4.6 below. District 625 and the YMCA shall enter into a modification of this Lease which establishes the commencement date (hereinafter referred to as the “Commencement Date”) and the termination date (hereinafter referred to as the “Termination Date”) once they have been determined.

## III. Rent and Shared Use by District 625.

3.1 Rent. The YMCA covenants and agrees to pay to District 625, in lawful money of the United States of America as follows: (a) prepaid rent in the amount of Five Million Six Hundred Seventy-three Thousand Seven Hundred Ninety-five and 00/100 Dollars (\$5,673,795.00) which will be payable to District 625 as the YMCA’s share of the cost of constructing the YMCA Building and (b) thereafter on the first (1<sup>st</sup>) day of each lease year during the term hereof the sum of One and 00/100 Dollar (\$1.00). The term “lease year” shall mean a

period consisting of twelve (12) consecutive months commencing on the first (1<sup>st</sup>) day of the calendar month subsequent to the Commencement Date unless the Commencement Date occurs on the first (1<sup>st</sup>) day of a month in which case the lease year shall be deemed to commence in the calendar month in which the Commencement Date occurs and each anniversary thereof during the term hereof.

3.2 Retained Rights of District 625. With respect to the Leased Premises, District 625 shall retain (a) the right to use all ingress and egress points of access from public roads, all driveways, all sidewalks and all parking lots other than the reserved parking spaces (described below) which are now or hereafter located on the YMCA Building Land, and (b) a non-exclusive easement to install, maintain and use utility lines over portions of the YMCA Building Land other than the portion of the YMCA Building Land on which the YMCA Building is located, and (c) the right to use the swimming pool located in the Leased Building Area in accordance with the schedule attached hereto as Exhibit "I" and made a part hereof at no charge to District 625. All staffing and lifeguarding during the swimming periods reserved for District 625 shall be provided by District 625 at its own cost and expense. The schedule shall be reviewed annually by the YMCA and District 625 but there shall be no right or obligation to increase or decrease the amount of time provided without the consent of both parties. All costs associated with the installation and maintenance of any utility lines by District 625 on the YMCA Building Land after the initial construction of all improvements contemplated hereunder shall be borne by District 625 unless such lines are being installed for the joint use of District 625 and the YMCA, with the consent of District 625, in which case the cost thereof will be apportioned on an equitable basis. District 625 shall have the obligation to restore all areas of the YMCA Building Land after completing such installation and repair. Notwithstanding the above, parking spaces shall be reserved for the exclusive use of the YMCA in the area indicated on the site plan attached hereto as Exhibit "F" and made a part hereof.

#### IV. Construction by District 625.

4.1 Construction by District 625. District 625 shall be responsible for (i) the renovation of the New School Building, (ii) the construction of the YMCA Building, and (iii) the construction of all roadways, parking areas, curb cuts, landscaping, sidewalks, utilities, recreational facilities and other improvements associated with the use and operation of the New School Building and the YMCA Building (hereinafter collectively referred to as the "Ancillary Improvements"), all in accordance with plans and specifications prepared by Ankeny Kell Architects (hereinafter referred to as the "Project Architect") dated September 20, 1999 as amended by Addendum No. 1 dated September 28, 1999, Addendum No. 2 dated October 5, 1999, Addendum No. 3 dated October 11, 1999, Addendum No. 4 dated October 11, 1999 and Addendum No. 5 dated October 11, 1999, copies of which have been initialed by District 625 and the YMCA (hereinafter referred to as the "Plans and Specifications"). District 625 agrees to construct the New School Building, the YMCA Building and the Ancillary Improvements in a good and workerlike manner, in accordance with the Plans and Specifications and in accordance with all applicable building and zoning laws and regulations, and free of all claims for mechanics liens with respect to all material and labor supplied in connection with the project.

4.2 Design Standards and Cost for the New School Building and the Auxiliary Improvements. The design standards used for the renovation of the New School Building and the construction of the Ancillary Improvements are the total responsibility of District 625. The cost of the renovation of the New School Building and the cost of the construction of the Ancillary Improvements shall be borne solely by District 625.

4.3 Design Standards and Cost for the YMCA Building. The design standards used for the construction of the YMCA Building are the total responsibility of the YMCA. The YMCA Building shall be freestanding and shall be constructed with its own separate heating, ventilation and air-conditioning systems as well as its own utilities so as to be used and operated without reliance on any such facilities located in the New School Building. The New School Building shall be connected to the YMCA Building as set forth in the Plans and Specifications. The cost of the construction of the YMCA Building shall be shared between the YMCA and District 625 strictly in accordance with the terms of this Lease. Except in the case of changes to the approved Plans and Specifications made by the YMCA in accordance with Section 4.5 below, the YMCA shall be obligated to pay to District 625 as prepaid rent the sum of Five Million Six Hundred Seventy-three Thousand Seven Hundred Ninety-five and 00/100 Dollars (\$5,673,795.00) (hereinafter referred to as the “YMCA Obligation”) which shall be used by District 625 for construction of the YMCA Building. District 625 shall be responsible for all other costs incurred in connection with the YMCA Building (hereinafter referred to as the “District 625 Obligation”).

4.4 Construction of YMCA Building. Prior to construction of the YMCA Building, District 625 shall submit to the YMCA for its approval (i) a General Construction Contract (hereinafter referred to as the “General Contract”) with Jorgenson Construction, Inc. as General Contractor (hereinafter referred to as the “General Contractor”) for the construction of the YMCA Building; (ii) a sworn construction cost statement prepared by the General Contractor (hereinafter referred to as the “Construction Cost Statement”), which shall set forth all construction costs associated with the construction of the YMCA Building. The General Contract and the Sworn Construction Statement shall be subject to the approval of the YMCA. The execution of this Lease by the YMCA shall constitute approval of the General Contract and the Construction Cost Statement. District 625 agrees that the YMCA Building when constructed will be in compliance with applicable building codes and regulations of the City of St. Paul at the time of construction.

4.5 Changes to Plans and Specifications. District 625 shall not make any changes to the approved Plans and Specifications for the YMCA Building or the Ancillary Improvements without the prior written consent of the YMCA. The YMCA shall have the right to make changes to and deviations and departures from such approved Plans and Specifications provided (i) the YMCA shall be responsible to pay for any increase in the costs of construction of the YMCA Building as a result of such changes, deviations or departures, (ii) the completion date referred to in Section 4.6 below shall be extended by such period of time as District 625 deems necessary to complete such changes, deviations or departures, and (iii) such changes shall require the prior written approval of District 625 which consent shall not be unreasonably withheld or delayed. District 625 shall share in the cost of such changes in an equitable manner to be agreed upon by the parties to the extent that such changes are approved by District 625 and affect the Joint Use Area in a manner which is advantageous to District 625’s use thereof.



4.6 Date of Substantial Completion. District 625 shall diligently proceed with the construction of the YMCA Building and the Ancillary Improvements necessary for the use and operation thereof and shall complete the same in accordance with the following schedule:

- |    |  |                   |
|----|--|-------------------|
| a) | Substantial Completion Date for YMCA<br>Gymnasium              | November 24, 2000 |
| b) | Substantial Completion Date for YMCA<br>(other than gymnasium) | January 12, 2001  |
| c) | Final Completion Date for YMCA<br>Gymnasium                    | December 8, 2000  |
| d) | Final Completion Date for YMCA<br>(other than gymnasium)       | January 26, 2001  |

provided, however, if delay is caused by or contributed to, by (i) a change allowed under the terms of Section 4.5 above, or (ii) an act or neglect of the YMCA or those acting for or under the YMCA, or (iii) legal delays, labor disputes, fire or other casualty, unusual delays in transportation, unavoidable casualties, acts of God, or the public enemy, governmental embargo restrictions, action or nonaction of public utilities or of local, state or federal government affecting the progress of the work or other causes beyond District 625's control, then, in each such instance, the time of completion of such construction shall be extended for a period of time equivalent to the time lost by such delay. For purposes hereof, the "date of completion" shall mean the date on which (a) an AIA Certificate of Substantial Completion is executed by the Project Architect, the General Contractor and District 625 and (b) a Certificate of Occupancy is issued by the City of Saint Paul, provided, however, if the issuance of a Certificate of Occupancy is held up solely by reason of work to be performed by the YMCA it shall be deemed issued when District 625 has completed all its work required for the issuance of said Certificate of Occupancy.

4.7 Right of Occupancy by the YMCA. The YMCA shall be permitted occupancy of the Leased Building Area prior to the estimated date of completion for purposes of installing its furniture, trade fixtures and equipment at such time as it gives notice to District 625 and the General Contractor of its election to do so provided such occupancy is coordinated with and approved by the General Contractor. The YMCA shall thereafter be allowed and required to install its furniture, trade fixtures and equipment at its sole cost and expense so long as the YMCA does not unreasonably interfere with the completion of construction of the YMCA Building by District 625 and the General Contractor. The YMCA shall during the period of such early occupancy for its construction purposes: (i) have the responsibility for risk of loss of its furniture, trade fixtures and equipment contained or stored therein, (ii) comply with all applicable building codes and laws, and (iii) keep the premises free of all claims for mechanic liens for the cost of such furniture, trade fixtures and equipment. Any work performed by the YMCA prior to the issuance of the Certificate of Substantial Completion shall not violate any terms of the Project Labor Agreement governing this construction project.

4.8 General Contractor Guaranty. District 625 shall obtain from the General Contractor a guaranty with respect to the construction of the YMCA Building against defective workmanship and/or materials for a period of one (1) year from the date of completion of the YMCA Building, including a guaranty by the General Contractor to repair or replace any items occasioned by defective workmanship and/or materials during said one (1) year period at its own cost and expense. Save and except for the aforesaid one (1) year guarantee from the General Contractor against defective materials and/or workmanship, the YMCA shall thereafter have and hold the YMCA Building upon completion, as constructed, without any liability or obligation on the part of District 625 of making any alterations, improvements or repairs of any kind on or about the YMCA Building for the term of this Lease.

4.9 Inspection of Construction by the YMCA; Punchlist Items. At all times, until the YMCA Building is completed, the YMCA shall have the right to enter upon the YMCA Building Land for the purpose of inspecting construction and progress of the YMCA Building and Ancillary Improvements provided that (a) the YMCA shall not interfere with construction thereof and (b) in each instance, the YMCA or its representatives shall have properly reported to the General Contractor. Within sixty (60) days after the date of completion and occupancy of the Leased Building Area by the YMCA, the YMCA shall have the right to notify District 625 of all punchlist items not completed under the Plans and Specifications with respect to the YMCA Building and the Ancillary Improvements, and District 625 will forthwith arrange with the General Contractor to have said items completed.

4.10 Construction Payment Procedure. The YMCA hereby agrees that it will contribute the YMCA Obligation to the construction of the YMCA Building in the following manner. Based upon the approved Construction Cost Statement, it is currently estimated that the YMCA Obligation will constitute seventy-eight percent (78%) of the total costs necessary to construct the YMCA Building and represents the cost to construct the Leased Building Area (hereinafter referred to as the "YMCA Pro Rata Share") and that the District 625 Obligation will constitute twenty-two percent (22%) of the total costs necessary to construct the YMCA Building and represents the cost to construct the Joint Use Area (hereinafter referred to as the "District 625 Pro Rata Share"). It is further anticipated that the YMCA Obligations will be paid directly to District 625 based upon monthly draw requests which will be submitted to the YMCA by District 625 and which will be supported by a draw request submitted to District 625 by the General Contractor for construction costs incurred since the last draw request in connection with the YMCA Building. Each draw request to the YMCA will be evidenced by an Application for Payment from District 625 in the form of that attached hereto as Exhibit "H" and made a part hereof (hereinafter referred to as the "Application for Payment"). Not more often than monthly, District 625 may submit an Application for Payment to the YMCA requesting payment of the YMCA Pro Rata Share of the amount set forth in the Application for Payment, which request shall be submitted to the YMCA at least five (5) business days prior to the date on which a disbursement is requested. Provided the conditions set forth herein have been complied with, the YMCA shall pay such sums to District 625 in accordance with the directions set forth in the Application for Payment. Prior to such payment, all costs shall have been approved in writing by the Project Architect, the General Contractor, District 625 and the YMCA. Each Application for Payment shall clearly set forth the amounts due and the parties to whom payment will ultimately be made and shall, upon the request of the YMCA, be accompanied by the following:

- a) A certificate signed by District 625, the Project Architect and the General Contractor certifying as to the improvements completed at the time; that the General Contractor and each subcontractor specified in the relevant Application for Payment has satisfactorily completed the work or furnished the materials for which payment is requested in accordance with the Plans and Specifications; that all work for which an Application for Payment is made is in place; and that all sums paid to District 625 pursuant to the previous Applications for Payment have been disbursed in accordance with the terms thereof.
- b) A certificate from the YMCA's independent inspecting architect, if it elects to retain one at its sole cost, stating that all work done as specified in the Application for Payment conforms to the Plans and Specifications and that the amount requested for work done or material furnished reasonably approximates the value of such work or materials and is in place.
- c) Waivers of mechanics' liens and materialmen's liens executed by the General Contractor and all subcontractors for all work done and all materials furnished to the YMCA Building and which were included in the previous Application for Payment.
- d) Such other supporting evidence, including invoices and receipts, as may reasonably be requested by the YMCA to substantiate all payments then made in respect to the project.

The making of any advance or part thereof shall not be deemed an approval or acceptance by the YMCA of the work done prior to such advance or part thereof. Requests for payment made in accordance with the terms hereof by District 625 shall only relate to labor and material associated with the YMCA Building. All costs and expenses related to the renovation of the New School Building and the construction of the Appurtenant Improvements shall be paid by District 625.

District 625 shall pay the District 625 Obligation in the same manner by paying the District 625 Pro Rata Share of each Application for Payment within the time periods required under the General Contract. At such time as the YMCA has paid its entire YMCA Obligation as provided herein, all additional construction costs shall be paid for by District 625. Failure to pay the YMCA Pro Rata Share or the District 625 Pro Rata Share of the Application for Payment within the time periods set forth herein shall constitute a default hereunder by the defaulting party and shall entitle the non-defaulting party to exercise all remedies available to it hereunder, including but not limited to taking such legal actions as are necessary to collect the delinquent amounts from the defaulting party. The YMCA shall not be obligated to advance any more amounts for the construction of the YMCA Building except in the case of additional construction costs incurred as a result of change orders which have been requested or consented to by the YMCA in accordance with the provisions of Section 4.5 above or except as ordered by an arbitrator or court of law.

Upon final completion of the YMCA Building, the YMCA Pro Rata Share and the District 625 Pro Rata Share shall be recomputed based upon the actual total costs expended to construct the

YMCA Building. The YMCA Pro Rata Share shall be computed by dividing a sum equal to the actual cost of constructing the Leased Building Area by a sum equal to the actual cost of constructing the YMCA Building. The District 625 Pro Rata Share shall be computed by dividing a sum equal to the actual cost of constructing the Joint Use Area by a sum equal to the actual cost of constructing the YMCA Building. The YMCA and District 625 shall enter into a modification of this Lease delineating the revised YMCA Pro Rata Share and the revised District 625 Pro Rata Share immediately upon completion of all construction and submission of such final cost numbers by the General Contractor. Thereafter such revised definitions shall be applicable when such terms are referred to in Section 5.2(d) of Article V, Article XI and Article XII hereof.

4.11 Final Disbursement. The final disbursement of construction costs to the General Contractor shall be made upon completion of the YMCA Building, issuance of a Certificate of Occupancy from the City of Saint Paul, issuance of an AIA Certificate of Substantial Completion executed by District 625, the Project Architect and the General Contractor, the issuance of final lien waivers from all parties supplying labor or material for the project and the IC134 Affidavit of Withholding and the Consent of Surety documents called for under the terms of the General Contract. Upon completion of the YMCA Building and payment of all costs and expenses associated therewith, the YMCA shall have no further obligation to make payments to District 625 notwithstanding the fact that the entire YMCA Obligation was not needed to complete such construction.

4.12 Indemnification. District 625 shall indemnify and hold the YMCA harmless from all loss, damages, claims, expenses and costs including attorneys' fees incurred by the YMCA as a result of District 625's negligence in connection with the construction of the YMCA Building or the disbursement of proceeds received from the YMCA. The YMCA shall indemnify and hold District 625 harmless from all loss, damages, claims, expenses and costs including attorneys' fees incurred by District 625 as a result of the YMCA's negligence in connection with the construction of the YMCA Building or the failure to pay the YMCA Obligation in accordance with the terms hereof.

4.13 Disputes. If there arises a dispute between District 625 and the YMCA under this Lease as to any matter connected with the construction of the YMCA Building, District 625 and the YMCA shall submit any such dispute to the Steering Committee in accordance with the provisions of Article XV of this Lease.

## V. Operating Relationship for Joint Use Area.

5.1 General Guidelines. In the operation of the Joint Use Area of the YMCA Building, the following guidelines shall apply and govern the relationship of the parties:

- a) Needs of Each Party. Overall recognition of the need of District 625 for education facilities and programs and the need of the YMCA to be able to provide a marketable program to fund the operation of the facility should be considered in all scheduling and operational decisions with respect to the Joint Use Area.

- b) Single Event and Shared Use Times. Recognition should also be given to the idea that there will be specific times with respect to the Joint Use Area for YMCA program usage only, other specified times for District 625 usage only, and the potential for shared same time usage by both parties.
- c) Operation of YMCA Programs. The YMCA shall be allowed to staff and operate the normal public and membership activities that have traditionally been considered the YMCA program and will be given latitude to initiate additional innovative programming.
- d) Schedule of Joint Use Area. The YMCA and District 625 shall jointly establish the scheduling, supervision, recording, and reporting for program activities in the Joint Use Area of the YMCA Building, subject to the maintenance and custodial duties stated in Article VII. The general supervision of the YMCA shall extend to the care and prevention of abuse of the YMCA Building. The initial schedule for the gymnasium, the boys and girls locker rooms, the learning readiness space, the shared play area and the child watch area facilities located in the Joint Use Area shall be as shown on Exhibit "G" attached to this Lease. Adjustments or changes to this schedule may be made from time to time by mutual agreement by both the YMCA staff and District 625 staff. Schedules for other facilities may be made by mutual agreement between the YMCA staff and District 625 staff. In the event that agreement cannot be reached as to any scheduling of the gymnasium, the boys and girls locker rooms, the learning readiness space, the shared play area and child watch area facilities located in the Joint Use Area, then disputes as to the schedule shall be determined by the Steering Committee created by this Lease. In arriving at its decision, the Steering Committee shall consider the following factors:
  - i) A flexible and revolving regular school day during the adopted school year calendar will be adapted to meet the best interest of District 625 educational/extra-curricular needs.
  - ii) The YMCA must meet the programming needs which best allow the YMCA to market its YMCA programs and by so doing, produce sufficient revenue to realize a reasonable excess of revenue over expenses in the operation of the YMCA Building.
  - iii) Pre-scheduling research shall be conducted to enable the Steering Committee to ascertain scheduling priorities for District 625 and for the YMCA.
- e) YMCA Membership and User Fees. The YMCA membership or user fees shall be required of all persons using the Leased Building Area and the Joint Use Area except:
  - i) District 625 students and supervising staff while actually participating in education classes.

- ii) District 625 students and supervising staff while participating in school sponsored activities which constitute an extension of school curriculum related to the New School Building.
  - iii) Persons paying a specified user fee for a specific activity.
  - iv) Persons attending public events, such as spectators, whether an entry fee is charged or not.
  - v) Such other persons as YMCA deems appropriate.
- f) Staffing. The YMCA shall be responsible to provide supervisors and instructors for all of its programs. District 625 shall be similarly responsible for its programs. Upon reasonable request from District 625, the YMCA shall assist with student supervision and needed support services. Unless agreed to by the YMCA, District 625 shall be primarily responsible for student supervision and discipline. District 625 and the YMCA shall reserve the right to negotiate for other sharing of staff when deemed appropriate.
- g) Signs. The YMCA shall have the right to use appropriate signs bearing YMCA identification and logos on the exterior of the Leased Building Area and within the Leased Building Area. The use of religious symbols, signs, pictures or other media and the conduct of religious activities will be strictly prohibited in the Joint Use Area except those in conformance with District 625 policy or those conducted by the YMCA or its members which have no student contact.

## 5.2 Use Charges - Budget - Periodic Payments.

- a) Use Charges and Membership Fees. The YMCA may set use charges and membership fees for the use of the Leased Building Area and the Joint Use Area by its members. These fees may be set at a level sufficient to permit the YMCA to generate a reasonable amount of excess revenue over expenses from the operation of the facilities and will be fees customary for similar YMCA facilities. If a dispute arises as to fees charged for use of the Leased Building Area, the Joint Use Area or the New School Building, then the dispute shall be resolved by the Steering Committee, but in no event shall the YMCA be required to set membership fees at a level which does not permit it to realize a reasonable excess of revenue over expense in the operation of the Leased Building Area and the Joint Use Area, nor shall District 625 be required to grant waivers from the school board policy on Community Use of Facilities with respect to the New School Building.
- b) Operation, Maintenance and Repair of the YMCA Building. The YMCA shall be responsible for the operation, maintenance, repair and replacement of the Leased Building Area and all of its associated systems and components at its own cost and expense. In addition, in consideration of the right of the YMCA to participate in the use of the Joint Use Area, the YMCA shall also be responsible for the operations, maintenance, repair and replacement of the Joint Use Area and all of

its associated systems and components. The YMCA retains the option of contracting with District 625 for any of these services. District 625 is not obligated to consent to providing these services. Such operational costs shall include, but not be limited to, the following:

- i) Lawn care and removal of snow, ice and debris from the sidewalks in the areas immediately adjacent to the YMCA Building.
  - ii) Rubbish and other solid waste disposal.
  - iii) Repair and maintain in good working order all plumbing, toilet facilities, and other fixtures and equipment installed for the general supply of hot and cold running water, heat, air conditioning, and electricity. All fixtures, furnishings and equipment owned by the YMCA shall be its responsibility to maintain.
  - iv) Janitorial and Custodial service for the Leased Building Area and the Joint Use Area.
  - v) All utilities, other than telephone, including but not limited to, water, electricity, heat, air conditioning and replacement of light bulbs which service the Leased Building Area and the Joint Use Area. Each party shall provide and pay for its own telephone service.
  - vi) All insurance premiums for the insurance policies required to be obtained by the YMCA in this Lease.
- c) Operation, Maintenance and Repair of the New School Building and the Common Areas. District 625 shall be responsible for the operation, maintenance, repair and replacement of the New School Building and all sidewalks, service roads, parking lots and grounds located on both the New School Building Land and the YMCA Building Land except for the lawn and sidewalks immediately adjacent to the YMCA Building (hereinafter referred to as the "Common Areas") at its sole cost and expense. The YMCA shall pay an annual flat rate fee for its share of the maintenance and repair of the Common Areas which will include, but not be limited to, plowing snow, mowing lawns, maintaining all landscaping, fertilizing, all in accordance with District 625 standards. The amount of the payment shall be initially set by mutual agreement and shall reasonably reflect the cost of providing these services and shall be subject to review based upon unusual inflationary cost increases or changes in proportionate usage each calendar year during the term of this Lease. District 625 shall maintain a record of the use of these payments from the YMCA, and such records shall be made available to the YMCA for inspection from time to time.
- d) Fire Alarm and Security Systems. District 625 will provide fire alarm and security systems as well as an energy management system for the New School Building and the YMCA Building and will monitor, operate, maintain, repair and replace these systems in a manner similar to other district-owned facilities. The

YMCA will pay the YMCA Pro Rata Share of the installation of such equipment which has been included in the portion of the construction costs which constitute the YMCA Obligation. In addition the YMCA shall pay the YMCA Pro Rata Share of all costs incurred by District 625 to maintain, repair and replace such equipment on an ongoing basis upon submission of satisfactory documentation to the YMCA by District 625.

VI. Use.

6.1 Restrictions on Use.

- a) Neither the YMCA nor District 625 shall use, or permit the use of, the YMCA Building for any purpose which would adversely affect the value or character of the YMCA Building or cause the YMCA Building Land to lose exempt status for real estate tax purposes.
- b) Neither party shall, at any time or times during this Lease, conduct or permit any activities, programs, or practices on the YMCA Building Land or in the Leased Building Area or the Joint Use Area which shall violate any federal or state constitutional, regulatory or statutory provision.

6.2 Non-Competition. District 625 shall not, directly or indirectly, permit the development of facilities or programs, other than “one time” events, which will compete with those conducted by the YMCA. The YMCA will not conduct competitive sports programs which compete with those conducted by District 625 without first obtaining the consent of District 625. Both District 625 and the YMCA will enumerate, in advance, those public service type programs in which it asks District 625 not to compete.

VII. Repair and Maintenance.

The YMCA shall keep the interior of both the Leased Building Area and the Joint Use Area in good order and repair, reasonable wear and tear, and damages, accidental fire, or other casualty excepted. The YMCA shall keep the structural supports, roof, and exterior walls of the YMCA Building, including windows and doors in good order and repair. District 625 has the right of inspection to ensure the Joint Use Area is being properly maintained and to periodically assess its condition. Each party shall be liable for any loss or damage to any property located in the Leased Building Area or the Joint Use Area which is damaged as a result of the negligence of such party or their respective invitees.

VIII. Surrender Upon Expiration or Termination.

At the expiration of this Lease, or upon termination of this Lease, the YMCA shall surrender the Leased Premises in as good condition as it was in at the beginning of the term, reasonable use and wear, and damages by the elements excepted.



IX. Alterations.

9.1 Alterations to the Leased Building Area. The YMCA shall have the right to make changes or alterations to the Leased Building Area provided no change or alteration which might modify the structural system of the YMCA Building shall be made without the consent of District 625, which consent shall not be unreasonably withheld.

9.2 Alterations to the Joint Use Area. Neither District 625 nor the YMCA shall have the right to make changes or alterations to the Joint Use Area without the prior written consent of both parties, which consent shall not be unreasonably withheld.

9.3 Additions. Neither District 625 nor the YMCA shall have the right to make any additions to the YMCA Building without the prior written consent of both parties, which consent shall not be unreasonably withheld.

9.4 Exterior Facade. Neither District 625 nor the YMCA shall have the right to make any change to the exterior facade of the YMCA Building which would alter the architectural character thereof without the prior written consent of both parties, which consent shall not be unreasonably withheld.

9.5 Responsibility for Costs of Alterations. The cost of an alteration or improvement to the Leased Building Area which is permitted hereunder shall be borne solely by the YMCA. The cost of an alteration or improvement to the Joint Use Area which is permitted hereunder and which benefits only District 625 or the YMCA shall be borne solely by the benefiting party. The cost of an alteration or improvement to the Joint Use Area which benefits both the YMCA and District 625 shall be divided proportionately between the parties on a mutually-agreed upon basis. If agreement cannot be reached, it will be referred to the Steering Committee for decision but either party may refuse to participate in such alteration or improvement.

9.6 Title to Alterations and Improvements. Any alterations or improvement to either the Leased Building Area or the Joint Use Area or to any part thereof and any replacement of fixtures shall become the absolute property of District 625 upon termination of this Lease.

X. Insurance.

10.1 Fire or Casualty Insurance. The YMCA shall secure and maintain at its own cost and expense an insurance policy for the YMCA Building. This policy will insure against loss, including repair and replacement. District 625 will be named as additional insured on this policy. The policy shall insure against the following:

- a) Loss or damage by fire and such other risks as may be included in the broadest form of extended coverage insurance from time to time available in amounts sufficient to prevent District 625 or the YMCA from becoming a co-insurer within the terms of the applicable policies, and in any event, in an amount not less than the full insurable value.
- b) Loss or damage from leakage of sprinkler systems in the YMCA Building in an amount mutually agreeable to the YMCA and District 625.

- c) Loss or damage by explosion of steam boilers, pressure vessels, or similar apparatus in the YMCA Building in such limits as are mutually agreeable to the YMCA and District 625.

The term “full insurable value” shall mean the actual replacement cost, excluding foundation and excavation costs. All such insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of Minnesota. All policies shall name District 625 and YMCA as the insureds, as their respective interests may appear. Each party shall be furnished with a copy of each policy specified under this Lease. To the extent obtainable, all policies shall contain an agreement by the insurer that such policies shall not be cancelled except upon thirty (30) days prior written notice to each party.

10.2 Business Interruption Insurance. Both the YMCA and District 625 will secure and maintain, at their sole cost and expense, business interruption insurance or its comparable or, in the alternative, each party may self-insure for such losses. Both parties agree to waive any claim for such loss against the other party.

10.3 Liability Insurance. Both the YMCA and District 625 shall carry liability insurance for protection of the YMCA and District 625 from any liability arising out of any accident or other occurrence causing any injury and/or damage to any person or property upon the YMCA Building Land and the YMCA Building due directly or indirectly to the use or occupancy thereof by the insured, or any person making claim through or under the insured. Liability policies shall have limits of not less than \$500,000 bodily injury per person, \$1,000,000 for each occurrence, \$100,000 for property damage, and \$1,000,000 excess liability umbrella. Such policies shall cover the YMCA Building Land and the YMCA Building, shall be issued by insurance companies and in forms satisfactory to the insured, and shall provide for at least thirty (30) days’ notice to both parties before cancellation. The above limits may be adjusted upwardly by mutual agreement in accordance with the insurance standards in the community for similar facilities and will be adjusted with any statutory limitations applicable to District 625. The YMCA shall carry insurance coverage which reflects its normal, anticipated liability.

XI. Fire or Other Casualty Loss.

If all or any part of the YMCA Building is damaged or destroyed by fire or other casualty, the YMCA shall repair and rebuild the structure with reasonable diligence. All insurance proceeds received by the YMCA shall be applied by the YMCA to the payment of such restoration, as such restoration progresses. The YMCA shall pay any deductible for each and all insurance claims related to the YMCA Building. To the extent that the insurance proceeds are not sufficient to restore or repair the YMCA Building to the condition that it was prior to such damage, the YMCA and District 625 will be obligated to fund the shortfall in accordance with the YMCA Pro Rata Share and the District 625 Pro Rata Share. Any excess insurance proceeds remaining after the restoration of the YMCA Building shall be retained by the YMCA and District 625 in accordance with the YMCA Pro Rata Share and the District 625 Pro Rata Share.

XII. Condemnation.

If the entire YMCA Building shall be taken by the exercise of the right of eminent domain for any public or quasi-public improvement or use, this Lease and the term hereby granted shall then expire, on the date when title to the YMCA Building so taken shall vest in the appropriate authority or on the date when any possession is required to be surrendered, whichever is earlier. If so substantial a portion of the YMCA Building shall be so taken as to make the same unusable in the YMCA's opinion for the purposes to which the YMCA Building shall then be devoted, then the YMCA shall have the right to cancel or terminate this Lease upon thirty (30) days written notice to District 625 to be given after the date when title to the portion so taken shall vest in the appropriate authority or, at the YMCA's option, on the date physical possession is required to be surrendered. District 625 shall be entitled to the award attributable to the YMCA Building Land on the assumption that there is no lease or improvements thereon. District 625 and the YMCA shall be entitled to share the award attributable to the YMCA Building based upon percentages equal to the YMCA Pro Rata Share and the District 625 Pro Rata Share as defined in Section 4.10 above.

XIII. Waiver of Subrogation Rights.

Each of the parties hereby releases the other from any claim for recovery for any loss or damage to any of its property or for any liability which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. It is further agreed that this waiver applies only when permitted by the applicable policy of insurance.

XIV. Non-Assignment of Interest Under this Lease.

Neither District 625 nor the YMCA shall assign or sublet its interests under this Lease without the prior written consent of the other party.

XV. Steering Committee.

15.1 Membership. A Steering Committee shall be established which includes seven members, each with one vote. The Committee shall be comprised of:

- a) The Superintendent of District 625 or a person designated by him or her;
- b) The President of the YMCA or a person designated by him or her;
- c) The Chairperson of the Eastside Branch of YMCA or a person designated by him or her;
- d) A staff person from District 625 to be selected by the Superintendent;
- e) A member at large who shall be a resident of the City of Saint Paul to serve for a term of one year at a time and who shall be selected by a majority of the remaining six members of the Committee;
- f) A Board member from the Governing Board of the YMCA; and

g) A Board member from the Board of Education of District 625.

15.2 Duties. The Steering Committee shall be empowered to resolve disputes arising under this Lease. Decision of the Steering Committee shall be binding so long as this Lease remains in force.

15.3 No Compensation. The Steering Committee shall serve without compensation.

15.4 Limitation on Liability. No member of the Steering Committee shall be personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or in a transaction from which the person draws an improper personal benefit. Nothing in this Lease shall be construed as constituting the waiver of any immunity from liability available to the parties, the Steering Committee members, or their officers, employees, agents, members, or volunteers pursuant to any applicable provision of law.

15.5 Indemnity. District 625 and the YMCA shall defend, indemnify, and hold harmless any of their own respective representatives on the Steering Committee from any and all claims, demands, causes of action, suits, settlements, and any other claimed damages, to include reasonable attorneys' fees, investigative costs, suit fees and other costs associated therewith, arising out of implementation of this Lease except those resulting directly from intentional misconduct or knowing violation of the law or in a transaction for which the Steering Committee member derives an improper personal benefit. District 625 and the YMCA shall defend, indemnify, and hold harmless the at-large member on the Steering Committee on a fifty percent – fifty percent basis from any and all claims, demands, causes of action, suits, settlements, and any other claimed damages, to include reasonable attorneys' fees, investigative costs, suit fees and other costs associated therewith, arising out of implementation of this Lease except those resulting directly from intentional misconduct or knowing violation of the law or in a transaction for which such Steering Committee member derives an improper personal benefit.

XVI. No Joint Obligation.

The obligations of District 625 and the YMCA under this Lease are several obligations and are not joint obligations.

XVII. Default by the YMCA; Remedies.

17.1 Events of Default. The following shall constitute an "Event of Default" under the terms of this Lease:

- a) If the YMCA shall default in the payment of rent on the date provided for in this Lease and if such default shall continue for a period of thirty (30) days after receipt by Tenant of written notice of said nonpayment;
- b) If the YMCA shall default or fail in the performance of any other covenant or agreement on its part to be performed in this Lease, and such default shall not have been cured for a period of sixty (60) days after receipt by the YMCA of written notice of said default from District 625, or if such default cannot, with due

diligence, be cured within sixty (60) days, and the YMCA shall not have commenced the remedying thereof within such period or shall not be proceeding with due diligence to remedy it (it being intended in connection with a default not susceptible of being cured by the YMCA with due diligence within sixty (60) days that the time within which to remedy same shall be extended for such period as may be necessary to complete same with due diligence).

17.2 Remedies. Upon the occurrence of an Event of Default hereunder by the YMCA, then, and in such case, it shall and may be lawful for District 625, at District 625's option, by summary proceedings, or by any other appropriate legal action or proceedings, to terminate this Lease and to enter upon the Leased Premises or any part thereof and expel the YMCA or any person or persons occupying the Leased Premises and so to repossess and enjoy the Leased Premises, all in accordance with the provisions of Minnesota law. In addition, during construction of the YMCA Building, District 625 shall have the right to bring an action for specific performance and/or damages with respect to any breach of the YMCA's duties and obligations as set forth in Article IV hereof. In addition, during the continuance of a default by the YMCA, and provided the YMCA has not cured such default within the time periods provided herein, the YMCA shall have no further right to use the Joint Use Area or otherwise use any of the facilities located within the YMCA Building.

#### XVIII. Default by District 625; Remedies.

In the event District 625 shall fail to perform any of the obligations imposed upon it by this Lease, or shall fail to pay any liens or claims which might jeopardize or affect the interest of the YMCA in the Leased Premises or the Joint Use Area, and District 625 shall fail to (a) cure such default within sixty (60) days (or sooner in the event of any emergency situation) after written demand for performance, specifying the nature of the default or claim given by the YMCA to District 625, or (b) initiate curative actions within said period (or sooner, in the event of any emergency situation) and diligently pursue the same to completion if such cure cannot reasonably be accomplished during such sixty (60) day period, then the YMCA, provided such default has not then been cured or curative action has not been initiated and diligently pursued, at its option may perform any such obligation or pay such lien or claim and shall have the right to be reimbursed therefor by District 625 together with interest on all sums advanced from the date of advancement at a per annum interest rate equal to four percent (4%) in excess of the Reference Rate as publicly announced by U.S. Bank National Association and in effect as of the date of each such advance. In addition, during construction of the YMCA Building, the YMCA shall have the right to bring an action for specific performance and/or damages with respect to any breach of District 625's duties and obligations as set forth in Article IV hereof.

#### XIX. Indemnity.

19.1 Indemnity by the YMCA. The YMCA agrees to indemnify and hold District 625 harmless from and defend District 625 against all claims, damages, losses and liabilities arising out of the use or occupancy of the Leased Premises or the Joint Use Area by the YMCA or resulting from the negligent or willful act or omission of the YMCA, its agents or employees. District 625 shall have, at its election, the right to engage attorneys of its choice with the approval, if necessary, of the YMCA's liability insurance carrier, and the YMCA shall be

responsible for any and all fees reasonably incurred. In no event, however, shall the indemnity contained in this Section 19.1 apply to any claims, demands, losses, liabilities, costs, or expenses caused by the negligence or misconduct of District 625 or its employees, agents or representatives.

19.2 Indemnity by District 625. District 625 agrees to indemnify and hold the YMCA harmless from and defend the YMCA against all claims, damages, losses and liabilities arising out of the use or occupancy of the Leased Premises or the Joint Use Area by District 625 or resulting from the negligent or willful act or omission of District 625, its agents or employees. The YMCA shall have, at its election, the right to engage attorneys of its choice with the approval, if necessary, of District 625's liability insurance carrier, and District 625 shall be responsible for any and all fees reasonably incurred. In no event, however, shall the indemnity contained in this Section 19.2 apply to any claims, demands, losses, liabilities, costs, or expenses caused by the negligence or misconduct of the YMCA or its employees, agents or representatives.

XX. Notices.

Any notice which either party hereto may desire or may be required to give to the other party shall be in writing and either (a) mailed by certified mail, return receipt requested, or (b) sent by an overnight carrier which provides for a return receipt. Any such notice shall be sent to the following addresses:

If to District 625:        Executive Director, Plant Planning and Maintenance  
                                 Saint Paul Public Schools  
                                 360 Colborne Street  
                                 St. Paul, Minnesota 55102

with a copy to:         Chair, Board of Education  
                                 Saint Paul Public Schools  
                                 360 Colborne Street  
                                 St. Paul, Minnesota 55102

If to the YMCA:         YMCA of Greater Saint Paul Association Office  
                                 476 Robert Street North  
                                 St. Paul, Minnesota 55101  
                                 Attention: President

or to such other address as such party may, by notice in writing, designate as its address. Any such notice shall constitute service of notice hereunder three (3) days after the mailing thereof by certified mail or one (1) day after the sending thereof by overnight carrier.

XXI. Miscellaneous.

21.1 Run With Land; Binding Effect. The terms and conditions of this Lease shall run with the land and extend to and be binding upon the successors in interest and the assigns of the respective parties hereto.

21.2 Entire Agreement – Amendment. This Lease contains the entire understanding between the parties and cannot be changed or terminated orally but only by an agreement in writing signed by both the YMCA and District 625.

21.3 Severability. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

21.4 Memorandum of Lease. A short-form memorandum of this Lease may be prepared by either party for the purpose of having the same recorded in the appropriate office in Ramsey County, Minnesota and each party agrees to execute same and to have their signatures acknowledged by a notary public.

21.5 Governing Law. This Lease shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective officers, pursuant to full authority granted and given as of the day and year first above written.

INDEPENDENT SCHOOL DISTRICT 625

YMCA OF GREATER SAINT PAUL

By: \_\_\_\_\_  
Chairperson of the Board

By: \_\_\_\_\_  
Chairperson of the Board

By: \_\_\_\_\_  
Clerk of the Board

By: \_\_\_\_\_  
President

**Exhibit "A"**

(Legal Description of District 625 Land)



**Exhibit "B"**

(Legal Description of New School Building Land)

**Exhibit "C"**

(Legal Description of YMCA Building Land)

## Exhibit "D"

(Diagrams of each floor of the YMCA Building, specifically designating the "Joint Use Area" and the "Leased Building Area")

### KEY TO EXHIBIT "D"

- I. JOINT USE AREA – All areas marked as "A," "B," "C," "D," and "E" on the attached Floor Plans
- (a) Gymnasium
    - (i) Gymnasium area is marked as "A" on the attached Floor Plans.
    - (ii) Gymnasium is to be used in accordance with the schedule set forth on Exhibit "G" attached to this Lease.
  - (b) Boys and Girls Locker Rooms
    - (i) Boys and Girls Locker Rooms are marked as "B" on the attached Floor Plans.
    - (ii) Boys and Girls Locker Rooms are to be used by the YMCA and District 625 for a reasonable period of time before and after and contemporaneously with each party's use of the Gymnasium and the Swimming Pool as set forth in Exhibits "G" and "I" of this Lease.
  - (c) Shared Play Area and Drop-in Child Care Area
    - (i) Shared Play Area and Drop-in Child Care Area is marked as "C" and "E" on the attached Floor Plans.
    - (ii) Shared Play Area and Drop-in Child Care Area is to be shared by the YMCA and District 625 pursuant to a schedule to be negotiated on an annual basis.
  - (d) Learning Readiness Area
    - (i) Learning Readiness Area is marked as "D" on the attached Floor Plans.
    - (ii) Learning Readiness Area is for the exclusive use of District 625.
- II. LEASED BUILDING AREA - All areas shown on the attached Floor Plans other than those designated as "A," "B," "C," "D," and "E" shall constitute the Leased Building Area and constitute the exclusive leasehold space for YMCA purposes under this Lease.

**Exhibit "E"**

**Liens and Encumbrances**

**TO BE COMPLETED AT A LATER DATE.**

**Exhibit “F”**

Site Plan

## **Exhibit "G"**

### **Schedule of Usage of Joint Use Area**

- \* District 625 shall retain the right to use the Joint Use Area facilities at reasonable times for education activities to be organized and supervised by District 625 employees. District 625 shall also retain the right to use the Joint Use Area for organized student activities such as competitive sports related to the school operating out of the New School Building, meets, community education activities, and other public service schedules. These scheduled activities of District 625 shall receive preference, over all other users other than the YMCA, if the YMCA is given notice of them on or before August 15 in advance of the event for the coming school year. Irrespective of the notice given, the YMCA will in good faith cooperate in the scheduling of those events and will recognize that not all events can be known in advance. In the event the parties cannot reach agreement, the matter shall be referred to the Steering Committee for decision.
  
- \* Use of the YMCA by District 625 during summer or other non-school days shall be allowed if scheduled in advance. Fees for such use will be those customarily charged for community use of the YMCA or such rate as mutually agreed upon between the parties.

**Exhibit "H"**

**Application for Payment**

**Exhibit "I"**

**Swimming Pool Schedule**

The following schedule will be negotiated and reviewed annually.

The following times will be made available to the new Achievement Plus School at 740 York Avenue, Saint Paul, Minnesota to provide swimming lessons as a part of the Physical Education curriculum.

11:00 – 11:45 a.m.                      Maximum of two days per week

2:00 – 2:45 p.m.                      Maximum of two days per week

The right to use the pool at the above specified times shall be on a non-exclusive basis with the YMCA. In the event that both parties are using the pool area at the same time the pool area shall be appropriately divided and each party shall be responsible for its own lifeguards, instructors and related personnel deemed necessary by such party at their respective sole cost and expense.