

RESOLUTION NO. 19-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPROVING A SUBLEASE AGREEMENT BETWEEN YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH FLORIDA, INC., AS SUBLESSOR, AND YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH FLORIDA SUPPORT ORGANIZATION, INC., AS SUBLESSEE, OF CITY-OWNED PROPERTY LOCATED AT 1409 NW 6 STREET, FORT LAUDERDALE, FLORIDA; DELEGATING AUTHORITY TO THE CITY MANAGER TO EXECUTE THE SUBLEASE AGREEMENT AND ALL DOCUMENTS AND INSTRUMENTS RELATED THERETO; REPEALING ANY AND ALL RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

---

WHEREAS, the City of Fort Lauderdale, Florida, (the "City") and the Young Men's Christian Association of South Florida, Inc., ("YMCA") previously entered into a Lease Agreement pertaining to the property located at 1409 NW 6 Street, Fort Lauderdale, Florida (the "Property"); and

WHEREAS, pursuant to Resolution No. 17-167, adopted at its meeting of August 22, 2017, the City Commission authorized the proper City Officials to enter into the Lease Agreement with YMCA for the lease of the Property commonly known as the Mizell Center (the "Ground Lease"); and

WHEREAS, by adoption of Resolution No. 18-223, at its meeting of October 23, 2018, the City Commission approved the First Amendment to the Lease Agreement establishing October 24, 2018, as the "Lease Date" as defined therein; and

WHEREAS, the YMCA, through Young Men's Christian Association of South Florida Support Organization, Inc., (the "Support Organization") has secured financing for construction of a new state of the art facility for the YMCA under the New Markets Tax Credit Program ("NMTC"); and

WHEREAS, the YMCA requests approval by the City of the Sublease Agreement to accomplish the goals and objectives set forth in the Ground Lease; and

WHEREAS, it is recommended that the City Commission approve a Resolution authorizing the City Manager to execute the Sublease Agreement between the YMCA and the Support Organization and all other documents and instruments related thereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the Recitals set forth above are true and correct and incorporated herein by this reference.

SECTION 2. That the City Commission hereby authorizes execution of the Sublease Agreement in substantially the form attached hereto, between Young Men’s Christian Association of South Florida, Inc., and Young Men’s Christian Association of South Florida Support Organization, Inc., and all other documents and instruments related thereto.

SECTION 3. That any and all Resolutions in conflict herewith are hereby repealed.

SECTION 4. That the City Attorney’s office shall review and approve as to form and legal sufficiency all documents prior to their execution by the City Manager.

SECTION 5. That this Resolution shall be in full force and effect upon final passage.

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor  
DEAN J. TRANTALIS

ATTEST:

\_\_\_\_\_  
City Clerk  
JEFFREY A. MODARELLI

## SUB-LEASE AGREEMENT

THIS IS A SUB-LEASE AGREEMENT (hereinafter “the *Sub-Lease*”), made and entered into this 19th day of September, 2019 (the “*Effective Date*”), by and between:

**YOUNG MEN’S CHRISTIAN ASSOCIATION OF SOUTH FLORIDA, INC.**, a Florida not-for-profit corporation, FEI/EIN No. 59-0624464, whose principal address is 900 S.E. 3<sup>rd</sup> Avenue, Fort Lauderdale, Florida 33316 (hereinafter “*SUB-LESSOR*”),

And

**YOUNG MEN’S CHRISTIAN ASSOCIATION OF SOUTH FLORIDA SUPPORT ORGANIZATION, INC.**, a Florida not-for-profit corporation, FEI/EIN No. 84-2377944, whose principal address is 900 S.E. 3<sup>rd</sup> Avenue, Fort Lauderdale, Florida 33316 (hereinafter “*SUB-LESSEE*”)

WITNESSETH:

WHEREAS, SUB-LESSOR is the holder of a ground lease interest in the Leased Premises (hereinafter defined) pursuant to that certain Lease Agreement dated October 9, 2017 between the City of Fort Lauderdale, a municipal corporation of the State of Florida (“*CITY*”) and SUB-LESSOR as amended by that certain First Amendment to Lease Agreement (the “*Ground Lease*”), and SUB-LESSOR intends to grant SUB-LESSEE a sub-leasehold interest in the Leased Premises; and

WHEREAS, the Ground Lease is evidenced by that certain Memorandum of Lease dated September 19, 2019 and to be recorded with Broward County public records as required by Section 3.4.3 of the Ground Lease; and

WHEREAS, the Leased Premises is within the City of Fort Lauderdale; and

WHEREAS, SUB-LESSEE is a not for profit organization and was created for the purpose of supporting SUB-LESSOR’s nonprofit purposes of strengthening the foundation of the community through youth development, healthy living and social responsibility; and

WHEREAS, pursuant to that certain Development Agreement, dated of even date here with between SUB-LESSOR and SUB-LESSEE (the “*Development Agreement*”), SUB-LESSEE intends to retain the development services of SUB-LESSOR in connection with SUB-LESSEE’S construction of a modern contemporary community facility to conduct certain activities as described herein, to benefit the public (the “*YMCA Facility*”); and

WHEREAS, pursuant to that certain Operating Lease, dated of even date herewith between SUB-LESSEE, as landlord, and SUB-LESSOR, as tenant (the “*Operating Lease*”), SUB-LESSEE intends to lease the YMCA Facility to SUB-LESSOR for SUB-LESSOR to operate the YMCA Facility in a manner that is consistent with the terms of the Operating Lease, this Sub-Lease and the Ground Lease.

NOW THEREFORE, in consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SUB-LESSOR and SUB-LESSEE agree as follows:

The foregoing recitals are true and correct in all respects and are incorporated herein.

## ARTICLE 1

### SUB-LEASE OF LEASED PREMISES

**1.1 Sub-Lease.** On the terms and conditions set forth in this Sub-Lease, and in consideration of SUB-LESSEE’s periodic payment of rents and performance of all other terms and conditions of this Sub-Lease, SUB-LESSOR hereby sub-leases to SUB-LESSEE and SUB-LESSEE hereby sub-leases from SUB-LESSOR and SUB-LESSOR grants SUB-LESSEE a possessory interest in and to the Leased Premises described below for the Term (hereinafter defined) subject to the terms and conditions set forth in this Sub-Lease.

**1.2 Leased Premises.** SUB-LESSOR sub-leases the Leased Premises to SUB-LESSEE and SUB-LESSEE rents from SUB-LESSOR the Leased Premises legally described as follows:

#### SEE EXHIBIT “A” ATTACHED HERETO

Whenever used herein, the term “*Leased Premises*” shall include the real estate described above and all attachments and improvements and appurtenances thereto now existing or hereafter constructed.

**1.3 Limitations on Grant of Possessory Interest.** The grant of possessory interest by SUB-LESSOR to SUB-LESSEE is subject to the following:

**1.3.1** Each and any condition, restriction, covenant, easement and/or limitation recorded against the Leased Premises;

**1.3.2** Existing or future land planning, land use or zoning laws, building codes, ordinances, statutes or regulations of any governmental entity or agency for the United States of America, State of Florida, Broward County or City of Fort Lauderdale, or any other governmental agency having jurisdiction over the Leased Premises and with legal authority to impose such restrictions;

**1.3.3** Each question of title that currently exists or may arise in the future, but SUB-LESSEE acknowledges that it has had the opportunity to examine SUB-LESSOR’s present title, and that it is satisfied with respect to the accuracy and sufficiency thereof;

**1.3.4** Each question of survey that currently exists or may arise in the future, but SUB-LESSEE acknowledges that it has had the opportunity to examine the boundary lines, and that it is satisfied with respect to the accuracy and sufficiency thereof and accepts matters of survey;

**1.3.5** SUB-LESSEE's satisfactory performance of all of the terms and conditions contained in this Sub-Lease; and

**1.3.6** Underground and overhead utilities facilities, including, but not limited to, water, wastewater, storm water and electrical lines, telephone and telecommunications facilities lines and septic tank, if any.

**1.4 Quiet Enjoyment.** Except as otherwise expressly set forth herein, SUB-LESSOR represents and warrants that it has full right and authority to enter into this Sub-Lease and that commencing with the Effective Date, SUB-LESSEE, while paying Rent (hereinafter defined) and Additional Rent (hereinafter defined) and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the term hereof without hindrance or molestation from SUB-LESSOR subject to the terms and provisions of this Sub-Lease.

## ARTICLE 2

### USE OF PREMISES

**2.1 Required Uses.** SUB-LESSEE shall construct the YMCA Facility and SUB-LESSOR shall operate, manage, and maintain the YMCA Facility and provide the services and programs pursuant to the terms and conditions of the Operating Lease, which provisions are consistent with the terms of this Sub-Lease and the Ground Lease. Provided, however, if (i) SUB-LESSOR ceases operations during the term of the loan (the "**CDE Loan**") among SUB-LESSEE, FCNMF 29, LLC, a Florida limited liability company and PCC Sub-CDE IX, LLC, a Delaware limited liability company (collectively, "**CDE Lender**"), SUB-LESSEE may replace SUB-LESSOR with a substitute operator of the Leased Premises or (ii) the Operating Lease is terminated by SUB-LESSEE as a result of an uncured default or expired by its own term, SUB-LESSEE may lease the Leased Premises to a new lessee, each of which are able to provide substantially similar amenities, services and program consistent with the spirit and intent of Section 8.13 of the City of Fort Lauderdale Charter. CITY'S consent to the substitute operator or new lessee shall be required but shall not be unreasonably withheld, conditioned or delayed.

**2.1.1 Subleases.** SUB-LESSEE may enter into subleases with third parties, subject to the terms and conditions of the Ground Lease. Additionally, if CDE Lender replaces SUB-LESSOR as the operator or terminates the Operating Lease as set forth in Section 2.1 above, SUB-LESSEE may enter into a replacement sublease with the substitute operator or new lessee, as the case may be, of the Leased Premises and the Ground Lease shall not be subject to termination. The CITY's consent to the substitute operator or new lessee shall be required but shall not be unreasonably withheld or delayed. Any such subleases are referred to as the "**Permitted Subleases**".

**2.1.2 Restrictions on Use.** SUB-LESSEE further agrees that the Leased Premises shall not be used for the non-permitted uses as provided in the Unified Land Development Regulations (“*ULDR*”) and shall not be used for the following: (i) adult uses as such term is defined in Section 47-18.2 of the *ULDR*; (ii) tattoo parlors; (iii) massage parlors (other than as an ancillary use to a health club or beauty salon or beauty space); (iv) liquor store; or (v) convenience store or convenience kiosk as provided in the *ULDR*.

**2.2 Compliance with Regulations of Public Bodies.** SUB-LESSEE covenants and agrees that it shall, at its own cost and expense or pursuant to the terms of the Development Agreement, make such improvements on the Leased Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises, in order to comply with the applicable requirements relating to sanitation, fire hazard, zoning, historic designation regulations, environmental requirements (subject to Article 5 below) and other similar requirements designed to protect the public, worker and residential use environments. In addition to the other terms and conditions contained in this Sub-Lease, SUB-LESSEE shall not use the Leased Premises, nor shall the Leased Premises suffer any such use during the Term, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.

**2.3 Improvements.** All improvements on the Leased Premises shall be subject to the restrictions contained in the Ground Lease. SUB-LESSEE and SUB-LESSOR acknowledge and agree that the YMCA Facility must be developed in accordance with the terms and conditions of the Ground Lease, as amended by the terms and provisions of this Sub-Lease, and the specific programing and other requirements contained in the Ground Lease are hereby incorporated herein by reference. SUB-LESSEE shall not construct any permanent improvements upon the Leased Premises that are not reflected on the approved Site Plan (as defined in the Ground Lease) without SUB-LESSOR’s express written consent as set forth in this section of the Sub-Lease. SUB-LESSEE shall not construct any improvements, nor perform any material alteration, modification or demolition of any improvements upon the Leased Premises without first (a) providing SUB-LESSOR with a complete set of plans and specifications therefor; and (b) securing from SUB-LESSOR written approval indicating that the proposed construction, alteration, modification or demolition is acceptable, which approval shall not be unreasonably withheld, delayed or conditioned. As a condition of acceptance, SUB-LESSOR may impose reasonable conditions on SUB-LESSEE. Notwithstanding the foregoing SUB-LESSEE may make interior alterations that are not structural without SUB-LESSOR’s prior approval, so long as SUB-LESSEE obtains the required permits) from the CITY and the SUB-LESSOR, in accordance with applicable codes and ordinances. Upon expiration or termination of this Sub-Lease, any improvements constructed on the Leased Premises shall become the property of SUB-LESSOR. Nothing herein shall be construed as a waiver or the CITY’s policy or regulatory policy in issuing development approvals. Approvals by the CITY pursuant to this Sub-Lease shall be considered approvals in its proprietary capacity and not under its police or regulatory power.

**2.4 Intentionally Omitted.**

**2.5 Intentionally Omitted.**

## ARTICLE 3

### TERM OF SUB-LEASE

**3.1 Term.** The term of this Sub-Lease commences on the Effective Date and runs for the full remaining term of the Ground Lease (the “*Term*”), unless this Sub-Lease is terminated prior to the expiration date pursuant to this Sub-Lease.

**3.2 Intentionally Omitted.**

**3.3 Intentionally Omitted.**

**3.4 Milestones.** During the Term, SUB-LESSEE agrees that it shall perform the following “*Milestones*”, within the prescribed time periods for each. The time period for SUB-LESSEE to commence and complete performance of the below listed Milestones shall not be altered without the prior written consent of the CITY and the SUB-LESSOR, which consent shall not be unreasonably withheld, conditioned or delayed.

**3.4.1 The Due Diligence Milestone.** Within three (3) months after the Effective Date, SUB-LESSEE, at its sole cost and expense, shall provide the CITY and the SUB-LESSOR with all of the following documents:

(a) If required by and ordered by the SUB-LESSEE, a copy of a Phase II Environmental Site Assessment (the “*Phase II Assessment*”); and

(b) A copy of a survey of the Leased Premises (“*Survey*”), performed by a licensed surveyor, licensed to perform such work in the State of Florida; and

(c) A copy of a Title Commitment issued by Shutts & Bowen LLP, as agents for First American Title Insurance Company (the “*Title Commitment*”).

**3.4.2 The Initial Development Milestone.** Within sixteen (16) months after the Effective Date, SUB-LESSEE, at its sole cost and expense, shall provide the CITY and the SUB-LESSOR with all of the following:

(a) Satisfactory evidence SUB-LESSEE has secured a commitment for a construction loan from a third party lender in an amount and on terms approved by SUB-LESSOR, which approval by SUB-LESSOR shall not be unreasonably withheld, conditioned, or delayed. Any conditions and requirements imposed by the construction lender on the CITY, as SUB-LESSOR, must be reasonably acceptable to SUB-LESSOR. SUB-LESSEE will also provide evidence that SUB-LESSEE has secured additional commitments necessary to complete construction of the YMCA Facility through cash, donations, pledges, lease commitments and New Market Tax Credit program. With regard to any New Market Tax Credits proposed by SUB-LESSEE, to the extent that it requires documentation or opinions from the CITY, the program must be approved by the CITY in advance and must not violate any applicable charter provision or ordinance of the CITY. Any expense incurred by the CITY in connection with a New Market Tax Credit program proposed by SUB-LESSEE must be reimbursed by the SUB-LESSEE.

(b) Final plat approval of the Leased Premises (if required), or a waiver of any plat requirement for the Leased Premises, (ii) rezoning of the Leased Premises, if required, (iii) variances, setbacks or other land development regulations, if required. SUB-LESSOR agrees to reasonably cooperate with the SUB-LESSEE in connection with development applications related to the Leased Premises. The City Manager, or his designee, shall, following written request from the SUB-LESSEE, execute any documents that may be reasonably requested by SUB-LESSEE or the governmental agency/entity to accomplish such land development approvals, if the CITY'S written consent, as owner of the Leased Premises, is necessary or requested. All development applications shall be done at SUB-LESSEE's sole costs and expense.

(c) A complete and final budget for construction of the YMCA Facility with a schedule of values (including a budget for buildout of the retail subleases, if applicable at the time), approved by the CITY, which approval shall not be unreasonably conditioned, withheld or delayed.

(d) Any and all other permits, approvals and/or licenses necessary, from the appropriate jurisdiction, agency and/or authority, in order to commence and complete construction of the YMCA Facility.

(e) A Development Agreement between the Fort Lauderdale Community Redevelopment Agency ("CRA") and the SUB-LESSEE providing the terms and conditions by which the CRA will provide a grant of \$10,000,000.00 funded from the Northwest-Progresso-Flagler Heights Redevelopment Trust Fund to SUB-LESSEE under the CRA's Development Incentive Program. SUB-LESSEE acknowledges that the Development Agreement will require that the grant will be secured by a mortgage lien on the SUB-LESSEE'S leasehold interest, and that the Operating Lease, the Development Agreement and the mortgage granted to CRA will be cross-defaulted.

(f) A construction contract from a general contractor for a fixed price, not to exceed the cost of construction of the YMCA Facility, as set forth in the final budget approved by the CITY pursuant to section (c) above, approved by SUB-LESSOR, which approval shall not be unreasonably withheld, conditioned or delayed.

(g) A written agreement between SUB-LESSEE and Broward College (or another institute of higher education), confirming a commitment to sublease a portion of the YMCA Facility, which written agreement must be approved by SUB-LESSOR.

**3.4.3** In the event SUB-LESSEE timely complies with the requirements of the Due Diligence Milestones, and timely complies with the requirement of the Initial Development Milestone, SUB-LESSEE shall have the right to take possession of the Leased Premises. The parties will record a Memorandum of this Sub-Lease confirming the Effective Date. The Memorandum of Lease will also contain the provisions required under the Consent Agreement. After the Effective Date, SUB-LESSEE shall have the right to commence construction of the proposed improvements on the Leased Premised at its sole cost and expense, in a good and workmanlike manner, in accordance with approved plans (if required), and in accordance with applicable ordinances and laws.



**3.4.4 *The Construction Milestone.*** Within two (2) years after the Effective Date, the SUB-LESSEE shall complete construction of the YMCA Facility and shall provide SUB-LESSOR with a copy of the Certificate of Occupancy from the applicable governing authority.

**3.5 Extension of Milestone Deadlines.**

**3.5.1** Upon written request from SUB-LESSEE, and provided all other prior Milestone(s) in Section 3.4 are complete and accepted by SUB-LESSOR, the CITY, in its sole discretion, may extend in writing the remaining Milestone Period(s).

**3.5.2** Upon the occurrence of a Force Majeure as described in Section 12.21 the applicable Milestone period(s) shall be tolled and extended by the length of the Force Majeure. Said extension shall not exceed two (2) years, unless agreed to in writing by SUB-LESSOR and SUB-LESSEE.

**3.5.3** Any delay in completing the Milestones attributable to SUB-LESSOR shall cause the Milestone Period to toll and shall extend the Milestone Period for any outstanding Milestones for the length of such delay, including, but not limited to SUB-LESSOR's failure to deliver vacant possession of the Leased Premises pursuant to Section 1.4.

**3.6 Default for Failure to Meet Milestones.**

**3.6.1** Failure by SUB-LESSEE to complete the requirements of a Milestone prior to the expiration of the applicable deadline and/or extension thereof pursuant to the other terms of this Sub-Lease, shall be an event of default under this Sub-Lease Agreement and SUB-LESSOR shall have the right to terminate this Sub-Lease. This Sub-Lease shall terminate upon receipt of a written Notice of Termination and become null and void. If the Sub-Lease is terminated after the Effective Date, then SUB-LESSEE shall have one hundred twenty (120) days to vacate the Leased Premises pursuant to the terms and conditions contained in Section 6.3, and all remaining improvements on the Leased Premises shall become the sole property of SUB-LESSOR or SUB-LESSOR may require SUB-LESSEE, at its expense, to remove all materials, equipment or improvements placed on the Leased Premises. SUB-LESSOR shall have the right to recover damages for delay in vacating the Leased Premises. Failure of SUB-LESSOR to timely terminate this Sub-Lease shall not be deemed a waiver of its rights and laches or other defenses related to delay in enforcement of this right may not be raised as an affirmative defense or counterclaim in any legal proceedings.

**3.7 Payment and Performance Bonds.** Prior to commencement of construction of the YMCA Facility, SUB-LESSEE shall provide satisfactory proof that it has secured statutory payment and performance bonds pursuant to Florida Statute Chapter 713 and Florida Statute Chapter 255 (for itself or from its respective contractor(s)) for construction of the YMCA Facility and infrastructure improvements related thereto, written by a corporate surety company on the U.S. Department of Treasury's current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, as same may be updated from time to time in the full amount of any contract entered into by SUB-LESSEE with said bonds being executed and issued by a resident agent licensed by and having offices in the State

of Florida representing such corporate surety at the time such capital improvements are constructed, conditioned upon full and faithful performance by SUB-LESSEE or any contractor, if applicable, of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements. Such bonds shall identify the CITY and the SUB-LESSOR as an additional or dual obligee. If the bonds are provided by the contractor, the bond shall provide that a default by SUB-LESSEE in the performance of the contractor's contract, shall not be raised as a defense to the SUB-LESSOR as one of the obligee's requiring performance of such construction contract by the surety.

**3.8 SUB-LESSEE to Pay for Construction.** SUB-LESSEE shall bear all costs and expenses of planning, designing, financing, developing, improving and constructing the YMCA Facility to be located on Leased Premises, including the demolition of the existing improvements, provided, however, that pursuant to the terms of the Development Agreement, SUB-LESSOR shall provide such development services to SUB-LESSEE. SUB-LESSEE and SUB-LESSOR (in its capacity as developer) shall complete construction of and secure certificates of occupancy for the YMCA Facility within two (2) years after the Effective Date (the "**Construction Completion Date**"). SUB-LESSOR and CITY acknowledge and agree that Construction Milestone set forth in Section 3.4.4 of the Ground Lease shall be satisfied if construction is completed and certificates of occupancy are issued on or before the Construction Completion Date.

**3.9 Progress Reports.** Commencing six (6) months after the Effective Date and every six (6) months thereafter until a Certificate of Occupancy, or other authorization issued by the Building Services Director, is issued for the YMCA Facility, SUB-LESSEE shall provide written reports, in form and substance satisfactory to the CITY and the SUB-LESSOR, to the City Manager, or his designee, on the status and progress of completion of the Milestones together with copies of supporting documents such as agreements, reports, records or other instruments as required under this paragraph (the "**Progress Report**"). SUB-LESSEE shall include copies of all professional services contracts in the Progress Reports upon receipt of the final executed contracts including all agreements with the general contractor for the YMCA Facility and other professional services agreement such as the architect and engineer. The Progress Reports and supporting documents may be transmitted electronically.

**3.10 Representations and Warranties.** The SUB-LESSEE represents and warrants unto the SUB-LESSOR and the CITY that it has the ability to obtain adequate financing and has the technical and business skill and ability to construct the YMCA Facility in order that the same may be operated and developed in conformity with applicable law according to this Sub-Lease

## ARTICLE 4

### RENT AND ADDITIONAL PAYMENTS

**4.1 Amount and Payment of Rent.** As rent for the Leased Premises, SUB-LESSEE shall pay to SUB-LESSOR the annual rent of One and No/100 Dollar (\$1.00) commencing with the Effective Date and continuing each and every successive anniversary date thereafter through the balance of the Term (the "**Rent**"). Rent shall be payable to SUB-LESSOR at the address provided for notices hereunder.

**4.2 Sales Tax, Fees, Special Assessments, etc.** Beginning on the Effective Date, all costs, expenses, sales or use taxes, or taxes of any nature or kind, special assessments, connection fees, and any other charges, fees or like impositions incurred or imposed against the Leased Premises, to the extent applicable, or any use thereof, including revenue derived therefrom, and any costs, expenses, fees, taxes or assessments in or upon the real property or improvements constructed thereon shall be made and paid by SUB-LESSEE in accordance with the provisions of this Sub-Lease, it being the intent of the parties that, except as may be specifically provided for herein, SUB-LESSEE is responsible for paying all the expenses and obligations that relate to the Leased Premises or any improvements thereon and that arise or become due during the Term. Should any such tax rate change under the Florida Sales Tax Statute or other applicable statutes, SUB-LESSEE shall pay SUB-LESSOR the amounts reflective of such changes.

**4.3 Additional Rent Payments.** Exclusive of Rent due under Section 4.1 and all sums due under Section 4.2 hereof, all other payments that SUB-LESSEE is obligated to make under this Sub-Lease shall be considered “*Additional Rent*” regardless of whether the payments are so designated. All Additional Rent payments are due and payable within thirty (30) days after rendition of a statement therefor.

**4.4 Utility or Service Charges.** Beginning on the Effective Date, SUB-LESSEE agrees to pay all utility service charges including, but not limited to gas, electricity, telephone, telecommunications, heating, air conditioning, water & sewer, storm water utility fees, and other similar service charges attributed to the Leased Premises. If any of these charges remain unpaid after they become due, SUB-LESSOR may exercise its remedies as set forth in Article 11. SUB-LESSOR shall not be liable to SUB-LESSEE for damage nor otherwise because of SUB-LESSEE’s failure to arrange for or to obtain any utilities or services referenced above for the Leased Premises that are supplied by parties. No such failure, interruption or curtailment may constitute a constructive or partial eviction.

**4.5 Governmental Charges or Services.** Beginning on the Effective Date and subject to the provisions of Section 4.7, SUB-LESSEE must pay all ad valorem and non-ad valorem taxes and other governmental fees, charges or assessments that are related to the Leased Premises or personalty situated thereon or operations conducted thereon and that arise during the Sub-Lease, SUB-LESSEE shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment. These taxes and other charges include, but are not necessarily limited to the following:

**4.5.1** All taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit fees;

**4.5.2** All such charges whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, confirmed or imposed upon the Leased Premise or use thereof or improvements thereto or personalty situated thereon;

**4.5.3** All such charges that arise from, become payable from or with respect to, or become a lien on any of the following:

- (a) All or any part of the Leased Premises or use thereof or improvements thereto or personalty situated thereon;
- (b) Any appurtenance to the Leased Premises;
- (c) The rent and income received by SUB-LESSEE from any subtenant;
- (d) Any use or occupation of the Leased Premises;
- (e) Any document to which SUB-LESSEE is a party and that creates or transfers an interest or estate in the Leased Premises;
- (f) Sales or use tax arising from SUB-LESSEE's operations; or
- (g) Any taxes or charges applicable to the Rent paid under this Sub-Lease.

**4.6 Payments and Receipts.** Upon SUB-LESSOR's written request, SUB-LESSEE shall deliver to SUB-LESSOR official receipts that show payment of all charges required under this Article and contained in SUB-LESSOR's written request. These receipts must be delivered to the place where the Rent payments are to be made. SUB-LESSEE shall pay every tax or other charge required to be made under this Article before the charge or tax becomes delinquent under the law then governing payment of the tax or other charge, unless the tax or charge is challenged by SUB-LESSEE in accordance with Section 4.7 of this Sub-Lease.

**4.7 SUB-LESSEE's Challenge of Tax.** SUB-LESSEE may contest the validity of any tax, tax claim, or charge or assessment, described herein without being in default for nonpayment of taxes under this Sub-Lease, provided SUB-LESSEE complies with terms and conditions of this Section. SUB-LESSEE must give SUB-LESSOR written notice of SUB-LESSEE's intention to contest and SUB-LESSEE must also furnish SUB-LESSOR with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by SUB-LESSOR. The bond or cash must be in an amount equal to the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined. SUB-LESSEE must give the written notice accompanied by evidence of the bond or escrow to SUB-LESSOR not later than sixty (60) days before the contested taxes would otherwise become delinquent.

**4.8 SUB-LESSOR'S Remedy for SUB-LESSEE'S Nonpayment.** If SUB-LESSEE fails, refuses, or neglects to pay any taxes, fees, assessments or other governmental charges under this Article, unless challenged as provided in Section 4.7 of this Sub-Lease, the CITY or the SUB-LESSOR may pay them. On the CITY'S or the SUB-LESSOR's demand, SUB-LESSEE shall reimburse the CITY or the SUB-LESSOR, as applicable, all amounts the CITY or the SUB-LESSOR has paid, plus expenses and attorney's fees reasonably incurred in connection with such payments, together with interest at the rate of twelve (12%) per cent per annum from the date the CITY or the SUB-LESSOR paid such outstanding taxes, fees, assessments or other governmental charges, up to but not exceeding the maximum rate of interest

allowable under Florida law. On the day the CITY or the SUB-LESSOR demands repayment or reimbursement from SUB-LESSEE, SUB-LESSOR is entitled to collect or enforce these payments in the same manner as a payment of Rent. The CITY's or the SUB-LESSOR's election to pay the taxes, fees, assessments or other governmental charges does not waive SUB-LESSEE's default.

**4.9 Capital Improvement and Repair Reserve Fund.** In addition to Rent and Additional Rent payable in this Article 4, SUB-LESSOR is required to deposit (or to cause the tenant under the Operating Lease to deposit) \$30,000.00 annually into a capital improvement reserve account at SUB-LESSOR'S (or such tenant's) designated financial institution beginning two years after the certificate of occupancy is issued.

## ARTICLE 5

### HAZARDOUS SUBSTANCES

**5.1 Definitions.** For the purpose of administering this Article, the following terms shall have the meaning as set forth below:

(a) ***“Environmental Agency”*** means a governmental agency at any level of government having jurisdiction over Hazardous Substances and Hazardous Substances Laws and the term as used herein shall also include a court of competent jurisdiction when used as a forum for enforcement or interpretation of Hazardous Substances Laws.

(b) ***“Hazardous Substances”*** means any hazardous or toxic substances, materials or wastes, including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table, 49 CFR 172.101 or by the Environmental Protection Agency as hazardous substances, 40 CFR Part 302, as now in effect or as same may be amended from time to time, or such substances, materials and wastes which are now or hereafter become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radon, (v) any substance designated as a “hazardous substance” pursuant to Sec. 311 of the Clean Water Act, 33 U.S.C. Sec. 1251, et seq. or listed pursuant to Sec. 307 of the Clean Water Act, 33 U.S.C. Sec. 1317, (vi) defined as “hazardous waste” pursuant to Sec. 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq., (vii) defined as a “hazardous substance” pursuant to Sec. 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., or (viii) designated as a “hazardous substance” as defined in Chapter 403, Part IV, Florida Statutes, or (ix) any other similar federal, state or local regulations.

(c) ***“Hazardous Substances Laws”*** means all local, state and federal laws, ordinances, statutes, rules, regulation and orders as same may now exist or may from time to time be amended, relating to industrial hygiene, environmental protection and/or regulation, or the use, analysis, generation, manufacture, storage, disposal or transportation of Hazardous Substances.

(d) “*Petroleum Products*” as defined by Florida Administrative Code Sec. 62-761.200 are any liquid fuel commodities made from petroleum including, but not limited to, diesel fuel, kerosene, gasoline, and fuels contain mixtures of gasoline and other products.

(e) “*Products*” is defined in Sec. 377.19(11), Florida Statutes, as same may be amended from time to time, as any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, untracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, used oil, kerosene, benzene, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(f) The term “*property damage*” as used in this Article includes, but is not limited to, damage to the property of the SUB-LESSEE, SUB-LESSOR and/or of any third parties caused by or resulting from SUB-LESSEE’s breach of any of the covenants in this Article and shall include remedial activities performed by an Environmental Agency or by SUB-LESSEE pursuant to directives from an Environmental Agency.

**5.2 SUB-LESSOR’S Consent Required.** Beginning on the Effective Date and continuing throughout the Term, no Hazardous Substances shall be brought upon or kept or used in or about the Leased Premises by any person whomsoever, unless SUB-LESSEE first obtains written consent from SUB-LESSOR, which consent shall be conditioned upon SUB-LESSOR’s consent from CITY pursuant to the terms of the Ground Lease, (except de minimus quantities of Hazardous Substances used in the ordinary course of SUB-LESSEE’s business and in accordance with applicable Hazardous Substance Laws and except for any Hazardous Substances in the existing improvements).

**5.3 Compliance with Hazardous Substances Laws.** Beginning on the Effective Date and continuing throughout the Term and with respect to Hazardous Substances brought onto the Leased Premises by any person whomsoever other than SUB-LESSOR, its agents, employees, contractors or licensees acting within the course and scope of their duties, SUB-LESSEE shall have the absolute responsibility to ensure that the Leased Premises are used at all times and all operations or activities conducted thereupon are in compliance with all Hazardous Substances Laws and all permits, licenses and other Environmental Agency approvals required for any such activity conducted upon the Leased Premises.

**5.4 Hazardous Substances Handling.**

**5.4.1** SUB-LESSEE covenants that beginning on the Effective Date and continuing throughout the Term hereof, any Hazardous Substance brought upon the Leased Premises by any person whomsoever, shall be handled, treated, dealt with and managed in conformity with all applicable Hazardous Substances Laws and prudent industry practices regarding management of such Hazardous Substances. SUB-LESSEE covenants that any and all Hazardous Substances removed from the Leased Premises shall be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposition of such Hazardous Substances and wastes and only in accordance with Hazardous Substances Laws and consistent

with all conditions of any and all permits, licenses and other Environmental Agency approvals required for such removal and transportation.

**5.4.2** Upon expiration of the Term or earlier termination of this Sub-Lease, SUB-LESSEE shall cause all Hazardous Substances which are brought upon the Leased Premises subsequent to the Effective Date by any person whomsoever, to be removed from the Leased Premises and to be transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Substances Laws; provided, however, that SUB-LESSEE shall not take any remedial action in response to the presence of Hazardous Substances in or about the Leased Premises, nor enter any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances Laws in any way connected with the Leased Premises, without first notifying SUB-LESSOR and CITY of SUB-LESSEE's intention to do so and affording SUB-LESSOR and CITY reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect SUB-LESSOR's interest with respect thereto.

## **5.5 Notices.**

**5.5.1** If at any time SUB-LESSEE shall become aware or have reasonable cause to believe that any Hazardous Substance has come to be located on or beneath the Leased Premises (except de minimus quantities of Hazardous Substances used in the ordinary course of SUB-LESSEE's business and in accordance with applicable Hazardous Substance Laws), Lessee shall promptly upon discovering such presence or suspected presence of the Hazardous Substance give written notice of that condition to SUB-LESSOR, as provided herein.

**5.5.2** In addition, SUB-LESSEE shall promptly notify SUB-LESSOR in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Substances Law, (ii) any written claim made or threatened by any person against SUB-LESSEE, the Leased Premises or improvements located thereon relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Substances, and (iii) any reports made to any Environmental Agency arising out of or in connection with any Hazardous Substances in or removed from the Leased Premises or any improvements located thereon, including any complaints, notices, warnings or asserted violations in connection therewith.

**5.5.3** SUB-LESSEE shall also supply to SUB-LESSOR, as promptly as possible, and, in any event, within five (5) days after SUB-LESSEE first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Leased Premises or improvements located thereon or SUB-LESSEE's use thereof.

**5.6 Environmental Liabilities.** Any Hazardous Substances discovered on, under or within the Leased Premises prior to the Effective Date as identified in the Phase I Report (as defined in the Ground Lease), the First Phase II Report (as defined in the Ground Lease) (collectively, the "*Environmental Reports*"), shall be the absolute responsibility of the SUB-LESSOR (and shall be referred to herein as the "*Existing Environmental Conditions*") and SUB-LESSOR shall indemnify SUB-LESSEE pursuant to Section 5.7 and SUB-LESSOR shall

be the “*Indemnitor*” and SUB-LESSEE shall be the “*Indemnitee*” as the terms are defined therein.

## **5.7 Hazardous Substances Indemnification.**

**5.7.1** Indemnitor agrees to and shall indemnify, defend and hold Indemnitee harmless of and from any and all claims, demands, fines, penalties, causes of action, administrative proceedings liabilities, damages, losses, costs and expenses, which are asserted against the Indemnitee for bodily injury, disease, sickness, death, property damage (including the loss of use therefrom), damage or injury to the environment or natural resources, or some or all of the foregoing, and which relate, refer, or pertain to:

(a) the existence of Hazardous Substances on, under, or over the Leased Premises, or

(b) Hazardous Substances being released into the air, water, groundwater, or onto the ground in connection with the use of or operations on the Leased Premises, or

(c) gaseous emissions (excluding methane, radon, and other naturally occurring gases) from the Leased Premises, or

(d) the use; generation, or storage of Hazardous Substances on the Leased Premises, or

(e) the disposal of Hazardous Substances, or some or all of the foregoing;

provided, however, that Indemnitor shall not indemnify Indemnitee with respect to any Hazardous Substances first introduced onto the Leased Premises by Indemnitee.

**5.7.2** Indemnitor shall further indemnify, defend and hold Indemnitee harmless from and against any and all liability, including, but not limited to, all damages directly arising out of the use, generation, storage or disposal of Hazardous Substances in, on, under, above or about the Leased Premises before or during the Term, including, without limitation the Existing Environmental Conditions and the following when required by Hazardous Substances Laws or by governmental entities and agencies that enforce Hazardous Substances Laws (herein “*Environmental Agencies*”):

(a) all required or necessary inspections, investigations, applications, permits, plans, licenses, consent orders, and the like; and,

(b) all cleaning, detoxification, remediation, cleanup and disposal; and

(c) all tests, audit, monitoring, and reporting; and

(d) all fees, costs, assessments, fines and penalties charged by Environmental Agencies;



provided, however, that Indemnitor shall not indemnify Indemnitee with respect to any Hazardous Substances first introduced onto the Leased Premises by Indemnitee.

**5.7.3** Indemnitor further agrees that its indemnification obligations shall include, but are not limited to, liability for damages resulting from the personal injury or death of any agent, licensee, subtenant, vendor, employee or volunteer of Indemnitor, regardless of whether Indemnitor has paid the employee under the Workers' Compensation Laws of the State of Florida, or other similar federal or state legislation for the protection of employees.

**5.7.4** Indemnitor agrees that the foregoing obligations to indemnify, defend and hold Indemnitee harmless, effective on the pursuant to Section 5.7 above, extends to and includes all reasonable attorneys' fees, experts' fees and costs incurred in the defense of any of the foregoing claims or demands as well as enforcement of the provisions of this Article respecting Hazardous Substances. The indemnification provided in this Sub-Lease is effective on the Effective Date and shall survive the termination of this Sub-Lease, but shall end, with respect to any claim or cause of action, with the expiration of any applicable statute of limitation for such claim or cause of action.

**5.7.5** Indemnitee reserves the right to select counsel of its own choosing, subject to Indemnitor approval, which shall not be unreasonably, withheld, conditioned or delayed, in the event Indemnitor is called upon to defend Indemnitee pursuant to this indemnity.

## **ARTICLE 6**

### **CONDITION OF PREMISES AND GROUND LEASE**

#### **6.1 SUB-LESSEE'S Acceptance and Maintenance of Leased Premises.**

**6.1.1 "AS IS" Condition.** SUB-LESSEE acknowledges that prior to the Effective Date hereof it has performed sufficient inspections of the Leased Premises in order to fully assess and make itself aware of the condition of the Leased Premises and all improvements thereon, and that SUB-LESSEE is leasing the Leased Premises in its "AS IS" condition. Except as may be expressly set forth in or required by this Sub-Lease, SUB-LESSEE acknowledges that the SUB-LESSOR has made no other representations or warranties as to the condition or status of the Leased Premises and that SUB-LESSEE is not relying on any representations or warranties of the SUB-LESSOR or any broker(s), of agent of SUB-LESSOR in leasing the Leased Premises. Except as may be expressly set forth in or required by this Sub-Lease, SUB-LESSEE acknowledges that neither SUB-LESSOR nor any agent or employee of SUB-LESSOR has provided any other representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning with respect to:

(a) The nature, quality or condition of the Leased Premises, including, without limitation, the water, soil and geology;

(b) The suitability of the Leased Premises for any and all activities and uses which SUB-LESSEE may conduct thereon;

- (c) The compliance of or by the Leased Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;
- (d) The habitability, merchantability or fitness for a particular purpose of the Leased Premises; or
- (e) Any other matter with respect to the Leased Premises.

Without limiting the foregoing, except as set forth herein, SUB-LESSOR does not and has not made and specifically disclaims any other representation or warranty regarding the presence or absence of any Hazardous Substances, at, on, under or about the Leased Premises or the compliance or non-compliance of the Leased Premises with any laws, rules, regulations or orders regarding Hazardous Substances Laws. Hazardous Substances shall also include Radon Gas. SUB-LESSEE further acknowledges that, except as set forth herein neither SUB-LESSOR nor any agent of SUB-LESSOR has provided any representation or warranty with respect to the existence of asbestos or other Hazardous Substances on the Leased Premises. Accordingly, as between SUB-LESSOR and SUB-LESSEE under this Sub-Lease, except as set forth herein, the physical condition of the Leased Premises and compliance with all applicable laws, statutes, ordinances or regulations with respect to the physical condition of the Leased Premises shall be the sole responsibility and obligation of SUB-LESSEE.

**6.1.2** At its expense, SUB-LESSEE shall maintain the Leased Premises and new improvements constructed by SUB-LESSEE in a good state of repair and in a condition. SUB-LESSEE shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, the fixtures and equipment that SUB-LESSEE brings, constructs or placed on the Leased Premises. Subject to SUB-LESSEE's right to demolish the existing improvements, SUB-LESSEE shall repair, replace and renovate the Leased Premises and all the improvements located thereon as often as is necessary to keep these items in a good state of repair.

**6.2 SUB-LESSOR Representations, Warranties and Covenants.** SUB-LESSOR represents, warrants and covenants that it is in full compliance with the terms of the Ground Lease and has no knowledge of any current condition that, with the passage of time, would lead to a default under Ground Lease. SUB-LESSOR shall provide to SUB-LESSEE simultaneous copies of any notices it receives from or sends to CITY under the Ground Lease and acknowledges and agrees that SUB-LESSEE shall have the right to cure any SUB-LESSOR default under the Ground Lease on the same terms and conditions under the Ground Lease.

**6.3 Condition at End of Term.** At the earlier of the expiration of the Term or termination of this Sub-Lease, SUB-LESSEE shall quit the Leased Premises and surrender it and all improvements thereon, including the YMCA Facility, to SUB-LESSOR, normal wear and tear expected. SUB-LESSEE shall remove all personal property including but not limited to, office furniture, gym equipment, weightlifting equipment, wellness equipment, basketball equipment, playground equipment, if any, and all other equipment, supplies or furniture purchased by SUB-LESSEE, except permanently affixed fixtures that cannot be removed without structural or functional damage to the Leased Premises.

## ARTICLE 7

### LIENS

**7.1.1 Liens against the Leased Premises.** Except as provided in that certain Consent and Estoppel Agreement dated of even date here with among the SUB-LESSOR, the SUB-LESSEE, the CITY, and the CDE Lender (the “*Consent Agreement*”), SUB-LESSEE shall have no power or authority to incur any indebtedness giving a right to a lien of any kind or character upon the right, title or interest of the CITY or the SUB-LESSOR in and to the Leased Premises, and no person shall ever be entitled to any lien, directly or indirectly derived through or under the SUB-LESSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said SUB-LESSEE as to the CITY’s or the SUB-LESSOR’s right, title or interest in and to the Leased Premises. All persons contracting with the SUB-LESSEE, or furnishing materials, labor or services to said SUB-LESSEE, or to its agents or servants, as well as all persons shall be bound by this provision of this Sub-Lease. Should any such lien be filed, SUB-LESSEE shall discharge the same within thirty (30) days thereafter, by paying the same or by filing a bond, or otherwise, as permitted by law. SUB-LESSEE shall not be deemed to be the agent of the CITY or the SUB-LESSOR, so as to confer upon a laborer bestowing labor upon or within the Leased Premises or upon material men who furnish material incorporated in the construction and improvements upon the foregoing, a construction lien pursuant to Chapter 713, Florida Statutes or an equitable lien upon the CITY’s or the SUB-LESSOR’s right, title or interest in and to the Leased Premises. These provisions shall be deemed a notice under Section 713.10(2), Florida Statutes of the “non-liability” of the CITY and the SUB-LESSOR.

## ARTICLE 8

### ENTRY AND INSPECTION OF PREMISES

**8.1 SUB-LESSOR’S Inspection and Entry Rights.** SUB-LESSOR, or any agent thereof, upon reasonable notice, shall be entitled to enter the Leased Premises during any reasonable business hours for any of the following reasons:

**8.1.1** To examine the Leased Premises; or

**8.1.2** To make all repairs, addition(s) or alteration(s) that SUB-LESSOR deems necessary for safety or preservation of the Leased Premises or improvements located thereon, after fifteen (15) days advance notice to SUB-LESSEE that the Leased Premises or any portion thereof is in need of maintenance or repair and SUB-LESSEE fails to take appropriate curative actions; or

**8.1.3** To remove signs, fixtures, alterations or additions that do not conform to the terms of this Sub-Lease after fifteen (15) days advance notice to SUB-LESSEE that the Leased Premises or any portion thereof is not in compliance with the terms of this Sub-Lease and SUB-LESSEE has failed to take appropriate curative actions.

Provided that nothing herein shall be construed in such a manner as to impose upon SUB-LESSOR the obligation to so enter the Leased Premises and perform any act referenced above.

**8.2 Annual Inspections.** Notwithstanding the foregoing, SUB-LESSOR may conduct annual inspections of the Leased Premises at SUB-LESSOR'S sole cost and expense, upon three (3) days prior written notice. Said inspection shall take place during normal business hours at a reasonable time mutually agreed to between the parties.

**8.3 Liability for Entry.** Neither SUB-LESSEE, nor any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under SUB-LESSEE, or any invitees thereof shall have no claim or cause of action against SUB-LESSOR because of SUB-LESSOR's entry or other action taken under this Article, except to the extent that any such claim or cause of action is due to the intentional or grossly negligent conduct of SUB-LESSOR its agents, servants, employees, contractors or licensees acting within the scope and course of their duties.

## ARTICLE 9

### INSURANCE AND INDEMNIFICATION

#### 9.1 Indemnity.

**9.1.1** Except as set forth herein with respect to Environmental Liabilities which liability shall be governed solely by that Section, SUB-LESSEE shall protect, defend, indemnify and hold harmless the CITY and the SUB-LESSOR, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses including attorney's fees or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of SUB-LESSEE under this Sub-Lease, conditions contained therein, the location, construction, repair, maintenance use or occupancy of the Leased Premises or improvements located thereon, or the breach or default by SUB-LESSEE of any covenant or provision of this Sub-Lease except for any occurrence arising out of or resulting from SUB-LESSOR's breach of this Sub-Lease or the intentional torts or gross negligence of the SUB-LESSOR, its officers, agents and employees acting within the scope and course of their duties. This indemnity shall survive termination of this Sub-Lease and is not limited by insurance coverage.

**9.1.2** Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Leased Premises, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right, or any actual or alleged violation of the CITY's Charter or any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity.

**9.1.3** SUB-LESSEE further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by

the SUB-LESSOR, SUB-LESSEE shall assume and defend not only itself but also the SUB-LESSOR in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to SUB-LESSOR, provided that SUB-LESSOR shall retain the right to select counsel of its own choosing, subject to the SUB-LESSEE'S approval which shall not be unreasonably withheld.

## **9.2 Intentionally Omitted.**

**9.3 Insurance.** At all times after the Effective Date and during the Term, SUB-LESSEE, at its expense, shall keep or cause to be kept in effect the following insurance coverage:

**9.3.1 Commercial General Liability Insurance.** A commercial general liability insurance policy, in standard form, insuring SUB-LESSEE during the Term of this Sub-Lease, shall be provided with policy limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury, property damage and personal and advertising injury and \$1,000,000 each occurrence and \$2,000,000 aggregate for products and completed operations. The policy must include coverage for Contractual Liability and Independent Contractors. SUB-LESSOR, CITY and their respective officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured — Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the SUB-LESSEE. The coverage shall contain no special limitation on the scope of protection afforded to SUB-LESSOR and CITY and their respective officials, employees, or volunteers.

**9.3.2 Property Coverage.** Coverage must be afforded in an amount not less than 100% of the insurable value of the YMCA Facility with a maximum deductible of \$25,000 each claim. Coverage form shall include, but not be limited to all risk coverage including flood and windstorm with no coinsurance clause. This policy shall insure the interests of SUB-LESSEE in the property against all risk of physical loss and damage, and name CDE Lender as a loss payee, so long as the CDE Loan is outstanding.

**9.3.3 Property Coverage/Builders Risk.** As a condition precedent to the commencement of the construction of the YMCA Facility, the following insurance policy is required and coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a maximum deductible of \$25,000 each claim. Coverage form shall include, but not be limited to, All risk coverage including flood and windstorm with no coinsurance clause, guaranteed policy extension provision, storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project, and equipment breakdown for cold testing of all mechanized, pressurized, or electrical equipment. This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage, and name CDE Lender as a loss payee. This insurance shall remain in effect until the YMCA Facility is completed.

**9.3.4 Business Automobile Liability.** Coverage must be afforded for all owned, hired, scheduled, and non-owned vehicles for bodily injury and property damage in an amount not less than \$1,000,000 combined single limit each accident. If the SUB-LESSEE does not own

vehicles, the SUB-LESSEE shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the commercial general liability policy or separate business auto liability policy.

**9.3.5 *Workers' Compensation Insurance.*** SUB-LESSEE shall maintain Workers' Compensation Insurance Limits: Per Chapter 440, Florida Statutes, with Employers' Liability of \$500,000. Any firm performing work on behalf of SUB-LESSEE must provide Workers' Compensation insurance to SUB-LESSOR prior to the commencement of said work. Exceptions and exemptions will be allowed by SUB-LESSOR, if they are in accordance with Florida Statute. Lessee must be in compliance with all applicable State and federal workers' compensation law; including the U.S. Longshore Harbor Workers' Act or Jones Act, if applicable.

**9.3.6** Providing and maintaining adequate insurance coverage is a material obligation of SUB-LESSEE and SUB-LESSEE shall provide SUB-LESSOR and CITY a certificate of insurance evidencing such coverage. SUB-LESSEE's insurance coverage shall be the primary insurance coverage for the Leased Premises and any insurance or self-insurance maintained by SUB-LESSOR, CITY or their respective officials, employees, or volunteers shall be in excess of SUB-LESSEE's insurance and shall be non-contributory. The limits of coverage under each policy maintained by SUB-LESSEE shall not be interpreted as limiting SUB-LESSEE's liability and obligations under this Sub-Lease. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of "A-" or better, subject to the approval of the SUB-LESSOR.

**9.3.7** The coverages, limits and/or endorsements required herein protect the primary interests of SUB-LESSOR and CITY, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect SUB-LESSEE against any loss exposures, whether as a result of this Sub-Lease or otherwise. The requirements contained herein, as well as SUB-LESSOR's and CITY's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by SUB-LESSEE under this Sub-Lease.

**9.3.8 *Insurance Certificate Requirements.*** The insurance certificates required to be provided herein shall comply with the following:

(a) SUB-LESSEE shall provide SUB-LESSOR and CITY with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Sub-Lease.

(b) SUB-LESSEE shall provide a Certificate of Insurance to SUB-LESSOR and CITY with a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

(c) In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of SUB-LESSEE to provide the proper notice as described herein.

(d) In the event the Term goes beyond the expiration date of the insurance policy, SUB-LESSEE shall provide SUB-LESSOR and CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The SUB-LESSOR and CITY reserve the right to suspend the Sub-Lease until this requirement is met.

(e) The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.

(f) SUB-LESSOR and CITY shall be named as an Additional Insured with a Waiver of Subrogation.

(g) The Sub-Lease or other identifying reference must be listed on the certificate.

(h) The Certificate Holder should read as follows:

City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

Young Men's Christian  
Association of South Florida,  
Inc.  
900 S.E. 3<sup>rd</sup> Avenue  
Fort Lauderdale, FL 33316

**9.4** SUB-LESSEE has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. If SUB-LESSEE'S primary insurance policy/policies do not meet the minimum requirements, as set forth in this Sub-Lease, SUB-LESSEE may provide an Umbrella/Excess insurance policy to comply with this requirement.

**9.5** Any exclusions or provisions in the insurance maintained by the SUB-LESSEE that excludes coverage for work contemplated in this Sub-Lease shall be deemed unacceptable and shall be considered an event of default.

**9.6** All required insurance policies must be maintained throughout the Term or as applicable, and any lapse in coverage shall be considered breach of this Sub-Lease. In addition, Lessee must provide confirmation of coverage renewal by providing an updated certificate should any policies expire prior to the expiration of this Sub-Lease. SUB-LESSOR and CITY reserve the right to review, at any time, coverage forms and limits of SUB-LESSEE'S insurance policies.

**9.7** All notices of any claim/accident (occurrences) associated with work being performed under this Sub-Lease, shall be provided to SUB-LESSEE's insurance company and SUB-LESSOR as soon as practicable.

**9.8** The SUB-LESSEE shall require every contractor performing any work pertaining to the YMCA Facility to furnish certificates of insurance to the reasonable satisfaction of the SUB-LESSOR. Copies of such certificates shall be furnished to the CITY and the SUB-LESSOR. The CITY and the SUB-LESSOR will be named as an additional insured on such policies. The SUB-LESSEE shall use commercially reasonable efforts (without being required to incur any increase in cost) to include an indemnification clause in any contract or agreement for any and all labor, services or materials to be provided in connection with the construction of Improvements in excess of \$1,000,000 between SUB-LESSEE and any general contractor (each a “*Third Party*”) whereby the Third Party shall indemnify and hold harmless the CITY and the SUB-LESSEE and SUB-LESSOR for any and all loss, cost, or expense, including, but not limited to, attorneys’ fees and court costs through all trial and appellate levels with respect to personal injury and/or property damage caused by the Third Party, its subcontractors, subconsultants, agents and employees in connection with performing or providing such labor, services or materials and/or any other of its obligations under the applicable contract or agreement and arising out of its negligence and/or intentional acts.

**9.9** It is SUB-LESSEE’s responsibility to ensure that all subcontractors comply with these insurance requirements. All coverages for subcontractors shall be subject to all of the requirements stated herein. SUB-LESSEE further confirms that SUB-LESSEE’s insurance will apply as excess over any other valid and collectible coverage of their vendors. Any and all deficiencies are the responsibility of the SUB-LESSEE.

## **ARTICLE 10**

### **ASSIGNMENTS**

#### **10.1 Assignment.**

**10.1.1** Unless expressly authorized otherwise in this Sub-Lease and except for Permitted Subleases pursuant to Section 2.1.1, SUB-LESSEE may not assign its leasehold interest in this Sub-Lease, or any portion thereof, to another person or entity without obtaining the prior written consent of the SUB-LESSOR (which consent from SUB-LESSOR shall be conditioned upon receipt of its consent from CITY), in its reasonable discretion.

**10.1.2** Except for Permitted Subleases pursuant to Section 2.1.1, SUB-LESSEE shall, by written notice, advise SUB-LESSOR of its desire from and after a stated date (which shall not be less than sixty (60) days) to assign its interest under this Sub-Lease for any part of the Term hereof. SUB-LESSEE shall supply SUB-LESSOR with such information, financial statements, verifications and related materials as SUB-LESSOR may reasonably request or desire to evaluate the written request to so assign; and in such event SUB-LESSOR shall have the right, to be exercised by giving written notice to SUB-LESSEE within sixty (60) days after receipt of SUB-LESSEE’s notice and all of the aforesaid materials to either refuse or consent to the proposed assignment. Said notice by SUB-LESSEE shall state the name and address of the proposed assignee.

**10.1.3** As a condition to SUB-LESSOR’s prior written consent of the proposed assignment, the assignee (as well as all Permitted Subleases pursuant to Section 2.1.1) shall



agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sub-Lease and the Ground Lease, and SUB-LESSEE shall deliver to SUB-LESSOR promptly after execution, an executed copy of such sublease or assignment and an agreement of said compliance by each subleasee or assignee.

**10.1.4** Notwithstanding the foregoing, SUB-LESSEE shall be permitted to sublease certain portions of the Leased Premises in accordance with Section 2.1.1. SUB-LESSEE's right to sublease, as permitted herein, shall be a continuing right and shall not be exhausted by a single exercise, and any such sublease shall be subject to all of the terms of this Sub-Lease and the Ground Lease, and shall be subordinate to this Sub-Lease and the Ground Lease and the rights of the CITY and the SUB-LESSOR.

**10.2 Continued Liability of SUB-LESSEE.** SUB-LESSOR's consent to any assignment or subletting shall not release SUB-LESSEE from any of SUB-LESSEE's obligations hereunder or be deemed to be a consent to any subsequent occurrence. Any assignment or encumbrance, subletting of this Sub-Lease that does not comply with the provisions of Article shall be void.

## ARTICLE 11

### SUB-LESSOR'S REMEDIES

**11.1 Remedies for Nonpayment of Rent or Additional Rent.** SUB-LESSOR shall have the same remedies for SUB-LESSEE's failure to pay Rent as for its failure to pay Additional Rent.

**11.2 Accord and Satisfaction.** If SUB-LESSEE pays or SUB-LESSOR receives an amount that is less than the amount stipulated to be paid under any Sub-Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or statement on any check or letter may be deemed an accord and satisfaction. SUB-LESSOR may accept any check or payment without prejudice to SUB-LESSOR's right to recover the balance due or to pursue any other available remedy.

**11.3 Abandonment of Sub-Leased Premises or Delinquency in Rent.** If SUB-LESSEE abandons or vacates the Leased Premises before the end of the Term or if SUB-LESSEE is in arrears in Rent or Additional Rent payments and applicable cure periods have expired, SUB-LESSOR may cancel or terminate this Sub-Lease, subject to the notice and opportunity to cure provisions set forth in Section 11.4 and CDE Lender's rights set forth in the Consent Agreement. On cancellation or termination of this Sub-Lease, SUB-LESSOR shall be entitled to peaceably enter the Leased Premises as SUB-LESSEE's agent to regain or relet the Leased Premises. SUB-LESSOR shall incur no liability for such entry. As SUB-LESSEE's agent, SUB-LESSOR may relet the Leased Premises with or without any improvements, fixtures or personal property that may be upon it, and the reletting may be made at such price, in such terms and for such duration as SUB-LESSOR determines and for which SUB-LESSOR receives rent. SUB-LESSOR shall apply any rent received from reletting to the payment of the rent due under this Sub-Lease. If, after deducting the expenses of reletting the Leased Premises, SUB-LESSOR does not realize the full rental provided under this Sub-Lease, SUB-LESSEE

shall pay any deficiency. If SUB-LESSOR realizes more than the full rental; SUB-LESSOR shall pay the excess to SUB-LESSEE on SUB-LESSEE's demand, after deduction of the expenses of reletting.

**11.4 Dispossession on Default; Notice and Opportunity to Cure.** Subject in all events to the rights of CITY and CDE Lender as set forth in the Consent Agreement and elsewhere in this Sub-Lease:

**11.4.1** If SUB-LESSEE defaults in the performance of any covenant, term, or condition of this Sub-Lease, SUB-LESSOR may give SUB-LESSEE written notice of that default, as provided in Section 12.2.1. If SUB-LESSEE fails to cure a default in payment of Rent or Additional Rent within twenty (20) days after notice is given, SUB-LESSOR may terminate this Sub-Lease. For defaults other than nonpayment of Rent or Additional Rent, SUB-LESSEE shall cure such default within thirty (30) days after notice is given or within such greater period of time as specified in the notice.

**11.4.2** If the default (other than for nonpayment of Rent or Additional Rent) is of such a nature that it cannot be reasonably cured within time specified, SUB-LESSOR may terminate this Sub-Lease only if SUB-LESSEE fails to proceed with reasonable diligence and in good faith to cure the default within one hundred eighty (180) days after written notice is given. Thereafter, termination of this Sub-Lease may occur only after SUB-LESSOR gives not less than ten (10) days' advance written notice to SUB-LESSEE and such default remains uncured. On the date specified in the notice, the Term will end, and, SUB-LESSEE shall quit and surrender the Leased Premises to SUB-LESSOR, except that SUB-LESSEE will remain liable as provided under this Sub-Lease.

**11.4.3** On termination of this Sub-Lease, SUB-LESSOR may peaceably reenter the Leased Premises without notice to dispossessed SUB-LESSEE, any legal representative of SUB-LESSEE or any other occupant of the Leased Premises. SUB-LESSOR may retain possession through summary proceedings or otherwise and SUB-LESSOR shall then hold the Leased Premises as if this Sub-Lease has not been made.

**11.5 Damages on Default.** If SUB-LESSOR retakes possession under Section 11.4, SUB-LESSOR shall have the following rights:

**11.5.1** SUB-LESSOR shall be entitled to Rent or Additional Rent that is due and unpaid, and those payments will become due immediately, and will be paid up to the time of the re-entry, dispossession or expiration, plus any expenses (including, but not limited to attorneys' fees, brokerage fees, advertising, administrative time, labor, etc.) that SUB-LESSOR incurs in returning the Leased Premises to good order and/or preparing it for re-letting, if SUB-LESSOR elects to re-let, plus interest on Rent and Additional Rent when due at the rate of twelve (12%) percent per annum.

**11.5.2** SUB-LESSOR shall be obligated, to re-let all or any part of the Leased Premises in SUB-LESSOR's name or otherwise, for any duration, on any terms, including but not limited to any provisions for concessions or free rent, or for any amount of rent that is higher than that in this Sub-Lease.

**11.5.3** SUB-LESSOR's re-letting all or any part of the Leased Premises shall not release or affect SUB-LESSEE's liability for damages. Any suit that SUB-LESSOR brings to collect the amount of the deficiency for any rental period will not prejudice in any way SUB-LESSOR's rights to collect the deficiency for any subsequent rental period by a similar proceeding. In putting the Leased Premises in good order or in preparing it for re-letting, SUB-LESSOR may alter, repair, replace, landscape or decorate any part of the Leased Premises in any reasonable way that SUB-LESSOR considers advisable and necessary to re-let the Leased Premises. SUB-LESSOR's alteration, repair, replacement, landscape or decoration will not release SUB-LESSEE from liability under this Sub-Lease.

**11.5.4** SUB-LESSOR is not liable in any way for failure to re-let the Leased Premises, or if the Leased Premises are re-let, for failure to collect the rent under the re-letting. SUB-LESSEE will not receive any excess of the net rents collected from re-letting over the sums payable by SUB-LESSEE to SUB-LESSOR under this Section.

**11.6 Insolvency or Bankruptcy.** Subject to the provisions hereof respecting severability, should SUB-LESSEE at any time during the Term suffer or permit the appointment of a receiver to take possession of all or substantially all of the assets of SUB-LESSEE, or an assignment of SUB-LESSEE for the benefit of creditors, or any action taken or suffered by SUB-LESSEE under any insolvency, bankruptcy, or reorganization act, such action shall at SUB-LESSOR's option, constitute a breach and default of this Sub-Lease by SUB-LESSEE and SUB-LESSEE agrees to provide adequate protection and adequate assurance of future performance to the SUB-LESSOR which will include, but not be limited to the following:

**11.6.1** All monetary and non-monetary defaults existing prior to the breach or default referenced above shall be cured within the time specified above that shall include all costs and reasonable attorneys' fees expended by SUB-LESSOR to the date of curing the default.

**11.6.2** All obligations of the SUB-LESSEE must be performed in accordance with the terms of this Sub-Lease.

If at any time during the pendency of the bankruptcy proceeding the SUB-LESSEE or its successor in interest fails to perform any of the monetary or non-monetary obligations under the terms of this Sub-Lease, or fails to cure any pre-filing default, the SUB-LESSEE HEREBY STIPULATES AND AGREES TO WAIVE ITS RIGHTS TO NOTICE AND HEARING AND TO ALLOW THE SUB-LESSOR TOTAL RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 TO ENFORCE ITS RIGHTS UNDER THIS SUB-LEASE AND UNDER STATE LAW INCLUDING BUT NOT LIMITED TO ISSUANCE AND ENFORCEMENT OF A JUDGMENT OF EVICTION, WRIT OF ASSISTANCE AND WRIT OF POSSESSION.

**11.7 Condemnation.** Upon a condemnation, SUB-LESSEE may pursue all awards it is legally entitled to receive.

**11.8 Holding Over.** SUB-LESSEE will, at the termination of this Sub-Lease by lapse of time or otherwise yield immediate possession of the Leased Premises.

**11.9 Cumulative Remedies.** SUB-LESSOR's remedies contained in the Sub-Lease are in addition to the right of a landlord under Florida Statutes governing non-residential

Landlord-Tenant relationships and to all other remedies available to a landlord at law or in equity.

## ARTICLE 12

### MISCELLANEOUS

**12.1 Requirement for Notice.** SUB-LESSEE shall give SUB-LESSOR prompt written notice of any accidents on, in, over, within, under and above the Leased Premises in which damage to property or injury to a person occurs.

#### 12.2 Notices.

**12.2.1** Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Sub-Lease, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand-delivery, overnight delivery by a national recognized service such as Federal Express, or by email to the addresses set forth below, or at such other address or addresses and to such other person or firm as SUB-LESSOR or SUB-LESSEE may from time to time designate by notice as herein provided.

(1) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder: (a) upon receipt, if hand-delivered or (b) the next day if by overnight delivery.

#### AS TO SUB-LESSOR:

Young Men's Christian Association of South  
Florida, Inc.  
Attention: Sheryl Woods  
900 SE 3rd Avenue  
Fort Lauderdale, FL 33316  
Telephone: (954) 334-9622  
E-mail: [swoods@vmcasouthflorida.org](mailto:swoods@vmcasouthflorida.org)

#### With copy to:

Shutts & Bowen LLP  
Attention: Brendan Aloysius Barry, Esq.  
200 East Broward Boulevard, Suite 2100  
Fort Lauderdale, FL 33301  
Telephone: (954) 847-3884  
E-mail: [bbarry@shutts.com](mailto:bbarry@shutts.com)

AS TO SUB-LESSEE:

Young Men's Christian Association of South  
Florida Support Organization, Inc.  
Attention: Sheryl Woods  
900 SE 3rd Avenue  
Fort Lauderdale, FL 33316  
Telephone: (954) 334-9622  
E-mail: [swoods@vmcasouthflorida.org](mailto:swoods@vmcasouthflorida.org)

With copy to: Shutts & Bowen LLP  
Attention: Brendan Aloysius Barry, Esq.  
200 East Broward Boulevard, Suite 2100  
Fort Lauderdale, FL 33301  
Telephone: (954) 847-3884  
E-mail: [bbarry@shutts.com](mailto:bbarry@shutts.com)

Copies of all notices under this Sub-Lease shall be simultaneously provided to:

City Manager  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

City Attorney  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

FCNMF 29, LLC  
c/o Florida Community Loan Fund, Inc.  
800 North Magnolia Avenue  
Suite 106  
Orlando, FL 32803

PCC Sub-CDE IX, LLC  
c/o Popular Community Capital, LLC  
PO Box 362708 (Mail Code 734)  
San Juan, PR 00936-2708  
Attention: Natalia Guzmán Pérez  
Facsimile: (787) 751-9051  
E-Mail: [natalia.guzman@popular.com](mailto:natalia.guzman@popular.com)

Legal notices (claims, breach of contract,  
indemnification requests, and regulatory  
compliance issues) must be sent by messenger with  
acknowledgement of receipt, certified mail or

national courier with copy to the Legal Representative in the same manner as follows:

Director of the Legal Division (Code 745)  
PO Box 362708  
San Juan, PR 00936-2708  
Attention: Legal Division  
Fax: (787) 765-4064  
E-mail: [legaldivision@popular.com](mailto:legaldivision@popular.com)

With a copy to:

Barnes & Thornburg LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Attention: Erik Rickard  
Facsimile: (614) 628-1433  
E-mail: [erik.rickard@btlaw.com](mailto:erik.rickard@btlaw.com)

SunTrust Community Capital, LLC  
303 Peachtree St. NE  
Suite 2200  
Atlanta, GA 30308  
Attention: Jamise B. Goodman  
Email: [jamise.goodman@suntrust.com](mailto:jamise.goodman@suntrust.com)

**12.3 Time Is Of The Essence.** Time is of the essence as to the performance of all terms and conditions under this Sub-Lease.

**12.4 SUB-LESSOR'S Cumulative Rights.** SUB-LESSOR's rights under this Sub-Lease are cumulative, and, SUB-LESSOR'S failure to promptly exercise any rights given under this Sub-Lease shall not operate or forfeit any of these rights.

**12.5 Modifications, Releases and Discharges.** No modification, release, discharge or waiver of any provision of this Sub-Lease will be of any effect unless it is in writing and signed by the SUB-LESSOR and SUB-LESSEE.

**12.6 Time.** In computing any period of time expressed in day(s) in this Sub-Lease, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed, shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**12.7 Captions.** The captions, headings and title of this Sub-Lease are solely for convenience of reference and are not to affect its interpretation.

**12.8 Survival.** All obligations of SUB-LESSEE hereunder not fully performed as of the expiration or earlier termination of the Term of this Sub-Lease shall survive the expiration or earlier termination of the Term hereof.

**12.9 Delays beyond control of SUB-LESSOR or SUB-LESSEE.** Whenever a period of time is herein prescribed for action to be taken by SUB-LESSOR, SUB-LESSOR shall not be liable or responsible for and there shall be excluded from the computation for any such period of time, any delays due to causes of any kind whatsoever which are beyond the control of SUB-LESSOR. Whenever a period of time is herein prescribed for action to be taken by SUB-LESSEE, SUB-LESSEE shall not be liable or responsible for and there shall be excluded from the computation for any such period of time, any delays due to causes of any kind whatsoever which are beyond the control of SUB-LESSEE.

**12.10 Assignment, Pledge, Security Interest, Cooperation.** SUB-LESSEE may not, without CITY's prior written consent, grant a mortgage or other security interest in its leasehold interest in the Leased Premises. Any grant by SUB-LESSEE of a mortgage or security interest in its leasehold interest by SUB-LESSEE without CITY's prior written consent shall be null and void. Nothing contained herein shall be construed as a right to encumber or subordinate the fee interest of the CITY in the Leased Premises, which encumbrance or subordination is prohibited.

**12.11 Interpretation of Sub-Lease; Severability.** This Sub-Lease shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Sub-Lease, or the application of the remainder of the provisions, shall not be affected. Rather, this Sub-Lease is to be enforced to the extent permitted by law. Each covenant, term, condition, obligation or other provision of this Sub-Lease is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Sub-Lease, unless otherwise expressly provided. All terms and words used in this Sub-Lease, regardless of the number or gender in which they are used, are deemed to include any other number and other gender as the context requires.

**12.12 Successors.** This Sub-Lease shall be binding on and inure to the benefit of the parties, their successors and permitted assigns.

**12.13 No Waiver of Sovereign Immunity.** Nothing contained in this Sub-Lease is intended to serve as a waiver of sovereign immunity by any agency, including the CITY, to which sovereign immunity may be applicable. Nothing herein shall be considered as a waiver of the limitations set forth in Section 768.28, Florida Statutes, as amended.

**12.14 No Third Party Beneficiaries.** Except as may be expressly set forth to the contrary herein, including without limitation the Consent Agreement, the parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Sub-Lease. Except as may be expressly set forth to the contrary herein, including without limitation the Consent Agreement, none of the parties intend to directly or substantially benefit a third party by this Sub-Lease. Except as may be expressly set forth to the contrary herein, including without limitation the Consent Agreement, the parties agree that

there are no third party beneficiaries to this Sub-Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Sub-Lease.

**12.15 Non-Discrimination.** SUB-LESSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Sub-Lease because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**12.16 Records.**

**12.16.1** Each party shall maintain its own respective records and documents associated with this Sub-Lease in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

**12.16.2** SUB-LESSEE and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the YMCA Facility shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by SUB-LESSOR in order to perform the services rendered.

(b) Upon request from CITY or SUB-LESSOR's custodian of public records, provide CITY or SUB-LESSOR with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to SUB-LESSEE for the duration of the Sub-Lease and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to SUB-LESSOR.

(d) Upon completion of said construction or maintenance at the YMCA Facility, transfer, at no cost, to SUB-LESSOR or CITY all public records in possession of SUB-LESSEE or Contractor or keep and maintain public records required by SUB-LESSOR or CITY to perform the service. If Contractor transfers all public records to SUB-LESSOR and CITY upon completion of the YMCA Facility, SUB-LESSEE and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If SUB-LESSEE or Contractor keeps and maintains public records upon completion of YMCA Facility, SUB-LESSEE and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SUB-LESSOR and CITY, upon request from SUB-LESSOR's or CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY.

**12.16.3** If SUB-LESSEE or any Contractor has questions regarding the application of Chapter 119, Florida Statutes, to SUB-LESSEE's or Contractor's duty to provide



public records relating to this Sub-Lease or its contract, contact the CITY's custodian of public records by telephone at (954) 828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, Attention: Custodian of Public Records.

**12.17 Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments; agreements or understandings concerning the subject matter of this Sub-Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

**12.18 Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Sub-Lease has been their joint effort.

**12.19 Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Sub-Lease and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Sub-Lease shall not be deemed a waiver of such provision or modification of this Sub-Lease. A waiver of any breach of a provision of this Sub-Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Sub-Lease.

**12.20 Governing Law.** This Sub-Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Sub-Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida. To that end, SUB-LESSEE expressly waives whatever other privilege to venue it may otherwise have.

**12.21 Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Sub-Lease if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil emulations, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("*Force Majeure*"). In no event shall a lack of funds alone on the part of SUB-LESSEE be deemed Force Majeure.

**12.22 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**12.23 Attorneys' Fees.** In any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this Sub-Lease, the Leased Premises or

the YMCA Facility project (including, without limitation, (a) the enforcement or interpretation of either party's rights or obligations under this Sub-Lease whether in contract, tort, or both, or (b) the declaration of any rights or obligations under this Sub-Lease), the prevailing party, as determined by the court, shall be entitled to recover from the losing party reasonable attorneys' fees and costs. All references in this Sub-Lease to attorneys' fees shall be deemed to include all legal assistants'; paralegals'; and law clerk's fees and shall include all fees incurred through all post-judgment and appellate levels and in connection with collection, arbitration, and bankruptcy proceedings.

[Remainder of page intentionally left blank]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

The CITY executes this Sub-Lease for the purposes of consenting to and approving of the terms and provisions hereof pursuant to the Ground Lease notwithstanding any terms or conditions in the Ground Lease to the contrary.

**CITY:**

**CITY OF FORT LAUDERDALE**

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
[Witness print or type name]

\_\_\_\_\_

\_\_\_\_\_  
[Witness print or type name]

(CORPORATE SEAL)

By: \_\_\_\_\_  
Christopher Lagerbloom, City Manager

ATTEST:

By: \_\_\_\_\_  
Jeffrey A. Modarelli  
City Clerk

APPROVED AS TO FORM:  
Alain E. Boileau, City Attorney

By: \_\_\_\_\_  
James Brako  
Assistant City Attorney

STATE OF FLORIDA            ):  
  ) ss:  
COUNTY OF BROWARD    ):

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Christopher Lagerbloom, City Manager of the City of Fort Lauderdale, a municipal corporation of Florida. He is personally known to me and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Commission Number

**AS TO SUB-LESSOR:**

WITNESSES:

**YOUNG MEN'S CHRISTIAN  
ASSOCIATION OF SOUTH FLORIDA,  
INC.**, a Florida nonprofit corporation  
(d/b/a YMCA of South Florida)

\_\_\_\_\_

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

Sheryl Woods  
Chief Executive Officer

\_\_\_\_\_

[Witness print or type name]

(CORPORATE SEAL)

\_\_\_\_\_

\_\_\_\_\_

[Witness print or type name]

STATE OF FLORIDA        ):  
                                  ) ss:  
COUNTY OF BROWARD    ):

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by **SHERYL WOODS**, as Chief Executive Officer of Young Men's Christian Association of South Florida, Inc., a Florida nonprofit corporation (d/b/a YMCA of South Florida), on behalf of said corporation. She is personally known to me or produced \_\_\_\_\_ as identification and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Commission Number

**AS TO SUB-LESSEE:**

WITNESSES:

**YOUNG MEN'S CHRISTIAN  
ASSOCIATION OF SOUTH FLORIDA  
SUPPORT ORGANIZATION, INC.,**  
a Florida nonprofit corporation

\_\_\_\_\_

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

Sheryl Woods  
Chief Executive Officer

\_\_\_\_\_  
[Witness print or type name]

(CORPORATE SEAL)

\_\_\_\_\_

\_\_\_\_\_  
[Witness print or type name]

STATE OF FLORIDA        ):  
                                  ) ss:  
COUNTY OF BROWARD   ):

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by **SHERYL WOODS**, as Chief Executive Officer of Young Men's Christian Association of South Florida Support Organization, Inc., a Florida nonprofit corporation, on behalf of said corporation. She is personally known to me or produced \_\_\_\_\_ as identification and did not take an oath.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary taking  
Acknowledgement)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Commission Number