

## LEASE AGREEMENT

THIS IS A LEASE AGREEMENT (hereinafter "the Lease"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between:

**CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida, whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter "LESSOR" or "CITY"),

And

**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 "LESSEE")

### WITNESSETH:

WHEREAS, the LESSOR is the owner of the Leased Premises (hereinafter defined) and LESSOR intends to grant LESSEE a leasehold interest in its fee simple interest in the Leased Premises; and

WHEREAS, the Leased Premises is a part of Holiday Park within the City of Fort Lauderdale; and

WHEREAS, under Section 8.21 of the City of Fort Lauderdale City Charter (the "**City Charter**"), the lease or sale of all or a portion of public parks within the City requires the unanimous vote of the City of Fort Lauderdale City Commission (the "**City Commission**"); and

WHEREAS, the LESSEE is a not for profit organization and was created for the purpose of strengthening the foundation of the community through youth development, healthy living and social responsibility; and

WHEREAS, LESSEE intends to construct a modern contemporary community facility to conduct certain activities as described herein, to benefit the public (the "**YMCA Facility**"); and

WHEREAS, LESSOR finds that LESSEE's activities serve a significant public purpose and LESSOR wishes to encourage and assist same; and

WHEREAS, the City Commission finds that the LESSEE's actions do not conflict with use by the public of portions of public land adjacent thereto; and

WHEREAS, the City Commission adopted Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2016 pursuant to Section 8.13 of the City Charter declaring its intent to lease the Leased Premises for a term of fifty (50) years; and

WHEREAS, in accordance with Section 8.13 of the City Charter, a Public Hearing was held before the City Commission during a Regular Meeting of the City Commission held on \_\_\_\_\_, 2016 for the purpose of permitting citizens and taxpayers the opportunity to review the proposed Lease and object to the execution, form or conditions of the proposed Lease; and

WHEREAS, by unanimous approval of the City Commission, proper City officials were authorized, empowered and directed to execute this Lease by adoption of Resolution No. \_\_\_\_\_ during a Public Hearing at its Regular Meeting held on \_\_\_\_\_ 2016.

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, the LESSOR and LESSEE agree as follows:

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

## **ARTICLE 1.**

### **LEASE OF LEASED PREMISES**

**1.1 Lease.** On the terms and conditions set forth in this Lease, and in consideration of the LESSEE's periodic payment of rents and performance of all other terms and conditions of this Lease, as of the Lease Date (hereinafter defined) the LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR and LESSOR grants 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 Lease.

**1.2 Leased Premises.** LESSOR leases the Leased Premises to LESSEE and LESSEE rents from LESSOR the Leased Premises:

#### **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 LESSOR to 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** Subject to Section 2.11, each question of title that currently exist or may arise in the future, but LESSEE acknowledges that it has had the opportunity to examine 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 exist or may arise in the future, but 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 the title survey as stated in Schedule B-I or B-II of the Title Commitment (hereinafter defined);

**1.3.5** LESSEE's satisfactory performance of all of the terms and conditions contained in this 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, except any environmental matters, including but not limited to, underground storage tanks, identified pursuant to Section 5.6.

**1.4 Quiet Enjoyment.** Except as otherwise expressly set forth herein, LESSOR represents and warrants that it has full right and authority to enter into this Lease and that 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 LESSOR subject to the terms and provisions of this Lease.

**1.5 Contract Administrator.** The contract administrator for LESSOR under this Lease shall be the City Manager of LESSOR (the “**City Manager**”), or his designee (the “**Contract Administrator**”). In the administration of this Lease, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

## **ARTICLE 2.**

### **TERM OF LEASE**

**2.1 Term.** The term of this Lease commences on the Lease Date (hereinafter defined) and runs for a period of fifty (50) years thereafter (the “**Term**”), unless this Lease is terminated prior to the expiration date pursuant to this Lease.

**2.2 Lease Date.** The lease date of this Lease shall be the date when the last party to this Lease has executed this Lease (the “**Lease Date**”).

**2.3 Recordation Memorandum of Lease.** A Memorandum of Lease, to be executed by both parties contemporaneously with the execution of this Lease, shall be recorded by LESSEE, at LESSEE’s expense, in the Public Records of Broward County, Florida on or about the Lease Date of this Lease. The Memorandum of Lease shall comply with the requirements of Article 7 herein.

**2.4 Milestones.** During the Term, LESSEE agrees that it shall perform the following “**Milestones**”, within the prescribed time periods. The time period for LESSEE to commence and complete performance of the below listed Milestones (the “**Milestone Period**”), shall not be altered without the prior written consent of the City Manager. The Milestone Period shall commence on the Lease Date.

**2.4.1** Within three (3) months of the Lease Date, LESSEE, at its sole cost and expense, shall provide the LESSOR with all of the following:

(a) A copy of the Phase I Environmental Site Assessment report provided by PM Environmental, Inc., Project No. 18-3506-0-0001 dated September 2, 2016; and

(b) A copy of a survey of the Leased Premises, performed by a licensed surveyor, licensed to perform such work in the State of Florida, which legal description on the survey shall match the legal description on Title Commitment No. 43639-0001 issued by Shutts and Bowen LLP, as agents for Fidelity National Title Insurance Company (the “**Title Commitment**”); and

(c) A copy of the Title Commitment.

**2.4.2** Within forty (40) months of the Lease Date, LESSEE, at its sole cost and expense, shall provide the LESSOR with all of the following:

(a) Evidence LESSEE has properly secured \$5,000,000.00 in construction loan financing or evidence LESSEE has raised \$5,000,000.00, through donations or pledges of cash or a combination thereof, to be used for the construction of the YMCA Facility; and

(b) A copy of an estimated budget for construction of the YMCA Facility.

**2.4.3** Within five (5) years of the Lease Date, LESSEE, at its sole cost and expense, shall provide the LESSOR with all of the following:

(a) A copy of an (i) application, including any and all necessary documentation to complete an application to plat the Leased Premises, or to secure a waiver of plat for the Leased Premises, (ii) application for rezoning the Leased Premises, if required, and (iii) application for vacation of any rights of way or easements or iv) application for variances or setbacks or other land development regulations, if required. LESSOR agrees to reasonably cooperate with the LESSEE in connection with development applications related to the Leased Premises. City Manager, or his designee, shall, following written request from the LESSEE, execute any documents that may be reasonably requested by LESSEE or the governmental agency/entity to accomplish such land development approvals, if the LESSOR'S written consent, as owner of the Leased Premises, is necessary or requested. All development applications shall be done at LESSEE's sole costs and expense.

(b) A copy of the complete and final budget for construction of the YMCA Facility, if available; and

(c) A copy of 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;

(d) A copy of a written Agreement between LESSOR, LESSEE and Parker Theatre, Inc. or its assigns, regarding accommodation for the existing Marquee Sign (hereinafter defined) on the Leased Premises; and

(e) Satisfactory evidence LESSEE has commenced construction of the YMCA facility pursuant to the development approvals and the Site Plan (hereinafter defined), including but not limited to approved building permits or engineering or architectural inspections or reports.

**2.4.4** Within seven (7) years of the Lease Date, the LESSEE shall complete construction of the YMCA Facility and shall provide LESSOR the Certificate of Occupancy from the applicable governing authority.

## **2.5 Extension of Milestone Deadlines.**

**2.5.1** Upon written request from LESSEE, and provided all other Milestones in paragraph 2.4.1 are complete and accepted by LESSOR, the City Manager, in its sole discretion, may grant one (1) two (2) year extension, which shall extend the Milestone Periods described in Section 2.4.2, Section 2.4.3 and Section 2.4.4 by two (2) years each, to complete the requirements of each section therein.

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

## **2.6 Default for Failure to Meet Milestones.**

**2.6.1** Failure to complete the Milestones during the deadlines or any extensions thereof shall be an event of default and LESSOR, by and through its City Commission, reserves the right to terminate this Lease. Failure of LESSOR to timely terminate this 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. Upon receiving written notice from LESSOR, this Lease shall terminate and become null and void and LESSEE shall have forty (45) days to vacate the Leased Premises pursuant to the terms and conditions contained in Section 6.2, and all remaining improvements on the Leased Premises shall become the sole property of LESSOR or LESSOR may require LESSEE, at its expense, to remove all materials, equipment or improvements placed on the Leased Premises, or if construction has not commenced, LESSEE shall restore the Leased Premises to a substantially similar condition that existed prior to the Lease Date of this Lease. LESSOR shall have the right to recover damages for LESSEE's failure to restore the Leased Premises or related to LESSEE's delay in vacating the Leased Premises.

**2.6.2** Any delay in completing the Milestones attributable to LESSOR shall cause the Milestone Period to toll and shall extend the Milestone Periods for any outstanding Milestones for the length of the delay period. LESSOR's delay shall include, but is not limited to, any delay caused by LESSOR's failure to remedy the title defects contained in Section 2.11 within the stated time period and any delay caused by LESSOR's decision to remediate the Leased Premises of Hazardous Substances (hereinafter defined).

**2.7 Payment and Performance Bonds.** Prior to commencement of construction of the YMCA Facility, LESSEE shall provide satisfactory proof that it has secured a 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 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 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 LESSOR as an additional or dual obligee. If the bonds are provided by the contractor, the bond shall provide that a default by LESSEE in the performance of the contractor's contract, shall not be raised as a defense to the LESSOR as one of the obligee's requiring performance of such construction contract by the surety.

**2.8 Parker Playhouse Marquee Sign.** As of the Lease Date, a marquee sign is located on the Leased Premises which advertises and promotes community or public events sponsored by City and/or Parker Theatre, Inc. (the "**Marquee Sign**"). Consequently, LESSEE cannot remove the Marquee Sign or commence construction of the YMCA Facility until the parties have entered into an acceptable written agreement with Parker Theatre, Inc. or its assigns, which agreement shall provide for alternative arrangements acceptable to Parker Theatre, Inc. and LESSOR. LESSEE acknowledges it takes possession of the Leased Premises subject to the Marquee Sign, set forth in this Section.

**2.9 YMCA to Pay for Construction.** LESSEE shall bear all costs and expenses of planning, designing, financing, developing, improving and constructing the YMCA Facility to be located on Leased Premises and shall assume all risk of loss.

**2.10 Progress Reports.** Commencing six (6) months after the Lease Date and every six (6) months thereafter until a Certificate of Occupancy, or other authorization issued by the regulatory authority, is issued for the YMCA Facility, LESSEE shall provide written reports, in form and substance satisfactory to the LESSOR, to 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**"). LESSEE shall include copies of all professional services contracts in the Progress Reports upon receipt of the final executed contract including all agreements with the general contractor for the YMCA Facility and other professional services agreement such as the architect and engineer. The Progress Report and supporting documents may be transmitted electronically.

**2.11 Title Defects.**

**2.11.1** LESSEE has requested and LESSOR has agreed to satisfy the title requirements 3, 4 and 5 reflected on Schedule B Section 1 of the Title Commitment attached hereto as **Exhibit "B"**. LESSOR agrees to expend up to Forty Thousand and No/100 Dollars (\$40,000.00) to satisfy the Requirements 3, 4 and 5 and to diligently and timely pursue satisfaction on or before LESSOR secures funding to construct the YMCA Facility. LESSEE shall be responsible for all other Requirements reflected on the Commitment or any subsequent requirements that may arise. LESSOR retains the right to hire and retain such professionals, consultants and experts as it deems necessary. LESSEE agrees to cooperate with LESSOR to resolve these title Requirements and shall provide copies of all documents, including deeds, probate orders and other relevant documents, in its possession or control relating to these matters.

**2.11.2** LESSEE at its sole cost and expense shall abandon NE 6<sup>th</sup> Terrance right-of-way and LESSEE shall be responsible for addressing the possible removal or realignment of all utilities and other encroachments within said right-of-way. LESSOR shall cooperate with LESSEE and shall provide all reasonable assistance, in its capacity as owner of the Leased Premises, in abandoning said right-of-way. City Manager shall be permitted to execute all required documents on behalf of LESSOR.

**2.12 Representations and Warranties.** All steps, acts and conditions required by the City Charter to be done as a condition precedent to the authorization of this Lease as of the date of City Commission approval have been done, and CITY has full authority to enter into this Lease. All steps, acts and conditions required by the organizational and other documents creating and binding on the LESSEE to be done as a condition precedent to the execution of this Lease have been done, and the LESSEE has full authority to enter into this Lease. The LESSEE represents and warrants unto the LESSOR that it has adequate financial capacity and technical and business skill and ability to perform all obligations herein imposed upon the LESSEE to diligently, skillfully and successfully construct, operate and managed the YMCA Facility in order that the same may be operated and developed in conformity with applicable law and according to this Lease.

## **ARTICLE 3.**

### **RENT AND ADDITIONAL PAYMENTS**

**3.1 Amount and Payment of Rent.** As rent for the Leased Premises, LESSEE shall pay to LESSOR the annual rent of One and No/100 Dollar (\$1.00) commencing with the Lease Date and

continuing each and every successive anniversary date thereafter through the balance of the Term (the “Rent”). Rent shall be payable to **City of Fort Lauderdale** and delivered to City of Fort Lauderdale, 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, Attention: City Manager.

**3.2 Sales Tax, Fees, Special Assessments, etc.** Beginning on the Lease 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 LESSEE in accordance with the provisions of this Lease, it being the intent of the parties that, except as may be specifically provided for herein, 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, LESSEE shall pay LESSOR the amounts reflective of such changes.

**3.3 Additional Rent Payments.** Exclusive of Rent due under Section 3.1 and all sums due under Section 3.2 hereof, all other payments that LESSEE is obligated to make under this 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.

**3.4 Utility or Service Charges.** 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, LESSOR may exercise its remedies as set forth in Article 11. LESSOR shall not be liable to LESSEE for damage nor otherwise because of 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.

**3.5 Governmental Charges or Services.** Subject to the provisions of Section 3.7, 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 Lease. 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:

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

**3.5.2** 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;

**3.5.3** 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 the LESSEE from any subtenant;
- (d) Any use or occupation of the Leased Premises;
- (e) Any document to which the LESSEE is a party and that creates or transfers an interest or estate in the Leased Premises;
- (f) Sales or use tax arising from LESSEE's operations; or
- (g) Any taxes or charges applicable to the Rent paid under this Lease.

**3.6 Payments and Receipts.** Upon LESSOR's written request, LESSEE shall deliver to LESSOR official receipts that show payment of all charges required under this Article and contained in LESSOR's written request. These receipts must be delivered to the place where the Rent payments are to be made. The 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 LESSEE in accordance with Section 3.7 of this Lease.

**3.7 LESSEE's Challenge of Tax.** 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 Lease, provided LESSEE complies with terms and conditions of this Section. LESSEE must give LESSOR written notice of LESSEE's intention to contest and LESSEE must also furnish 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 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. LESSEE must give the written notice accompanied by evidence of the bond or escrow to LESSOR not later than sixty (60) days before the contested taxes would otherwise become delinquent.

**3.8 LESSOR'S Remedy for LESSEE'S Nonpayment.** If LESSEE fails, refuses, or neglects to pay any taxes, fees, assessments or other governmental charges under this Article, unless challenged as provided in Section 3.7 of this Lease, the LESSOR may pay them. On LESSOR's demand, LESSEE shall reimburse LESSOR all amounts 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 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 LESSOR demands repayment or reimbursement from LESSEE, LESSOR is entitled to collect or enforce these payments in the same manner as a payment of Rent. The LESSOR's election to pay the taxes, fees, assessments or other governmental charges does not waive LESSEE's default.

## **ARTICLE 4.**

### **USE OF PREMISES**

**4.1 Permissible Uses.** LESSEE shall use the Leased Premises to construct, operate, manage, and maintain the YMCA Facility which may include but shall not be limited to, gymnasium, wellness center, teen and youth center, community rooms, locker rooms, fitness studio, offices, parking, bathrooms, elevators and other ancillary uses consistent with the mission of the LESSEE (as well as such other complementary minor uses such as fast food restaurants and community services). Such uses are referred to as the "**Permitted Use**". The use of the YMCA Facility shall be open to the public and LESSOR shall provide services and programs similar to the services and programs described in **Exhibit**



“C” attached hereto, which shall serve a public purpose and provide a substantial public benefit. Further, said uses must provide a benefit to the public and not have a commercial, pecuniary, profitable or private use as its primary use. Any use other than the Permitted Use, shall require the written consent of the LESSOR, in its sole discretion, but such uses must be consistent with the spirit and intent of Section 8.13 of the City Charter as determined by the City Commission.

**4.2 Compliance with Regulations of Public Bodies.** LESSEE covenants and agrees that it shall, at its own cost and expense, 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. 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.

**4.3 Site Plan; Plans and Specifications.** In the event LESSEE undertakes construction of the YMCA Facility located on the Leased Premises, as a condition precedent to such construction LESSEE shall submit to the City Engineer of the City of Fort Lauderdale (the “**City Engineer**”) a site plan containing the specifications of the YMCA Facility (the “**Site Plan**”) for approval by the City Engineer and the City Engineer shall make a recommendation to the City Commission which City Commission approval shall not be unreasonably withheld, delayed or conditioned. Such approval of the Site Plan by the City Commission under this Lease shall not constitute an approval under its governmental or regulatory authority. The approved Site Plan shall be retained on file in the Office of the City Engineer and the City Engineer shall provide notice to LESSEE of such approved Site Plan.

**4.4 Improvements.** LESSEE shall not construct any permanent improvements upon the Leased Premises that are not reflected on the approved Site Plan without LESSOR’s express written consent as set forth in this Article and this Lease. LESSEE shall not construct any improvements, nor perform any material alteration, modification or demolition of improvements upon the Leased Premises without first (a) providing the City Engineer with a complete set of plans and specifications therefor; and (b) securing from City Engineer written approval indicating that the proposed construction, alteration, modification or demolition is acceptable; and (c) securing the approval of the City Commission which approval shall not unreasonably withheld, delayed or conditioned. As a condition of acceptance, the City Engineer may impose reasonable conditions. City Engineer shall not unreasonably withhold written approval of the plans and specifications for construction, alteration, modification or demolition of improvements. Upon expiration or termination of this Lease, any improvements constructed on the Leased Premises shall become the property of the LESSOR. Nothing herein shall be construed as a waiver of the LESSOR’s police or regulatory policy in issuing development approvals. Approvals by the City Commission pursuant to this Lease shall be considered approvals in its proprietary capacity and not under its police or regulatory power.

**4.5 Alterations, Additions, Modifications or Demolitions.** LESSEE shall not make any material alterations, additions, modifications or demolitions to the Leased Premises that are not in accordance with the process outlined in Section 4.3 or 4.4 above.

**4.6 Liability for Personal Property.** All personal property placed or moved onto the Leased Premises is at the sole risk of LESSEE or other owner of such personal property. LESSOR shall not be liable for any damage to such personal property, or for personal injuries to LESSEE or any of LESSEE’s subtenants, agents, servants, employees, contractors, guests or invitees or to trespassers on the

Leased Premises that arise from any person's tortious acts or omissions, regardless of the status of the person; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

**4.7 Liability for Damages or Injuries.** LESSOR shall not be liable for any damage or injury incurred or sustained in, on or about the Leased Premises when such damage or injury results from the tortious acts or omissions of any person, including LESSEE's guests, invitees, servants, agents, employees or contractors or trespassers on the Leased Premises; provided, however, that if the damage or injury is caused by LESSOR's tortious acts or omissions, then, to the extent the damage or injury in question is caused by LESSOR's tortious acts or omissions, then LESSEE's liability to LESSOR hereunder shall be proportionately abated.

**4.8 ADA Compliance.** LESSEE shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time, with respect to the Leased Premises.

## **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, uncracked 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 LESSEE, LESSOR and/or of any third parties caused by or resulting from LESSEE’s breach of any of the covenants in this Article and shall include remedial activities performed by an Environmental Agency or by LESSEE pursuant to directives from an Environmental Agency.

(g) **“Phase I Environmental Baseline”** means the environmental condition of the Leased Premises as set forth in the Phase I Environmental Site Assessment report provided by PM Environmental, Inc., Project No. 18-3506-0-0001 dated September 2, 2016.

(h) **“Phase II Environmental Baseline”** means the environmental condition of the Leased Premises as set forth in the Limited Phase I (as defined below) and, if the Phase II is obtained (as defined below), the condition of the Leased Premises set forth in the Phase II.

(i) **“Environmental Baseline”** means collectively the Phase I Environmental Baseline and the Phase II Environmental Baseline.

**5.2 LESSOR’S Consent Required.** During the Term no Hazardous Substances shall be brought upon or kept or used in or about the Leased Premises by any person whomsoever, unless LESSEE first obtains written consent from the Contract Administrator (except de minimis quantities of Hazardous Substances used in the ordinary course of LESSEE’s business and in accordance with applicable Hazardous Substance Laws).

**5.3 Compliance with Hazardous Substances Laws.** During the Term, and with respect to Hazardous Substances brought onto the Leased Premises by any person whomsoever other than LESSOR, its agents, employees, contractors or licensees acting within the course and scope of their duties, 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** LESSEE covenants any Hazardous Substance brought upon the Leased Premises by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees acting within the course and scope of their duties, 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. 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 or earlier termination of this Lease, LESSEE shall cause all Hazardous Substances which are bought upon the Leased Premises subsequent to the Effective Date by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees, 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 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 LESSOR of LESSEE's intention to do so and affording LESSOR reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect LESSOR's interest with respect thereto.

## **5.5 Notices.**

**5.5.1** If at any time 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 minimis quantities of Hazardous Substances used in the ordinary course of 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 LESSOR, as provided herein.

**5.5.2** In addition, LESSEE shall promptly notify 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 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** LESSEE shall also supply to LESSOR as promptly as possible, and, in any event, within five (5) days after 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 LESSEE's use thereof.

## **5.6 Limited Phase I and Phase II.**

**5.6.1** LESSEE has provided LESSOR with the Phase I Environmental Baseline and LESSEE has agreed to conduct a Limited Phase I Environmental Site Assessment (the "**Limited Phase I**") as a result of the historical operation of a gasoline service station on the Leased Premises between 1961 and 1995. LESSEE shall order the Limited Phase I to be completed within ninety (90) days of the Lease Date. City Manager, at its sole discretion, may extend this ninety (90) day period by an additional ninety (90) days.

**5.6.2** The parties shall have ninety (90) days after receipt of the Limited Phase I to determine the consequence and, if recommended by the Limited Phase I, the LESSEE shall order a Phase II Environmental Site Assessment (the “**Phase II**”) within said ninety (90) days, at its sole cost and expense.

**5.6.3** The LESSOR and LESSEE shall have ninety (90) days from the receipt of the Phase II to determine the consequence and effect thereof. The LESSOR and the LESSEE each independently reserve the right to terminate this Lease after consultation with the other party, at each of its sole determination, based upon said results, within said ninety (90) days, and both parties shall be released thereby without further obligations to the other party under this Lease. Nothing in this Section shall be construed as an obligation imposed on LESSOR or LESSEE to clear or remediate the Leased Premises of any hazardous contamination.

**5.6.4** If the Lease is not terminated by LESSOR or LESSEE under section 5.6.3 above, the ninetieth (90<sup>th</sup>) day set forth in Section 5.6.3 shall be the “**Effective Date**” of this Lease.

## **5.7 Environmental Liabilities.**

**5.7.1** Any Hazardous Substances discovered on, under or within the Leased Premises after the Effective Date, and which do not appear in the Environmental Baseline, at levels that are in violation of the Hazardous Substances Laws shall be the absolute responsibility of the LESSEE unless LESSEE demonstrates by a clear and convincing evidence that the presence of such Hazardous Substances on, under or within the Leased Premises after the Effective Date were either part of the Environmental Baseline or caused by the acts or omissions of LESSOR, its agents, servants, employees, contractors or licensees engaged to perform services on the Leased Premises.

**5.7.2** Anything herein to the contrary notwithstanding, LESSEE shall not be responsible for concentrations of Hazardous Substances above clean-up target levels as defined by Florida Administrative Code Sec. 62-777, as same may be amended from time to time, for Petroleum Products as a result of any potential discharges from a gasoline service station that operated on the Leased Premises between 1961 – 1995 and identified in the Limited Phase I and/or the Phase II. However, LESSEE shall be responsible for any discharges of Petroleum Products that are a result of LESSEE’s operations.

**5.7.3** Anything herein to the contrary notwithstanding, LESSEE shall not be responsible for Hazardous Substances appearing in the Environmental Baseline.

## **5.8 Hazardous Substances Indemnification.**

**5.8.1** Effective on the Effective Date, LESSEE agrees to and shall indemnify, defend and hold LESSOR 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 LESSOR 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

(f) some or all of the foregoing.

This indemnity applies regardless of whether the activity in Section 5.8.1(a) - (f) occurred before or during the Term as a result of Hazardous Substances brought onto the Leased Premises by any person whomsoever, other than LESSOR, its agents, servants, employees, contractors or licensees engaged to perform services on the Leased Premises and/or other than as set forth in the Environmental Baseline.

**5.8.2** Effective on the Effective Date, LESSEE shall further indemnify, defend and hold LESSOR 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 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.

This indemnification shall not extend to any claim, demand, fine, penalty, cause of action, liability, damage, loss, cost or expense related to the presence of Hazardous Substances that are caused by LESSOR, its agents, servants, employees, contractors or licensees engaged to perform services on the Leased Premises and/or as set forth in the Environmental Baseline.

**5.8.3** Except for Hazardous Substances set forth in the Environmental Baseline, effective on the Effective Date, LESSEE 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 LESSEE, regardless of whether LESSEE 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.

**5.8.4** LESSEE agrees that the foregoing obligations to indemnify, defend and hold LESSOR harmless, effective on the Effective Date, 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 Lease is effective on the Effective Date and shall survive the termination of this 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.

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

## **5.9 Environmental Testing.**

**5.9.1** At any time during the Term, LESSOR may, upon reasonable prior written notice to LESSEE (taking into account the potential disruption of the LESSEE's operation) enter upon the Leased Premises for the purpose of conducting environmental tests ("**LESSOR'S Tests**") to determine the presence and/or extent of contamination by Hazardous Substances in, on, under, above, within or about the Leased Premises. LESSOR shall not be entitled to conduct the LESSOR'S Tests unless:

(a) An Environmental Agency shall have issued a notice of violation with respect to the Hazardous Substances on, within, above, about or under the Leased Premises; or

(b) LESSOR has probable cause to believe that LESSEE has violated Hazardous Substance Laws relating to the LESSEE's use of the Leased Premises.

**5.9.2** LESSOR'S Tests shall be at the sole cost and expense of LESSOR. The cost and expenses relating to the LESSOR'S Tests shall not be included in the scope of any indemnification set forth in this Article, unless the LESSOR'S Tests reveals the presence of Hazardous Substances at levels that are in violation of the Hazardous Substances Laws. No LESSOR'S Tests shall be conducted until LESSOR has provided to LESSEE the name of the environmental engineering firm licensed to perform such work in the State of Florida (the "**Permitted Firm**")

## **5.10 Environmental Procedure; Consent to Assignment.**

**5.10.1** Any provisions herein to the contrary notwithstanding, LESSEE, or its proposed assignee, whichever the case may be, shall, at its own cost and expense, furnish to LESSOR an updated Phase I Environmental Assessment and/or Phase II Environmental Assessment of the Leased Premises, by a Permitted Firm, as a condition precedent to LESSOR's consent to an assignment of the leasehold interest or any part thereof. The foregoing is referred to hereinafter as the "**Environmental Procedure**."

**5.10.2** The Environmental Procedure shall include a qualitative and quantitative analysis of the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises.

**5.10.3** If the Environmental Procedure establishes the presence of Hazardous Substances at levels that are in violation of the Hazardous Substance Laws, then LESSOR may withhold consent to the assignment of the leasehold interest or any part thereof, until security is posted with LESSOR which is deemed by LESSOR to be reasonably adequate to cover 150% of the projected costs of any legally required clean-up, detoxification or remediation of the Leased Premises from the presence of Hazardous Substances in, on, under, above, within or about the Leased Premises and any and all fines or penalties associated therewith.

# **ARTICLE 6.**

## **CONDITION OF PREMISES**

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

**6.1.1 “AS IS” Condition.** LESSEE acknowledges that prior to the Lease 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 that except as set forth in Section 2.11 and 5.6 LESSEE is leasing the Leased Premises in its “AS IS” condition. Except as may be expressly set forth in or required by this Lease, LESSEE acknowledges that the LESSOR has made no other representations or warranties as to the condition or status of the Leased Property and that LESSEE is not relying on any representations or warranties of the LESSOR or any broker(s), of agent of LESSOR in leasing the Leased Premises. Except as may be expressly set forth in or required by this Lease, LESSEE acknowledges that neither LESSOR nor any agent or employee of 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 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, 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. LESSEE further acknowledges that neither LESSOR nor any agent of LESSOR has provided any representation or warranty with respect to the existence of asbestos or other Hazardous Substances on the Leased Premises other than as may be specifically set forth in this Lease. Accordingly, as between LESSOR and LESSEE under this Lease, 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 LESSEE.

**6.1.2** At its expense, LESSEE shall maintain the Leased Premises in a good state of repair and in a condition consistent with the Permissible Uses. LESSEE shall not suffer or permit the commission of any waste or neglect of the grounds, landscaping, buildings, the fixtures and equipment that LESSEE brings, constructs or placed on the Leased Premises. 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 Condition at End of Term.** At the earlier of the expiration of the Term or termination of this Lease, LESSEE shall quit the Leased Premises and surrender it and all improvements thereon, including the YMCA Facility, to LESSOR, normal wear and tear expected. LESSEE shall removal 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 LESSEE, except permanently affixed fixtures that cannot be removed without structural or functional damage to the Leased Premises.



## **ARTICLE 7.**

### **LIENS**

**7.1 Liens against the Leased Premises.** 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 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 LESSEE, or its agents, servants, employees, contractors or officers or on account of any act or omission of said LESSEE as to LESSOR's right, title or interest in and to the Leased Premises. All persons contracting with the LESSEE, or furnishing materials, labor or services to said LESSEE, or to its agents or servants, as well as all persons shall be bound by this provision of this Lease. Should any such lien be filed, 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. LESSEE shall not be deemed to be the agent of 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 LESSOR's right, title or interest in and to the Leased Premises. These provisions shall be deemed a notice under Section 713.10(1), Florida Statutes of the "non-liability" of the LESSOR.

## **ARTICLE 8.**

### **ENTRY AND INSPECTION OF PREMISES**

**8.1 LESSOR'S Inspection and Entry Rights.** 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 LESSOR deems necessary for safety or preservation of the Leased Premises or improvements located thereon, after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof is in need of maintenance or repair and 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 Lease after fifteen (15) days advance notice to LESSEE that the Leased Premises or any portion thereof is not in compliance with the terms of this Lease and LESSEE has failed to take appropriate curative actions.

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

**8.2 Annual Inspections.** Notwithstanding the foregoing, LESSOR may conduct annual inspections of the Leased Premises at 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.** LESSEE, nor any agent, servant, employee, independent contractor, licensee or subtenant claiming by, through or under LESSEE, or any invitees thereof shall have no claim or cause of action against LESSOR because of 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 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 for Hazardous Substance indemnities, which are set forth in Article 5 above, LESSEE shall protect, defend, indemnify and hold harmless the 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 LESSEE under this 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 LESSEE of any covenant or provision of this Lease except for any occurrence arising out of or resulting from LESSOR's breach of this Lease or the intentional torts or gross negligence of the LESSOR, its officers, agents and employees acting within the scope and course of their duties. This indemnity shall survive termination of this Lease and is not limited by insurance coverage.

**9.1.2** Without limiting the foregoing (and, again, except for Hazardous Substance indemnities, which are set forth in Article 5 above), 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** Except for matters related to Hazardous Substances, which are set forth in Article 5 above, LESSEE further agrees to investigate, handle, respond to, provide defense for, and defend (with counsel selected by LESSEE) 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 LESSOR, LESSEE shall assume and defend not only itself but also the LESSOR in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to LESSOR, provided that LESSOR, exercisable by LESSOR's Risk Manager (the "Risk Manager") shall retain the right to select counsel of its own choosing.

**9.2 LESSOR'S Liability.** In no event shall LESSOR'S liability for any breach of this Lease exceed the amount of Rent then remaining unpaid for the then current term (exclusive of any renewal periods which have not then actually commenced). This provision is not intended to be a measure or agreed amount of LESSOR'S liability with respect to any particular breach and shall not be utilized by any court or otherwise for the purpose of determining any liability of LESSOR hereunder except only as a maximum amount not to be exceeded in any event. Furthermore, no property, whether real or personal, including the Leased Premises or other assets of LESSOR shall be subject to levy, execution or other enforcement procedure for the satisfaction of LESSEE's remedies under or with respect to this Lease and LESSOR shall not be liable for any deficiency. Nothing contained in this Paragraph shall be construed to permit LESSEE to offset against Rents due to a successor LESSOR, by a judgment (or other judicial process) requiring the payment of money by reason of any default of a prior landlord, except as otherwise specifically set forth herein.

**9.3 Insurance.** At all times during the Term, 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 LESSEE during the Term of this 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. City, its 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 LESSEE. The coverage shall contain no special limitation on the scope of protection afforded to City, its 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 City as owner in the property against all risk of physical loss and damage, and name City as a loss payee.

**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 City 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 LESSEE does not own vehicles, the 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.** 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 City must provide Workers' Compensation insurance to LESSEE prior to the commencement of said work. Exceptions and exemptions will be allowed by Risk Manager, if they are in accordance with Florida Statute. Lessee must be in compliance with all applicable State and federal workers' compensation laws, 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 LESSEE and LESSEE shall provide City a certificate of insurance evidencing such coverage. LESSEE's insurance coverage shall be the primary insurance coverage for the Leased Premises and any insurance or self-insurance maintained by City, its officials, employees, or volunteers shall be excess of LESSEE's insurance and shall be non-contributory. The limits of coverage under each policy maintained

by LESSEE shall not be interpreted as limiting LESSEE's liability and obligations under this 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 Risk Manager.

**9.3.7** The coverages, limits and/or endorsements required herein protect the primary interests of 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 LESSEE against any loss exposures, whether as a result of this Lease or otherwise. The requirements contained herein, as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by LESSEE under this Lease.

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

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

(b) LESSEE shall provide a Certificate of Insurance to 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 LESSEE to provide the proper notice as described herein.

(d) In the event the Term goes beyond the expiration date of the insurance policy, LESSEE shall provide City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement 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) City shall be named as an Additional Insured with a Waiver of Subrogation.

(g) The 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

**9.4** 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 LESSEE's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Lease, 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 LESSEE that excludes coverage for work contemplated in this 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 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 Lease. City reserves the right to review, at any time, coverage forms and limits of LESSEE's insurance policies.

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

**9.8** It is 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. LESSEE further confirms that 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 LESSEE.

## **ARTICLE 10.**

### **ASSIGNMENTS AND SUBLETTING**

#### **10.1 Assignment and Subletting.**

**10.1.1** Unless expressly authorized otherwise, LESSEE may not assign this Lease or any portion of its leasehold interest, nor sublet, license or grant any concession for the use of the Leased Premises to another person without obtaining LESSOR's prior written consent, in its reasonable discretion. LESSOR approved this Lease pursuant Section 8.13 of the City's Charter and any proposed assignee must comply with said provision and agree to operate a YMCA Facility on the Leased Premises.

**10.1.2** LESSEE shall, by written notice, advise 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 Lease or any portion thereof for any part of the Term hereof. LESSEE shall supply LESSOR with such information, financial statements, verifications and related materials as LESSOR may reasonably request or desire to evaluate the written request to so assign; and in such event LESSOR shall have the right, to be exercised by giving written notice to LESSEE within sixty (60) days after receipt of LESSEE's notice and all of the aforesaid materials, to either refuse or consent to the proposed assignment. Said notice by LESSEE shall state the name and address of the proposed assignee.

**10.1.3** As a condition to LESSOR's prior written consent of the proposed assignment, the assignee shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease, and LESSEE shall deliver to LESSOR promptly after execution, an executed copy of such sublease or assignment and an agreement of said compliance by each sublease or assignee.

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

## **ARTICLE 11.**

### **LESSOR'S REMEDIES**

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

**11.2 Accord and Satisfaction.** If LESSEE pays or LESSOR receives an amount that is less than the amount stipulated to be paid under any 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. LESSOR may accept any check or payment without prejudice to LESSOR's right to recover the balance due or to pursue any other available remedy.

**11.3 Abandonment of Leased Premises or Delinquency in Rent.** If LESSEE abandons or vacates the Leased Premises before the end of the Term, fails to or is no longer operating the YMCA Facility on the Leased Premises or if LESSEE is in arrears in Rent or Additional Rent payments and applicable cure periods have expired, LESSOR may cancel or terminate this Lease, subject to the notice and opportunity to cure provisions set forth in Section 11.4. On cancellation or termination of this Lease, LESSOR shall be entitled to peaceably enter the Leased Premises as LESSEE's agent to regain or relet the Leased Premises. LESSOR shall incur no liability for such entry. As LESSEE's agent, 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 LESSOR determines and for which LESSOR receives rent. LESSOR shall apply any rent received from reletting to the payment of the rent due under this Lease. If, after deducting the expenses of reletting the Leased Premises, LESSOR does not realize the full rental provided under this Lease, LESSEE shall pay any deficiency. If LESSOR realizes more than the full rental, LESSOR shall pay the excess to LESSEE on LESSEE's demand, after deduction of the expenses of reletting.

#### **11.4 Dispossession on Default; Notice and Opportunity to Cure.**

**11.4.1** If LESSEE defaults in the performance of any covenant, term, or condition of this Lease, LESSOR may give LESSEE written notice of that default, as provided in Section 12.2.1. If LESSEE fails to cure a default in payment of Rent or Additional Rent within twenty (20) days after notice is given, LESSOR may terminate this Lease. For defaults other than nonpayment of Rent or Additional Rent, 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, LESSOR may terminate this Lease only if 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 Lease may occur only after LESSOR gives not less than ten (10) days' advance written notice to LESSEE and such default remains uncured. On the date specified in the notice, the Term will end, and, LESSEE shall quit and surrender the Leased Premises to LESSOR, except that LESSEE will remain liable as provided under this Lease. Notice under Section 2.6.1 controls with respect to failure to complete Milestones within the prescribed time period.

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

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

**11.5.1** 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 LESSOR incurs in returning the Leased Premises to good order and/or preparing it for re-letting, if 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** LESSOR shall be entitled, but is not obligated, to re-let all or any part of the Leased Premises in 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 Lease.

**11.5.3** LESSOR's election to not re-let all or any part of the Leased Premises shall not release or affect LESSEE's liability for damages. Any suit that LESSOR brings to collect the amount of the deficiency for any rental period will not prejudice in any way 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, LESSOR may alter, repair, replace, landscape or decorate any part of the Leased Premises in any reasonable way that LESSOR considers advisable and necessary to re-let the Leased Premises. LESSOR's alteration, repair, replacement, landscape or decoration will not release LESSEE from liability under this Lease.

**11.5.4** 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. LESSEE will not receive any excess of the net rents collected from re-letting over the sums payable by LESSEE to LESSOR under this Section.

**11.6 Insolvency or Bankruptcy.** Subject to the provisions hereof respecting severability, should 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 LESSEE, or an assignment of LESSEE for the benefit of creditors, or any action taken or suffered by LESSEE under any insolvency, bankruptcy, or reorganization act, such action shall at LESSOR's option, constitute a breach and default of this Lease by LESSEE and LESSEE agrees to provide adequate protection and adequate assurance of future performance to the 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 LESSOR to the date of curing the default.

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

If at any time during the pendency of the bankruptcy proceeding the LESSEE or its successor in interest fails to perform any of the monetary or non-monetary obligations under the terms of this Lease, or fails to cure any pre-filing default, or fails to make additional security deposit required under this Lease for the adequate assurance of future performance clause above, the LESSEE HEREBY STIPULATES AND AGREES TO WAIVE ITS RIGHTS TO NOTICE AND HEARING AND TO ALLOW THE LESSOR TOTAL RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 TO ENFORCE ITS RIGHTS UNDER THIS 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, LESSEE may pursue all awards it is legally entitled to receive.

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

**11.9 Cumulative Remedies.** LESSOR's remedies contained in the 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.** LESSEE shall give 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 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 mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as LESSOR or 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 forty-eight (48) hours after the time that the same shall be deposited in the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO LESSOR:

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

With copy to:

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

AS TO LESSEE:

Young Men's Christian Association of  
South Florida, Inc.



Attn: Sheryl Woods  
900 SE 3rd Avenue  
Fort Lauderdale, FL 33316  
Telephone: 954-334-9622  
Email: [swoods@ymcasouthflorida.org](mailto:swoods@ymcasouthflorida.org)

With copy to:

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

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

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

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

**12.6 Time.** In computing any period of time expressed in day(s) in this 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 Lease are solely for convenience of reference and are not to affect its interpretation.

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

**12.9 Landlord Delays; Causes beyond Control of LESSOR.** Whenever a period of time is herein prescribed for action to be taken by LESSOR, 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 LESSOR. Whenever a period of time is herein prescribed for action to be taken by LESSEE, 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 LESSEE.

**12.10 Assignment, Pledge, Security Interest, Cooperation.** LESSEE may not, without LESSOR's consent, grant a security interest, in its leasehold interest in the Leased Premises. LESSOR agrees to reasonably cooperate with LESSEE in connection with any financing and agree to execute documents in form and substance acceptable to LESSOR in its sole discretion and its attorney reasonably required by LESSEE's lender, including the obligation to give such lender additional notice and

opportunity to cure and to enter into a new lease upon a bankruptcy or similar event. Execution of such documents is subject to City Commission approval. Notwithstanding, the term of the leasehold mortgage cannot exceed the Term of this Lease. **Nothing herein shall be construed as a right to encumber or subordinate the fee interest of the LESSOR in the Leased Premises, which encumbrance or subordination is prohibited.**

**12.11 Interpretation of Lease; Severability.** This 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 Lease, or the application of the remainder of the provisions, shall not be affected. Rather, this Lease is to be enforced to the extent permitted by law. Each covenant, term, condition, obligation or other provision of this 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 Lease, unless otherwise expressly provided. All terms and words used in this 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 Lease shall be binding on and inure to the benefit of the parties, their successors and assigns.

**12.13 No Waiver of Sovereign Immunity.** Nothing contained in this Lease is intended to serve as a waiver of sovereign immunity by any agency, including LESSOR, 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, 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 Lease. None of the parties intend to directly or substantially benefit a third party by this Lease. The parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against any of the parties based on this Lease. Nothing herein shall be construed as consent by Lessor to be sued by third parties in any manner arising out of any Lease.

**12.15 Non-Discrimination.** LESSEE shall not discriminate against any person in the performance of duties, responsibilities and obligations under this 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 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** 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 CITY in order to perform the services rendered.

(b) Upon request from CITY's custodian of public records, provide CITY 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 LESSEE for the duration of the 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 CITY.

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

**12.16.3** If LESSEE or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to LESSEE or Contractor's duty to provide public records relating to 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, FL 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 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 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 Lease and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this 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 Lease.

**12.20 Governing Law.** This 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 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, 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 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 commotions, 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 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 Loss of Non-Profit Status.** LESSEE is a tax exempt organization as recognized by the Internal Revenue Service. If LESSEE’s non-profit status is revoked by the IRS due to LESSEE’s actions (as opposed to changes in the law governing non-profits), such revocation shall constitute an event of default under this Lease and LESSOR shall be entitled to exercise any and all remedies available under this Lease, including, termination of this Lease. If the LESSEE is no longer licensed, certified or otherwise loses its recognition as a YMCA by the YMCA national organization, then LESSOR has the right to terminate this Lease, subject to the notice and opportunity to cure provisions of Section 11.4.

**12.24 Attorneys’ Fees.** In any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to this 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 Lease [whether in contract, tort, or both], or (b) the declaration of any rights or obligations under this 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 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.

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

**AS TO LESSOR:**

WITNESSES:

**CITY OF FORT LAUDERDALE**

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

By: \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

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

By: \_\_\_\_\_  
Lee R. Feldman, City Manager

(CORPORATE SEAL)

ATTEST:

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

APPROVED AS TO FORM:  
Cynthia A. Everett, City Attorney

By: \_\_\_\_\_  
Lynn Solomon, Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by **JOHN P. "JACK" SEILER**, Mayor 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  
Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed,  
Printed or Stamped  
My Commission Expires:

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

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by **LEE R. FELDMAN**, 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  
Acknowledgment)

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

My Commission Expires:

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

**AS TO LESSEE:**

**WITNESS**

**Young Men's Christian Association of South  
Florida, Inc.**

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

By:\_\_\_\_\_  
Sheryl Woods, President/CEO

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

By:\_\_\_\_\_  
Dennis Nowak, Chairman of the Board

**CORPORATE SEAL**

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_  
[Type or Print Name and Title]

**STATE OF FLORIDA:  
COUNTY OF BROWARD:**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Sheryl Woods, as President/CEO of Young Men's Christian Association of South Florida, Inc., 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  
Acknowledgment)

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

My Commission Expires:

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

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Dennis Nowark, as Chairman of the Board of Young Men's Christian Association of South Florida, Inc., on behalf of said corporation. He 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  
Acknowledgment)

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

My Commission Expires:

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



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lessee's interest in that certain Lease by and between City of Fort Lauderdale, a Florida municipal corporation (Lessor) and Young Men's Christian Association of South Florida, Inc., a Florida not-for-profit corporation ("Lessee"), dated \_\_\_\_\_, recorded \_\_\_\_\_, Clerk's File Number \_\_\_\_\_, of the Public Records of Broward County, Florida, demising the following described Land:

A parcel of land being the West 7.50 feet of Lots 7 through 15, Block 251, all of Lots 33 through 48, Block 251, all of Lots 5 through 21, Block 252, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, and the West 18.00 feet of Lots 17 through 21, and all of Lots 28 through 32, REPLAT OF A PORTION OF BLOCK 251 PROGRESSO, according to the Plat thereof, as recorded in Plat Book 47, Page 30, of the Public Records of Broward County, Florida, and being a portion of HOLIDAY PARK, according to the Plat thereof, as recorded in Plat Book 24, Page 14 of the Public Records of Broward County, Florida, and a portion of vacated N.E. 6th Terrace, said parcel being more particularly described as follows:

BEGIN at the Northwest Corner of said Block 251;

THENCE N 90°00'00" E along the North line of said Block 251, a distance of 135.00 feet to the Northeast corner of Lot 48, Block 251;

THENCE S 00°00'00" E along the East line of Lots 43 through 48 of said Block 251, a distance of 150.00 feet to the Northwest corner of Lot 7 of said Block 251, PROGRESSO;

THENCE N 90°00'00" E along the North line of said Lot 7, Block 251, a distance of 7.50 feet to the West line of Tract "A", "THEATER CENTER", according to the Plat thereof, as recorded in Plat Book 63, Page 5, of the Public Records of Broward County, Florida;

THENCE S 00°00'00" E along the West line of Tract "A", a distance of 225.00 feet;

THENCE S 90°00'00" W continuing along the said West line of Tract "A", a distance of 7.50 feet;

THENCE S 00°00'00" E continuing along the said West line of Tract "A", a distance of 25.00 feet;

THENCE N 90°00'00" E continuing along the said West line of Tract "A", a distance of 18.00 feet;

THENCE S 00°00'00" E continuing along the said West line of Tract "A" and the Southerly extension thereof, a distance of 170.00 feet to a line being 45.00 feet South of and parallel with the South line of the said REPLAT OF A PORTION OF BLOCK 251 PROGRESSO;

THENCE S 90°00'00" W along the said parallel line a distance of 293.90 feet to the East right-of-way line of Federal Highway (S.R. No. 5);

THENCE N 00°06'00" W along the East right-of-way line of Federal Highway, a distance of 470.00 feet to the North line of Lot 5, Block 252;

THENCE N 90°00'00" E along the said North line of Lot 5, Block 252 and the Easterly extension thereof, a distance of 141.72 feet to the West line of said Block 251;

THENCE N 00°00'00" W along the said West line of Block 251, a distance of 100.00 feet to the POINT OF BEGINNING.

Said land situate within the City of Fort Lauderdale, Broward County, Florida.

## EXHIBIT "B" TITLE EXCEPTIONS



*Fidelity National Title Insurance Company*

Order Number: 5683734  
Customer Reference: 43639-0001

### SCHEDULE B SECTION I REQUIREMENTS

The following are requirements to be complied with:

1. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.
2. Instrument(s) creating the estate or interest to be insured must be properly executed, delivered and filed for record:

- A. Duly executed Memorandum of Lease, by and between The City of Fort Lauderdale, A Florida municipal corporation ("Lessor"), and Young Men's Christian Association of South Florida, Inc., a Florida not-for-profit corporation ("Lessee"), demising the lands described on Schedule A hereof.

If the proposed Memorandum of Lease will be executed by anyone other than the Mayor of the City of Fort Lauderdale, or if authorized by the City Charter, the City Manager of the City of Fort Lauderdale, documentation evidencing the authority of the signatory must be attached as an exhibit to the Memorandum of Lease.

NOTE: The Company reserves the right to make further requirements and/or exceptions upon its review of the proposed documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction.

- B. Duly executed Leasehold Mortgage from Young Men's Christian Association of South Florida, Inc., a Florida not-for-profit corporation, Mortgagor, to The Proposed Insured under the Leasehold Loan Policy, Mortgagee, encumbering the land described on Schedule A hereof.

Together with proof that Young Men's Christian Association of South Florida, Inc., a Florida not-for-profit corporation is currently in good standing under the laws of the State of Florida. If the current transaction involves the execution of documents incident to the transaction by an officer other than the president, chief executive officer or any vice-president, then a recordable resolution of the corporation's Board of Directors, Shareholders and/or Members must be obtained.

3. Obtain and record a Corrective Personal Representative's Deed from Iris L. Tyler Stolee and Sue Seymour Steffan, individually and as Co-Personal Representative's of the Estate of Don Seymour, deceased, Grantor, to the City of Fort Lauderdale, a Florida municipal corporation, Grantee, conveying the following lands:

Lots 5 and 10, inclusive, in Block 252, less the West 17 feet thereof for right-of-way for U.S. Highway 1, and Lots 38 and 41, inclusive, in Block 251, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida. Said lands situate, lying and being in Broward County, Florida.

Additionally, the Company will require review of:

- a) Petition and Order re-opening Broward County Probate Division Case No. 88-8358 CP Estate of Don Seymour, deceased;
- b) Order authorizing the Co-Personal Representative's to execute a Corrective Deed to the City of Fort Lauderdale.

NOTE: On July 5, 1994, Iris L. Tyler Stolee and Sue Seymour Steffan, as Personal Representative's of the Estate of Don Seymour, deceased, conveyed to the City of Fort Lauderdale, by Personal

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**SCHEDULE B SECTION I**  
**Requirements continued**

Representative's Deed recorded in Official Records Book 22347, Page 45, Lots 5 through 10, Block 252, and Lots 38 through 41, Block 251, LESS the West 17 feet thereof for right of way for U.S. Highway 1. The less out of the West 17 feet of Lots 38 through 41, Block 251, created a gap on the West boundary of Block 251.

NOTE: The West boundary of Block 252 abuts U.S. Highway 1, less the lands previously conveyed to the State of Florida. Block 251 lies to the East of Block 252.

4. Obtain and record a Quitclaim Deed from Texaco Refining and Marketing Inc., a Delaware Corporation, Grantor, to The City of Fort Lauderdale, a Florida municipal corporation, Grantee, conveying all their interest to the following described property:

A portion of Lots 14, 15, 16, 17, 18, 19, 20, and 21, Block 252, of PROGRESSO, according to the Plat thereof recorded in Plat Book 2, at Page 18, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the South line of said Lot 21 with its intersection with the Easterly Right-of-Way line of U.S. Highway No. 1; thence run North, along the said Easterly Right-of-Way line of U.S. Highway No. 1, for a distance of 199.96 feet to a point on the North line of said Lot 14; thence run S. 89°49'19" E., along the North line of Lot 14, for a distance of 101.55 feet to a point on the Westerly Right-of-way line of N.E. 6th Terrace, Fort Lauderdale, Florida; thence run S. 0°08'56" W. along the said Westerly Right-of-way line of N.E. 6th Terrace, for a distance of 199.96 feet to a point on the South line of said Lot 21; thence run N. 89°49'19" W. along the said South line of Lot 21 for a distance of 101.03 feet to the Point of Beginning. Said lands situate, lying and being in Broward County, Florida.

NOTE: Texaco Refining and Marketing Inc. vested into title by Special Warranty Deed from Texaco, Inc., a Delaware corporation, recorded August 5, 1985, in Official Records Book 12725, Page 277. Said deed is clouding title to the subject property. Texaco, Inc. had previously conveyed its interest in the subject property to Dorothy C. Westby by Warranty Deed recorded September 8, 1978, in Official Records Book 7758, Page 501, of the Public Records of Broward County, Florida.

5. Obtain and record a Quitclaim Deed from Cynwyd Investments, a co-partnership, Grantor, to The City of Fort Lauderdale, a Florida municipal corporation, conveying the following described property:

Lot 7, Block 251, of PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida. Said lands situate, lying and being in Broward County, Florida.

NOTE: Robert Saligman, as Trustee and individually conveyed to Cynwyd Investment, a co-partnership, by Quitclaim Deed recorded June 21, 1974, in Official Records Book 5816, Page 789, and Corrective Quitclaim Deed recorded October 5, 1976, in Official Records Book 6748, Page 245, Lots 1 through 7, and Lots 42 through 45, Lots 46 through 48, Block 251 (and other lands). Cynwyd Investments conveyed to Michael A. Schroeder Trustee U/T 12/1/95 by Warranty Deed recorded January 4, 1996, in Official Records Book 24344, Page 467, Lots 1 through 6, and Lots 42 through 48, Block 251, but failed to convey any interest it may have had in Lot 7, Block 251. Said interest is clouding title to Lot 7.

6. The Company has been asked to insure a portion of the lands situated between Block 252 and Block 251, previously dedicated as 17th St on the Plat of Progresso, Plat Book 2, Page 18, Public Records of Miami-Dade County, now known as N.E. 6th Terrace. The Company will require the recordation of an

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**SCHEDULE B SECTION I**  
**Requirements continued**

Ordinance from the City of Fort Lauderdale, in compliance with statutory requirements, permanently vacating, abandoning and closing that portion of N.E. 6th Terrace situated within the subject property as described on Schedule A herein. Surveyor to provide the exact legal description for the proposed Ordinance.

The Company reserves the right to review the proposed Ordinance, and this Commitment will then be subject to such further requirements and/or exceptions as the Company may then deem necessary.

The proposed exception for said Ordinance is as follows:

Rights of the public, adjoining property owners, utility companies, and Broward County, if any, in and to vacated N.E. 6th Terrace, lying East of and adjacent to Block 252, West of and adjacent to Block 251, South of N.E. 9th Street, and North of N.E. 8th Street, in the City of Fort Lauderdale, Florida, vacated by Ordinance No. \_\_\_\_\_ executed \_\_\_\_\_, recorded \_\_\_\_\_, as CFN # \_\_\_\_\_, in the Public Records of Broward County, Florida.

7. Proof of payment of any outstanding assessments in favor of Broward County, Florida, any special taxing district and any municipality. NOTE: If this requirement is not satisfied the following exception will appear on Schedule B:

Any outstanding assessments in favor of Broward County, Florida, any special taxing district and any municipality.

8. Proof of payment of service charges for water, sewer, waste and gas, if any, through the date of closing. NOTE: If this requirement is not met the following exception will appear on Schedule B:

Any lien provided for by Florida Statutes in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer, waste or gas system supplying the insured land or service facilities.

9. NOTE: No open mortgage(s) were found of record. Agent must confirm with the owner that the property is free and clear.

10. An Affidavit in form acceptable to Fidelity National Title Insurance Company ("Company") and executed by or on behalf of the current record owner(s) of the subject property stating that: (A) there are no parties in possession of the subject property other than said current record owner(s); (B) there are no encumbrances upon the subject property other than as may be set forth in this Commitment; (C) there are no unrecorded assessments which are due and payable and; (D) there have been no improvements made to or upon the subject property within the last ninety (90) day period for which there remain any outstanding and unpaid bills for labor, materials or supplies for which a lien or liens may be claimed must be furnished to the Company, or, in lieu thereof, an exception to those matters set forth in said Affidavit which are inconsistent with or deviate from the foregoing requirements will appear in the policy or policies to be issued pursuant to this Commitment.

11. Proof of payment of all special assessments, recorded or unrecorded, including but not limited to special assessments arising under Chapter 159 of the Florida Statutes.

12. Satisfactory survey, in conformity with the minimum technical standards for land surveys, certified to the Company, and/or its agent, dated no more than 90 days prior to the closing of the subject transaction, disclosing the nature and extent of any encroachment, encumbrance, violation, variation

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**SCHEDULE B SECTION I**  
**Requirements continued**

or adverse circumstance affecting the Title to the Land. Additional requirements and/or exceptions will be made for any such matters disclosed.

13. Issuing agent must obtain from the Company or perform themselves a title update three (3) business days prior to closing, to verify that no adverse matters or defects appear in the public records.

14. NOTE: Upon receipt of proper documentation, affidavit(s), and survey, and payment of applicable promulgated premium, the Loan Policy, when issued, will contain the following:

- (X ) ALTA Endorsement Form 9-06 (with Florida Modifications (if applicable)
- (X ) ALTA Endorsement Form 8.1-06 Environmental Lien End. (if applicable)
- (X ) ALTA 13.1-06 Leasehold Loan Endorsement

15. NOTE: This commitment is being issued with the Liability and Proposed Insured under the Leasehold Loan Policy "To Be Determined" and is subject to the review and approval of the Company's State Underwriting Office once this information is added to Schedule A. The Company reserves the right to revise and amend this commitment in accordance with said review.

16. We have reviewed an unsigned and unsealed survey of the subject property prepared in anticipated compliance with Schedule B, Section 1, Item 12. We will require production of an **updated** survey with surveyors signature and original raised seal, meeting the minimum standards for all land surveys as set forth in Chapter 472.027, Florida Statutes or in Chapter 5J 17, Florida Administrative Code, and upon receipt of same, we will be in a position to add the following proposed survey exception:

Survey prepared by Calvin, Giordano & Associates, Inc., under Project No. 04-4723, dated February 12, 2016, revised March 15, 2016, reveals the following:

- a) Overhead power lines cross the West property line from the Northwest corner of Lot 48, Block 251, in a Southerly direction into the road right of way of NE 6th Terrace until it connects with a power pole to the East of Lot 32, Block 251, then proceeds in a Southeasterly direction crossing the East property line of Lot 30, Block 251, and across Lots 28 and 29, Block 251, into the swale lying South of Block 251, being part of Holiday Park (PB 24/14), with no apparent easement of record under the lines.
- b) Power and light poles, electrical boxes, water meter, catch basins, 2' wood rail, irrigation valve, backflow preventor, monitor well, FPL transformer, telephone manhole, situated throughout the subject property and abutting the property lines.
- c) Dumpster (ownership unknown) encroaches onto Lot 8, Block 251.
- d) Wood fence (ownership unknown) encroaches onto Lots 11, 12 and 13, Block 251.
- e) Slabs (unidentified) straddle the East property lines on Lots 11 through 15, Block 251.
- f) 2' wood rails situated on the East property lines of Lots 17 through 21, Block 251.
- g) Overhead power lines run across Lot 32, Block 251, from a power pole situated in NE 6th Terrace East to a power pole straddling the property line between Lot 32 and Lot 17, Block 251.





**SCHEDULE B SECTION I**  
**Requirements continued**

- h) Concrete sidewalk, curb and gutters situated within Lots 46, 47 and 48, Block 251, and extend into the right of ways to the North and West.
  - i) Catch basin straddles the East property line and light pole situated upon the Northeast corner of a portion of Holiday Park lying South of Lot 21, Block 251.
  - j) Metal Sign situated within a portion of Holiday Park lying South of Lot 21, Block 252.
  - k) Mastarm Sign pole between Lots 14 and 15, Block 252 appears to be situated on the property line.
  - l) NE corner of Lot 48, Block 251 appears to be marked on the survey 5.5 +/- feet South of the platted corner.
  - m) Power pole situated at the NE corner of Lot 5, Block 252.
  - n) Unable to determine if a dirt road crosses the East property lines of Lots 43, 44 and 45, Block 251.
17. The Company has been asked to delete Exception 13, on Schedule B-II. In order to delete same, the Company will require recordation of a duly executed Termination of Agreement of the instrument recorded in Official Records Book 12997, Page 53, by the authorized municipal representative of the City of Fort Lauderdale, Florida.

**END OF SCHEDULE B SECTION I**



**EXHIBIT “C”**  
**Possible YMCA Services and Programs**

- Weight Exercises – weight machines, free weights
- Cardio Exercise – Treadmills, ellipticals, recumbent bikes, upright bikes
- Aerobics Classes – high and low intensity
- Yoga
- Pilates
- Zumba
- Enhanced Fitness
- Personal Training
- Aquatics
- Studio Cycling
- Running Club
- Tri Club
- Arthritis Aerobics
- Active Older Adults
- Chair Aerobics
- Balance Class
- Silver Sneakers
- Youth Basketball
- Adult Basketball
- Basketball Clinics
- Youth Volleyball
- Adult Volleyball
- After School Programs
- Friday nights for Teens
- Wall Climbing
- Computer classes – Youth and Seniors
- Y Leaders Club
- Youth and Adult Sports
- Youth in Government
- Child Watch for parents
- Parents Night out on weekends
- Pre K learning – Letters, Shapes, Colors, Reading, Art
- Pre K readiness
- Summer Day Camp
- Special Events
- Y-Fit
- Committee and Volunteer Meetings
- Health seminars – diabetes, heart,
- Nutrition Education
- Holiday and Vacation Camps
- Health screenings
- Community Events