

DEVELOPMENT AGREEMENT

BY AND AMONG

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE TRIANGLE AREA, INC.

AND

WAKE COUNTY BOARD OF EDUCATION

DECEMBER 20, 2016

THIS DEVELOPMENT AGREEMENT (this “**Agreement**” or “**Development Agreement**”), is dated this the 20th day of December, 2016, by and among the **THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE TRIANGLE AREA, INC.**, a North Carolina nonprofit corporation, having its principal place of business at 801 Corporate Center Drive, Suite 200, North Carolina 27607 (“**YMCA**”) and the **WAKE COUNTY BOARD OF EDUCATION** (“**WCBE**”), a body corporate, having its principal place of business at 5625 Dillard Drive, Cary, North Carolina 27518, with control and oversight over the Wake County Public School System. YMCA and WCBE are each a “**Party**” and are collectively referred to as the “**Parties**.”

W I T N E S S E T H:

WHEREAS, WCBE has determined that there is a critical need to develop an elementary school that serves the Southeast Raleigh community with identified elementary educational success targets that are compatible with WCBE elementary educational support model, while at the same time meeting the capacity and educational needs identified in WCBE Capital Improvement Plan, and has determined to develop such a school under N.C.G.S. Section 143-128.1C which permits public private partnerships to construct certain assets (the “**PPP Act**”); and

WHEREAS, YMCA and its partners desire to further their mission to end the cycle of intergenerational poverty in the Southeast Raleigh community through significant investments in the areas of education, health and wellness, affordable housing for all, economic opportunity, and leadership development; and

WHEREAS, WCBE reviewed the qualifications of YMCA to serve as its development partner to develop an elementary school that meets its programming requirements, as required by the PPP Act, including review of its financial stability, experience in constructing buildings such as the Building (as herein defined), the experience of its project team and its proposed method of design and construction of the Building, and the proposed timeline for construction, and has determined to enter into this Agreement with YMCA in order to accomplish the purposes set forth herein; and

WHEREAS, YMCA currently owns approximately 30.896 acres of property located at 1436 and 1440 Rock Quarry Road and 2003 State Street in Raleigh, North Carolina (as further described below, the “**Southeast Raleigh Development**”); and

WHEREAS, YMCA plans to develop on the Southeast Raleigh Development, with other non-profit partners, among other things, a 110,000 square foot building containing a YMCA facility and an elementary school, as well as parking areas, access and perimeter roads, landscaping, playing fields, playgrounds, an aquatics center, community gardens, sidewalks and other YMCA facilities, over 70 units of affordable housing, and retail space to potentially include healthcare options and access to healthy food; and

WHEREAS, on approximately 19 acres of the Southeast Raleigh Development (as further described below, the “**Property**”), YMCA will develop and construct a building of approximately 110,000 square feet in size (the “**Building**”), approximately 35,000 square feet of which will be used primarily by YMCA and approximately 75,000 square feet of which will be used primarily by WCBE for an elementary school; and

WHEREAS, YMCA will lease to WCBE that portion of the Building to be used as an elementary school (as further described below, the “**School Portion**”), and provide for the joint use by WCBE and YMCA of other YMCA facilities and common areas on the Property pursuant to a Lease Agreement and Joint Use Agreement to be entered by the Parties as provided below; and

WHEREAS, WCBE has determined that the proposed Elementary School (as defined herein) to be operated in the School Portion meets the Parties' goal of serving a community with identified elementary educational success targets that are compatible with WCBE elementary educational support model, and is located within a target area identified in WCBE Capital Improvement Plan for an elementary school (E-46); and

WHEREAS, it is the intent of YMCA and WCBE that the development of the Property and the design, construction and leasing of the Building constitute a public-private project and that this Agreement be a development contract under the PPP Act; and

WHEREAS, the Parties have common and compelling interests in developing the Property as an elementary school and a YMCA facility that meets the needs of the students and others in and about the community; and

NOW, THEREFORE, in consideration of the foregoing premises, this Agreement and undertakings hereinafter set forth, WCBE and YMCA, hereby agree as follows:

ARTICLE I

DEFINITIONS / INTERPRETATIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Agreement" means this Development Agreement and all Exhibits hereto.

"Elementary School" means the elementary school to be operated by WCBE in the School Portion pursuant to the terms of the Lease.

"Joint Use Agreement" shall have the meaning provided in Section 3.1 below.

"Lease Agreement" or **"Lease"** shall have the meaning provided in Section 2.4.a. below.

"Property" means the 19 acre tract of land on which the Building will be constructed, located at 1436 Rock Quarry Road in Raleigh, North Carolina, as shown on the site plan attached hereto as **Exhibit A**.

"School Portion" means the approximately 75,000 square feet of the Building which will be dedicated to the development and operation of the Elementary School, as designated on the site plan attached hereto as Exhibit A.

"Shared Space" means those portions of the Building and the Property that will be used by both YMCA and the Elementary School from time to time in accordance with the terms of the Lease and the Joint Use Agreement, and consists generally of Athletic Fields and Gymnasium in YMCA Facility and the Multipurpose/Cafeteria/Stage, Instructional Kitchen, and four (4) classrooms in the School Portion.

"Southeast Raleigh Development" means the 30.896 acre tract of land, including the buildings and any other improvements located at 1436 and 1440 Rock Quarry Road, and 2003 State Street, in Raleigh, North Carolina, and shown on that plat entitled "YMCA, dated November 19, 2015 and recorded in Plat Book 016221, Pages 01201-01210, Wake County Registry."

“YMCA Facility” means YMCA Portion of the Building, as well as roads, drives and parking areas, landscaping, playing fields, playgrounds, aquatic center, community gardens, sidewalks and other public facilities to be constructed by YMCA at the Property.

“YMCA Portion” means that portion of the Building consisting of approximately 35,000 square feet to be used by YMCA.

Section 1.2 Interpretations.

1.2(a) Wherever used in this Agreement:

1.2(a)(i) the words “include” or “including” shall be construed as incorporating “without limitation”;

1.2(a)(ii) the phrases “at YMCA’s expense” or “at WCBE’s expense” shall mean at the sole and exclusive expense of such Party, which shall be responsible for all costs involved in, or associated with, the applicable matter;

1.2(a)(iii) words of the masculine gender mean and include correlative words of the feminine and neuter genders and words imparting the singular number mean and include the plural number and vice versa; and

1.2(a)(iv) a reference to a specific section is a reference to a section in this Agreement.

1.2(b) Whenever this Agreement imposes any obligation on a Party, or provides that a Party shall be responsible for any action or matter, it shall be construed to mean, unless specifically provided to the contrary, that Party shall perform or undertake the action or matter at that Party’s expense.

ARTICLE II **OBLIGATIONS TO IMPLEMENT DEVELOPMENT**

Section 2.1 Development Plan.

YMCA shall design, develop and construct the Building, which shall include YMCA Portion and the School Portion, as well as the rest of YMCA Facility, on the Property. The School Portion will comprise approximately 75,000 square feet of the Building and YMCA Portion will comprise approximately 35,000 square feet of the Building. The Building will be designed to allow WCBE to serve and educate approximately 500 students. The Parties will use commercially reasonable efforts to cause the construction of the Building to be completed by the start of the school year in August, 2019. The development of the Property, including the design, development and construction of YMCA Facility and the Building constitutes a public-private partnership, and this Agreement is a development contract under the PPP Act. In addition, the Parties agree that they will put forth a good-faith effort, in compliance with the Act, to recruit and select small business entities with respect to the development of the Property and the design and construction of YMCA Facility and the Building.

Section 2.2 Schedule. The Parties agree to proceed with the development of design drawings for the Building in accordance with the Schedule set forth on **Exhibit B** attached hereto. The Parties will use their best efforts to finalize the terms of the Lease and the Joint Use Agreement referenced herein prior to the date established for completion of the design drawings; provided that, the Parties acknowledge that

the amount to be included in the rent to be paid under the Lease will be determined upon execution of the guaranteed maximum price contract for construction of the Building. However, the final lease payment shall be determined after the Building is constructed and shall reflect the calculations and adjustments noted in Section 2.4.b.

Section 2.3 YMCA's Obligations to the Implementation Effort.

- a. The Southeast Raleigh Development has recently been acquired by YMCA and includes three separate tracts that will be recombined to accommodate playing fields, playgrounds, an outdoor pool, community gardens, gymnasiums, affordable housing, retail, wellness-education and other public facilities to be constructed by YMCA. YMCA will engage and compensate the necessary architects, engineers and contractors for the design and construction of YMCA Facility and the Building on the Property. WCBE shall approve the selection of all designers and engineers employed by YMCA to provide services for the design and construction of the Building. Design plans, specifications, and the method of construction as they relate to the School Portion of the Building as well as the Shared Space shall be reviewed and approved by WCBE. The design plans and specifications shall be approved by WCBE at each major stage of design. YMCA shall ensure that its agreements with all designers and engineers permit YMCA and WCPSS to use any documents prepared for this Building for the completion of the Building.-WCBE's requests for changes to the design plans and specifications as they relate to the School Portion shall be granted when such requests do not, in the reasonable opinion of YMCA or the Building's construction manager, impact the Building's construction budget, schedule, or parts of the Building outside of the School Portion leased to WCBE, unless WCBE pays for all costs and expenses associated solely with such changes and compensates YMCA for all costs, expenses, and losses incurred solely as a result of any construction schedule delays associated with such changes. WCBE shall not be required to compensate YMCA for any delays that result from changes jointly requested by the Parties or that result in delays that are contemporaneous to delays caused in whole or in part by YMCA. The design plans shall consider a joint or separate storm, water, and sewer system and shall provide for a system that allows for separate utility metering for the School Portion, including but not limited to, electric and gas services, and shared central plant services for maintaining indoor environmental conditions (i.e. chilled water, hot water, alternative power, etc.).
- b. YMCA shall apply for federal New Market Tax Credits ("NMTC") for the Property on behalf of YMCA and WCBE, and for that purpose all consulting fees, accounting fees, legal fees and applicable CDE sponsor fees shall be at YMCA's expense.
- c. YMCA shall use commercially reasonable efforts to complete construction of the Building by no later than July 31, 2019; provided, however, construction of the Building shall not commence until YMCA has in place development and construction financing for the Building, and the completion date for the Building may be adjusted as a result of the financing schedule with the written approval of WCBE.
- d. YMCA shall be solely responsible for any costs, expenses and delays arising from the discovery, presence, removal or remediation of any hazardous material or other environmental contaminant on the Property.
- e. YMCA shall provide a performance and payment bond each in the amount of 100% of the total anticipated amount of the construction contracts for the Building as required by N.C.G.S. 143-128.1C(g). For the purposes of this section, YMCA certifies that \$27,960,000 is the total

anticipated amount of the construction contracts as of the date of this Agreement. YMCA believes this amount is a good-faith projection of the total cost to construct the Building.

Section 2.4 WCBE's Obligations to the Implementation Effort.

- a. WCBE and YMCA intend to enter into a mutually agreeable lease agreement (the "Lease Agreement" or "Lease") pursuant to which YMCA will construct the Building and lease to WCBE the School Portion, and along with the Joint Use Agreement (defined below), provide for the use of other YMCA facilities and common areas on the Property. The Lease Agreement shall address and include the terms set forth on Exhibit C attached hereto and made a part hereof. The key provisions of Exhibits C, D and E shall not be altered except by mutual agreement of the Parties. The Parties shall enter into the Lease Agreement only after the design of the Building is sufficiently complete to YMCA's and WCBE's satisfaction, including a cost estimate that is documented to the satisfaction of WCBE and YMCA. The Parties agree that as a condition of WCBE executing the Lease Agreement, the Wake County Board of Commissioners (the "County") and the Local Government Commission must each approve the Lease Agreement.
- b. The Lease Agreement shall provide, among other payments and terms, for the payments (to be agreed upon as set forth herein) from WCBE to be payable on the schedule set forth on Exhibit E. The amount of the lease payments will be agreed upon by the Parties and will reflect the final costs of construction of the Building. Such payments will reflect WCBE's share of the construction cost of the Building and WCBE's allocated share of the costs of development of the Southeast Raleigh Development and the Property. The lease payments under the Lease Agreement shall be calculated and adjusted to reflect (a) any unused allowances or other amounts credited to YMCA in the construction contract at the completion of the construction of the Building, and (b) any sales tax that is reimbursed for the funds expended on the School Portion of the Building. Lease payments shall not be increased after originally established due to any delay in receipt or failure to obtain NMTC. WCBE shall not execute the Lease Agreement until YMCA provides documentation acceptable to WCBE that it has secured sufficient funding for the construction of the Building with or without NMTC.
- c. WCBE shall carry adequate property insurance on the School Portion, or reimburse YMCA for its proportionate cost of property insurance for the Building, effective on the date of WCBE's occupancy of the School Portion and as otherwise required under the Lease Agreement.
- d. WCBE shall cooperate with, and take all actions reasonably necessary to further, YMCA's initiative to obtain development and construction financing with respect to the Southeast Raleigh Development, including but not limited to, any application by YMCA or its affiliate for federal New Market Tax Credits, and in its related capital campaign. Such cooperation may include a change in the party leasing the School Portion to WCBE, or modification of the terms of the Lease or Joint Use Agreement to obtain such financing or more favorable financing, so long as WCBE does not object to the lessor and such change or modification does not adversely affect in any material respect the scheduled completion of the Building or the rights of WCBE contemplated under the Lease or Joint Use Agreement. YMCA shall provide timely updates to WCBE regarding the status of its procurement of development and construction financing, and its application for NMTC for the Building, including a schedule showing the proposed procurement of the funds. Nothing herein shall require WCBE to execute the Lease prior to all conditions of execution set forth in this Agreement being met.
- e. WCBE shall reimburse YMCA 67.3% of the design, engineering, surveying and construction management preconstruction fees and related costs as they are incurred by YMCA in the

preparation of construction documents for the Building. This percentage was mutually agreed upon by the Parties based upon the anticipated areas of the Building and surrounding amenities that will be occupied and/or used by each Party. In the event either the anticipated areas to be occupied or used changes during the design of the Building, the Board's reimbursement percentage shall be adjusted to reflect the revised anticipated occupancy and use. The fees and associated work shall be approved by YMCA and WCBE prior to reimbursement by WCBE. It is anticipated that such fees will be invoiced, paid, and reimbursed on a monthly basis. The reimbursed costs shall cover all required services, including the furnishing of all materials, apparatus, labor and any required insurance. WCBE's approval of these costs shall not be unreasonably withheld, provided that the fees and costs are consistent with the agreed upon scope for the construction of the Building. Notwithstanding the foregoing, WCBE's reimbursement of these fees and related costs pursuant to this Agreement and prior to the execution of a Lease Agreement shall not exceed \$1,000,000, with no minimum amount due or payable.

ARTICLE III **USE OF THE PROPERTY**

Section 3.1 Joint Use Agreement. YMCA and WCBE shall enter into a mutually agreeable joint use agreement (the "**Joint Use Agreement**"), regarding the use of the Property. The Joint Use Agreement shall provide, among other things, for YMCA and WCBE to jointly use the Property for YMCA After School and Summer Programs and other purposes, and for WCBE educational programming for WCBE students at the Elementary School. Key terms to be included in the Joint Use Agreement are indicated on **Exhibit D** attached hereto and made a part hereof, as such **Exhibit D** may be amended by mutual agreement of the Parties.

Section 3.2 Liability/Indemnification. To the extent permitted by law, the Parties shall be subject to those indemnity provisions set forth in the Lease Agreement and the Joint Use Agreement, as outlined on the Exhibits to this Agreement. YMCA shall use its best efforts to require all architects, engineers, surveyors, construction managers and other individuals or firms retained by YMCA to indemnify and hold harmless the Parties and Wake County from all claims arising out of their negligence or intentional misconduct.

Section 3.3 Insurance. The Parties shall be subject to those insurance provisions set forth in the Lease Agreement and the Joint Use Agreement. YMCA shall require all architects, engineers, surveyors, construction managers and other individuals or firms retained by YMCA for the design and construction of the Building to provide general liability, workers compensation and professional malpractice insurance when providing any services in any way related to the design or construction of the Building.

ARTICLE IV **MISCELLANEOUS**

Section 4.1 No Partnership Created. It is understood and agreed that no agreement of partnership is intended hereby and nothing herein shall be deemed or construed to render WCBE as the partner of YMCA, their successors and assigns, or constitute WCBE or YMCA as an agent of the other such as to permit or empower YMCA or WCBE to bind the other to financial or other obligations to third parties nor constitute or give rise to any joint ownership or joint venture in violation of any constitutional or other provision of North Carolina law.

Section 4.2 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successor and assigns.

Section 4.3 Amendment. This Agreement may be amended only by a written agreement executed by the Parties.

Section 4.4 Governing Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. All litigation arising out of this Agreement shall be commenced in the appropriate division of the General Court of Justice in Raleigh, North Carolina. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

Section 4.5 Entire Agreement. This Agreement contains the final, complete and exclusive statement of the agreement between the Parties with respect to the transactions contemplated herein and supersedes and replaces all prior or contemporaneous written or oral agreements with respect to the subject matter hereof.

Section 4.6 Notices. All notices, demands, requests for consents, consents and other communications required or permitted under the provisions of this Agreement (“Notice”) shall, unless otherwise specified, be in writing, sent by hand delivery or by certified first class mail, postage prepaid, with return receipt required, to the following addresses:

As to WCBE:

5625 Dillard Drive
Cary, North Carolina 27518
ATTN: Dr. James Merrill, Superintendent

With a copy to:

Tharrington Smith, LLP
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 1800
Raleigh, NC 27601
ATTN: Rod Malone

As to YMCA:

801 Corporate Center Drive, Suite 200
Raleigh, NC 27607
ATTN: Douglas W. McMillan, President and Chief Executive Officer

With a copy to:

McGuireWoods LLP
434 Fayetteville Street, Suite 2600
Raleigh, NC 27601

or to such other address or addresses in the United States and to such other persons as the party to whom the notice is sent shall have designated in writing in accordance with the provisions of this Section 4.6.

Section 4.7 Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or

remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 4.8 Approvals. For the purposes of this Agreement, whenever the approval or consent of WCBE is required hereunder, such consent or approval shall be deemed given only if in writing signed by the appropriate public official. Whenever the approval or consent of YMCA is required hereunder, such consent or approval shall be deemed given only if in writing signed by the appropriate officer.

Section 4.9 No Third Party Rights. Nothing contained in this Agreement is intended to create any rights or to otherwise benefit any parties other than WCBE and YMCA.

Section 4.10 Corporate Authority. By execution hereof, the person signing for his respective Party below certifies that he/she has read this Agreement and that he/she is duly authorized to execute this Agreement on behalf of his respective Party.

Section 4.11 Reserved.

Section 4.12 Termination. This Agreement shall terminate upon execution and delivery of the Lease Agreement and the Joint Use Agreement referenced herein, or either Party provides 30 days notice to the other Party that it does not intend to proceed with the Lease Agreement. In the event the Agreement is terminated, each Party shall be responsible for its proportionate share of the design, engineering, surveying and construction management preconstruction fees and related costs incurred by the YMCA, prior to the notice of termination in accordance with this section. If not sooner terminated, this Agreement shall terminate on December 31, 2018.

Section 4.13 Compliance with Applicable Laws. YMCA shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, YMCA shall not employ any individuals to provide services with respect to the School Portion or the Shared Space who are not authorized by federal law to work in the United States. YMCA represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. YMCA shall also require that its contractor (and will require the contractor to require its their subcontractors (of any tier)) remain in compliance with these laws at all times while providing contracted or subcontracted services in connection with this Agreement. YMCA is responsible for providing affordable health care coverage to all of its full-time employees providing services to the School Portion or the Shared Space. The definitions of “affordable coverage” and “full-time employee” are governed by the Affordable Care Act and accompanying IRS and Treasury Department regulations.

Section 4.14 Compliance with Iran Divestment Act of 2015. YMCA certifies that as of the date of this Agreement, YMCA is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. YMCA understands that it is not entitled to any payments whatsoever under this Agreement if this certification is false. The individual signing this Agreement certifies that he or she is authorized by YMCA to make the foregoing statement.

Section 4.15 Lunsford Act/Criminal Background Checks. YMCA acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being within 300 feet of a public school. Following occupancy of the School Portion of the Building by WCBE, YMCA shall provide certification that it has conducted sexual

offender registry checks on each of its owners, employees, agents or subcontractors who will engage in any service on or delivery of goods to the Building as part of YMCA's obligations pursuant to this Agreement (checks can be conducted at no cost at <http://www.nsopw.gov/>). YMCA shall not assign any individual to deliver goods or provide services in the Building following occupancy of the School Portion by WCBE if such individual appears on any of the listed registries.

Section 4.16 PPP Act. YMCA and WCBE each agree to comply with the requirements of the PPP Act in developing and constructing the Southeast Raleigh Development and the Building.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed under seal as of the day and year first above written.

ATTEST:

**THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF THE
TRIANGLE AREA, INC.**

By: _____
Douglas W. McMillan,
President and Chief Executive Officer

ATTEST:

**WAKE COUNTY
BOARD OF EDUCATION**

By: _____
Board Chairperson

Pre-Audit Certificate:

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act (G.S. § 115C-441).

By: _____
Finance Officer

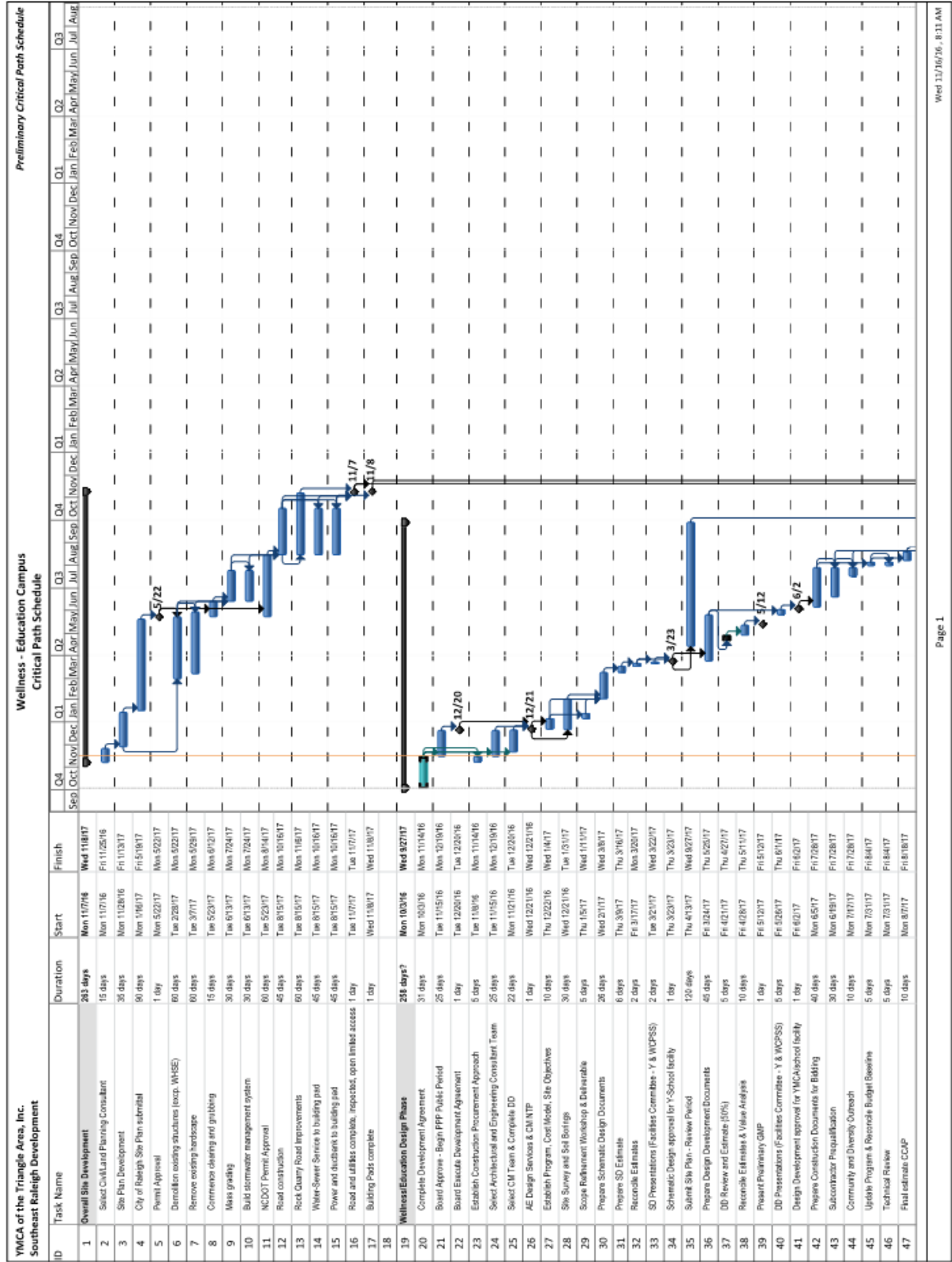
Date Signed: _____

Exhibit A
Preliminary Site Plan – YMCA and Elementary School



Exhibit B

Critical Path Schedule (2 pages)



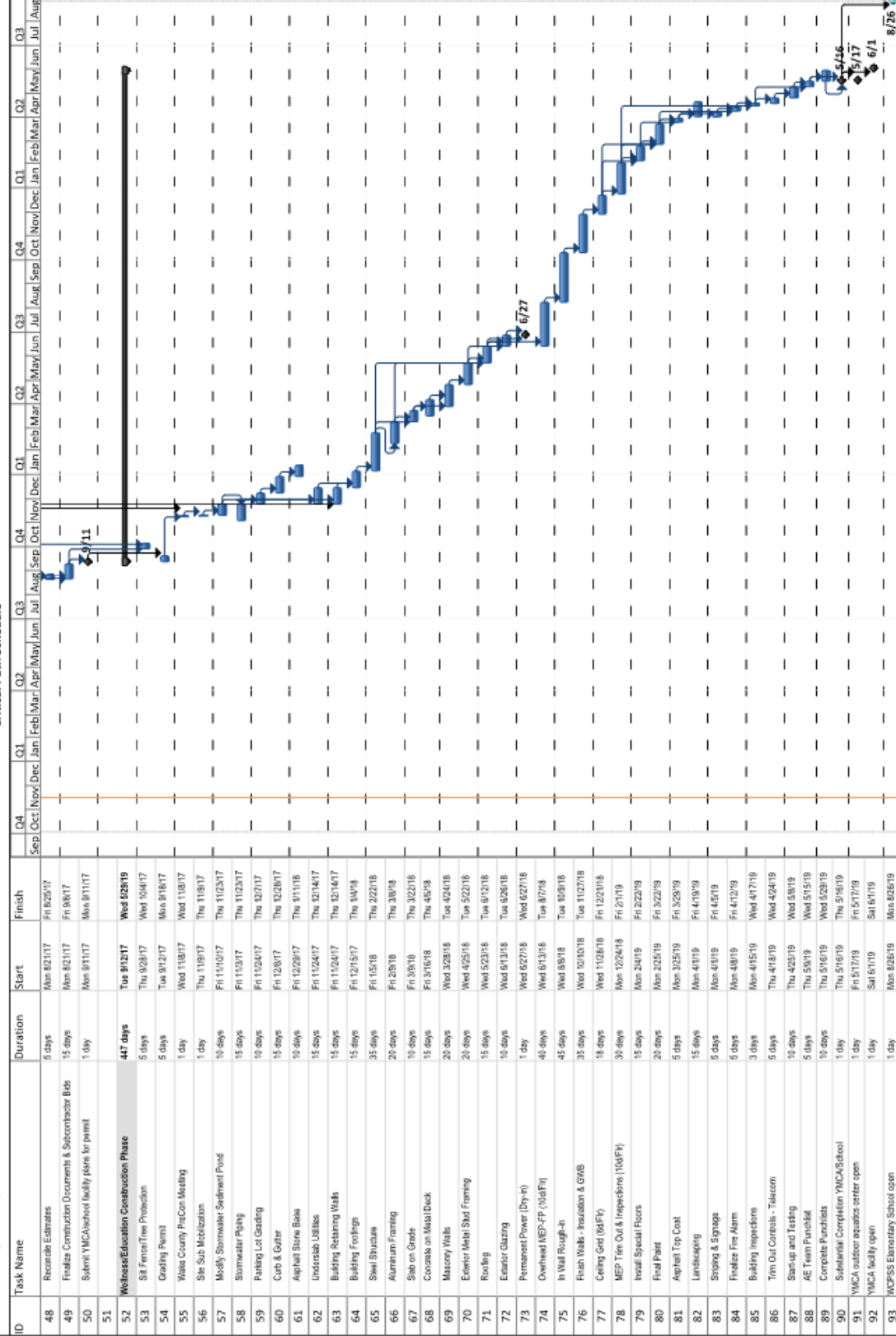


Exhibit C

Key Points of Lease Agreement

Lease Form:	Lease to WCBE for exclusive use of School Portion, subject to rights of YMCA to used Shared Space.
Term:	Initial Term of 20 years
Renewals:	Three renewable ten (10) year periods
Commencement Date:	Upon execution of the Lease
Building:	School Portion of approximately 75,000 SF; YMCA Portion of approximately 35,000 SF; Shared Spaces include Athletic Fields, Gymnasium, Multipurpose/Cafeteria/Stage, Instructional Kitchen, and four (4) classrooms.
Naming Rights:	Each party retains right to name the School Portion or YMCA Portion of the Building, as applicable, as well as space within such portions of the Building. YMCA retains right to name portions of YMCA Facility that are not part of the Shared Space unless agreed otherwise in writing.
Lease Payments:	See Exhibit E.
Operating Expenses:	WCBE share will be based on building area occupied and its proportionate use of the Property. The Lease Agreement shall have a provision allowing for WCBE's share of operation expenses to be equitably adjusted to account for changes in the building area occupied or the use of the Property.

Other Key Points:

1. Definition of Common Areas, and use by WCBE and YMCA as determined by Joint-Use Agreement.
2. Payment for use of Common Areas including (but not limited to) operations and maintenance, utilities, insurance, management, trash removal, janitorial maintenance and capital improvements reserve fund; may be funded annually or monthly.
3. Each party to pay for utility costs of its portion of the Building; Parties to determine proportionate allocation of utility costs of Shared Space and Common Areas.
4. WCBE will use the School Portion consistent with operation of a community responsive elementary school in the District.
5. Exhibits to Lease Agreement will include Site Plan, Floor Plans (including space allocations), Rules and Regulations.
6. The Lease Agreement shall not be assigned by YMCA without WCBE's written approval.
7. The Lease Payments shall not increase after execution of the Lease Agreement due to the failure to acquire or delay in acquiring NMTC for the construction of the Building.
8. Applicable WCBE policies shall apply to the School Portion of the Building and any shared space within the Building, and any adjacent amenities contained within the primary circulation roadway for the School at all times.

9. Lease will address contingencies for default by both Parties, including abatement of lease payment obligations and reimbursement of other damages caused by the delay in the completion of the Building.

Exhibit D

Key Points of Joint-Use Agreement ("JUA")

Mutual Interests:	<p>Quality educational and recreational programs for Wake County residents and WCBE students.</p> <p>Serve the needs of the community as identified by WCBE. A plan to address the needs would be incorporated into the educational program in partnership with the YMCA.</p> <p>Investment in education of elementary school students.</p>
YMCA Facilities:	<p>WCBE is entitled to use playing fields, playgrounds, and designated parking spaces (approximately 40 assigned spaces) during school hours and may arrange for use of same for school events during non-school hours; YMCA is entitled to use the same during non-school periods (specific hours and days to be specified, plus summer).</p> <p>YMCA will control access to and use of the aquatics center and may offer use by WCBE for educational programming.</p> <p>YMCA or its designee will manage ground level community gardens accessible to YMCA, WCBE, and other community partners.</p>
Space in Building:	<p>WCBE will have primary possession and control of School Portion and YMCA will have primary possession and control of YMCA Portion (floor plan Exhibit in JUA). The term of the joint use agreement shall run concurrently with the term of the lease.</p>
Programs:	<p>YMCA is exclusive provider of After School Program. In providing such After School Program, YMCA will be entitled to use the Shared Space within the School Portion during After School Program hours. YMCA will manage summer programming beginning one week after the end of the school year and ending one week prior to the start of the following school year; during such period YMCA will have access to the Shared Space within the School Portion. Any use of the School Portion outside of the Shared Space will be subject to WCBE standard practices for rental of space within an elementary school.</p> <p>WCBE and YMCA will cooperate in seeking to provide snacks and meals for YMCA After School Program and Summer Programming.</p> <p>WCBE shall be the only operator of an elementary school in the Building; the Parties acknowledge that YMCA intends to provide childcare and day camp on the Southeast Raleigh Development.</p>
Community Use:	<p>YMCA recognizes the statutory and WCBE requirements for community use of public schools (N.C.G.S. 115C-203) and will collaborate with WCBE for management of use of Shared Spaces by non-school community groups,</p>

except WCBE and YMCA shall have final decision making authority regarding the use of their respective portions of the Building.

YMCA acknowledges that N.C.G.S. 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being within 300 feet of a public school.

Academic Support:

Create a working group of WCBE, YMCA and community representatives that provides recommendations to WCBE in the following areas: Southeast Raleigh attendance zone; school advisory board; strategic staffing; community responsive educational model; and strategic community partnerships.

Facility Management:

Modifications to School Portion (i.e. enhancements, modifications, renovations, or new construction) can be planned and executed with mutual agreement and written approval of YMCA. Modifications of Shared Space in YMCA Facility will be planned and executed with mutual agreement and written approval of WCBE.

Each party will be responsible for providing security in the portion of the Building under its primary control; provided that, YMCA will provide security for Shared Spaces during After School Programming and Summer Programming.

YMCA maintains administrative control of the Building subject to WCBE's rights under the JUA and the Lease. YMCA shall be responsible for scheduling use of gymnasium, playing fields, and aquatics center. WCBE shall be responsible for scheduling use of cafeteria/multipurpose/stage, classrooms, instructional kitchen, and playgrounds. WCBE shall have access and use of the School Portion at all times subject to YMCA's rights under the JUA and the Lease.

Each Party agrees to pay for landscape maintenance and for maintenance of the parking lot and playing fields in an amount proportionate to its use of these amenities.

Other Key Points:

Subject to WCBE's rights under the Lease Agreement and JUA, YMCA will manage, coordinate, and schedule third party use of grounds (fields, gardens, pool, etc.) in context of the community purpose, including regular access by affordable housing residents, including pedestrian access, family recreation, etc.

Parties may collaborate in providing transportation for YMCA After School Program and Summer Program participants.

Exhibit E

Lease Payment Schedule

Lease Payments:

Lease Payments will be determined based upon WCBE's share of the actual cost of the Building Property and WCBE's allocated share of cost of development of the Southeast Raleigh Development and the Property. For illustrative purposes only, the WCBE's allocated share is \$18,528,786. This amount for illustrative purposes, the base Lease Payment would be calculated and paid as follows:

The initial \$1,000,000 for design/engineering included in the Development Agreement would be credited against total Lease Payments.

\$2.5 million would be paid upon commencement of Building construction.

\$2.5 million would be paid when Building construction is at 50% completion.

The remainder is due after WCBE's occupancy of the Building, to be defined at a minimum as such time that the building's architect has issued a certificate of substantial completion and WCBE can fully occupy the Building subject to delineated punch list items which do not prevent WCBE's use of the Building as a school. Based on a WCBE cost of \$18,528,786, after the payments listed above, the remainder is \$12,528,786 plus YMCA's actual construction period interest cost. Assuming a construction period interest cost of 4.25%, the balance owed at occupancy, including interest estimated at \$584,751, is \$13,113,537. This amount would be paid in two payments (90% at occupancy and an additional 7.5% after the punchlist items are completed, the permanent Certificate of Occupancy is obtained, and final payment is authorized under the construction contract). The remaining amount due under the Lease Agreement will be determined after an open book examination of the construction costs by a third party, and will be adjusted to take into account any allowances or contingency retained by or returned to YMCA as a result of such inspection; provided that, the parties anticipate that such inspection shall take place within three months of final completion. The remaining amount due under the Lease Agreement will also be adjusted to account for the reimbursement of sales tax paid by the YMCA.

Note that the Lease Payments set forth above do not include WCBE's share of ongoing Operating Expenses, which will be calculated as set forth in **Exhibit C** and paid over the life of the Lease.