

JOINT USE AGREEMENT
(SOUTHEAST RALEIGH PROJECT)

THIS JOINT USE AGREEMENT (this "Agreement"), dated as of _____, 2017, is made by and between THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE TRIANGLE AREA, INC., a North Carolina nonprofit corporation with its principal office at 801 Corporate Center Drive, Suite 200, Raleigh, North Carolina 27607 ("YMCA"), and THE WAKE COUNTY BOARD OF EDUCATION, a body corporate with its principal office at 5625 Dillard Drive, Cary, North Carolina 27518 and control and oversight over the Wake County Public School System ("Board", and together with YMCA, collectively referred to herein as the "Parties" and each sometimes individually referred to herein as a "Party").

WITNESSETH:

WHEREAS, the Parties are mutually interested in quality educational and recreational programs for Wake County residents and Wake County Public School System students; and

WHEREAS, the Parties have entered into a Development Agreement dated December 20, 2016 to develop YMCA facilities and a Board elementary school, both of which will be located at 1436 Rock Quarry Road in Raleigh, North Carolina; and

WHEREAS, the Parties have also entered into a Lease Agreement of even date herewith (the "Lease"), pursuant to the terms of which YMCA will construct certain facilities at the Property (as defined in the Lease) including a building of approximately 115,021 square feet in size, approximately 39,017 square feet of which will be used for a YMCA facility and approximately 76,004 square feet of which will be used for a Board elementary school as referenced in the Lease; and

WHEREAS, this Agreement is the Joint Use Agreement defined in the Lease, and will govern the joint use of the Board Space, YMCA Facility, the Common Areas, and the Shared Space (as each such term is defined herein) by YMCA and the Board as referenced in the Lease, including the Building, parking, fields, playgrounds and play equipment and the other facilities to be constructed by YMCA at the Property; and

WHEREAS, all non-Board use of any area in the Board Space to which the Board has any right to use as authorized by this Agreement or the Lease shall be governed by the liability limitations in N.C.G.S. Section 115C-524.

NOW, THEREFORE, in consideration of the above-stated desires and agreements of the Parties, YMCA and the Board hereby agree as follows:

1. Definitions.

(a) "Board Space" shall mean the "Premises" as defined in the Lease, and is the approximately 76,004 square feet in the Building as shown on Attachment A-1 hereto.

(b) “Building” means the building of approximately 115,021 square feet in size, which will include the Landlord Space, to be used as a YMCA facility, and the Board Space, to be used for the Elementary School, all to be constructed by YMCA at the Property.

(c) “Common Areas” shall have the meaning ascribed to it in Section 5.1 of the Lease.

(d) “Elementary School” means the elementary school to be operated by the Board at the Premises.

(e) “Landlord Space” has the meaning ascribed to it in the Lease, and is the approximately 39,017 square feet space in the Building shown on Attachment A-1 hereto.

(f) “Property” shall have the meaning ascribed to it in the Lease, as shown on Exhibit B to the Lease.

(g) “Shared Space” shall have the meaning ascribed to it in the Lease, as shown on Attachment A-2 hereto.

(h) “YMCA Facility” means the Landlord Space, consisting of approximately 39,017 square feet to be used by YMCA, as well as the parking areas, exits, entrances, access and perimeter roads, landscaping, playing field, playgrounds, playground equipment, community kitchen, outdoor pool, sidewalks and other facilities to be constructed by the YMCA at the Property.

2. Term. The term of this Agreement shall be commensurate with the term of the Lease, as amended from time to time.

3. Joint Use. This Agreement is the Joint Use Agreement defined in the Lease, and will govern the joint use by the Parties of the Building, including the Board Space, the Shared Space and the YMCA Facility, a portion of which will be included in the Common Areas. The framework for this Agreement is built on the traditional school calendar and bell schedule for the Board’s elementary schools. The Board reserves the right to change from the traditional school calendar if required to address space or instructional requirements. However, the Board shall not adopt a year-round school calendar, and the Board shall not adopt a modified school calendar without giving at least twelve (12) months’ written notice thereof to the YMCA and ensuring the YMCA’s use of the YMCA Facility and the Shared Space for at least eight (8) consecutive weeks during the months of June, July and August of each calendar year for the YMCA’s summer programs.

4. Property Exterior.

(a) Playing Field. The Parties shall each be entitled to use the playing field to be located at the YMCA Facility in the following manner:

(1) During the school year (i.e. from the first day of school in August until the last day of school in June), the Board shall be entitled to use the portion of the playing field designated for use by the Board for the Elementary School (hereafter referred

to as the “School Playing Field”) at all times that school is in session for students at the Elementary School. The School Playing Field shall not be available for use by the YMCA or any third party while school is in session for students at the Elementary School. The Board may place signs restricting access to the portion of the playing field designated for use by the Board for the Elementary School at such times.

(2) During the school year, YMCA shall be entitled to use the portion of the playing field (including the walking track adjacent to the School Playing Field) that is not the School Playing Field while school is in session only during the first 30 minutes after the start of the school day and 30 minutes prior to the end of the school day; provided that, the YMCA and the Board may mutually agree on use by the YMCA from time to time of that portion of the playing field that is not the School Playing Field for programs supervised by YMCA staff for children during other times when the School Playing Field is not in use by the Board.

(3) On days that school is not in session, YMCA shall be entitled to exclusive use of the playing field, except for scheduled school events.

(4) Should one Party desire to use the playing field during the other Party’s assigned time, the Party desiring to use the playing field shall schedule such use with the other Party.

(5) YMCA shall be responsible for scheduling and overseeing all third party use of the playing field outside school hours. YMCA shall be responsible for all third party use.

(6) The Parties shall endeavor to coordinate scheduling of special events during the school year so as to avoid conflict with community planned events. The Parties shall agree to a calendar designating school days and hours for the entire year for use of the playing field based on the calendar adopted by the Board prior to the beginning of each school year. The Parties acknowledge that the schedule of school days and hours may need to be amended during the school year to address inclement weather and other issues beyond the Board’s control.

(b) Playgrounds. The Board will manage public access to the playgrounds for pre-kindergarten, K-2 and 3-5, and the basketball goals located at the Property outside of the Building during school hours, and YMCA will control and manage public and third party access to playgrounds and basketball goals located at the Property during non-school hours and during summer camp. The Parties will coordinate playground access by the community at all times in compliance with N.C.G.S. 115C-524. The schedule for priority of use in Section 4(a) shall also govern the playgrounds and basketball goals.

(c) Pool. YMCA will be solely responsible for complete control and access to and use of the pool to be located at the YMCA Facility. The Board shall have no oversight, responsibility, maintenance or control of the pool.

(d) Parking. The Parties shall each be entitled to use the parking spaces to be located at the Property in the following manner:

(1) The Board shall be allocated a minimum of 72 parking spaces (the “Board Spaces”), during school days and in-service days in reasonable proximity to the main entrance to the Building. Said allocated spaces shall be signed to indicate the daily time periods when spaces are reserved for Board use.

(2) YMCA also have the right to use the Board Spaces except at times posted for use by the Board or when required for Board scheduled school events.

(3) The Board (including visitors to the Elementary School) shall be entitled to use spaces other than Board Spaces at all times.

(4) The Parties agree that they will work together to coordinate the scheduling of events to avoid exceeding the available parking or creating obstructions to YMCA member access and school activities.

5. Division of Space.

(a) Except as specifically provided in this Agreement, the Board shall have exclusive possession and use of the Board Space, and the Board will operate the Elementary School and its associated programs in the Board Space and the Shared Space.

(b) Except as specifically provided in this Agreement, YMCA shall have exclusive possession and use of the Landlord Space.

(c) The Board and YMCA will both have access to and use of the Shared Space. Scheduling for use of the Shared Space shall be in accordance with the responsibility matrix outlined in Attachment B hereto (the “Responsibility Matrix”). Each Party shall be responsible for providing security for the Shared Space during the times of its use of such Shared Space.

(d) YMCA agrees that it will not post any signs, art or other material promoting or endorsing religion in any Shared Space, the playgrounds or in any other area that will be used by the Board on a regular basis.

6. After School Program. The Board hereby agrees that YMCA will be the exclusive provider for the after school program in the Building for students in the Elementary School (the “After School Program”). This program is planned to occur each school day when students are present, from the end of the official school day until 6:00 pm. YMCA is hereby granted permission to provide the After School Program in that portion of the Shared Space consisting of Room 1002 (PE/Gym), the cafeteria, the platform, the commons areas adjoining the community kitchen and four (4) classrooms located in the Board Space (collectively, the “Shared Program Space”) unless, due to another school function, the Board requires the After School Program to relocate to other rooms in the Board Space. The Board will provide YMCA with reasonable notice of any requirement to relocate the After School Program. In addition, the After School Program may utilize the playing field referenced in Section 4(a). The After School Program will serve children from the Elementary School as well as children transported to the site from other schools. Based on historical YMCA statistics, the After School Program can serve up to 250 youth. YMCA will pay all costs to run the After School Program (other than costs of cleaning and maintaining that portion of the Shared Space in the Board Space used for the After School Program, which will be

allocated as set forth in the Lease). Notwithstanding the foregoing, the Board shall remain responsible for managing the use and scheduling of the Board Space during the After School Program. Prior to the beginning of each school year, the Parties will discuss whether the Board or its designee will sponsor snacks for the After School Program.

Because YMCA will be providing the After School Program through a contract with the Board and such services may be reasonably attributed to the Board, YMCA agrees that it will not promote, endorse, sponsor, advance, criticize or denigrate religion in any way during the After School Program.

7. 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, YMCA shall be entitled to use the Shared Program Space for its YMCA summer day camp program (the "Summer Program"). The YMCA and Board shall work together in good faith to coordinate times for the Board to use the cafeteria that is part of the Shared Space during the summer when needed for teacher training or staff meetings. The Parties may annually establish a provision for the Board or its designee to sponsor meals for the Summer Program.

YMCA promotional materials for the Summer Program shall state that the Summer Program is not sponsored by the Board. The Summer Program will serve children from the Elementary School as well as children from the surrounding area. YMCA will pay all costs to run the Summer Program. Notwithstanding the foregoing, the Board shall remain responsible for managing the use and scheduling of the Board Space during the Summer Program, in coordination with YMCA.

8. Operations.

(a) Facility Security. YMCA agrees that during the After School Program, the Summer Program and any other use of the Board Space it will abide by any and all security measures concerning use of the Board Space set forth by the Board and/or the administration of the Elementary School and prior reasonable written notice of which is given to YMCA. Each of the Board and the YMCA shall be allowed to place security cameras in sufficient locations throughout the Building and exterior areas of the Building reasonably necessary to monitor the activities of its respective students, members, employees and invitees; provided that, the YMCA acknowledges and agrees that the Board will be solely responsible for placing and monitoring security cameras in the Shared Space located in the Landlord Space. All information captured on such security cameras shall be the property of the Party collecting such information, and will be shared with the other Party as requested, to the extent allowed by state and federal law.

(b) Administrative Control. YMCA shall have administrative control of the Building, subject to the Board's rights under this Agreement and/or the Lease at all times. The Parties agree to meet a minimum of three (3) times a year to inspect the Shared Space and the Common Areas, and to coordinate usage and maintenance schedules. The YMCA shall be solely responsible for and have administrative control over the pool at all times.

(c) Scheduling. Scheduling for use of the Property, including the Building, shall be in accordance with the responsibility matrix specifically outlined in Attachment B hereto (“Responsibility Matrix”).

(d) Transportation. The Parties will annually discuss the provision by the Board of transportation for the After School Program and the Summer Program.

(e) Use of Board Space. YMCA shall ensure that any Shared Space located in the Board Space or in any other portions of the Board Space that are used during the school year are returned to the condition that existed prior to YMCA use, including returning all desks and other furnishings to their original location. The YMCA shall not erase or remove any information contained on any marker boards without the written permission of the classroom teacher or the principal. The YMCA shall not use any electronic equipment, including any projectors, televisions, computers or monitors, owned by the Board in any Elementary School classroom or other educational space under any circumstances.

(f) Officers. Board acknowledges that YMCA may require that a uniformed police officer or sheriff’s deputy be present during the After School Program and the Summer Program, in which event YMCA shall be responsible for any required payments for such officer’s or deputy’s service during the After School Program or the Summer Program.

(g) Supervision. YMCA agrees to provide supervision by appropriate trained staff of participants in the After School Program, the Summer Program and at any other time that the YMCA is using Board Space. YMCA will assume full responsibility for payment of damages to school property and/or owned equipment that occurs during the YMCA’s use of Board Space that is caused by YMCA personnel, agents, invitees, or program participants, but will not be responsible for any such damage that is caused by Board personnel, agents, licensees or invitees, natural disasters or acts of God.

(h) Wi-Fi. The YMCA shall ensure at its expense that any Wi-Fi system it provides or makes available for its staff or patrons shall contain the same or better security used by the Board to prevent and restrict access to its Wi-Fi system and to sites that would be inappropriate for children.

(i) Board Policies. Each Party acknowledges that the other Party has established policies regarding conduct while on property owned or leased by it, and agrees to abide by such policies at all times when accessing or using the other Party’s space. The YMCA acknowledges that the Board’s policies are available for review and inspection on the Board’s website.

9. Indemnification by YMCA. Except for any claims, damages, liabilities or expenses arising from or out of the negligent or willful acts or omissions of the Board, its employees, agents, volunteers or contractors, YMCA hereby agrees to indemnify and hold the Board harmless from any and all claims, damages, liabilities or expenses arising out of (i) any and all claims by third parties arising from any breach or default in the performance of any obligation of YMCA under this Agreement, (ii) negligence or willful acts or omissions (where there was an obligation for YMCA to act) of YMCA, its agents, volunteers or employees, or (iii) the injury to, or death of,

any persons or damage to, or destruction of any property occurring on the Property (including without limitation at the outdoor pool to be located on the Property) directly caused by YMCA, its agents, volunteers or employees.

10. Indemnification by the Board. To the extent allowed by law and except for any claims, damages, liabilities or expenses arising from or out of the negligent or willful acts or omissions of YMCA, its employees, agents or contractors, the Board hereby agrees to be responsible for any and all claims, damages, liabilities or expenses arising out of (i) any and all claims by third parties arising from any breach or default in the performance of any obligation of the Board under this Agreement, (ii) negligence or willful acts or omissions (where there was an obligation for the Board to act) of the Board, its agents or employees or (iii) the injury to, or death of, any persons or damage to, or destruction of any property occurring at the Property directly caused by the Board, its agents or employees.

11. E-Verify. Each party understands that “E-Verify” is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. Each party agrees to use E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended, and each party will require any subcontractor that it uses in connection with the transactions contemplated herein to certify to such subcontractor’s compliance with E-Verify.

12. Notices. Any notice, if mailed by certified mail return receipt requested and properly addressed at the address set forth above with postage prepaid or sent by an overnight delivery service (Federal Express or other nationally recognized overnight delivery service) and properly addressed at the address set forth above shall be deemed given when received.

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

14. Amendment. This Agreement may be amended only by a written agreement executed by the Parties hereto.

15. Recording. The parties agree that this Agreement will not be recorded in the office of the Register of Deeds of Wake County.

16. Severability. The provisions of this Agreement are independent covenants and should any provision or provisions contained in this Agreement be declared by a court of other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.

17. Governing Law. This Agreement shall be interpreted and construed in accordance with the substantive laws, as opposed to the laws with respect to conflicts of law, of the State of North Carolina.

18. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

YMCA:

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

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

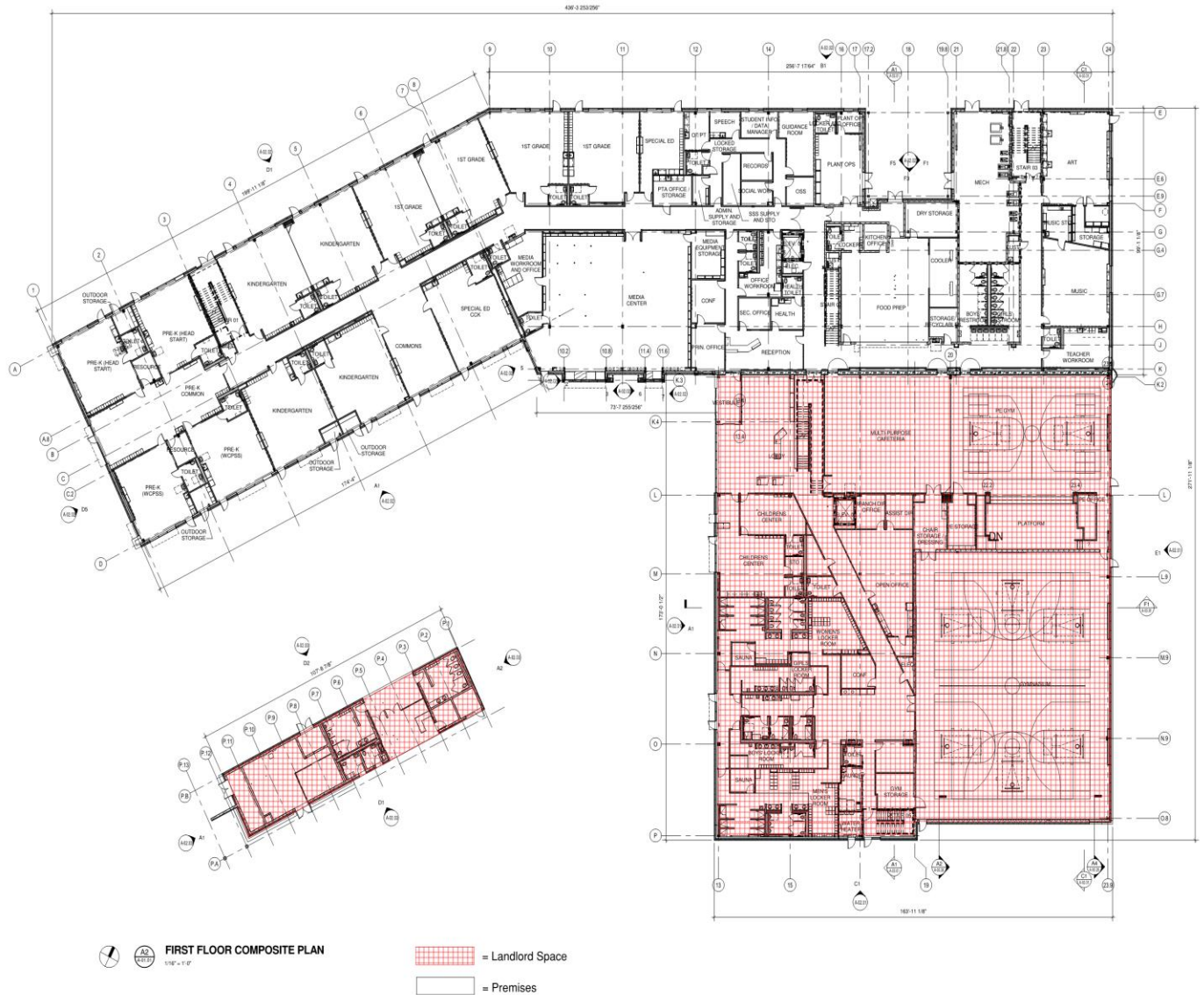
Board:

WAKE COUNTY BOARD OF EDUCATION

By: _____
Name: _____
Title: _____

ATTACHMENT "A-1"

Board Space (marked "Premises") and Landlord Space— Level 1

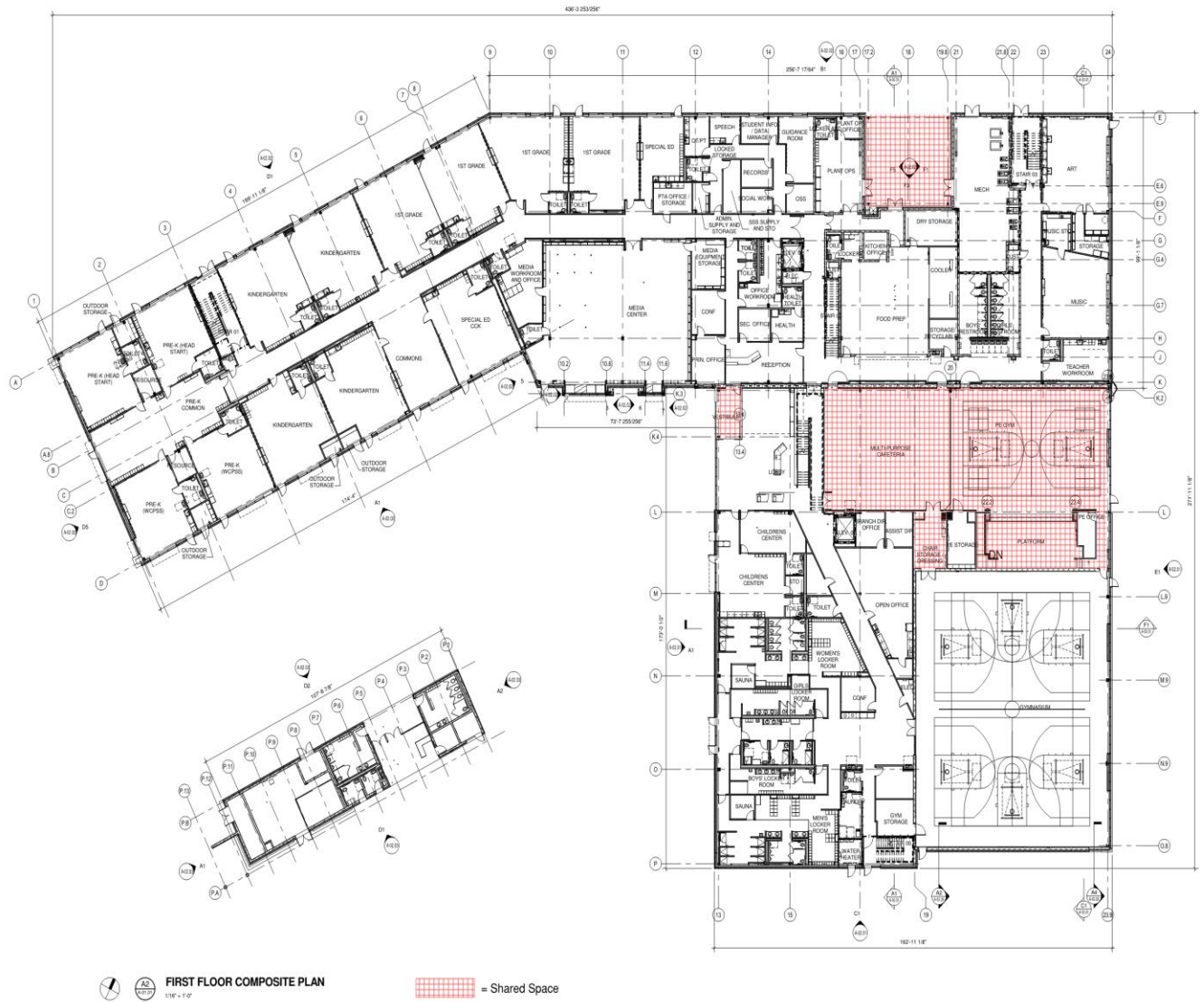


ATTACHMENT "A-1"

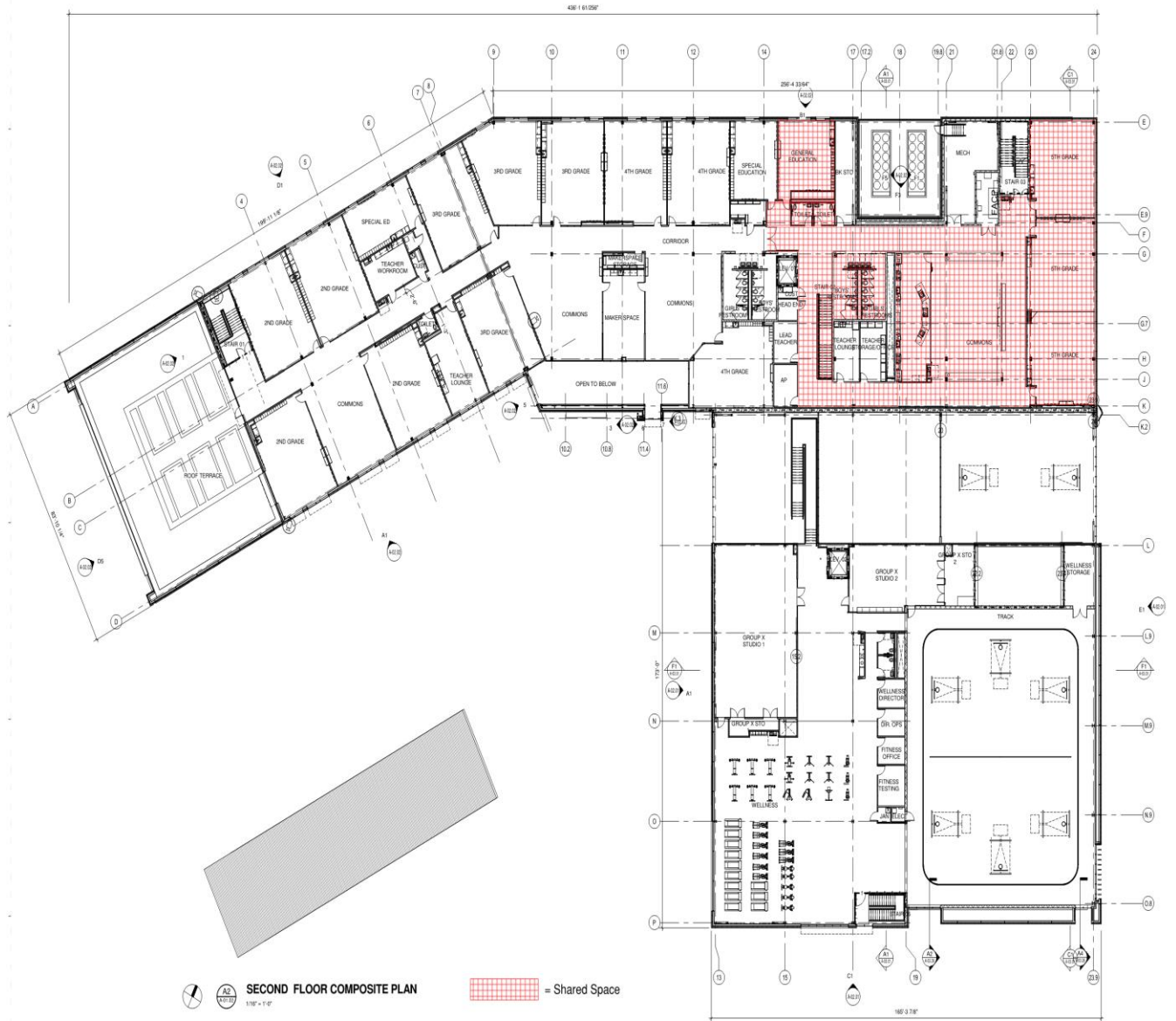
Board Space (marked "Premises") and Landlord Space – Level 2



Shared Space – Level 1



Shared Space – Level 2



ATTACHMENT 'B'

RESPONSIBILITY AND UTILIZATION MATRIX

The following table assigns primary (P), and, where applicable, secondary (S) responsibility for various activities at the Property. In addition, it sets forth the times during which the Board or YMCA, as applicable, has the right to use certain Shared Space and Common Areas.

Activity		Responsibility		
		YMCA	Board	Joint
Maintenance (1)				
1	Exterior and Interior of Building	P		
2	Landscaping of common areas (including field)	P		
3	Housekeeping / janitorial / custodial responsibilities	P	P	
4	Preventive Maintenance	P		
5	Maintenance and Repairs	P		
6	Routine Inspections	P	S	
Management				
1	Facility Director - building operations	P	S	
2	Master calendar for use of building areas			P
3	Develop annual operating budget (M&O)			P
Security				
1	Security Services (personnel)	S	P	
2	Access Control	P	S	
3	Camera Monitoring			P ₍₁₎
4	Policies and Procedures			P
Operations / Use				
1	Physical Education (educator & curriculum): Fee based from first day of school (August) through last day of school (June)*		P	
2	Transportation (vehicles, drivers and coordination):	YMCA Activities	Board Activities	
3	Use of School Playing Field: Physical Education, Recess, Sports. First day school (August) through last day school (June)*	"E" below	"D" below	
4	Use of non-school portion of playing field: First day of school (August) through last day of school (June)	"A" below;	"B" below	
5	Use of all portions of playing field in summer from last day of school in June to first day of school in August	(all times)		
6	Room 1002 (PE/Gym): First day school (August) through last day school (June)*	2:30 p.m. to 10:00 p.m.**	"D" below	
7	Room 1002 (PE/Gym): Summer Day Camp from one week following school closing to one week prior to school opening.	(all times)		
8	Cafeteria: Student meals and after school rides out assembly. First day school (August) through last day school (June)*	"C" below	"D" below	
9	Cafeteria: Summer Day Camp from one week following school closing to one week prior to school opening.	(all times)		
10	Commons Area adjoining the Community Kitchen: First day school (August) through last day school (June)*	"C" below	"D" below	
11	Community Kitchen: First day of school (August) through last day of school (June)*	(all times)		

Activity		Responsibility		
		YMCA	Board	Joint
12	Community Kitchen and Commons: Summer Day Camp from one week following school closing to one week prior to school opening.	<i>(all times)</i>		
13	Classrooms (4): First day school (August) through last day school (June)	<i>"C" below</i>	<i>"D" below</i>	
14	Classrooms (4): Summer Day Camp from one week following school closing to one week prior to school opening.	<i>(all times)</i>		

* Note - Subject to schedule changes pursuant to Section 4(a)(6).

- (1) YMCA shall be responsible for Landlord Space, and Board shall be responsible for the Board Space, except that Board shall provide security cameras in Shared Space located in the Landlord Space.
- (A) YMCA shall have use until 30 minutes after the school day starts for students and starting 30 minutes prior to the end of the school day through 10:00 p.m.
- (B) Board shall have use 30 minutes after the start of the school day for students until 30 minutes prior to the end of the school day for students.
- (C) 30 minutes after the school day ends for students until 10:00 p.m.
- (D) During the school day for students.
- (E) After the school day ends for students.

** YMCA and Board agree to cooperate and collaborate in the event that Room 1002 (PE/Gym) is needed for School events or activities, and to make alternative space available to the YMCA for after school care during such times.