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[Presented in Wake County Agenda for January 16, 2018]

**LEASE AGREEMENT**

**between**

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

as Landlord

**and**

**THE WAKE COUNTY BOARD OF EDUCATION,**

as Tenant

\_\_\_\_\_, 2018

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (hereinafter the “Lease”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE TRIANGLE AREA, INC., a North Carolina nonprofit corporation (“Landlord”), and THE WAKE COUNTY BOARD OF EDUCATION, a body corporate with control and oversight over the Wake County Public School System pursuant to N.C.G.S. §115C-40 (“Tenant”).

### **ARTICLE I** **DEMISE OF PREMISES**

1.1 **Premises.** For and in consideration of the covenants and agreements contained herein and other valuable consideration, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the following terms and conditions, a portion of a building containing a total of 115,021 square feet (“Building”) consisting of 76,004 square feet (“Premises”) as shown on the site plan attached hereto as Exhibit “A” (“Site Plan”) and floor plan attached hereto as Exhibit “A-1” (“Floor Plan”) for the operation of an elementary school (the “School”), and by these references made a part hereof, and located on an approximately 18.758-acre parcel of land more particularly described on Exhibit “B” attached hereto and by this reference made a part hereof (the “Property”), which is located at 1436 Rock Quarry Road in Raleigh, North Carolina, commonly referred to as Southeast Raleigh Development. The remaining 39,017 square feet of the Building shall be referred to hereafter as the “Landlord Space”. The portion of the Building which will be subject to shared use by Landlord and Tenant as set forth herein is shown in the floor plan attached hereto as Exhibit “A-2” (“Shared Space”).

### **ARTICLE II** **DELIVERY OF PREMISES**

2.1 **Landlord’s Work.** Landlord, at its sole cost and expense, shall perform, or cause to be performed, all of the design, permitting, alterations, and construction to be installed in the Premises and in accordance with (i) the floor plan and elevations set forth in Exhibit A-1 attached hereto and (ii) the scope of work attached hereto as Exhibit “C” (the “Landlord’s Work”). Landlord and Tenant shall work together in good faith to establish a construction schedule which accurately sets forth the timing for completion of Landlord’s Work by Landlord and delivery of the Premises to Tenant on or about July 1, 2019 (the “Delivery Date”), and shall use their commercially reasonable best efforts, subject to Unavoidable Delays, to meet such schedule. Landlord shall deliver exclusive possession of the Premises to Tenant upon Substantial Completion (as defined below) of Landlord’s Work, and upon Substantial Completion of Landlord’s Work, Tenant agrees to accept possession of the Premises and to proceed with due diligence to perform any work required for Tenant to install its fixtures, furniture, and equipment in the Premises. “Substantial Completion” of Landlord’s Work shall mean the stage in the progress of the Landlord’s Work when the Landlord’s Work in the Premises is sufficiently complete in accordance with the Construction Contract (as defined in Exhibit “C”) and as certified by the Architect (as defined in the Construction Contract), so that the Tenant can occupy or utilize the Premises for its intended use, with all of the parts and systems operable as required by the Construction Contract. The Landlord acknowledges and agrees that the intercom, telephone, data security, and MATV systems are required for the Tenant’s use of the Premises for its intended purpose. The Tenant’s occupancy of incomplete work shall not alter the Contractor’s responsibilities pursuant to this paragraph.

Landlord shall give Tenant at least thirty (30) days’ prior written notice of the date on which Landlord will accomplish Substantial Completion of Landlord’s Work (“Notice of Substantial Completion”). Landlord and Tenant will schedule the date for an inspection of the Premises within five (5) business days after delivery of the Notice of Substantial Completion, and after said inspection has occurred,

Tenant shall prepare a list of defects and omissions in the Landlord's Work (the "Punchlist") for Landlord to complete. Landlord shall complete any material Punchlist items that would prohibit Tenant from commencement of Tenant's Work in the Premises prior to the Delivery Date. All minor Punchlist items shall be completed within twenty (20) days after Landlord's receipt of the Punchlist. If Landlord shall fail to complete all Punchlist items (as reasonably determined by Tenant) within said twenty (20) day period after preparation of the Punchlist, Tenant shall have the right, to complete the Punchlist on behalf of Landlord, and deduct any actual expenditures associated therewith from Rent (as defined herein) until such amounts are paid in full. In addition, following receipt of the Notice of Substantial Completion, Tenant shall have the right to enter upon the Premises in order to perform any work required for Tenant to install its fixtures, furniture, and equipment in the Premises and to begin the Tenant's Work, as defined in Section 2.2. Tenant and Landlord shall cooperate in providing Tenant such access to the Premise and the performance of Tenant's Work so as not to interfere with Landlord's completion of the Punchlist. In addition, Landlord shall notify Tenant when it receives a Temporary Certificate of Occupancy for the Premises in order to permit Tenant, its agents, employees contractors, to install intercom, telephone data security, building automation systems, MATV and other educational operational systems for the Tenant's use of the Premises for its intended purpose.

2.2 Tenant's Work. "Tenant's Work" as used herein shall mean all finishing work required for Tenant to operate in the Premises, in Tenant's reasonable discretion, other than Landlord's Work. Tenant's Work shall be performed in compliance with any and all governmental codes, ordinances, requirements and required approvals. Landlord and Tenant agree, as required, to cooperate promptly to make any and all applicable applications for permits, licenses, and approvals as may be necessary for the completion of Landlord's Work and Tenant's Work and to allow Tenant to open its elementary school to the public in the Premises for the 2019-20 traditional school year.

### **ARTICLE III** **LEASE TERM**

3.1 Term. The "Term" of this Lease shall commence on the Effective Date. The Lease shall expire on the last day of the twentieth (20th) Lease Year following the Delivery Date ("Original Term") unless extended as provided in Section 3.2. "Lease Year" shall mean a twelve (12) month period beginning on the Delivery Date and terminating in the succeeding year on the last day of the month in which the Delivery Date occurs, and on the same day each year thereafter during the Term. The period of time, if any, between the Delivery Date and the first day of the month immediately following the Delivery Date shall be considered to be a part of the first Lease Year.

3.2 Extension Options. Tenant shall have the option to extend the Term of the Lease for three (3) additional successive periods of ten (10) years each (each, an "Option Term", and collectively referred to as, the "Option Terms"). Tenant shall exercise each Option Term by giving Landlord written notice of its intent to exercise such right at least ninety (90) days prior to the expiration of the Term immediately preceding such Option Term. The Option Terms shall be on the same terms and conditions as provided herein, except that the Base Rent (as defined below) shall be one dollar (\$1.00) per month as provided herein. The Original Term and Option Terms shall hereinafter sometimes collectively be referred to as, the "Term".

### **ARTICLE IV** **RENT**

4.1 Rent. Except for "Tenant Improvement Costs" (as hereinafter defined), "Rent" shall include all amounts and charges advanced by Landlord and to be reimbursed by Tenant under any provision of this Lease, including but not limited to, reimbursement for Common Area Charges, Real Estate Taxes,

if any, and insurance cost as set forth herein, and shall include any taxes imposed by the State of North Carolina on the Rent and other charges due hereunder. Such sums are designated as “additional Rent” hereunder solely for the purpose of enabling Landlord to enforce its rights hereunder. Such sums shall not be deemed Rent for purposes of computing taxes.

Landlord and Tenant have agreed that Tenant shall pay Tenant Improvement Costs based on Tenant’s share of the actual cost of the Building and its allocated share of cost of development of the Property (the “Total Tenant Improvement Costs”). Such Total Tenant Improvement Costs are detailed on Exhibit “G”, and will be finally determined based on the guaranteed maximum price (“GMP”) in the Construction Contract, the actual cost of construction period interest, and sales tax rebates, all as indicated on Exhibit “G” and in the chart below; provided that, the Total Tenant Improvement Costs shall not exceed \$18,528,786 unless such increased Tenant Improvement Costs are a result of change orders under the Construction Contract agreed to by Landlord and Tenant. Tenant agrees to pay the following amounts as Tenant Improvement Costs and Base Rent for the Original Term in strict accordance with the terms and provisions of this Article IV:

<u>Original Term Payment Dates</u>	<u>Tenant Improvement Costs</u>
Upon commencement of Building construction after a building permit has been issued (“Tenant Commencement Payment”)	\$2,500,000.00
Paid when Building construction is at 50% completion, as certified by the Architect (the “Tenant Mid Point Payment”)	\$2,500,000.00
Paid when Architect has issued a certificate of Substantial Completion (the “Substantial Completion Payment”)	An amount equal to 90% of the remaining Tenant’s share of construction cost plus construction period interest as modeled at an assumed rate of 4.5%, less amounts previously paid, including costs paid by Tenant under the Development Agreement
Paid upon completion of Punch List items, the permanent Certificate of Occupancy is obtained and final payment is authorized by the Architect under the Construction Contract	An amount equal to 7.5% of Tenant’s share of construction cost plus actual construction period interest paid, calculated at LIBOR plus 0.75%, less amounts previously paid

Tenant's initial payment of \$1,000,000.00 (or such amount as was actually paid by Tenant under the Development Agreement) (the “Design Funds”) for design, engineering, surveying and construction management pre-construction fees and costs with respect to the Building, as set forth in the Development Agreement dated December 20, 2016 between Landlord and Tenant shall be credited against the total amount of the Tenant Improvement Costs at the time of the Substantial Completion Payment, as set forth in the chart above.

The final payment of the Tenant Improvement Costs allocated to the Tenant 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 tax credits (other than new markets tax credits), allowances or contingency retained by or returned to Landlord as a result of such inspection; provided that, the parties anticipate that such inspection

shall take place within three months of final completion. Such adjustment will take into account actual financing charges paid and reimbursement of sales tax paid by the Landlord.

During the initial Term and any Option Term, Tenant agrees to pay a Base Rent of one dollar (\$1.00) per month.

Landlord has agreed to provide funding for its proportionate share of the Building, as set forth on Exhibit "G". The obligations of Tenant to perform any of the terms and conditions of this Lease including, payment of Base Rent are subject to the Landlord completing any required financing and/or having sufficient funds necessary for it to fully comply with Section 2.1 of this Lease on or before the date Base Rent is first due from Tenant to Landlord hereunder.

4.2 Payment of Rent. During the Term, Tenant covenants and agrees to pay to Landlord, without demand, deduction or setoff, except as expressly set forth herein, all Rent as defined in Section 4.1 above. Except as expressly set forth herein, Rent for the Original Term shall be payable as provided in Section 4.1 above, and during the Option Terms, in advance, on the first (1st) of each and every calendar month during the Term commencing on the first day immediately following the last day of the Original Term. If the first day of the Option Term does not fall on the first day of a calendar month, the Rent for such month shall be prorated appropriately. Landlord's address for Rent payments shall be as set forth in Section 18.4. At Tenant's election, Tenant may prepay Rent during the Option Terms on an annual basis.

4.3 Late Rent. If Tenant shall fail to make any payment of undisputed Rent within ten (10) days after a notice of delinquency is received by Tenant, Tenant shall pay a late fee equal to five percent (5%) of the amount past due, it being understood that said amount shall constitute liquidated damages and shall be for the purpose of reimbursing Landlord for additional costs and expenses which Landlord presently expects to incur in connection with the handling and processing of late Rent payments. The payment of the above listed amount is in addition to any other remedy provided in this Lease.

## **ARTICLE V** **COMMON AREAS**

5.1 Common Areas. The "Common Areas" shall include the structural portions of the Building (including the roof, exterior walls, and those areas within the Property which house mechanical, electrical or other equipment or are otherwise determined at any time by Landlord to be used in operating or maintaining the Property), parking areas, exits, entrances, access and perimeter roads, landscaping, playing fields, playgrounds and equipment, lobby, vestibules, administration and sidewalks located at the Property. No provision of this Lease shall be construed as a demise to Tenant of other areas of the Property, including the outdoor pool. The use by Landlord and Tenant of the Common Areas and other portions of the Property, including the Shared Space, are further subject to a Joint Use Agreement of even date herewith and attached hereto as Exhibit "F" as such agreement may be amended from time to time.

5.2 Common Area Charges. "Common Area Charges" shall include (1) all of the costs and expenses paid or incurred by Landlord in or for operating, maintaining, and repairing the Common Areas, including without limitation costs and expenses for building floor care, athletic facilities maintenance, elevator maintenance and repairs, HVAC preventative maintenance and repairs/replacement, electrical repairs/replacement, concrete/asphalt maintenance and repairs, pest management, landscaping, grass cutting, snow removal, de-icing walkways, security and fire alarm system repairs and monitoring, painting, roof repairs and maintenance, doors, locks and window repairs, interior repairs to walls and ceilings, HVAC repairs and replacements, window and door repairs and replacement, other interior and exterior building repairs, building inspections as required by governmental authorities, and State inspections to include boilers, compressed air vessels and elevators; (2) all utilities allocable to the Common Areas; (3) third party

insurance premiums for policies insuring the Property; (4) commercially reasonable compensation paid to and expenses of “in-house” property management personnel who perform duties in connection with the operation, maintenance, and repair of the Property; and (5) trash removal. Common Area Charges shall not include janitorial, depreciation or amortization of costs required to be capitalized in accordance with generally accepted accounting practices. Common Area Charges shall not include amortization of capital improvements made subsequent to the initial development of the Building on the Premises unless agreed upon between Landlord and Tenant. Any expenses associated with repairs and/or replacement for the Common Area Charges that would result in a charge to Tenant in excess of \$10,000 for any one repair or replacement shall require consultation with Tenant and approval by Tenant prior to such repair or replacement. Landlord shall use best business practices in repairing any of the items listed in Section 5.2. Further, Common Area Charges shall not include, and Tenant shall not be obligated to reimburse Landlord for (1) costs incurred by Landlord for the repair of damage to the Property to the extent that Landlord is reimbursed by insurance proceeds, (2) costs associated with the operation of the business of the Landlord as distinguished from the costs of operation of the Property, including financial accounting and legal matters, (3) interest, principal, points and fees of any mortgage or mortgages or any other debt instrument encumbering the Property, or (4) any operating costs or expenses that Landlord incurs with respect to any land or improvements outside of the Property.

5.3 Payment of Common Area Charges. Tenant will reimburse Landlord for Tenant’s Proportionate Share (as defined below) of the Common Area Charges as provided herein. From and after the Delivery Date, on the first day of each month of the Term, Tenant shall pay to Landlord an amount equal to one-twelfth (1/12) of Tenant’s Proportionate Share of the estimated annual cost of the Common Area Charges. The Common Area Charges for the first Lease Year of the Term is estimated to be \$170,775 per year or \$14,231 per month, which is based on \$2.25 per square foot. The initial monthly payments are based upon the estimated amounts for the year in question, and shall be increased or decreased annually to reflect the projected actual cost of all such items. Within ninety (90) days after each calendar year, or as soon as reasonably practical but in no event later than one hundred twenty (120) days after each calendar year, Landlord shall provide an annual statement (the “Statement”) showing in reasonable detail the Common Area Charges theretofore incurred for that calendar year. If the Statement indicates that Tenant’s total payments are less than its Proportionate Share of the Common Area Charges, Tenant shall pay the difference to Landlord as additional Rent within thirty (30) days after receipt of notice. If the Statement indicates that Tenant’s total payments are more than its Proportionate Share of the Common Area Charges, Landlord shall retain such excess and credit it against Tenant’s next monthly installments of Rent, provided however that any monies left at the end of the Term shall be immediately refunded to Tenant. For purposes hereof, the Tenant’s “Proportionate Share” of the Common Area Charges other than with respect to the playing fields and playgrounds shall be 66% and Tenant’s Proportionate Share of the Common Area Charges with respect to the playing fields and the playgrounds shall be 25%.

5.4 Janitorial Services. Landlord shall be responsible for providing janitorial services for the Landlord Space, and Tenant shall be responsible for providing janitorial services in the Premises. Janitorial services shall include deep cleaning of floors and carpets in accordance with Landlord’s and Tenant’s customary practices for similar space. Landlord agrees that, with respect to the Shared Space located in the Landlord Space, it will abide by the standards and requirements for janitorial services that are followed by Tenant in cleaning the Premises. Tenant shall provide written evidence of such requirements to Landlord.

## **ARTICLE VI**

### **TAXES**

6.1 Real Estate Taxes. For purposes hereof, the term “Real Estate Taxes” shall mean and include all real property taxes and assessments levied or assessed upon the Premises. Tenant recognizes and acknowledges that during the Term of the Lease, there may be imposed new forms of taxes,

assessments, charges, levies or fees, or that there may be increases levied in connection with the ownership, leasing, occupancy or operation of the Premises. Landlord shall provide a copy of any tax bill to the Tenant within sixty (60) days of receipt of the tax bill. Notwithstanding anything contained herein to the contrary, the following shall be excluded from Real Estate Taxes payable by Tenant: (1) franchise, corporation, income or net profits tax, unless substituted for real estate taxes, which may be assessed against Landlord or the Premises or both, (2) transfer taxes assessed against Landlord or the Premises or both, (3) penalties or interest on any late payments of Landlord, (4) personal property taxes of Tenant, (5) documentary stamp, capital stock, succession, estate, gift or inheritance taxes or taxes substituted for or in lieu of the foregoing exclusions and/or taxes on gross receipts or revenues of Landlord from the Premises and (6) Real Estate Taxes, if any, related to any real or personal property outside of the Property as depicted on Exhibit B.

6.2 Payment of Real Estate Taxes. Landlord and Tenant acknowledge that Landlord intends to file an application for exemption from taxation through the customary process outlined by the County Revenue Collector to be considered in accordance with the exemptions then permitted by the North Carolina General Statutes Chapter 105 et seq. In the event Real Estate Taxes are levied against the Premises on or after the Delivery Date, such Real Estate Taxes attributable to the Premises shall be the sole responsibility of Tenant with no contribution from Landlord. Tenant agrees that Tenant shall pay to Landlord an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the estimated annual cost of all Real Estate Taxes related to the Premises, if any, on the first day of each month of the Term. Any Real Estate Taxes relating to a fiscal period, a part of which is not included within the Term, shall be prorated so that Tenant shall pay only that portion thereof that relates to the tax period included within the Term.

6.3 Personal Property Taxes. Tenant shall be responsible for all municipal, county or state taxes, levies and fees of every kind and nature assessed during the Term of the Lease against Tenant's personal property. Tenant shall be liable for, and shall pay, all North Carolina sales tax that may be due in respect of this Lease.

## **ARTICLE VII** **UTILITIES**

Tenant shall pay all charges for gas, electricity, water, sewer service and other similar utilities ("Utilities") used in the Premises during the Term hereof. Landlord shall cause all such utilities to be separately metered to the Premises from the applicable utility company prior to Tenant's occupancy of the Premises. During Landlord's use of Shared Space within the Premises during the summer, Landlord shall pay actual Utility charges attributable to such Shared Space, or alternately, Tenant can credit amounts attributable to Landlord's Use to Rent due.

## **ARTICLE VIII** **USE**

8.1 Use of Premises. Tenant covenants and agrees to use, occupy and operate the Premises for the operation of an elementary school, consistent with the operations of other elementary schools in the Wake County Public Schools system and other ancillary uses, including, an after-school program in the location designated on the Site Plan, and for no other use or purpose whatsoever (the "Permitted Use") unless by the written consent of Landlord.

8.2 Intentionally Omitted.

8.3 Applicable Laws. Tenant and Landlord shall comply with all applicable laws, orders, statutes, ordinances, rules and regulations of federal, state, county and municipal authorities having jurisdiction over the operation of the elementary school at the Premises. Tenant shall also comply with all

regulations of any board of fire underwriters having jurisdiction that imposes any obligation, order or duty in respect of Tenant's particular use of the Premises related to the interior, non-structural portions of the Premises, provided that if insurance rates increase due to Tenant's operations of the Premises for the Permitted Uses, such increase shall be Tenant's responsibility. Tenant shall not use or suffer or permit the Premises, or any part thereof, to be used for any purpose or use in violation of this Lease, or in any manner that will violate, suspend, void or serve to increase the premium rate of or make inoperative any policy or policies of insurance of any kind whatsoever at any time carried in connection with the Property, or any part thereof, including the Premises. Tenant shall have the right to contest any alleged violation of law provided that Tenant provides a bond or other security and that the interest of Landlord in the Property is not at risk as the result of such contest or from any adverse judgment.

8.4 Lunsford Act. Landlord 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 on the premises of any school. Landlord shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, and subcontractors ("contractual personnel") who will engage in any service on the Premises. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For Landlord's convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. Landlord shall conduct an initial check of the registries within 30 days of Landlord's execution of this Agreement and prior to allowing any contractual personnel to perform any services on the Premises. In addition, Landlord agrees to conduct the registry checks before any additional contractual personnel are used to provide services on the Premises. Landlord further agrees to conduct annual registry checks of all contractual personnel at each anniversary date of this Agreement. Landlord shall not assign any individual to provide services on the Premises if said individual appears on any of the listed registries. Landlord agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the Tenant upon request.

8.5 Criminal Background Checks. Landlord agrees to conduct annual criminal background checks of contractual personnel who will be employed or used to provide any services to any students at the Elementary School. Any personnel convicted of (1) any felony or (2) any crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of children shall not be permitted to have any interaction with children. The Tenant reserves the right to prohibit any contractual personnel of Landlord from being on the Premises if the Tenant determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others, or if such contractual personnel may otherwise pose a risk to the Tenant's operations.

8.6 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.

8.7 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.



8.8 Mission of Landlord. Landlord and Tenant acknowledge that Landlord's mission is rooted in Christian values but as to this Agreement and the use of the Premises and the Shared Space, Landlord will ensure that all programs it offers in the Premises or the Shared Space are available to individuals of all religions or no religions.

## **ARTICLE IX**

### **MAINTENANCE AND REPAIR OF PREMISES**

9.1 Landlord's Maintenance. Landlord shall maintain the Common Areas, with all costs of such maintenance being Common Area Charges to be allocated between, and paid by, Landlord and Tenant pursuant to Section 5.3 hereof. Landlord shall maintain, at its sole cost and not as a part of the Common Area Charges, the interior, non-structural portions of the Landlord Space. Landlord shall also be responsible at its sole cost (and not as part of the Common Area Charges) for (1) the repair and replacement of any defective construction work on the Premises, and (2) any repairs or replacement work covered by any warranties from Landlord's contractors or suppliers. Landlord shall have exclusive responsibility for pool maintenance, repair, and replacement. Notwithstanding the time otherwise allowed for the Landlord to make repairs to Common Areas, Landlord agrees to make any required repairs to the Pre-K playground in an expeditious manner following written notice from Tenant.

9.2 Tenant's Maintenance. Landlord shall maintain the interior, non-structural portions of the Premises in good, clean and habitable condition and shall make all maintenance and repairs associated with the interior, non-structural portions of the Premises, and Tenant shall pay Landlord for such maintenance and repairs on a monthly basis, within thirty (30) days of billing therefor by Landlord. Tenant shall pay to Landlord 30 days from Landlord's billing therefor, as additional rent hereunder, the cost of such repairs and maintenance plus, to the extent such payment is not made within thirty (30) days from Landlord's billing therefor, interest at five percent (5%), such interest to accrue continuously from the date that is thirty (30) days from the date of billing by Landlord until payment by Tenant. The Landlord shall obtain written approval from Tenant for any repair or replacement to the Premises that is estimated to cost more than \$10,000 prior to making such repair or replacement (except in the event of any dangerous condition or emergency, in which event no prior written consent shall be required). At the expiration of this Lease, Tenant shall surrender the Premises in good condition and repair, excepting reasonable wear and tear and damage by fire or other casualty.

9.3 Enhancements, Modifications, Renovation or New Construction. Landlord shall be responsible for any enhancements, modifications, renovations, or new construction in or of the Building, including the Premises. Tenant shall notify Landlord in writing of any requested enhancement, modifications, or renovations, and Landlord and Tenant shall use facility request forms as promulgated by Landlord from time to time to coordinate such plans for modifications and enhancements. Landlord and Tenant shall agree to the scope and cost of such enhancements, modifications, renovations or new construction prior to Landlord commencing work, and Tenant shall pay Landlord for such work within thirty (30) days of billing therefor by Landlord, with interest thereon as set forth in Section 9.2. Landlord and Tenant shall each pay their Proportionate Share of any modifications to Shared Space if such modifications are required to adhere to building codes. Landlord and Tenant shall plan and coordinate such improvements to minimize impact on operations of the Building, the Elementary School and Landlord's programming in the Shared Space.

## **ARTICLE X**

### **INSURANCE**

10.1 Tenant's Insurance. Tenant covenants and agrees to procure the following insurance coverage with respect to the Premises, in the amounts stated below, and to maintain same in full force and

effect at all times beginning with Effective Date through the expiration or earlier termination of the Term of this Lease:

(a) commercial general liability insurance insuring Tenant against any and all liability for bodily injury (including death) or property damage in the Premises occasioned by or arising out of any construction work being done in the Premises by Tenant, its agents, contractors or employees, or arising out of Tenant's use or occupancy of the Premises, or in any way occasioned by or arising out of the activities of Tenant, its agents, contractors or employees in the Premises, with such limits as to each as may be reasonably required by Landlord from time to time but not less than \$1,000,000 for each occurrence for bodily injury (including death)/\$3,000,000 aggregate, and \$100,000 for property damage, or \$1,000,000 per occurrence/\$3,000,000 aggregate-combined single limit bodily injury and property damage. The policy of commercial general liability insurance shall name Landlord and any other party designated by Landlord as an additional insured party.

(b) property insurance insuring any leasehold improvements or betterments installed by Tenant in the Premises (regardless of whether Tenant may remove such items at the expiration of the Lease) and its merchandise, trade fixtures, personal property, furnishings, supplies, inventory, signs and all other contents of the Premises against fire, with all risk coverage, for the full replacement value thereof. Landlord shall have no responsibility whatsoever for any damage, theft or other casualty to or involving the same, except as expressly provided for in this Lease.

(c) worker's compensation insurance covering all employees of Tenant employed in, the Premises in order to provide statutory benefits as required by the laws of the State of North Carolina.

10.2 Landlord's Insurance. Landlord covenants and agrees to procure the following insurance coverage, in the amounts stated below, and to maintain same in full force and effect at all times beginning with Effective Date through the expiration or earlier termination of the Term of this Lease:

(a) carry commercial general liability insurance, including contractual liability, with a combined single limit in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage and \$3,000,000 in the aggregate;

(b) a "special cause of loss" insurance policy (formerly an "all risk" policy) for fire and extended coverage insurance, including coverage for the Building and associated improvements for at least the full replacement cost thereof including all escalation riders (including all HVAC units and all other betterments and improvements in and to the Premises installed by Landlord as provided in this Lease), providing protection against perils included in the standard "special cause of loss" policy of insurance; provided, however, that during the construction of the Building, Landlord will procure builder's risk insurance. Such insurance shall also be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by Tenant with regard to areas located outside of the Premises, and shall contain a severability of interest and waiver of subrogation clause. If Landlord fails to procure and maintain said insurance, Tenant may, but shall not be required to, procure and maintain same, but at the expense of Landlord, but only after fifteen (15) days prior written notice to Landlord and Landlord's failure to thereafter procure same.

Landlord shall deliver to Tenant certified copies of policies or certificates of liability insurance required herein with loss payable clauses in compliance with this Lease within twenty (20) days after the renewal date. No policy shall be cancelable or subject to reduction of coverage, without written notice at least thirty (30) days in advance that said policy is to be canceled. The Landlord's policy of commercial general liability insurance shall name Tenant as an additional insured party

Tenant shall reimburse Landlord, within thirty (30) days of written request therefor together with written evidence of payment therefor by Landlord reasonably satisfactory to Tenant, for Tenant's applicable Proportionate Share (66%) of the cost of insuring the Building as provided in Section 10.2(b).

10.3 General. All insurance required under this Article X shall be carried by a reputable insurance company or companies qualified to do business in the State of North Carolina with a financial rating of VIII or better and policyholder's rating of A- or better in the latest edition of Best's Rating Guide on Property and Casualty Insurance Companies (or a comparable rating in any comparable international ratings guide) and such insurance shall provide that each insured and any additional insureds shall be given a minimum of thirty (30) days' written notice prior to the cancellation, termination or alteration of the terms or limits of such coverage. Landlord shall be named as an additional insured in all of Tenant's insurance policies pertaining to the Premises, and Tenant shall deliver to Landlord, within twenty (20) days after Tenant's receipt of Landlord's written request for such information, a certificate or certificates of insurance from its insurance company or companies, certifying the existence and amounts of coverage of such insurance, and that Landlord is named as an additional insured. Any insurance required to be maintained by Tenant under this Article X may be maintained under a so called blanket policy or policies, so long as the amount and coverage required hereunder is not diminished. If Tenant fails to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain the same at the expense of Tenant as additional Rent to be paid upon Landlord's demand, with interest at five percent (5%) accruing on the cost of the same until the Landlord is repaid in full, but only after fifteen (15) days prior written notice to Tenant and Tenant's failure to promptly thereafter procure same.

10.4 Increase in Fire Insurance Premium. Tenant shall not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant agrees to pay, as additional rent hereunder, any increase in premiums for all risk (special form) insurance that may be charged during the Term on the amount of such insurance which may be carried by Landlord on the Premises, directly resulting from Tenant's operations in the Premises, whether or not Landlord has consented to same. In determining whether increased premiums are the result of Tenant's use of the Premises, a schedule, issued by the organization making the insurance rate on the Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the fire insurance rate on the Premises.

10.5 Indemnification by Tenant. Except for any claims, damages, liabilities or expenses arising from or out of the negligent or willful acts or omissions of Landlord, its employees, agents or contractors, to the extent permitted by law, Tenant 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 Tenant under this Lease, (ii) gross negligence or willful acts or omissions (where there was an obligation for Tenant to act) of Tenant, its agents or employees or (iii) the injury to, or death of, any persons or damage to, or destruction of any property occurring in the Premises directly caused by Tenant, its agents or employees.

10.6 Indemnification by Landlord. Except for any claims, damages, liabilities or expenses arising from or out of the negligent or willful acts or omissions of Tenant, its employees, agents or contractors, Landlord hereby agrees to indemnify and hold Tenant 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 Landlord under this Lease, (ii) gross negligence or willful acts or omissions (where there was an obligation for Landlord to act) of Landlord, its agents or employees or (iii) the injury to, or death of, any persons or damage to, or destruction of any property occurring in the Property directly caused by Landlord, its agents or employees.

10.7 Waiver of Subrogation Language. Notwithstanding anything in this Lease to the contrary, Tenant and Landlord hereby waive and release any and all rights of recovery for any and all loss of income or damage to any property located within or constituting a part of the Property (inclusive of the Premises), which loss or damage arises from the perils that are insured against under the ISO Causes of Loss-Special Form Coverage (formerly known as “all-risk”) for policies in effect. Landlord and Tenant shall cause each property insurance policy carried by either of them insuring the Premises, the contents thereof, or the Property, to provide that the insurer waives all rights of recovery by way of subrogation or otherwise against the other party hereto in connection with any loss or damage which is covered by such policy or that such policy shall otherwise permit, and shall not be voided by the releases provided for above.

## **ARTICLE XI** **DAMAGE OR DESTRUCTION**

In the event the Premises is damaged (either wholly or substantially, defined as in excess of 50% of the replacement value thereof) by fire, condemnation or other casualty, and Landlord determines and notifies Tenant within thirty (30) days after such casualty that such damage cannot be restored to its previous condition, this Lease shall terminate. Upon termination Landlord shall promptly make all required claims to its insurance carrier but in no event more than thirty days after the casualty resulting in the loss. Upon Landlord’s receipt of payment from its insurance carrier it shall make payment to Tenant for sixty-six percent (66%) of all amounts received under the Landlord’s insurance policy required under Section 10.2. Tenant shall retain proceeds from Tenant’s insurance. If the cost of such damage or destruction is less than 50% of the replacement cost of the Premises, then Landlord shall be obligated to commence repair of the Premises on the date which is the later of 90 days from the occurrence of such casualty and the date of receipt by Landlord of insurance proceeds therefor, to substantially the same condition and same or better quality of materials as existed prior to such damage or destruction, to the extent that such damage or destruction is covered by insurance. If Landlord elects to, or is obligated to, restore the Premises, the monthly Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof, and this Lease shall continue in full force and effect. All Rent, including Tenant’s Proportionate Share of Common Area Charges, Real Estate Taxes, insurance and other charges hereby reserved, shall be abated proportionately as to the portion of the Premises rendered untenable during the period of such untenability.

## **ARTICLE XII** **EMINENT DOMAIN**

In the event the entire Premises shall be taken by condemnation or right of eminent domain, this Lease shall terminate as of the day possession shall be taken by the taking authority and Landlord and Tenant shall be released from any further liability hereunder. In the event greater than twenty-five percent (25%) of the Premises shall be taken by condemnation or right of eminent domain, either Landlord or Tenant shall be entitled to terminate this Lease, such termination to become effective as of the day possession of the Premises shall be taken, provided notice of such termination is given within thirty (30) days after the date of notice of such taking. If, in such case, this Lease is not terminated, Landlord agrees to restore the Premises within 90 days, or if 90 days is not practicable, within a reasonable time period to be determined by the parties to an architectural unit as nearly like its condition prior to such taking as shall be practicable. If during and/or after the work of restoration, Tenant shall be deprived of the use of all or any portion of the Premises, a proportionate adjustment in the Base Rent and Tenant’s Proportionate Share of Common Area Charges, Real Estate Taxes and insurance shall be made corresponding to the portion of the Premises of which Tenant is so deprived. All damages awarded in connection with the taking of the Premises, whether allowed as compensation for diminution in value to the leasehold, to the fee of the Premises, or otherwise, shall be allocated between Landlord and Tenant in accordance with their respective applicable Proportionate Shares, after application of any such damages awarded to any rebuilding required

hereunder. Notwithstanding the foregoing, Tenant shall be entitled to make a separate claim to the condemning authority for damage to merchandise and fixtures, removal and reinstallation costs, and moving expenses.

### **ARTICLE XIII** **DEFAULT AND REMEDIES**

13.1 Tenant Default. The failure of Tenant to comply with any covenant or provision of this Lease inclusive of Exhibits, including the Joint Use Agreement attached hereto, within ninety (90) days after notice in writing is received by Tenant shall be deemed to be a Tenant Default under this Lease unless such failure or non-compliance is of such nature that it cannot be cured within such ninety (90) day period, in which case no Tenant Default shall occur so long as Tenant shall commence the curing of such failure or non-compliance within such ninety (90) day period and shall thereafter diligently prosecute the curing of same provided such cure occurs within one hundred and twenty (120) days after notice.

#### 13.2 Landlord's Remedies.

(a) Upon the occurrence of any monetary or material Tenant Default, Landlord may pursue any one or more of the following remedies, in addition to any other remedies provided under this Lease, at law or in equity, separately or concurrently or in any combination, without any notice (except as specifically provided herein) or demand whatsoever and without prejudice to any other remedy which it may have for possession of the Premises or for arrearages in rent or other amounts payable by Tenant:

(i) Landlord may terminate this Lease (or Tenant's right to possession) by giving Tenant written notice of termination, in which event Tenant shall immediately quit and vacate the Premises and deliver and surrender possession of the Premises to Landlord, and this Lease (or Tenant's right to possession of the Premises) shall be terminated at the time designated by Landlord in its notice of termination to Tenant; provided, however, that no termination of this Lease prior to the normal expiration hereof shall affect Landlord's right to collect rent for the period prior to or following the date set for termination; or

(ii) With or without terminating this Lease, Landlord may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises, by force if necessary, without being liable for prosecution for damages; or

(iii) Landlord may re let the Premises or any part thereof, on such terms and conditions as Landlord may deem satisfactory, and receive the rent for any such re letting, in which event Tenant shall pay to Landlord on demand the reasonable costs and expenses of such reletting and any deficiency that may arise by reason of such re letting (but only to the extent such cost or expense was necessary to put the Premises in the condition it would have been in had Tenant not defaulted hereunder). Landlord shall use commercially reasonable efforts to mitigate damages in the event of a Tenant Default.

(b) Notwithstanding the foregoing, the parties agree that Landlord may only exercise the remedies set forth in subsections (a)(i), (ii) and (iii) above after the end of the Original Term, and only after the end of the school year following the school year during which any such monetary or material Tenant Default occurs; provided, however, that Landlord may bring an action against Tenant for payment of Rent hereunder for any monetary Tenant Default at any time during the Term of this Lease.

13.3 Remedies Cumulative. All rights, remedies, powers and privileges conferred under this Lease on Landlord shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

13.4 Landlord's Self-Help Right. In addition to Landlord's right of self-help set forth elsewhere in this Lease or as provided by law or in equity, if Tenant shall be in default hereunder, after the expiration of any applicable cure period, Landlord shall have the option, but not the obligation, upon ten (10) business days written notice to Tenant (except in the event of any dangerous condition or emergency, in which event no notice shall be required), to cure the act or failure constituting said default for the account of and at the expense of Tenant. Landlord's cure of, or attempt to cure, any act or failure constituting the default by Tenant shall not result in a waiver or release of Tenant's obligations under this Lease.

13.5 Landlord Default. The failure of Landlord to comply with any covenant or provision of this Lease inclusive of Exhibits, including the Joint Use Agreement attached hereto within thirty (30) days after notice in writing is received by Landlord shall be deemed to be a Landlord Default under this Lease unless such failure or non-compliance is of such nature that it cannot be cured within such thirty (30) day period, in which case no Default shall occur so long as Landlord shall commence the curing of such failure or non-compliance within such thirty (30) day period and shall thereafter diligently prosecute the curing of the same provided such cure occurs within ninety (90) days after notice.

13.6 Tenant's Remedies. Upon the occurrence of a Landlord Default, Tenant may pursue any one of more of the following remedies, in addition to any other remedies provided under this Lease, at law or in equity, separately or concurrently or in any combination, without any notice (except as specifically provided herein): (1) to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, together with all damages to Tenant by reason of any such breach, without terminating this Lease; and/or (2) provided the default of Landlord is of a material nature such that Tenant is unable to reasonably operate a school in the Premises, terminate this Lease upon thirty (30) days written notice to Landlord without waiving Tenant's rights to damages for Landlord's failure to perform its obligations hereunder. In the event Tenant shall elect to terminate this Lease, as aforesaid, all rights and obligations of Tenant, and of any permitted successors or assigns, shall cease and terminate, except that Tenant shall have and retain full right to sue for and collect all amounts for the payment of which Landlord shall then be in default and all damages to Tenant by reason of any such breach. Notwithstanding the foregoing, if Landlord shall commence to cure the default during such thirty (30) day period after Tenant has delivered written notice to Landlord of its termination of this Lease, Tenant's termination notice shall be deemed void and of no further force and effect and this Lease shall continue in full force and effect provided Landlord does actually cure such default. Also notwithstanding the foregoing, in the event Landlord does not deliver the Premises to the Tenant and achieve Substantial Completion on the Delivery Date as set forth in Section 2.1 hereof, provided that Landlord has required and obtained performance and payment bonds from Contractor acceptable in form and amount to Tenant, Tenant's exclusive remedy shall be for Landlord to pay or allocate to Tenant Tenant's Proportionate Share of any liquidated damages received by or credited to Landlord from the Contractor under the Construction Contract until Landlord's delivery of the Premises to Tenant upon Substantial Completion. Landlord shall obtain Tenant's consent (which shall not be unreasonably withheld) regarding any decision by Landlord to claim or modify liquidated damages under the Construction Contract. It is agreed that this is a fair measure of Tenant's damage and shall offset the cost of Tenant having to relocate students or other costs in Tenant's discretion in the event that the Premises are not delivered by the Delivery Date.

13.7 Tenant's Self-Help Right. In addition to Tenant's right of self-help set forth elsewhere in this Lease or as provided by law or in equity, if Landlord shall be in default hereunder, after the expiration of any applicable cure period, Tenant shall have the option, but not the obligation, upon ten (10) business days written notice to Landlord (except in the event of any dangerous condition or emergency or to protect the safety, health and wellbeing of its students, in which event no notice shall be required), to cure the act or failure constituting said default for the account of and at the expense of Landlord. Tenant's cure of, or attempt to cure, any act or failure constituting the default by Landlord shall not result in a waiver or release

of Landlord's obligations under this Lease. Landlord agrees to pay the costs incurred by Landlord pursuant to this Section, plus a charge of fifteen percent (15%) of such costs, to Tenant upon demand or to credit Tenant's next due monthly Rent payment by such amount.

#### **ARTICLE XIV** **COVENANT OF QUIET ENJOYMENT**

As long as Tenant is not in default under the terms of this Lease beyond any applicable cure period, Landlord covenants that Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance or interruption by Landlord or any other person or persons, either lawfully or equitably claiming by, through or under Landlord and Landlord shall defend Tenant's rights to such use and occupancy, subject only to the other terms and conditions of this Lease.

#### **ARTICLE XV** **SUBORDINATION**

15.1 Subordination and Attornment. Tenant agrees that this Lease shall be subject and subordinate to any mortgage, deed of trust or other lien, or any required restrictions whether presently existing or hereafter placed by Landlord, upon the Property, and to any renewals and extensions thereof (collectively, a "Mortgage"). Tenant further agrees to attorn to any holder of a Mortgage (a "Mortgagee"), or any purchaser at a foreclosure or like sale, that acquires title to the Premises. Tenant agrees that any Mortgagee shall have the right at any time to subordinate its Mortgage to the operation of this Lease; provided, however, notwithstanding that this Lease may be (or made to be) superior to a Mortgage, the provisions of such Mortgage relative to the rights of the Mortgagee with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord) or arising from insurance proceeds payable by reason of damage to or destruction of the Property or the Premises shall be prior and superior to any contrary provisions contained in this Lease with respect to the payment or use of such proceeds. Notwithstanding the foregoing, Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any Mortgage, and Tenant agrees upon demand to execute such further instruments to confirm the subordination of this Lease and the obligation of Tenant to attorn as Landlord or any Mortgagee may reasonably request. Landlord represents and warrants to Tenant that as of the Effective Date the Property is not subject to any Mortgage except for that certain Mortgage entered into by Landlord in connection with a new markets tax credit transaction or other financing to finance the Building ("Landlord's Lender"). As a condition precedent to Tenant's obligations under this Lease, Landlord shall cause Landlord's Lender to execute and deliver to Tenant a subordination, non-disturbance and attornment agreement ("SNDA") in a form mutually acceptable to Landlord's Lender and Tenant, which SNDA shall give Tenant reasonable assurance that its leasehold rights under this Lease shall not be interrupted or disturbed as a result of a foreclosure or deed in lieu of foreclosure with respect to the Mortgage held by Landlord's Lender.

15.2 Notice to Mortgagee. Tenant hereby agrees to send a copy of any notice or demand given or made to Landlord, its successors or assigns, pursuant to the provisions of this Lease, which notice involves the invoking of any of Tenant's remedies under the Lease, to the Mortgagee of the Property (upon being notified in writing at least thirty (30) days in advance of such Mortgagee's name and address) on the same date and in the same manner any such notice or demand is sent to Landlord, its successors or assigns, giving to the Mortgagee or its assignee the same right to cure any default complained of in any said notice or demand as the Landlord has under this Lease; it being agreed that said Mortgagee or its assignee shall be entitled to the benefits of the force majeure (or Unavoidable Delay) provisions of Section 18.14 of the Lease.

**ARTICLE XVI**  
**ACCESS TO PREMISES**

Tenant agrees that Landlord, its agents, employees, or servants or any person authorized by Landlord may enter the Premises during normal business hours, except as otherwise provided herein, with at least two (2) days prior written notice to Tenant, or otherwise in cases of emergency, to inspect the condition of same, conduct environmental testing, remediate any unsafe condition, and to make such repairs to the Premises as Landlord may elect to make in accordance with the terms and provisions of this Lease. Notwithstanding the foregoing, except where any claim arises out of the negligent acts or omissions or willful misconduct of Landlord, its employees or contractors, Landlord shall not be liable for any interruption of Tenant's business due to Landlord's access of the Premises, environmental testing, remediation, or repairs. Nothing in this Article XVI, however, shall be deemed or construed to impose upon Landlord any obligation or liability whatsoever for care, supervision, repair, remediation, improvement, addition, change, or alteration of the Premises.

**ARTICLE XVII**  
**ASSIGNMENT AND SUBLETTING**

Tenant shall not have the right to assign this Lease, or to sublet all or any portion of the Premises, without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained herein to the contrary, in the event of an assignment or subletting of this Lease, Tenant shall at all times remain fully liable for all obligations and liabilities of Tenant hereunder, including but not limited to the full payment of Rent, Common Area Charges, Real Estate Taxes, insurance, and any other amounts due or coming due under this Lease. Further, any approval by Landlord to an assignment or subletting shall be limited to that instance alone and shall not constitute a release, waiver, or consent to any other assignment or to any further transfer of interest or further subletting. Notwithstanding anything contained herein to the contrary, in the event that Landlord permits Tenant to sublease the Premises in accordance with this Article XVII, any rentals received in excess of the Rent due hereunder shall be paid to Landlord.

**ARTICLE XVIII**  
**MISCELLANEOUS**

18.1 Holding Over. Tenant will surrender possession of the Premises to Landlord upon the expiration or earlier termination of this Lease. At the expiration or earlier termination of the Term, Tenant shall quit and surrender the Premises broom-clean, free of debris and litter, and in good condition, reasonable wear and tear, casualty and condemnation excepted. The Tenant shall repair any damage to the Premises caused by the installation or removal of such personal property. Should Tenant continue in possession, with or without the consent of Landlord, after expiration of the Original Term of this Lease (if Tenant elects not to renew this Lease), any Renewal Term thereafter or after an event of a Default which permits termination of the Term, Tenant shall owe a Base Rent at 150% of the then current market rental rate for the Premises (the "Holdover Base Rent"). Such Holdover Base Rent shall be reasonably determined by an experienced real estate professional in the area of the Premises reasonably selected by the Landlord, and shall be owed at such amount for such period of time after expiration or termination of the Term notwithstanding when notice of the determination of such Holdover Base Rent is provided by Landlord to Tenant. For those payments of Holdover Base Rent owed during such holdover period prior to notice to the Tenant of the Holdover Base Rent determination, Tenant shall pay the amount of such Holdover Base Rent for such periods within ten (10) days' notice to Tenant of the Holdover Base Rent determination and thereafter on a monthly basis as provided herein. In the event of a holdover, Tenant shall continue to be subject to all of the other terms and conditions of this Lease, except that Tenant shall be deemed a month-to-month tenant, which tenancy may be terminated as provided by applicable law.



18.2 Non-Waiver of Default. No acquiescence by either party to any default by the other party hereunder shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition, nor shall the acceptance of Rent by Landlord at any time constitute a waiver of any rights of Landlord.

18.3 Recording. This Lease shall not be recorded, except in Memorandum Form as provided by 18.20.

18.4 Notice. Any notice or consent required to be given by or on behalf of either party to the other shall be in writing and mailed by registered or certified mail (return receipt requested with postage prepaid) or sent by air courier, expedited mail service or overnight national delivery service providing receipted delivery, addressed to the other party as follows:

If to Tenant: Wake County Board of Education  
5625 Dillard Drive  
Cary, North Carolina 27518  
Attention: Superintendent  
Telephone No.: 919.533.7770  
Facsimile No.: 919.431.7563

With a copy to: Tharrington Smith  
150 Fayetteville Street, Suite 1800  
Raleigh, North Carolina 27601  
Telephone No.: 919.821.4711  
Facsimile No.: 919.829.1583

Boxley, Bolton, Garber & Haywood, LLP  
Post Office Drawer 1429  
Raleigh, North Carolina 27602  
Telephone No.: 919.832.3915  
Facsimile No.: 919.832.3918

If to Landlord: YMCA of the Triangle Area, Inc.  
801 Corporate Center Drive, Suite 200  
Raleigh, NC 27607  
Attention: Chief Executive Officer  
Telephone No.: 919.719.9622  
Facsimile No.: 919.401.0117

With a copy to: McGuireWoods LLP  
434 Fayetteville Street, Suite 2600  
Raleigh, NC 27601  
Telephone No.: 919.755.6600  
Facsimile No.: 919.755.6587

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date marked on the return receipt or delivery confirmation unless delivery is refused or cannot be made, in which case the date of postmark or attempted delivery by the carrier, as applicable, shall be deemed the date notice has been given.

18.5 Successors and Assigns. All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply, and inure to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

18.6 Time is of the Essence. The time of the performance of all of the covenants, conditions, and agreements of this Lease is of the essence in this Agreement.

18.7 Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

18.8 Interpretation; Entire Agreement. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. This Lease, including but not limited to the Exhibits appended hereto, constitutes the entire and complete agreement of Landlord and Tenant regarding the subject matter hereof. The Exhibits are incorporated into this Lease by reference.

18.9 Headings, Captions and References. The captions of Articles, Sections, subsections and Paragraphs are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires.

18.10 Brokerage Commissions. Landlord and Tenant each warrants and represents to the other that there are no brokers', finders' fees or any real estate commissions due to any broker, agent or other party in connection with the negotiation or execution of this Lease or on behalf of either of them. Each of Landlord and Tenant hereby agree to indemnify and hold the other harmless from and against any and all costs, expenses, liabilities, causes of action, claims or suits by any party for compensation, commissions, fees or other sums claimed to be due or owing by a person claiming by, through, or under the indemnifying party.

18.11 Governing Law. This Lease shall be construed under the laws of the State of North Carolina.

18.12 Liens. Tenant will not create or permit to be created or to remain, and will discharge or bond over within twenty (20) days of receipt of written notice of the filing thereof, any lien (including, but not limited to, the liens of mechanics, laborers or materialmen for work or materials alleged to be done or furnished in connection with the Premises), encumbrance or other charge upon the Premises. If Tenant fails to discharge or bond over any such liens, encumbrances or charges as may be placed upon the Premises, Landlord may, but shall not be obligated to, remove any such lien, whereupon Tenant shall reimburse Landlord upon written demand for all sums so expended by Landlord, including attorney's fees in connection therewith, and interest thereon from the date of Landlord's payment.

18.13 Estoppel Certificates. As often as may be requested by a party (but no more than three (3) times per year), the other party shall within fifteen (15) business days after receipt of such written request, and without cost, execute and deliver to the requesting party, to its mortgagees, and/or any other designee, a written estoppel certificate with respect to the Premises and/or this Lease in a form reasonably acceptable to the requesting party.

18.14 Unavoidable Delay. In the event that either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act required under this Lease to be performed by the party and such delay or hindrance is due to strikes, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered (each of the foregoing, an “Unavoidable Delay” and collectively, “Unavoidable Delays”), then performance of such work, service, or other act shall be excused for the period of such delay and the period for the performance of such work, service, or other act shall be extended for a period equivalent to the period of such delay. In no event shall such delay constitute a termination or extension of this Lease; provided that, in the event that there is a delay in delivery of the Premises to Tenant that lasts for six months, and at the end of such six month period Tenant determines in good faith that it will not be able to reasonably operate a school in the Premises within two (2) years, then Tenant’s Remedies set forth in Section 13.6 shall apply. The provisions of this Article shall not otherwise operate to excuse Tenant from the prompt payment of Rent and other charges as due under the provisions hereof.

18.15 Environmental Matters.

(a) Tenant shall not use, keep, or bring any Hazardous Material in the Premises in violation of any governmental laws, ordinances or restrictions. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused by Tenant results in contamination of the Premises or the Property, or if contamination of the Premises or the Property by Hazardous Material otherwise occurs for which Tenant is legally responsible to Landlord for damage resulting therefrom, then Tenant shall to the extent permitted by law indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, any diminution in value of the Premises and the Property, damages for the loss or restriction on use of rentable or usable space or of any amenity, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys’ fees, consultant fees and expert fees) actually incurred by Landlord as a result of Tenant’s use of any Hazardous Materials in the Premises in violation of any governmental laws, ordinances or restrictions unless said Hazardous Materials or environmental problems existed in the Premises prior to the date of this Lease or were caused by acts of Landlord, its agents, employees or contractors in which event this indemnity shall not apply. This indemnification of Landlord by Tenant includes, without limitation, costs actually incurred by Landlord in connection with site clean-up, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or the Property. The indemnification obligations contained herein shall survive the expiration or termination of this Lease. Tenant shall not be responsible for any Hazardous Material on the Premises not caused by Tenant.

(b) Except as provided in the Environmental Site Assessments dated October 10, 2008 and March 20, 2015 by ECS Carolinas, LLP presented by Landlord to Tenant, Landlord has received no notice of, nor is Landlord aware of, the existence of any areas in the Property where any Hazardous Materials have been generated, disposed of, released or found, and Landlord has no knowledge of the existence of any such areas for the storage or disposal of any Hazardous Materials in the Property.

(c) As used herein, the term “Hazardous Material” means any substances, materials, elements or compounds that are defined as or included in the definition of “hazardous substances”, “hazardous wastes”, or “toxic substances” now or subsequently regulated under any applicable federal, state or local laws or regulations. The term “Hazardous Material” includes, without limitation, any material or substance that is (i) petroleum, (ii) asbestos, (iii) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (iv) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901,

(v) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, or (vi) defined as a “regulated substance” pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991.

18.16 Relationship of Parties. Nothing herein shall be construed so as to constitute a joint venture or partnership between Landlord and Tenant.

18.17 Sale by Landlord. The parties acknowledge that the Landlord’s operation of a YMCA is an integral part of the value of the Tenant’s occupancy. Therefore, the Landlord shall not exercise the right to sell the Building or any portion of the Premises during the term of this Lease, without Tenant’s prior written consent. In the event Tenant provides written consent to Landlord for a sale during the term of this Lease, of its interest in the Premises and assumption of possession of the Premises by the transferee, such transferee shall be solely responsible for all obligations of Landlord under this Lease accruing thereafter and Landlord shall be fully and forever released of its obligations hereunder provided that the transferee has contractually assumed all obligations of Landlord. If in connection with or as a consequence of the sale, transfer or other disposition of the Property, or any portion thereof, Landlord ceases to be the owner of the Property or any portion thereof, Landlord shall be freed and relieved from the performance and observance thereafter of all covenants and obligations under this Lease on the part of Landlord to be performed and observed, provided that the person succeeding to Landlord’s ownership of said Property shall, thereupon and thereafter contractually assume, and perform and observe, any and all of such covenants and obligations of Landlord thereafter accruing while such party is the owner of the Property.

18.18 Building Signage. Provided Tenant is not otherwise in default under the terms of this Lease beyond any applicable cure period, Tenant shall have the right to install either (a) two (2) signs on the exterior of the Building, or (b) one (1) sign on the exterior of the Building and one (1) monument sign at the Property, as may be permitted by the City of Raleigh. Prior to the installation by Tenant of any signage on the exterior of the Premises or monument sign, Tenant shall deliver dimensioned design plans of said signage to Landlord for approval, which approval shall not be unreasonably withheld, conditioned or delayed. Further, all proposed material changes or material modifications to Tenant’s signage shall be subject to Landlord’s approval, which approval shall not be unreasonably withheld, conditioned or delayed, and any signage submittal to Landlord by Tenant shall include dimensioned design plans of such proposed change to Tenant’s signage. Tenant shall be solely responsible as to its signage for compliance with all local or municipal sign ordinances. Landlord 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 Tenant on a regular basis.

18.19 Naming Rights. Tenant shall have the right to name the Premises (and specific rooms in the Premises except for the community kitchen) for so long as Tenant occupies the Premises during the Term. Landlord reserves all other naming rights on the Property; provided that, Landlord and Tenant agree to consult with each other concerning the names selected for the Shared Space and Common Areas, and either party has the right to object to a name selected by the other party for such space that it can demonstrate to be offensive to the objecting party’s mission.

18.20 Memorandum of Lease. Landlord and Tenant agree to execute and record a Memorandum of Lease in the form attached hereto as Exhibit “D” concurrently with the execution of this Lease. The Memorandum of Lease expressly provides that any consents Landlord gives to Tenant to construct building improvements on the Premises or to make any alterations or additions thereto shall not be deemed improvements required by an agreement between Landlord and Tenant, within the meaning of the North Carolina Construction Lien Law. Pursuant to North Carolina General Statutes 44A-8, et seq., all contractors, subcontractors, mechanics, laborers, materialmen and others who perform any work, labor or services or

furnish any materials or otherwise participate in any improvements to the Premises, and who are not acting pursuant to a direct contract with Landlord, are hereby given notice that Tenant is not authorized to subject Landlord's interest in the Premises to any claim for mechanics, laborers, materialmen's liens, or other liens, and all persons dealing directly or indirectly with Tenant may not look to the Premises as security for payment.

18.21 Operating Rules and Regulations. Tenant shall abide by and adhere to the operating rules and regulations promulgated from time to time by Landlord, provided that the same are not inconsistent with the terms of this Lease. The initial rules and regulations are attached hereto as E".

18.22 Intentionally Omitted.

18.23 Consent. Where the consent or approval of any party is required hereunder, except where a different standard is expressly used, the parties agree that such consent or approval shall not be unreasonably withheld, condition or delayed.

18.24 Cooperation. Tenant shall cooperate with, and take all actions reasonably necessary to further, Landlord's initiative to obtain development and construction financing with respect to the Southeast Raleigh Development, including but not limited to, in connection with any application by Landlord 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 Premises to Tenant (by Landlord's assignment of this Lease or otherwise), or modification of the terms of this Lease to obtain such financing or more favorable financing, so long as such change or modification does not adversely affect in any material respect the rights of Tenant contemplated under this Lease or increase the financial responsibility of Tenant under this Lease.

## **ARTICLE XIX** **DEFINITIONS**

19.1 Defined Terms. Capitalized terms used in this Lease shall have the meanings assigned to them in this Section, or in the Sections cross referenced in this Section:

"Base Rent" shall have the meaning assigned to such term in Section 4.1 of this Lease.

"Building" shall have the meaning assigned to such term in Section 1.1 of this Lease.

"Commencement of Building Construction" means commencement of the construction of the Building after a building permit has been issued by the applicable governmental authority.

"Common Area Charges" shall have the meaning assigned to such term in Section 5.2 of this Lease.

"Common Areas" shall have the meaning assigned to such term in Section 5.1 of this Lease.

"Delivery Date" shall have the meaning assigned to such term in Section 2.1 of this Lease.

"Effective Date" shall mean the date in the first paragraph of this Lease, which shall be the date of execution by both parties.

"Landlord" shall mean The Young Men's Christian Association of the Triangle Area, Inc., a North Carolina nonprofit corporation.

"Landlord's Work" shall have the meaning assigned to such term in Section 2.1 of this Lease.

“Option Term” shall have the meaning assigned to such term in Section 3.1 of this Lease.

“Permitted Use” shall have the meaning assigned to such term in Section 8.1 of this Lease.

“Premises” shall have the meaning assigned to such term in Section 1.1 and Exhibits A and A-1 of this Lease.

“Property” shall have the meaning assigned to such term in Section 1.1 and Exhibit B to this Lease.

“Proportionate Share” shall have the meaning assigned to such term in Section 5.3 of this Lease.

“Real Estate Taxes” shall have the meaning assigned to such term in Section 6.2 of this Lease.

“Registries” shall have the meaning assigned to such term in Section 8.4 of this Lease.

“Rent” shall have the meaning assigned to such term in Section 4.1 of this Lease.

“School” shall have the meaning assigned to such term in Section 1.1 of this Lease.

“Shared Space” shall have the meaning assigned to such term in Section 1.1 and Exhibit A-2 to this Lease.

“Site Plan” shall have the meaning assigned to such term in Section 1.1 and Exhibit A to this Lease.

“Substantial Completion” shall have the meaning assigned to such term in Section 2.1 of this Lease.

“Tenant’s Work” shall have the meaning assigned to such term in Section 2.2 of this Lease.

“Term” shall have the meaning assigned to such term in Section 3.1 of this Lease.

“Unavoidable Delay” shall have the meaning assigned to such term in Section 18.14 of this Lease

“Utilities” shall have the meaning assigned to such term in Article VII of this Lease.

[Signatures Begin on Next Page]

IN WITNESS WHEREOF this Lease has been executed under seal as of the day and year first above written.

“LANDLORD”:

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

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

[Signatures Continue on Next Page]

“TENANT”:

WAKE COUNTY BOARD OF EDUCATION

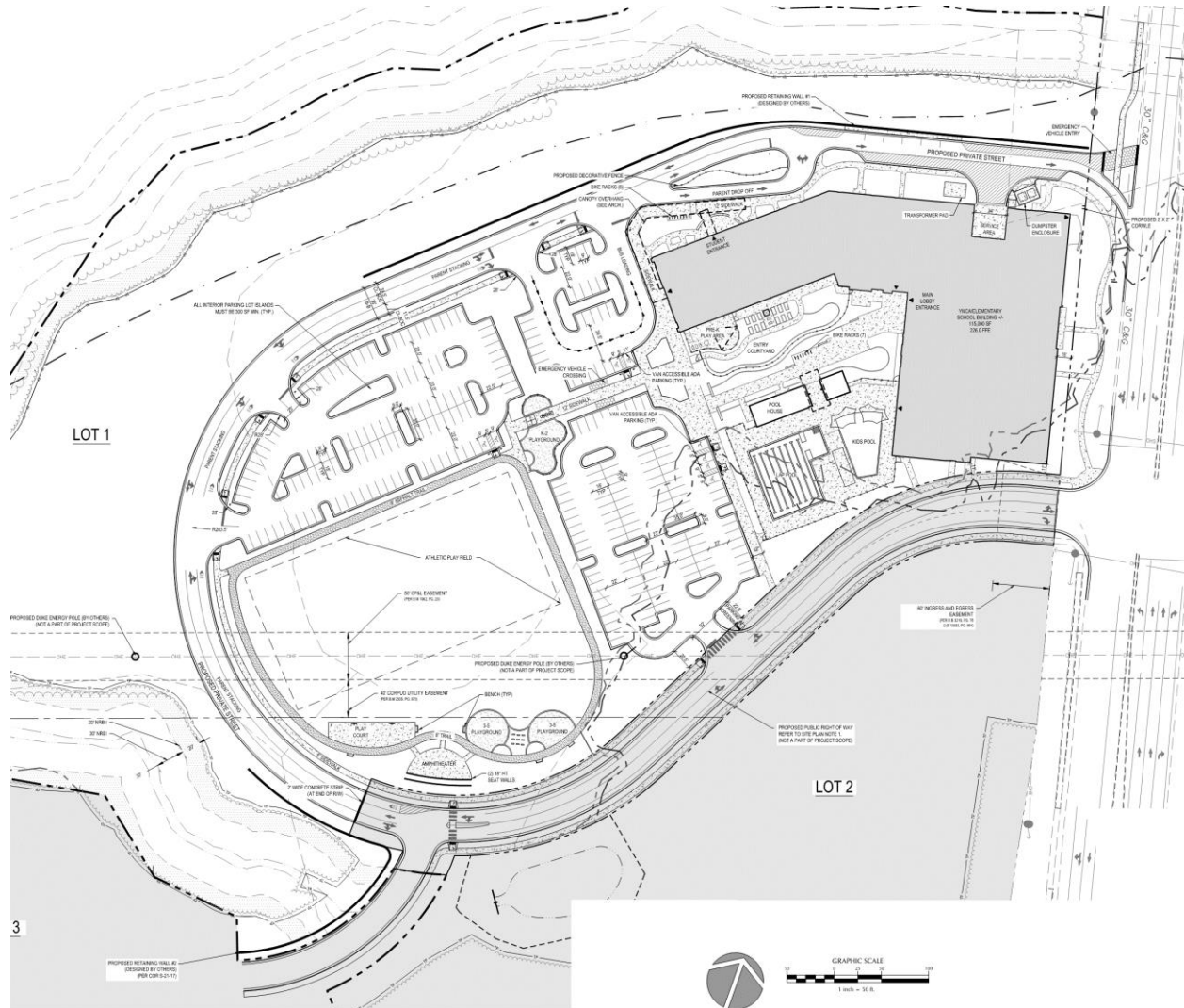
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

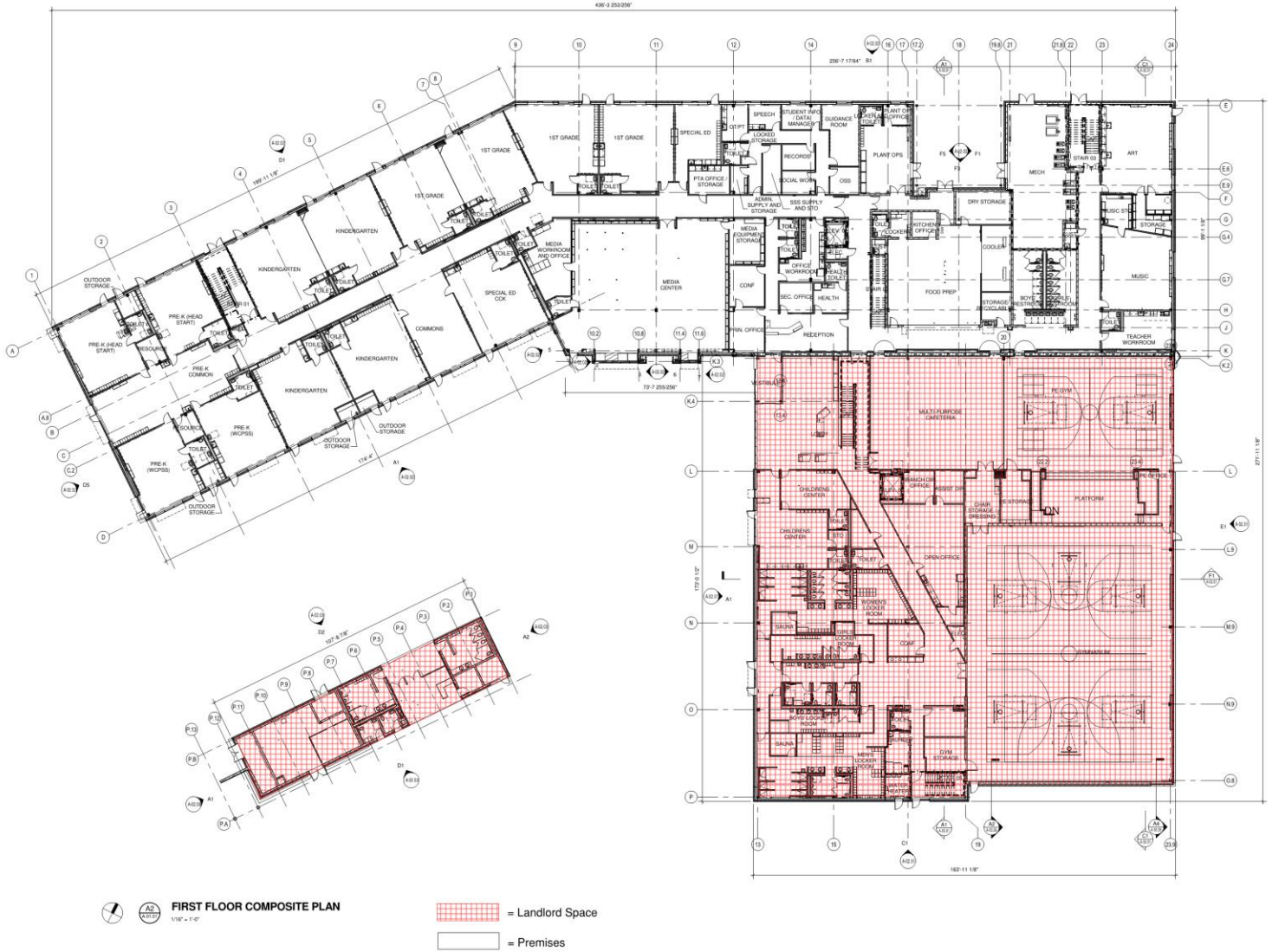


## Site Plan



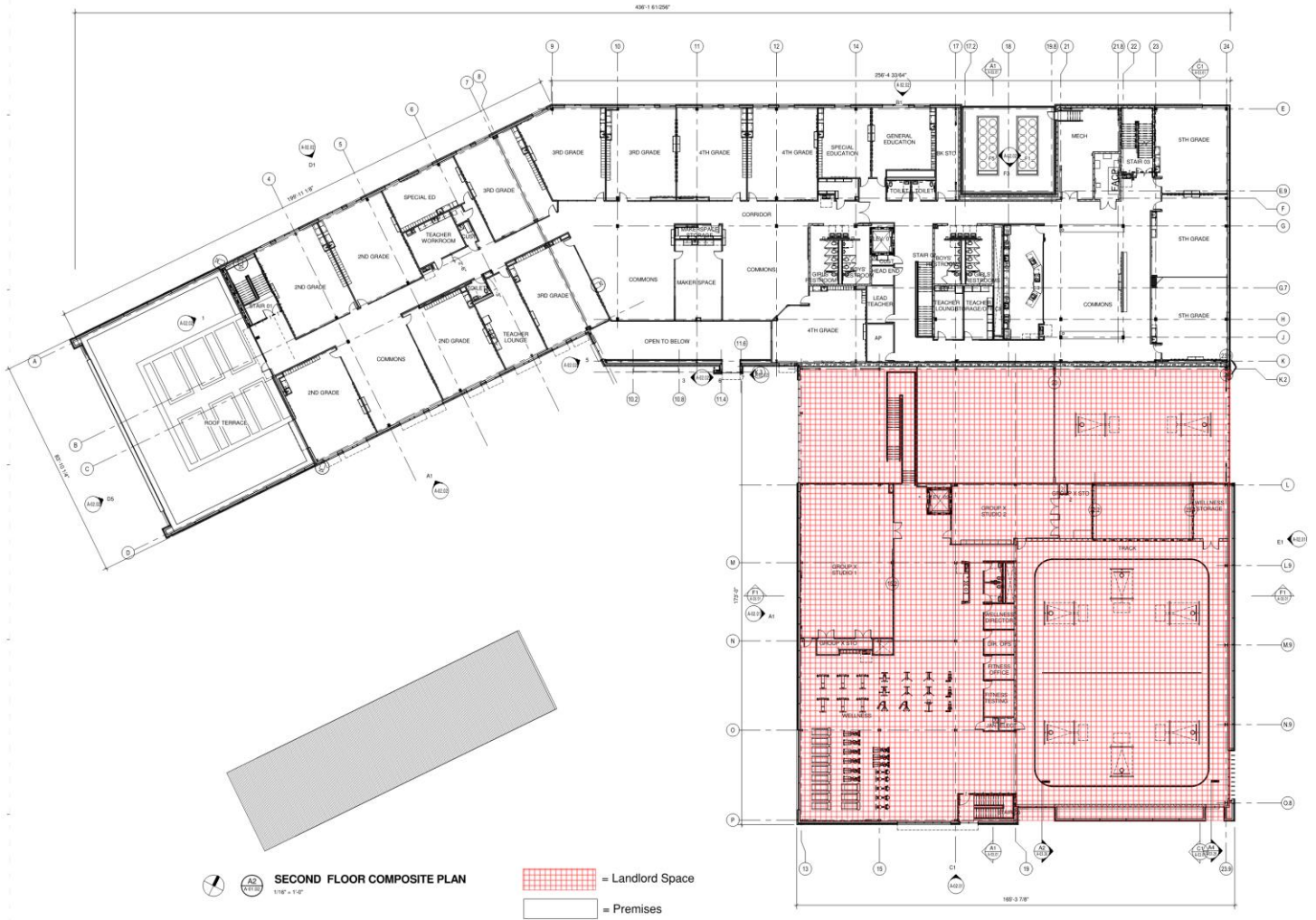
# EXHIBIT "A-1"

## Landlord Space and Premises – Level 1

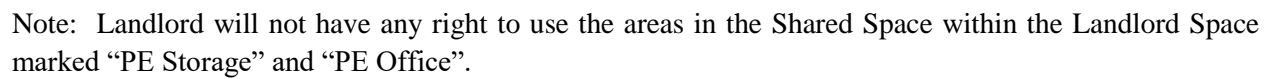


# EXHIBIT "A-1"

## Landlord Space and Premises- Level 2



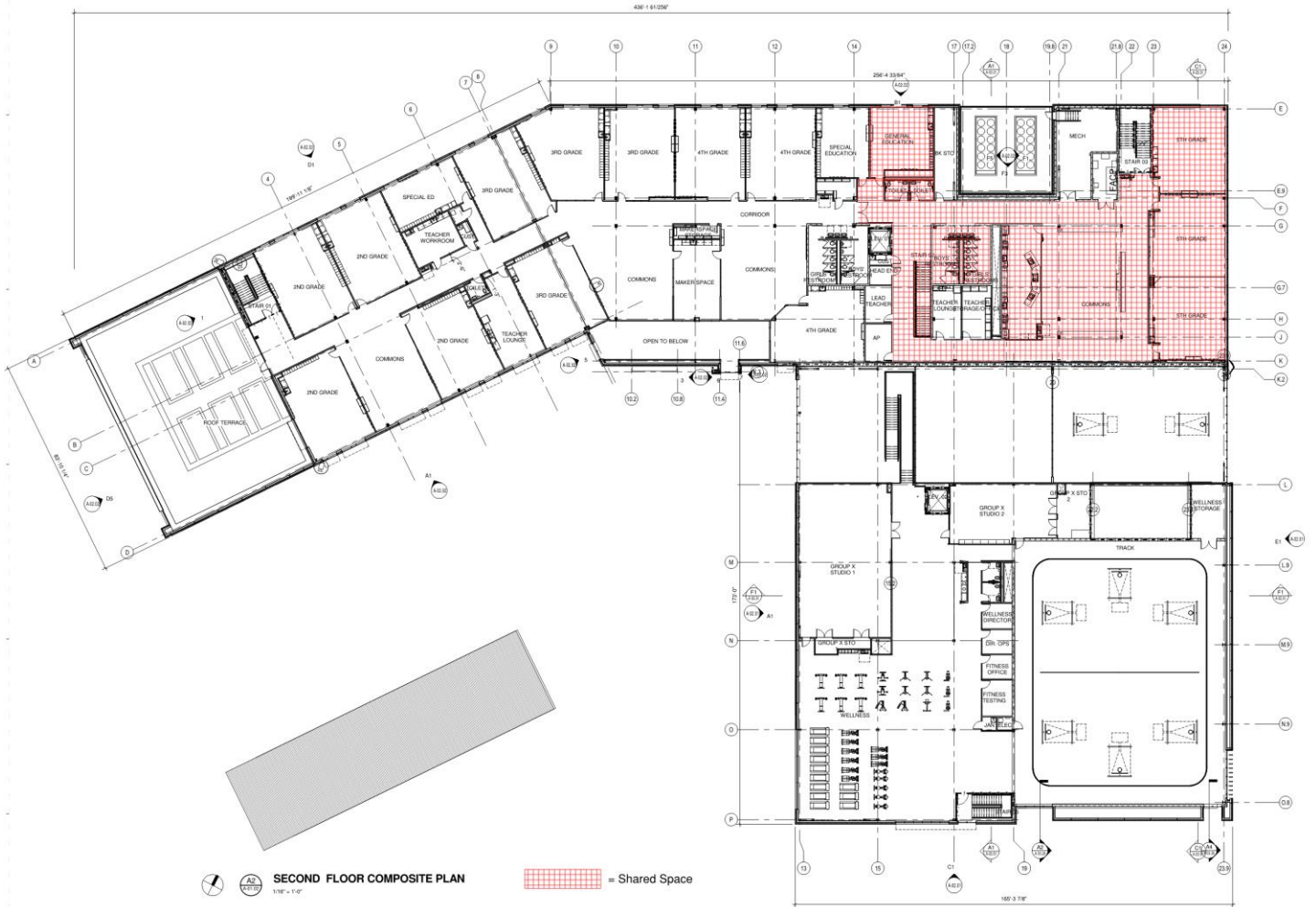
### Shared Space – Level 1





# EXHIBIT "A-2"

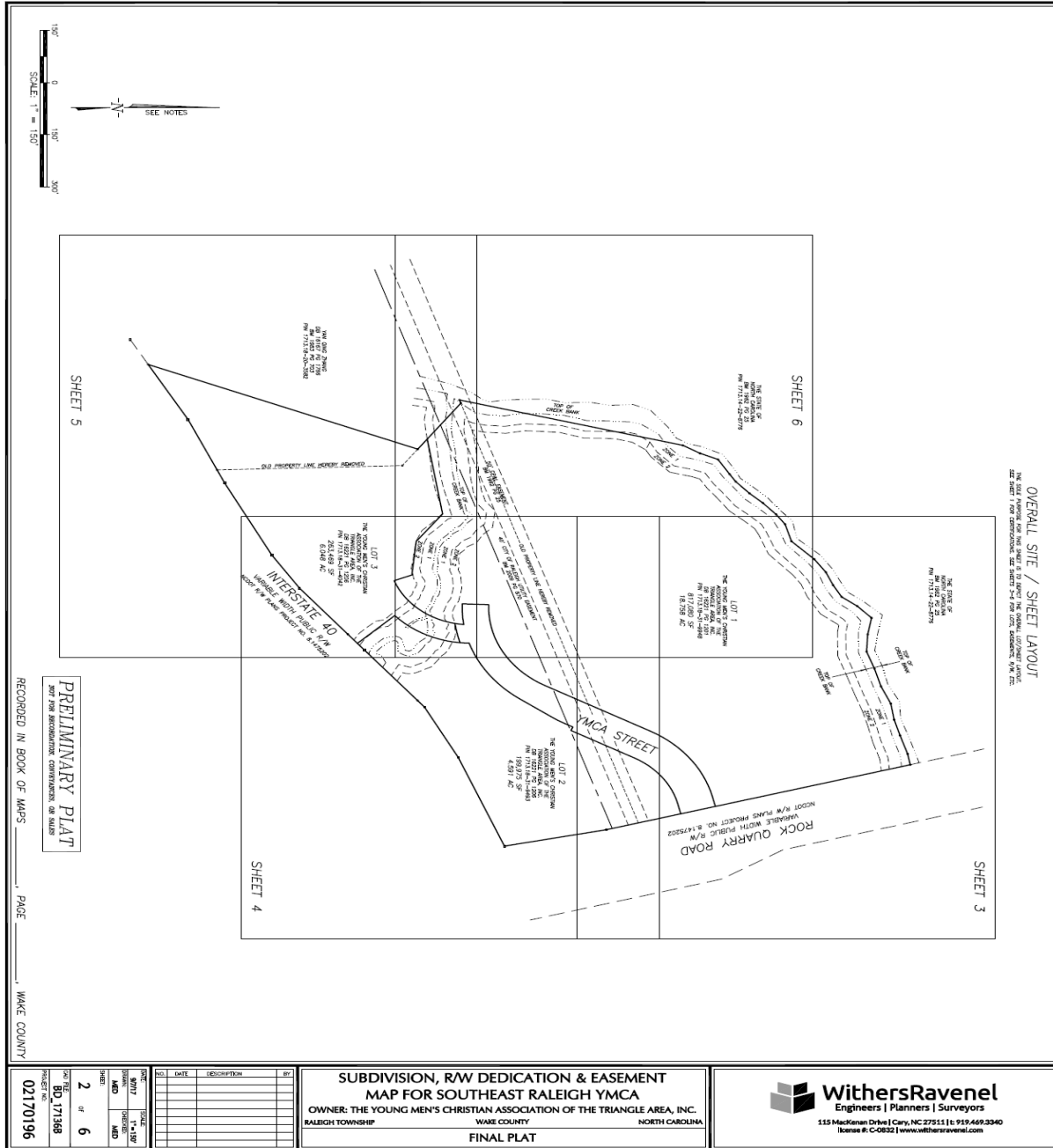
## Shared Space – Level 2



## EXHIBIT "B"

### Property Plat and Legal Description

Being all of Lot 1 as shown on the subdivision plat dated September 7, 2017 prepared by WithersRavenel set forth below.



## **EXHIBIT “C”**

### **Landlord’s Work**

As described in AIA Document A133-2009, Standard Form of Agreement between Owner and Architect and Construction Manager as Contractor, dated December 7, 2017, by and between Landlord and Balfour Beatty/Holt Brothers, YMCA – Elementary School, a Joint Venture (the “Construction Contract”), and the other Contract Documents (as defined in the Construction Contract).

## **EXHIBIT “D”**

### **Memorandum of Lease**

Prepared by:

McGuireWoods LLP  
300 North Third Street, Suite 320  
Wilmington, North Carolina 28401

STATE OF NORTH CAROLINA  
MEMORANDUM OF LEASE  
COUNTY OF WAKE

THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF THE TRIANGLE AREA, INC., a North Carolina nonprofit corporation (“Landlord”), and WAKE COUNTY BOARD OF EDUCATION, a body corporate with control and oversight over the Wake County Public School System (“Tenant”), are landlord and tenant under a Lease Agreement dated \_\_\_\_\_, 20\_\_ (the “Lease”) with respect to certain premises (the “Premises”) more particularly described in the Lease and located Lot 1 as shown in plat recorded in Map Book \_\_\_\_ at Pages \_\_\_\_ - \_\_\_\_ in the office of the Wake County, North Carolina Register of Deeds. The initial term of the Lease commences on \_\_\_\_\_, 20\_\_ and expires on \_\_\_\_\_, 2038. The Lease contains an option to extend the term for three (3) additional renewal periods of ten (10) years each as more particularly set forth in the Lease. The provisions set forth in the Lease are hereby incorporated in this Memorandum of Lease. This Memorandum of Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Signatures appear on the following page.]



LANDLORD:

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

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

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, certify that Douglas W. McMillan personally appeared before me this day and acknowledged that he is the President and Chief Executive Officer of The Young Men's Christian Association of the Triangle, Inc., a North Carolina nonprofit corporation (the "Corporation"), and that he in such representative capacity he voluntarily executed the foregoing on behalf of the Corporation for the purposes stated therein.

I certify that the Signatories personally appeared before me this day, and  
(*check one of the following*):

\_\_\_\_\_ (I have personal knowledge of the identity of the Signatories); or

\_\_\_\_\_ (I have seen satisfactory evidence of the Signatories' identity, by current state or federal identification with the Signatories' photograph(s) in the form of: (*check one of the following*)

\_\_\_\_\_ a driver's license; or

\_\_\_\_\_ other (describe: \_\_\_\_\_); or

\_\_\_\_\_ (a credible witness has sworn to the identity of the Signatories).

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_  
(*type or print name*)

My commission expires:

\_\_\_\_\_

(NOTARIAL SEAL)

TENANT:

WAKE COUNTY BOARD OF  
EDUCATION

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

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that (s)he is \_\_\_\_\_ of Wake County Board of Education, a body corporate with control and oversight over the Wake County Public School System (the "Board"), and that (s)he in such representative capacity voluntarily executed the foregoing on behalf of the Board for the purposes stated therein.

I certify that the Signatories personally appeared before me this day, and  
(*check one of the following*):

\_\_\_\_\_ (I have personal knowledge of the identity of the Signatories); or

\_\_\_\_\_ (I have seen satisfactory evidence of the Signatories' identity, by current state or federal identification with the Signatories' photograph(s) in the form of: (*check one of the following*)

\_\_\_\_\_ a driver's license; or

\_\_\_\_\_ other (describe: \_\_\_\_\_); or

\_\_\_\_\_ (a credible witness has sworn to the identity of the Signatories).

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
Notary Public \_\_\_\_\_  
(*type or print name*)

My commission expires:

\_\_\_\_\_

(NOTARIAL SEAL)

## **EXHIBIT "E"**

### **Rules and Regulations**

1. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.
2. Landlord shall in all cases retain the right to reasonably control and prevent access to the Building of all persons whose presence would be prejudicial to the safety, character, reputation and interests of the Building and its Tenants. No Tenant and no employee or invitee of any tenant shall go up upon the roof of the Building without the prior written consent of Landlord.
3. Smoking is prohibited in all spaces on the Property. Landlord reserves the right to exclude or expel from the Property any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.
4. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive to or other occupants of the Property by reason of noise, odors, or vibrations, or to otherwise unreasonably interfere in any way with the use of the Property by other tenants. Tenant shall not disturb, solicit, or canvas any occupant of the Property and shall cooperate with the Landlord and its agents to prevent the same.
5. Subject to Sections 18.18 and 18.19 of the Lease, no sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside of the Building without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. In addition, Landlord reserves the right to change from time to time the format of the signs or lettering and to require previously approved signs or lettering to be altered.
6. All moving activity into or out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord reasonably designates.
7. If Tenant requires telegraphic, telephonic, burglar alarm or similar services beyond those provided in the initial Construction of the Premises, it shall first obtain, and comply with, Landlord's instruction in their installation. Landlord shall have the right to approve where and how telephone wires are to be introduced to the Premises. However, Landlord shall not unreasonably withhold or delay consent to such installation. No boring or cutting for wires shall be allowed without the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. The location of telephone call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall not affix any floor covering to the Premises in any manner except as approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

8. The Premises shall not be occupied or used for sleeping or lodging at any time. No gambling, immoral, or other unlawful conduct shall be permitted on or about the property.
9. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any other purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be thrown into any of them, and the expense of any breakage, stoppage or damage resulting from the violation of this rule in the Premises shall be borne by Tenant.
10. Tenant shall store all its trash and garbage within the interior of the Premises and in a trash receptacle provided by Landlord adjacent to the Building loading dock. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash in the vicinity of the Property without violation of any law or ordinance covering such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate.
11. Tenant shall comply with all reasonable safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency. Tenant agrees not to use any space heaters within the Premises.
12. Tenant shall not use or keep in or on the Premises or the Property any kerosene, gasoline or other inflammable or combustible fluid or material other than such materials are normally located within Tenant's school properties or as part of the Permitted Uses. Tenant shall not bring into or keep within the Premises or the Building any animals, birds, bicycles or other vehicles except as part of the Permitted Uses set forth in this Lease.
13. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease or the Joint Use Agreement. In addition, Landlord and Tenant intend to develop Operational Guidelines to provide process and procedures relating to day-to-day operation of the Premises and the Property, including procedures for requesting maintenance and repair, move policies, etc. Landlord and Tenant agree to abide by such policies and procedures once put in place.
14. Tenant shall be responsible for the observance of all the foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.

### **PARKING RULES**

1. Designated parking facilities are made available by Landlord for Tenants and their visitors, and shall be used for vehicles that may occupy a standard parking area only. Moreover, the use of such parking facilities shall be limited to normal business parking and shall not be used for the continuous parking of any vehicle or trailer regardless of size for more than seventy-two (72) consecutive hours, without written consent of Landlord.
2. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded or parked in areas other than those agreed to be Tenant and Landlord as designated for such activities. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.

3. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons or loss of property, all which risks are assumed by the party using the parking area.

Tenant shall be responsible for seeing that all employees, agents, and invitees comply with the applicable parking rules, regulations, laws and agreements. Landlord reserves the right to terminate parking rights for any person or entity that willfully refuses to comply with these rules and regulations.

Notwithstanding anything contained herein to the contrary, the parking rules set forth above, shall not apply to the Premises' loading dock area.

**EXHIBIT “F”**

Joint Use Agreement

## EXHIBIT "G"

### Sources and Uses

#### **Sources – Landlord**

Capital Campaign Cash – Designated Dollars	\$ 7,400,000 <sup>1</sup> (\$4,010,867 in hand)
Capital Campaign Cash – Undesignated Dollars	\$ 12,600,000 <sup>1</sup> (\$4,455,579 in hand)
New Market Tax Credits – Net	\$ 4,500,000 <sup>2</sup>
Existing Cash	\$ 588,739 <sup>4</sup>
<b>TOTAL</b>	<b>\$ 25,088,739</b>

#### **Sources – Tenant – Total Tenant Improvement Cost**

Tenant Design Funds	\$ 1,000,000
Tenant Commencement Payment	\$ 2,500,000 <sup>3</sup>
Tenant Midpoint Payment	\$ 2,500,000 <sup>3</sup>
Tenant Substantial Completion Payment	\$11,275,907 <sup>4</sup>
Tenant Permanent Certificate of Occupancy Payment	\$ 939,659 <sup>4</sup>
Tenant Final Payment	\$ 313,220 <sup>4</sup>
<b>TOTAL</b>	<b>\$ 18,528,786<sup>4</sup></b>

**Total Sources** **\$43,617,525**

#### **Project Uses**

Land Purchase	\$ 4,716,584
Site Work (31 acres)	\$ 9,217,927
Construction (hard & soft) – School/Y	\$28,398,014 <sup>4</sup>
Construction period interest	\$ 275,000 <sup>4</sup>
FF&E – School/Y (Y's expenses only)	\$ 510,000
Contingency	\$ 500,000

**Total Uses** **\$ 43,617,525<sup>4</sup>**

1. Remaining is Pledges to be collected over the next several years. YMCA Board of Directors has authorized cash on hand to be used to fund the pledges in the event payment on such pledges is delayed or is never made.
2. The Landlord has commitment letters from CAHEC New Markets, LLC and SunTrust Community Capital, LLC, which combined are allocating \$21,000,000 worth of New Market Tax Credits to the Landlord. The net equity to the Landlord will be approximately \$4,500,000.
3. SunTrust has provided a term sheet dated November 16, 2017 that provides the terms of a draw-down bridge loan to the YMCA in an amount of up to \$20,280,000 at a variable interest rate calculated at LIBOR plus .75% to cover construction costs prior to payments on Capital Pledges and payments from Tenant.
4. These amounts will be adjusted to reflect actual costs of construction, sales tax refunds and the actual financing charges incurred by the YMCA, calculated at LIBOR plus .75%.