

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: January 12, 2021

Consent Regular
 Ordinance Public Hearing

Department: Parks and Recreation

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) **adopt** a Resolution authorizing the lease of certain real property to the Young Men's Christian Association of the Palm Beaches, Inc. a Florida not for profit corporation (YMCA), pursuant to Florida Statutes, Section 125.38; and
- B) **approve** a Lease Agreement with the YMCA, for approximately five (5) acres in Lake Lytal Park.

Summary: On March 13, 2018, the Board authorized staff to evaluate the potential of forming a cooperative partnership with the YMCA to relocate the existing YMCA Branch in Palm Springs to undeveloped land within Lake Lytal Park. The YMCA and County have worked collaboratively to develop a conceptual master plan ("CMP") for collocation of the County's replacement Aquatic Facility with YMCA's proposed skate park, fitness facility and child care/preschool center.

Under this proposal, the County would lease approximately five (5) acres of undeveloped land in Lake Lytal Park to YMCA. The initial lease term is for fifty (50) years with one fifty (50) year extension option. Rent will be \$10/year. YMCA shall reimburse the County up to 50% of the cost of design and permitting of infrastructure improvements, not to exceed \$75,000. Each party shall construct its respective facilities and infrastructure improvements at its own expense.

The YMCA will construct their facilities in three phases. Phase I includes an Olympic Style Skate Park Training Facility and associated site improvements and infrastructure. Phase II includes a new 45,000 square foot community center/health and fitness facility and associated site improvements and infrastructure. Phase III includes a 10,000 square foot child care center/preschool and associated site improvements and infrastructure. The Lease Agreement requires the YMCA to commence construction of Phase I within three (3) years, Phase II within six (6) years and Phase III within ten (10) years. The Lease includes a Fundraising Schedule that obligates the YMCA to raise \$7,500,000 by November 30, 2023; \$16,500,000 by November 30, 2026; and \$21,500,000 by November 30, 2030. Either party shall have the right to terminate in the event the fundraising milestones are not met.

The Lease Agreement also requires the YMCA and County to enter into an Operations Agreement for the staffing, programming and operational management of the Aquatics Facility within twenty-four (24) months after the County's completion of construction of the Aquatics Facility. This operations agreement is projected to reduce the County's operating expenses. District 2 (HF)

Background and Policy Issues: The Parks and Recreation Department is planning to commence design of a new Aquatics Facility on undeveloped land at Lake Lytal Park with funds allocated through **Infrastructure Sales Tax** proceeds. In an effort to eliminate duplicate facilities and expand programs and services for all ages within this densely populated service area, the YMCA has proposed relocating the YMCA facility currently located on Congress Avenue in Palm Springs to an undeveloped portion of Lake Lytal Park adjacent to the proposed replacement Aquatic Facility. Cooperative partnerships such as this have been successfully implemented in Miami-Dade and Broward Counties, the City of Tampa and elsewhere around the country. The potential of a collaborative partnership with the YMCA is a distinctive and timely opportunity that will offer the residents of Central Palm Beach County some exceptional facilities and services while reducing the County's cost of operating the new Aquatics Facility.

Continued on page 3.

Attachments:

- 1. Location Map
- 2. Resolution
- 3. Conceptual Master Plan
- 4. Lease Agreement (W/Exhibits "A", "B" and "C")

Recommended by:  12-16-20
Department Director Date

Approved by:  12/16-2020
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS


A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures *	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues *	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>	<u>(10.00)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget:		Yes	<u>X</u>	No	_____
Does this item include use of federal funds?		Yes	_____	No	<u>X</u>

Budget Account No.: Fund 0001 Department 580 Unit 5110
 Object _____/Revenue Source 4902 Program _____

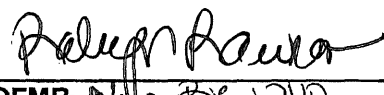
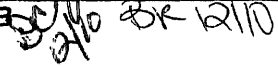
B. Recommended Sources of Funds/Summary of Fiscal Impact:

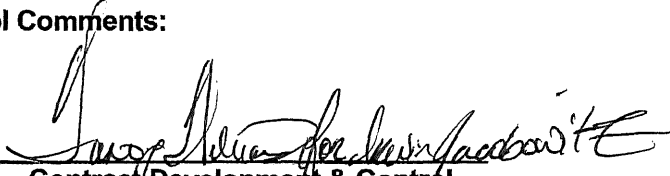
*The replacement Lake Lytal Park Aquatic Facility is being funded from \$6M in Infrastructure Sales Tax (IST) proceeds per the Board approved IST Project Plan. Pursuant to terms of the Lease Agreement, Parks and Recreation will be responsible for updating the CMP at its cost, advancing funds for infrastructure design and site clearing, with the YMCA reimbursing Parks for 50% of those costs, not to exceed \$75,000. In the event that the Lease is terminated during the infrastructure design phase, the YMCA will be relieved of the obligation to reimburse Parks. The estimated costs for the infrastructure design, permitting and site preparation is \$150,000 and will be paid from IST account – 3950-581-T001-6505. In 2010, the County provided the YMCA funding from its 2002 Recreation and Cultural Facilities Bond for construction of a concession building at the John Knapp Little League Ballfield Complex. Per the terms of the bond agreement (R2010-0524 and R2010-0919) YMCA is required to reimburse the County \$143,699 upon sale of its Brown Branch property. YMCA has been made aware of this requirement and will comply with the terms of the bond agreement upon sale.

C. Departmental Fiscal Review: 

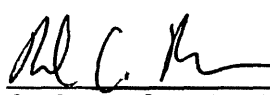
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

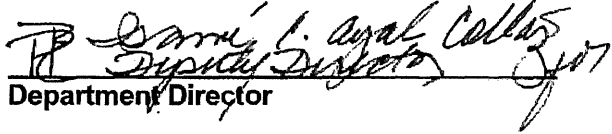
 12/11/2020
 OFMB 


 Contract Development & Control
 12-31-2020

B. Legal Sufficiency:

 1/8/2021
 Assistant County Attorney for H. Falcon

C. Other Departmental Review:


 Department Director

This summary is not to be used as a basis for payment

The YMCA is the nation's largest provider of aquatic training and drowning prevention. One of the main intended benefits of collocating these facilities is the opportunity for the County to have the YMCA assume operational responsibility for the Aquatics Facility. The Lease requires the YMCA and the County to enter into an operations agreement for the YMCA to assume responsibility for the programmatic operations and management of the Aquatics Facility. This operations agreement will generally provide for: (i) the staffing, programming, scheduling of events, daily routine maintenance (including chemicals for pool cleaning and other custodial services) and concessions, (ii) the YMCA being entitled to retain all revenues generated from use fees or charges and concession operations to offset the cost of the YMCA's operation of the Aquatics Facility, (iii) the YMCA to continue to accommodate historical usage by long standing clubs and school swim and dive teams specifically identified by the County, unless the parties mutually agree in writing at any time to prohibit a club or team from using the Aquatics Facility, (iv) the County retaining title to the grounds, buildings, structures, pool and all other improvements associated with the Aquatics Facility, and (v) the County to be responsible for utilities of the Aquatics Facility, and for the maintenance, repair and replacement of capital improvements servicing the Aquatics Facility, including, without limitation, the building systems, HVAC, pool deck, pump system, chlorinators, pool equipment and other capital improvements needed for the Aquatics Facility.

The following is a discussion of the provisions of the Lease relating to design, construction and cost thereof:

1. **Conceptual Master Plan.** Parks and the YMCA have jointly developed the Conceptual Master Plan (CMP) attached hereto as Attachment 3 which shows the facilities proposed to be developed by each party, and the phases of construction of the YMCA's facilities. Numerous details will need to be worked out to finalize the CMP, including the number of parking spaces that will need to be provided based upon a shared parking study to be performed by Parks and the preliminary design of the infrastructure (access drives, parking areas, drainage and utilities). Parks will be responsible for updating the CMP at Park's expense with input from and approval by the YMCA.
2. **Infrastructure Design.** Parks will hire a consulting engineer to design the access road, parking, utilities and surface water management systems servicing the Aquatics Facility and the YMCA's proposed facilities (Infrastructure), and to provide cost estimates and recommendations for shared Infrastructure costs. The YMCA will reimburse Parks for 50% of the cost of design, with YMCA's share not to exceed \$75,000 of the overall reimbursement cap. In the event that the estimated cost of such Infrastructure is not acceptable, either party will have the right to terminate the Lease. In the event that the Lease is terminated, the YMCA will be relieved of the obligation to reimburse Parks.
3. **Drainage.** Upon written approval of the design of the Infrastructure by both parties, County's Engineering Consultant shall apply for a conceptual surface water management permit for the overall surface water management system serving the Aquatics Facility and the Project (the "Permit"). Each party will apply for separate general surface water management permits for their respective projects, by phases as applicable. The parties will each construct that portion of the overall surface water management system as required by the general permits for their projects.
4. **Site Preparation.** Within one hundred eighty (180) days following receipt of the Permit, County shall clear, grub and grade the overall site, including removal of existing trees which cannot be relocated or will be in conflict with proposed improvements. County shall be responsible for payment of all permit and mitigation fees associated with the site preparation. The YMCA shall reimburse Parks for 50% of the physical cost of the site preparation, not to exceed the overall reimbursement cap of \$75,000.
5. **Parking.** The YMCA is responsible for constructing up to 267 parking spaces as required by code. Parks will perform at its expense a shared parking analysis to determine whether the number of parking spaces can be reduced. Each party will be required to construct the parking required for their facilities.
6. **Construction of access road.** The YMCA is required to rebuild the access road extending from Gun Club Road to the YMCA's facilities as part of Phase 2 of YMCA's development. The parties will share the cost 50/50.
7. **Except as otherwise expressly provided in the Lease, each party shall be responsible for the full cost of design and construction of their respective projects.**
8. **The YMCA will develop their project in three phases. The YMCA shall commence construction of Phase I within 3 years of the Effective Date, or within 6 months after approval of the Detailed Plans and Permit Applications for Phase I, whichever is later. Construction of Phase II must commence within six (6) years of the Effective Date. Construction of Phase III must commence within ten (10) years of the Effective Date.**

It is anticipated that the design and construction of the collocated facilities will be a fairly complex process, requiring full coordination and cooperation between Parks and Recreation and the YMCA. It is the intention of both parties to use the same consulting design professionals to facilitate such coordination. In addition, this will require assignment of a project manager from the Capital Improvements Division of FD&O. County staff has worked closely with the YMCA and their team of professionals to provide a workable framework for the design and construction of the proposed facilities.

Attachment 1
LOCATION MAP



Attachment 2

RESOLUTION

RESOLUTION NO. 20__

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY TO THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PALM BEACHES, INC., PURSUANT TO FLORIDA STATUTE SECTION 125.38; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The Young Men's Christian Association of the Palm Beaches, Inc., a Florida not for profit corporation ("Tenant"), has made application to the Board of County Commissioners of Palm Beach County requesting that Palm Beach County lease certain real property owned by Palm Beach County to the Tenant for use by the Tenant for development of a skate park, community center and child care center, creating recreational opportunities; and

WHEREAS, the Board of County Commissioners of Palm Beach County hereby finds that the aforementioned use constitutes a use for the community interest and welfare, such real property is required for such use and such real property is not needed for County purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Recitals

The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Authorization to Lease Real Property

The Board of County Commissioners of Palm Beach County shall lease to YMCA, pursuant to the Lease attached hereto as Exhibit "A" and incorporated herein by reference, for a term of fifty years and an annual rental of ten Dollars (\$10.00), the real property identified in such Lease for the use identified above.

Section 3. Conflict with Federal or State Law or County Charter

Any statutory or Charter provisions in conflict with this Resolution shall prevail.

Section 4. Effective Date

The provisions of this Resolution shall be effective immediately upon adoption hereof.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The Motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Dave Kerner, Mayor	_____
Commissioner Robert S. Weinroth, Vice Mayor	_____
Commissioner Maria G. Marino	_____
Commissioner Gregg K. Weiss	_____
Commissioner Maria Sachs	_____
Commissioner Melissa McKinlay	_____
Commissioner Mack Bernard	_____

The Mayor thereupon declared the resolution duly passed and adopted this ____ day of _____, 2021.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

**JOSEPH ABRUZZO
CLERK & COMPTROLLER**

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Howard J. Falcon
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

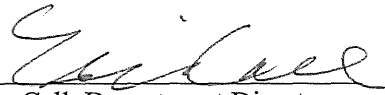
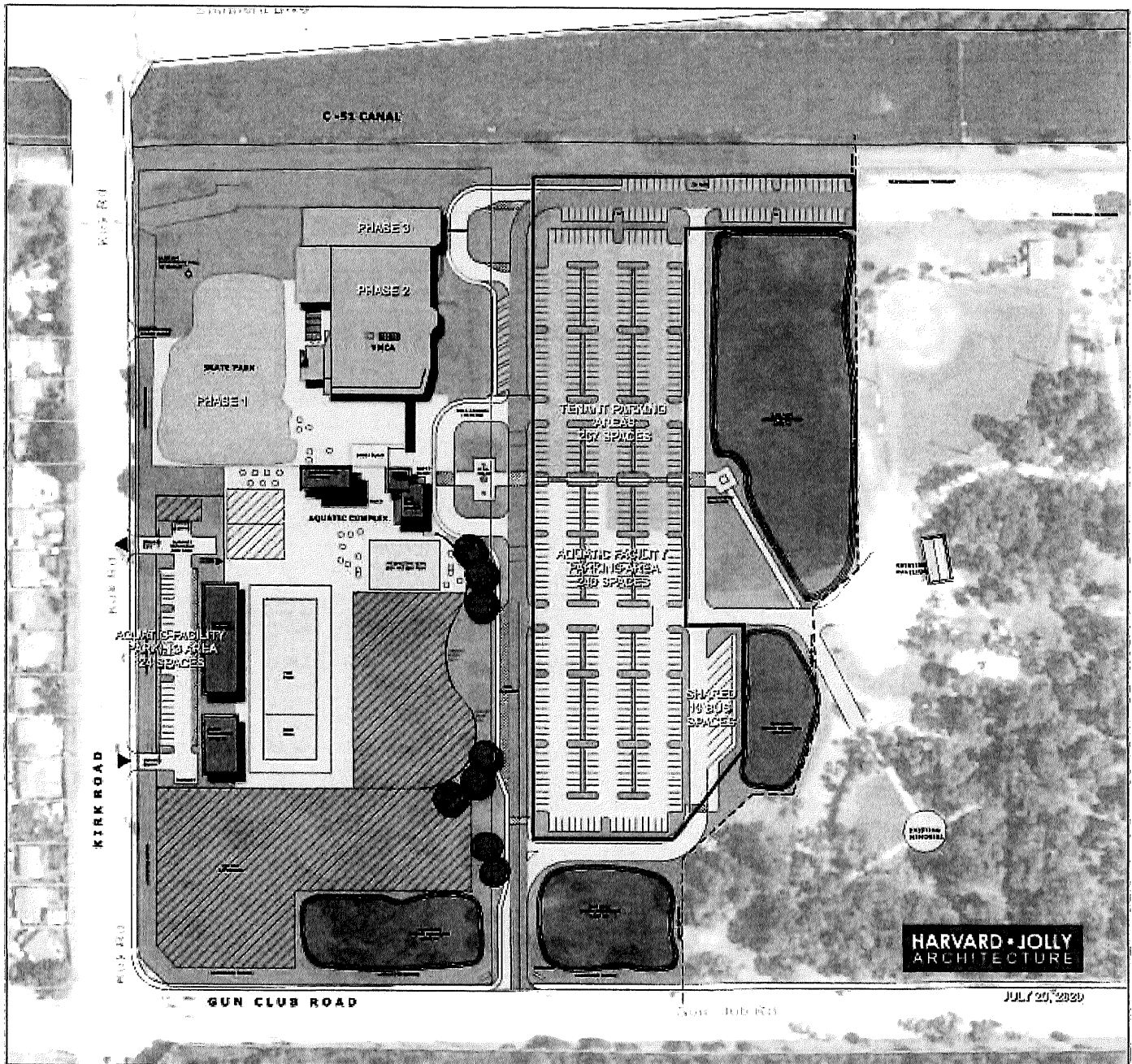
By: 
Eric Call, Department Director

Exhibit "A"
Lease Agreement

Attachment 3

CONCEPTUAL MASTER PLAN



Attachment 4

LEASE AGREEMENT

PALM BEACH COUNTY

LEASE AGREEMENT

between

PALM BEACH COUNTY

A POLITICAL SUBDIVISION OF THE

STATE OF FLORIDA

(County)

and

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PALM BEACHES, INC.

A NOT-FOR-PROFIT CORPORATION

(Tenant)

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**LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND THE YMCA OF THE
PALM BEACHES, INC FOR THE LEASE OF REAL PROPERTY IN LAKE LYTAL
PARK**

THIS LEASE AGREEMENT ("Lease") is made and entered into on _____, 2020 by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County," and THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PALM BEACHES, INC., a Florida not for profit corporation, authorized to do business in the State of Florida hereinafter referred to as the "Tenant."

WHEREAS, the County is the owner of real property in Palm Beach County, Florida, known as Lake Lytal Park located at 3645 Gun Club Road, West Palm Beach, Florida 33406; and

WHEREAS, the Tenant is a not-for-profit organization whose areas of focus are youth development, healthy living and social responsibility; and

WHEREAS, on March 13, 2018, the Board of County Commissioners authorized County staff to evaluate the potential for forming a cooperative partnership with the Tenant; and

WHEREAS, the Tenant has requested to lease from the County approximately 5 acres of real property located in the northwest portion of Lake Lytal Park for the design, construction and operation by Tenant of a skate park, community center and child care center together with other related improvements as more particularly described in this Lease (collectively, the "Project"); and

WHEREAS, the County intends to relocate its aquatics facility adjacent to Tenant's Project; and

WHEREAS, the Tenant is willing and able to promote fund-raising activities for the design and construction of the Project; and

WHEREAS, Florida Statutes Section 125.38 permits County to lease public property to a not-for-profit corporation which is organized for the purposes of promoting community interest and welfare provided such property is not required for County purposes; and

WHEREAS, both parties desire to enter into this Lease to increase the recreational opportunities for residents of Palm Beach County.

NOW THEREFORE, in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be observed and performed, the County demises and leases to Tenant and the Tenant leases from County the Premises, as defined hereinafter, upon the following terms and conditions;

ARTICLE I BASIC LEASE PROVISIONS

Section 1.01 Premises.

The premises which are subject to this Lease consist of approximately 5 acres of real property depicted as the Skate Park, Community Center and Child Care Center on the Conceptual Master Plan attached hereto as Exhibit "A" (the "Premises"). Promptly after approval of the Approved Master Plan (AMP), County shall obtain at its cost a survey of the Aquatics Facility, the Premises and each Phase of the Project, which survey shall provide metes and bounds legal descriptions for each of the foregoing areas consistent with the AMP. Upon written approval thereof by County and Tenant, said legal descriptions shall be made and become a part of this Lease. County also grants to Tenant and Tenant's agents, employees, licensees, invitees, and guests the right to use the Access Road (defined in Section 6.02) for vehicular and pedestrian access to and from the Premises, and the Tenant Parking Area (defined in Section 6.02) for parking vehicles during Tenant's hours of operation for the Premises.

Section 1.02 Term.

This Lease shall be effective upon the Effective Date, as defined hereinafter. The Lease shall extend for a period of fifty (50) years thereafter ("Initial Term"), unless sooner terminated pursuant to the provisions of this Lease.

Section 1.03 Option to Extend.

Provided the Tenant is not then in default of any material term, covenant, condition, or payment of Rent under this Lease after any applicable notice and cure periods, the Tenant shall have the right to extend this Lease for one additional fifty (50) year term under the same terms and conditions as this Lease and commencing upon the expiration of the Initial Term of this Lease. The Tenant shall exercise such option to extend if at all, by written notice to the County received by the County no later than one hundred eighty (180) days prior to the expiration of the Initial Term of this Lease. Failure of the Tenant to duly and timely exercise its option to extend shall be deemed a waiver of the Tenant's right to such option.

Section 1.04 Not-for-Profit Status.

It is the intent of the parties that the Premises will be used by a not-for-profit corporation for the non-commercial development and operation of a skate park, community center, and child care center. Tenant represents that Tenant has full authority to enter into this Lease and to perform or cause to be performed all of Tenant's obligations herein, and that Tenant is a not-for-profit corporation currently in good standing under Florida law. Tenant shall maintain its not-for-profit corporation status in good standing during the entire term of this Lease.

Section 1.05 Naming Rights of Tenant.

County hereby grants Tenant the right to name the Project, its improvements and all components thereof, and displays in recognition of Tenant's major donors, subject to approval by the Director, which shall not be unreasonably withheld. Upon expiration or

termination of this Lease, or Tenant's surrender of the Premises, naming rights to the building and all improvements constructed by Tenant shall revert to County.

ARTICLE II RENT

Section 2.01 Annual Rent.

The Tenant shall pay the County an annual net rent of Ten Dollars (\$10.00) (the "Annual Rent"), payable on or before the Effective Date and on or before each subsequent anniversary thereof. Annual Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Parks & Recreation Department, Revenue Section, 2700 Sixth Avenue South, Lake Worth, FL 33461. This Lease shall be what is commonly referred to as "triple net" to the County, it being understood by the parties that the County shall receive the rent payable hereunder free and clear of any and all impositions, taxes, liens, charges, and expense of any nature whatsoever relating to ownership or operation of the Premises, including, without limitation, those relating to taxes, if any, insurance, repair, maintenance, use, care, or operation.

Section 2.02 Assessments and Personal Property Taxes.

The Tenant shall pay all sales, use or rent taxes assessed by any governmental authority against the Annual Rent and/or Additional Rent, as defined in Section 2.03, if any, even if such tax is intended to be imposed against the County. The Tenant shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special, and all tangible or intangible personal property taxes and assessments of any kind or nature that may be levied by any governmental authority against the Premises, the Tenant's leasehold interest in the Premises and the Tenant's alterations or personal property located on the Premises.

Section 2.03 Additional Rent.

Any and all sums of money or charges required to be paid by the Tenant under this Lease other than Annual Rent shall be considered "Additional Rent", whether or not the same is specifically so designated, and the County shall have the same rights to enforce due and timely payment by the Tenant of all Additional Rent as are available to the County with regards to Annual Rent.

Section 2.04 Unpaid Fees.

In the event the Tenant fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Lease within ten (10) days after Tenant has received written notice from the County of such failure, interest at the rate of one and one-half percent (1½ %) per month (or the highest rate permitted by law if lower) shall accrue against the delinquent payment(s) from the date due until the date payment is received by the County. Such interest shall constitute Additional Rent.

Section 2.05 Accord and Satisfaction.

In the event the Tenant pays any amount that is less than the amount stipulated to

be paid under this Lease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to the County's right to recover the balance due or to pursue any other remedy available to the County pursuant to this Lease or under the law.

ARTICLE III FUND RAISING PLAN

The Tenant has prepared the fundraising plan attached to this Lease as Exhibit "B" ("Fundraising Plan"), which has been accepted by the County and is a material consideration in the negotiation of this Lease. The Fundraising Plan includes scheduled milestones by which funds for the design and construction, must be secured. In the event that Tenant fails to meet a fundraising milestone for a Phase of the Project, either party shall have the right at its option, to terminate Tenant's right to develop and operate such Phase as well as all subsequent Phases hereunder, but such termination shall not apply to a Phase which has been completed or for which the funding milestone has been met. For purposes of clarification, if Tenant is unable to meet a funding milestone for Phase II, such failure shall not provide either party with a right to terminate this Lease as to Phase I, and if Tenant is unable to meet a funding milestone for Phase III, such failure shall not provide either party with a right to terminate this Lease as to Phase I or Phase II. In no event shall Tenant commence construction of any Phase of the Project until such time as 100% of the cost of the Phase has been identified and committed in the customary manner for non-profit organizations funding of development projects. If Tenant's right to develop and operate any Phase(s) of the Project is terminated pursuant to this Section, Tenant shall surrender possession of that portion of the Premises upon which such Phases were to be developed, and Tenant shall have no further rights or obligations hereunder with respect to such Phase(s), except for those matters that expressly survive termination of the Lease.

ARTICLE IV CONDITION OF LEASED PREMISES

Section 4.01 Inspection Period; Condition of Premises.

Tenant shall have a period of ninety (90) days after the Effective Date (the "Inspection Period"), during which Tenant, and all of Tenant's agents, contractors, consultants, representatives and other persons designated by Tenant, shall have the right to enter the Premises, for the purpose of investigation, discovery and testing of the Premises, including, without limitation, surveying, soil testing and boring, hydrological studies, environmental studies, structural inspections or any other studies or tests Tenant determines in its reasonable discretion to be necessary or appropriate (collectively, the "Inspections"). Tenant shall have the absolute and unqualified right to terminate this Lease by written notice to County at any time prior to the expiration of the Inspection Period for any reason whatsoever or for no reason. In the event that Tenant desires to terminate this Lease, Tenant shall repair any damage resulting from the Inspections and restore the Premises to the condition in which it existed prior thereto using materials of like kind and

quality, and surrender possession of the Premises to County, whereupon the parties shall be released from all further obligation hereunder, except for those matters that expressly survive termination of the Lease. If Tenant does not terminate this Lease during the Inspection Period pursuant to this Section, Tenant shall be deemed to have accepted the Premises in its "As Is Condition," and "With All Faults" together with any defects, if any, and subject to all easements, encumbrances, restrictions, and matters of record. To the best of the County's knowledge, there are no pending contracts for the sale of any portion of the Premises; and there is no suit or proceeding pending or threatened affecting any portion of the Premises. The Tenant acknowledges that except as provided immediately above and in Section 8.11 and Article XVIII, the County has made no representations or warranties of any nature whatsoever regarding the Premises, including, without limitation, the physical condition of the Premises, any improvements or equipment located thereon, if any, or the suitability thereof for the Tenant's intended use.

Section 4.02 Evidence of Title.

During the Inspection Period, Tenant shall have the right to obtain a title insurance commitment for the Premises, issued by a nationally recognized title insurer, (the "Commitment"), which shall commit to issue to Tenant, upon expiration of the Inspection Period, a lessee's policy of title insurance (the "Title Policy") in the amount of the estimated value of the Premises. Tenant shall be responsible for all costs and premiums for said Commitment and Title Policy. The County shall cooperate with Tenant obtaining the Title Policy provided that the County shall not be obligated to incur any cost or expense in connection with the Title Policy.

**ARTICLE V
PROJECT ELEMENTS**

Section 5.01 Project Elements, Phasing.

The development of the Project shall be completed in 3 phases.

The Phase I Project shall contain the following minimum improvements as depicted on the Conceptual Master Plan:

1. Olympic Style Skate Park training facility.
2. Temporary restroom facilities at time of construction.
3. Related site improvements including bleachers, shade structures, pathways and signage for Phase I.
4. Related civil work including:
 - (a) parking, as and to the extent required by the Palm Beach County's Unified Land Development Code ("Code") for the Phase I project;
 - (b) paving, grading, drainage, water retention, landscaping, lighting and related infrastructure for Phase I.
5. Related fencing, gates and/or other approved means of securing and controlling access to Phase 1.

Tenant shall construct permanent restrooms within three (3) years of completion

of Phase I.

The Phase II Project shall contain the following minimum improvements as depicted in the Conceptual Master Plan:

1. +/- 45,000 square foot community center.
2. Related Site improvements including pathways, site furnishings, and outdoor lighting, for Phase II.
3. Related civil work including paving, grading, drainage, water retention, parking within the Tenant Parking area as required by the Code for the Phase II Project, landscaping, lighting and related infrastructure for Phase II.
4. The access road from Gun Club Road to the Community Center and associated parking area.
5. Related fencing, gates and/or other approved means of securing and controlling access to Phase II.

The Phase III Project shall contain the following minimum improvements as depicted in the Conceptual Master Plan:

1. Child Care Center/preschool with approximately 10,000 square feet intended to serve approximately 200 children.
2. Related site improvements including pathways, outdoor lighting, and site furniture for Phase III.
3. Related civil work including access road, paving, grading, drainage, landscaping, water retention, parking within the Tenant Parking Area as required by Code for the Phase III project, offsite road improvements as required by the Code for Phase III, lighting and related infrastructure for Phase III.

ARTICLE VI PLANNING, DESIGN, AND CONSTRUCTION

Section 6.01 Master Plan.

A conceptual master plan of the County's Aquatics Facility, as defined in Section 6.11, and the Project, including Phases I, II and III thereof, is reflected in the Conceptual Master Plan attached hereto as Exhibit "A". The County, at the County's expense, shall prepare and deliver to Tenant for review and written approval an updated master plan, which will include the County's Aquatics Facility and the Project, including Phase I, Phase II and Phase III. The updated master plan shall at a minimum include and/or identify: 1) all proposed improvements within the Project and each Phase thereof, including buildings, drive aisles, parking areas and surface water management areas; 2) all ingress/egress points from the Premises to Gun Club Road and/or Kirk Road; 3) all points of vehicular and pedestrian circulation within Lake Lytal Park; 4) location of and access to the South Florida Water Management District ("SFWMD") monitoring well; and 5) all easements required for development of the Project and the Aquatics Facility. The County

shall seek input from Tenant and incorporate Tenant's comments in connection with the updated master plan and the parties shall work together in good faith and with commercially reasonable efforts to agree on and approve the updated master plan. The updated master plan approved in writing by the Tenant and the Director shall be referred to herein as the Approved Master Plan (the "AMP").

Section 6.02 Design of Infrastructure / Cost sharing.

A. Infrastructure Design. The parties shall cooperate in the design of infrastructure serving both the Aquatics Facility and the Project, as depicted in the AMP ("Infrastructure"). As used herein, Infrastructure shall include the Access Road (defined in 6.02 D); parking for both the Project and the Aquatics Facility; water, sewer and other utilities serving both the Project and the Aquatics Facility, including connection points for water and sewer utility services, piping required for said connections and metering locations; and surface water management improvements for both the Project and the Aquatics Facility. The County shall hire a civil engineering consultant (the "County's Engineering Consultant") to design the Infrastructure, provide cost estimates for construction of the Infrastructure, and make recommendations as to allocation of costs. The County's Engineering Consultant shall seek input from Tenant and incorporate Tenant's comments in connection with creating the Infrastructure design, cost estimates and recommended allocation of costs. Upon completion, the County shall submit the Infrastructure design, cost estimates and proposed allocation of costs to Tenant for review and approval. If Tenant reasonably disapproves of the Infrastructure design, cost estimates and/or proposed allocation of costs then Tenant shall provide specific reasons for such disapproval and proposed revisions, and County and County's Engineering Consultant shall use its best efforts to revise the Infrastructure design to address such items specified by Tenant. Once such comments have been addressed, the County shall submit to Tenant the revised Infrastructure design, cost estimates and proposed allocation of costs and the same review and approval process shall apply to such revised Infrastructure design, cost estimates and proposed allocation of costs. In the event that the parties are unable to agree upon the Infrastructure design, cost estimates and/or allocation of costs, either party shall have the right to terminate this Agreement. In the event of such termination, Tenant shall be released from its obligation to reimburse County for its 50% share of the cost of Infrastructure design, Permit (defined in Section 6.02 B) and Site Preparation (defined in Section 6.02 C).

B. Drainage Facilities. Upon written approval of the design of the Infrastructure by both parties, County's Engineering Consultant shall apply for a conceptual surface water management permit for the overall surface water management system serving the Aquatics Facility and the Project (the "Permit"). Promptly after receipt of the Permit, Tenant shall reimburse County for fifty percent (50%) of the costs incurred by County for the Infrastructure design and obtaining the Permit; provided, however, the total reimbursable amount by Tenant for the

Infrastructure Design, obtaining the Permit and Site Preparation costs, as provided in Section 6.02 C, shall not exceed \$75,000. Thereafter, each party will apply for separate general surface water management permits for their respective projects, by Phases, as applicable. The parties will each construct that portion of the overall surface water management system as required by the general permits for their projects. All construction shall be performed in accordance with all SFWMD permitting requirements and all other applicable approvals and permits associated with the development of the Aquatics Facility and the Project.

C. Site Preparation. Within one hundred eighty (180) days following receipt of the Permit, County shall clear, grub and grade the Premises, the Tenant Parking Area, the Aquatics Facility and the Aquatics Facility Parking Area, including removal of existing trees which cannot be relocated or will be in conflict with proposed improvements ("Site Preparation"). County shall be responsible for payment of all permit and mitigation fees associated with the foregoing Site Preparation. Tenant shall reimburse County fifty percent (50%) of the cost incurred by County in physically performing the foregoing Site Preparation; provided, however, the total reimbursable amount for Infrastructure design, obtaining the Permit and Site Preparation costs, shall not exceed \$75,000. If Site Preparation has not been completed within two (2) years after the Effective Date, then Tenant shall have the right to terminate the Lease and upon such termination, Tenant shall be released from its obligation to reimburse County for its 50% share of the cost of Infrastructure design, obtaining the Permit and Site Preparation.

D. Access Road. The access road extending from Gun Club Road to the Community Center (including drainage retention for the access road) (collectively, the "Access Road") shall be constructed by Tenant in compliance with the Infrastructure design and the AMP as part of Phase II of Tenant's Project. Prior to constructing the Access Road, Tenant shall obtain from its contractor and submit to the County for review and approval a proposed cost estimate for such construction (the "Access Road Estimate"). The County shall provide written approval or disapproval of such estimate within thirty (30) days after receipt thereof, which approval shall not be unreasonably withheld or conditioned. If the County reasonably disapproves of the Access Road Estimate in a timely manner, the County shall provide specific reasons for such disapproval and Tenant shall use commercially reasonable efforts to obtain a revised Access Road Estimate addressing the reasons specified by the County in the disapproval. Upon approval of the Access Road Estimate, Tenant shall enter into a contract for construction of the Access Road at the approved price. In the event Tenant's contractor needs to revise its plans for construction of the Access Road ("Change Order") and same results in an increase in the total cost of the approved Access Road Estimate by more than five percent (5%), then Tenant shall first obtain the prior written approval of the County for such cost increase. Following the completion of the construction of the Access Road, the

County shall reimburse the Tenant for fifty percent (50%) of the approved cost to construct the Access Road, including Change Orders, within forty-five (45) days after receiving a reasonably detailed invoice of all costs to construct such Access Road.

E. Parking. Tenant, at Tenant's cost and expense, shall be responsible for constructing that portion of the parking area, lighting and related improvements labeled as "Tenant Parking Area" on the Conceptual Master Plan, with 267 parking spaces as required by Code, in accordance with the AMP and Infrastructure design. County, at County's cost and expense, shall be responsible for constructing that portion of the parking area, lighting and related improvements labeled as "Aquatics Facility Parking Area" on the Conceptual Master Plan in accordance with the AMP and Infrastructure design. Notwithstanding the foregoing, although the Conceptual Master Plan shows such parking areas generally, the parties acknowledge that the number of parking spaces and the exact boundaries and dimensions of the Tenant Parking Area and Aquatics Facility Parking Area may be adjusted on the AMP and as required by the Infrastructure design, but unless otherwise mutually agreed upon, shall be generally consistent with the size/area and number of parking spaces contemplated by the Conceptual Master Plan. Tenant shall be required to construct parking within the Tenant Parking Area for each phase of its Project as required by Code, unless County agrees, in its sole discretion, to allow for a reduction in the required parking count based upon a shared parking study performed by County at its expense. County shall allow stabilized grass (pervious) parking areas to meet a portion of the parking requirement for the Project, as allowed by Code and as approved by the Palm Beach County Department of Planning, Zoning and Building. The Tenant Parking Area and Aquatics Facility Parking Area and associated lighting shall be designed and constructed to be consistent with and complement one another, including the design of the landscape islands, drive isles, bumper stops and lighting, all in accordance with the AMP and Infrastructure design. The Tenant Parking Area shall not be deemed part of the Premises. Following Tenant's completion of construction of the Tenant Parking Area, County shall maintain the Tenant Parking Area at County's sole cost and expense.

F. Other Costs. Except as otherwise expressly provided in this Section 6 of this Lease each party shall be responsible for the full cost of design and construction of their respective projects.

Section 6.03 Zoning and Development Approvals.

The parties acknowledge that the Premises is zoned PO (Public Ownership). As such, development of Phase I and Phase II of the Project will not require rezoning or site plan approval, and will only require applications for concurrency and building permits under prevailing regulations. Phase III, with its proposed day care center/preschool use, will require administrative site plan approval through the DRO process under prevailing regulations. As part of the approval process for the updated Conceptual Master Plan,

Tenant shall obtain, at its expense, a traffic study identifying whether there is sufficient roadway capacity available for development of the Aquatics Facility and Tenant's Project, and whether any offsite roadway improvements will be required to obtain concurrency approval. Tenant shall be responsible for obtaining the foregoing approvals at Tenant's expense. Tenant shall also be responsible for performing, at its expense, any roadway improvements required in connection with obtaining the foregoing approvals. If issuance of building permits are conditioned upon tree mitigation, County shall use its tree mitigation credits in satisfaction of the required tree mitigation.

County shall reasonably cooperate with Tenant in Tenant's efforts to obtain the foregoing approvals, including signing such consents as landowner.

Tenant acknowledges that County is entering into this Lease in County's proprietary capacity as landowner and that this Lease shall not be construed to bind or influence County acting in its regulatory capacity to approve any development order, permit or other regulatory approval.

Section 6.04 Design and Construction Plans.

After the parties agree on the AMP and the Infrastructure design, Tenant shall prepare permit ready design and construction plans and specifications for Phase I of the Project, including construction phasing plans, for all Tenant's work on such Phase (the "Detailed Plans"), and shall submit same to the County for prior review and approval, which approval shall not be unreasonably withheld. The County shall also review Tenant's building permit applications for the Project (the "Permit Applications") concurrently with the County's review of the Detailed Plans. No construction work on a Phase shall be performed by Tenant until (i) the County has reviewed and approved in writing the Detailed Plans and the Permit Applications for such Phase; (ii) Tenant has demonstrated that Tenant has the full amount of funds required to complete such work; and (iii) the Palm Beach County Building Department has issued all required permits for construction of such Phase. If County has not approved the Detailed Plans and Permit Applications for the Project within 3 months of Tenant's initial submission thereof to County, Tenant may immediately terminate this Lease by giving written notice to the County.

Section 6.05 Construction of Project.

All construction and improvements shall be made and performed in a good and workmanlike manner and in full compliance with applicable building codes, zoning regulations and the provisions of this Lease. Tenant shall obtain, prior to commencing each Phase of work, a construction payment and performance bond to County equal to the cost of the improvements for such Phase and in the form required under Section 255.05, Florida Statutes. Tenant shall also require contractors to furnish to County satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form with the interest of County endorsed thereon, in such amounts and in such manner as County may reasonably require. County may require additional insurance for any alterations or improvements completed hereunder, in such amount as County reasonably determines to be necessary.

Section 6.06 Phased Construction Deadlines.

The Tenant shall develop the Project on the Premises in three phases, which are referred to in this Lease as “Phase I,” “Phase II,” and “Phase III”. Tenant shall commence construction of Phase I within three (3) years of the Effective Date, or within six (6) months after approval of the Detailed Plans and Permit Applications for Phase I, whichever is later (the “Phase 1 Deadline”). Tenant shall commence construction of Phase II within six (6) years of the Effective Date (the “Phase II Deadline”). Tenant shall commence construction of Phase III within ten (10) years of the Effective Date (the “Phase III Deadline”). If Tenant fails to commence construction of Phase I by the Phase I Deadline, then County, at its sole discretion, may terminate this Lease as to all Phases. If Tenant fails to commence construction of Phase II by the Phase II Deadline, then County, at its sole discretion, may terminate this Lease as to Phase II and Phase III only. If Tenant fails to commence construction of Phase III by the Phase III Deadline, then County, at its sole discretion, may terminate this Lease as to Phase III only. However, any such termination as to Phase II shall have no effect on the Tenant’s tenancy and leasehold of Phase I, and any termination of Phase III shall have no effect on the Tenant’s tenancy and leasehold of Phase I or Phase II. If any portion of the Lease is terminated pursuant to this Section, Tenant shall surrender possession of the applicable Phase of the Premises to County, and neither party shall have any further rights or obligations hereunder with respect to such Phase, except for those matters that expressly survive termination of the Lease. For purposes hereof, commencement of construction shall mean that Tenant has issued a notice to proceed to its construction contractor and contractor has begun work in accordance with the construction contract documents. Once construction of a Phase of the Project is commenced, Tenant shall continuously prosecute said construction to completion. For purposes hereof, completion of construction shall mean full completion of construction in accordance with the Detailed Plans and the issuance of a certificate of occupancy or a certificate of completion as applicable to the work performed.

Section 6.07 Construction Payments.

The Tenant shall ensure that all improvements that are the responsibility of Tenant are constructed to completion in accordance with the approved plans therefor and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

Section 6.08 “As BUILTS.”

The Tenant shall provide the County with complete “As Built” plans for all Infrastructure, buildings, utilities, stormwater management systems, landscaping and lighting systems completed by Tenant upon completion of each phase of the Project. “As Built” plans will also be required for any future material alterations to the Project completed by the Tenant.

Section 6.09 No Liens.

The Tenant covenants and agrees that nothing contained in this Lease shall be construed as consent by the County to subject the estate of the County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the County's estate shall not be subject to such liability. The Tenant shall notify any and all parties or entities performing work or providing materials relating to any improvements made by the Tenant of this provision of this Lease. If so requested by the County, the Tenant shall file a notice satisfactory to the County in the Public Records of Palm Beach County, Florida stating that the County's interest shall not be subject to liens for improvements made by the Tenant. In the event that a construction lien is filed against the Premises or other County property in connection with any work performed by or on behalf of the Tenant, the Tenant shall satisfy such claim, or transfer same to security, within 30 days from the date Tenant is notified of such construction lien.

Section 6.10 Signage.

County shall allow Tenant to install a monument sign to replace the existing sign at the western entrance of Lake Lytal Park as depicted upon the Conceptual Master Plan. Design of the sign shall be approved in conjunction with approval of the updated Conceptual Master Plan. The monument sign shall identify both Tenant and Lake Lytal Park and will replace the existing sign. The installation of any additional monument signage shall require written approval of the Director.

Section 6.11 Aquatics Facility.

The County intends to build an aquatics facility, including a community pool and related facilities and amenities as depicted upon the Conceptual Master Plan(the "Aquatics Facility"). . Tenant and the County recognize that the Project and the Aquatics Facility will complement one another and will primarily serve residents of the County. Both parties shall take all reasonable precautionary measures during construction of such party's improvements to protect against damage to the land and/or improvements of the other party, and each party causing damage shall be responsible to the other for the cost of repairing any such damage.

Section 6.12 Easements.

(a) In order to provide for the orderly development of the Project and Aquatics Facility, it may be necessary, desirable, or required that utility, access, and/or parking easements be granted over or within portions of the Premises and the Aquatics Facility. All easements including, but not limited to, utility easements shall require the prior written approval of County and Tenant, which approval shall not be unreasonably withheld. Any easements not approved in writing by County shall be void and without legal effect. Tenant will be responsible for the termination of the easements if requested by the County upon surrender of the Premises.

(b) The AMP shall incorporate and identify all easements that currently exist and those additional easements that are requested by the Tenant.

(c) In addition, County grants to Tenant and Tenant's agents, contractors and subcontractors the right to construct, and access over and through, the Access Road and Tenant Parking Area as identified on the Conceptual Master Plan, as well as the adjacent

area to the extent reasonably necessary for Tenant to complete the work required hereunder and any other infrastructure to be installed by or on behalf of Tenant as identified on the AMP, the approved Detailed Plans and/or the approved Permit Applications. Tenant shall be responsible for designing, constructing and operating gates or other security measures selected by Tenant in its sole discretion and capable of prohibiting access (whether it be vehicular or pedestrian) to the Project during non-business hours.

Section 6.13 Future Development.

Tenant acknowledges that Lake Lytal Park may undergo future construction which may impact Tenant's access to, and parking within the Premises. In such event, the County agrees to use its best efforts to provide alternate access to and parking for the Premises during such construction and to keep any interference with Tenant's business at a minimum. All costs associated with the relocation of said area(s) shall be at the sole cost and expense of County. County will provide Tenant 15 days' notice prior to closure of the access area and/or parking area serving the Premises.

The County shall, at County's risk and cost, have the right to use any open, undeveloped areas of the Premises for construction staging for future park development, as long as it does not unreasonably interfere with Tenant's use of the Premises and operation of the Project. County agrees that Tenant shall not be liable for any damage or injuries caused as a result of such construction staging and County shall repair any damage resulting from such staging.

Section 6.14 South Florida Water Management District Well.

Tenant agrees to preserve and provide access to the existing SFWMD Tri-Zone Monitoring Well, approved by the County on April 2, 2019 (R-2019-0426), and recorded in Official Records Book 30554, Page 1591, as may be amended.

Section 6.15 Use of Parking Areas; Lighting.

Except for County special events, all parking serving Lake Lytal Park and the Premises shall be nonexclusive and open for use by Tenant and the public on a first-come, first-served basis. The parking lot lights in the Tenant Parking Area shall be, at a minimum, illuminated during the same hours as Lake Lytal Park's parking lot lights, seven days a week.

ARTICLE VII
ALTERATIONS

Section 7.01 Alterations.

After completion of each Phase of the Project and issuance of a certificate of completion or occupancy for such Phase, the Tenant shall not make any exterior additions, modifications or alterations to such Phase costing in excess of \$100,000 and which were not included within the Detailed Plans previously approved by County (hereinafter collectively referred to as "Alterations") without prior written consent from the County in each instance, which consent shall not be unreasonably withheld. Tenant shall

submit detailed plans and specifications for all such Alterations to the County for the County's written approval prior to commencing work on same. Tenant agrees and acknowledges that all work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of the Tenant, and not for the benefit of the County, such work being nevertheless subject to each and every provision of this Lease. All work done by the Tenant shall be done in a good and workmanlike manner and shall be diligently pursued to completion in accordance with the approved plans and specifications therefor.

Section 7.02 Contractor Bond Requirements for Alterations.

For exterior Alterations costing in excess of \$200,000, the Tenant shall require contractors to furnish for the benefit of the County a payment and performance bond to the Tenant equal to the cost of the improvements and in the form required under Section 255.05, Florida Statutes. The Tenant shall also require contractors to furnish to County satisfactory evidence of statutory Worker's Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance on a Builder's Risk form, in such amounts and in such manner as the Tenant may reasonably require.

**ARTICLE VIII
CONDUCT OF BUSINESS AND USE OF PREMISES BY TENANT**

Section 8.01 Use of Premises.

The Tenant shall use and occupy the Premises solely and exclusively for a skate park, community center, child care center and associated programs, which may include one or more of the uses listed on Exhibit "C". The Tenant shall not use, permit, or suffer the use of the Premises for any other purpose whatsoever without the prior written consent of the County, which consent shall not be unreasonably withheld.

The Tenant shall provide onsite supervision and strictly enforce all rules, regulations, and safety procedures established by the Tenant, the requirements of this Lease, and in general, good standards and practices for the safe and orderly use of the Premises. At all times the Premises is in use by the Tenant or its invitees, such use shall be under the control and supervision of the Tenant and such supervision shall be conducted by a supervisor authorized by the Tenant. The Tenant shall not use the Premises or allow the Premises to be used for any commercial or unauthorized purpose, or sublet to any other groups, foundations, or persons not authorized by the County, except that Tenant may permit concession space(s) on the Premises in accordance with Section 8.12 of this Agreement. The Tenant shall not commit or permit any reckless or dangerous conduct on the Premises.

The Tenant shall be in full control of the operation of the Premises, and shall set and establish the times of operation and the rules and regulations for use by the public. The Tenant shall ensure that all access areas to the Premises are locked and secured outside of normal operating hours. The County shall have no control or responsibility with

regard to the use of the Premises, except as is otherwise set out in this Lease.

The Tenant agrees that the Premises shall be used only and exclusively for lawful purposes, and the Tenant will not use, or suffer anyone to use, the Premises for any purpose in violation of the laws of the United States, the State of Florida, or the ordinances and regulations of Palm Beach County or any governmental entity having jurisdiction over the Premises.

The Tenant agrees that the Premises shall not be used to participate or engage in political activities that promote or oppose a specific candidate for public office (although it may host political forums or functions in which all candidates for an office are invited to participate).

The Tenant agrees to administer, in good faith, a Drug-Free Workplace Policy designed to ensure that the Tenant's employees, Premises, agents and subcontractors are free from the illegal use, possession, or distribution of drugs or alcohol.

Section 8.02 Program and User Fees.

Throughout the lease term, Tenant shall serve area residents of Palm Beach County and endeavor to maintain its goal of never having to turn away a family or individual for a needed program or service due to the inability to pay full cost. Tenant will also provide subsidized programming through sliding scale membership fees and/or subsidized program fees. Financial assistance will be based on income and/or special needs, as well as grants, transportation for select programs or other assistance to economically disadvantaged prospective members or program attendees, consistent with YMCA's historical practice of inclusion and community outreach programs and other assistance to economically disadvantaged prospective members. Tenant shall provide County an annual report detailing its rates for use of the Project facilities and financial assistance provided to participants using such facilities.

Section 8.03 Use of Facilities for County Business and Programs.

Tenant will provide a process for County's reasonable use of conference and meeting rooms located on the Premises for free County programs, County meetings, and County business at no charge to County beyond reasonable reimbursement to Tenant for actual out-of-pocket costs when not otherwise scheduled for activities associated with the Premises. Use of the conference and meeting rooms by the County will be at the Tenant's discretion and at a duration and frequency commensurate with other nonprofit/government agency partners.

Section 8.04 Use of Aquatics Facility for Tenant Business and Programs.

County will provide a process for Tenant's reasonable use of the Aquatics Facility's meeting rooms for free Tenant programs, Tenant meetings, and Tenant's business at no charge to Tenant beyond reasonable reimbursement to County for actual out-of-pocket costs when not otherwise scheduled for activities associated with the Aquatics Facility. Use of the meeting rooms by the Tenant will be at the County's discretion and at a duration and frequency commensurate with other nonprofit/government agency partners.

Section 8.05 Staffing, Programming and Operational Management of Aquatics Facility by Tenant.

Within twenty-four (24) months after County's completion of construction of the new Aquatics Facility, Tenant and the County shall enter into an operations agreement for Tenant to assume responsibility for the programmatic operations and management of the Aquatics Facility (the "Aquatics Facility Operations Agreement"). The Aquatics Facility Operations Agreement will generally provide for: (i) the staffing, programming, scheduling of events, daily routine maintenance (including chemicals for pool cleaning and other custodial services) and concessions, (ii) Tenant being entitled to retain all revenues generated from use fees or charges set by Tenant, and concession operations to offset the cost of Tenant's operation of the Aquatics Facility, (iii) Tenant to continue to accommodate historical usage by long standing clubs and school swim and dive teams specifically identified by the County in the Aquatics Facility Operations Agreement, unless the parties mutually agree in writing at any time to prohibit a club or team from using the Aquatics Facility, (iv) the County retaining title to the grounds, buildings, structures, pool and all other improvements associated with the Aquatics Facility, and (v) the County to be responsible for utilities of the Aquatics Facility, and for the maintenance, repair and replacement of capital improvements servicing the Aquatics Facility, including, without limitation, the building systems, HVAC, pool deck, pump system, chlorinators, pool equipment and other capital improvements needed for the Aquatics Facility.

Section 8.06 Waste or Nuisance.

The Tenant shall not commit or suffer to be committed any waste upon the Premises, commit or permit the maintenance or commission of any nuisance or other act or thing that may result in material damage or depreciation of value of the Premises, or that may affect the County's fee interest in the Premises, or that results in an unreasonably unsightly condition. All refuse is to be removed from the Premises at the Tenant's sole cost and expense, and the Tenant will keep such refuse in proper containers on the interior of the Premises until removed. The Tenant will keep the access to the Premises reasonably free and clear of obstructions, trash and other debris. The Tenant, at its sole cost and expense, will endeavor to keep the Premises free of rodents, vermin, and other pests.

Section 8.07 Governmental Regulations.

The Tenant shall, at the Tenant's sole cost and expense, comply with all ordinances, laws, statutes, and regulations promulgated thereunder of all county, municipal, state, federal, and other applicable governmental authorities, now in force or that may hereafter be in force, pertaining to the Tenant or its use of the Premises.

The parties acknowledge and agree that the County is entering into this Lease in its proprietary capacity as the owner of the Premises and that nothing contained herein shall be construed to constitute any form of approval by the County in its governmental capacity or alter the Tenant's obligation to comply with all applicable governmental regulations.

Section 8.08 Americans with Disabilities Act.

Tenant shall comply with the applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and Section 504 of the Rehabilitation Act and any similar or successor laws, ordinances, rules, and regulations, including cooperation with County, concerning the same subject matter.

Section 8.09 Non-Discrimination.

The Tenant shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the Premises or conducted pursuant to this Lease.

The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Tenant warrants and represents that throughout the term of this Lease, including any extensions thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information.

Section 8.10 Surrender of the Premises.

Upon termination or expiration of this Lease, the Tenant, at its sole cost and expense, shall remove Tenant's non-real property or chattel, if so directed by the County and shall surrender the Premises to the County. Upon surrender of the Premises, title to any and all remaining improvements, alterations, and structures within the Premises shall vest in the County.

Section 8.11 Hazardous Substances.

To the best of County's knowledge, there is not any "Hazardous Substance," as defined in this Section, above, below, on, or within the Property, and there has never been any (a) generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance on the Premises, or (b) failure by County or any former owner of the Premises to comply with any applicable local, state or federal environmental laws, regulations, ordinances or administrative or judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substance. The Tenant shall not use, maintain, store, or dispose of any contaminants, including, but not limited to, Hazardous Substances or toxic substances, chemicals, or other agents on the Premises, or any adjacent land, in any manner in violation of Environmental Laws. Furthermore, the Tenant shall not cause or permit the Disposal of Hazardous Substances upon the Premises or upon adjacent lands in violation of Environmental Laws and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, "Hazardous Substance" shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-

product, and contaminant or pollutant as defined or regulated by Environmental Laws in amounts that are in violation of Environmental Laws. "Disposal" shall mean the release, storage, use, handling, discharge, or disposal of such Hazardous Materials. "Environmental Laws" shall mean any applicable federal, state, or local environmental laws, statutes, ordinances, rules and regulations.

Any discharge, release, spill, or disposal of a Hazardous Material, whether by the Tenant or any third party, shall be reported to the County immediately upon the knowledge thereof by the Tenant. The Tenant shall be solely responsible for the entire cost of remediation and cleanup of any Hazardous Materials disposed of or emanating from the Premises onto adjacent lands that occurs as a result of the use and occupancy of the Premises by the Tenant, or the Tenant's agents, licensees, invitees, subcontractors, or employees.

The Tenant hereby agrees to indemnify, defend, and hold harmless the County from and against any and all claims, suits, judgments, loss, damage, fines, or liability, including reasonable attorney's fees and cost, that may arise from Tenant's use or disposal of Hazardous Substances upon the Premises that occurs as a result of the use and occupancy of the Premises by the Tenant, or the Tenant's agents, licensees, invitees, subcontractors, or employees. The Tenant's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise.

This provision shall survive expiration or termination of this Lease.

Section 8.12 Concessions.

The Tenant may enter into contracts with or issue licenses to vendors for the operation of the concession space(s) on the Premises for sale of food and/or merchandise. The Tenant shall be entitled to retain the proceeds generated by such contracts and/or licenses. Such contracts and/or licenses shall not release the Tenant from any obligations under this Lease. Further, the Tenant shall comply with and shall be obligated to ensure that all such contracts and/or licenses comply with the terms of this Lease and all applicable federal, state, and county laws, rules, regulations, and ordinances pertaining to the foregoing, including, without limitation, the sale of retail goods, food, and beverages, and the collection and remittance of sales tax as applicable. Tenant shall include in each such contract or license a requirement that the concessionaire or licensee 1) indemnify the County as provided in Article XII, and 2) provide commercial general liability insurance, business auto liability insurance and workers compensation & employers liability insurance as set forth in Sections 11.01, 11.02 and 11.03 listing the County as an additional insured as provided for in Section 11.05.

Section 8.13 Park Rules and Special Events.

Tenant shall comply with the Palm Beach County Parks and Recreation Ordinance 2019-001, as the same may be amended, with respect to any and all rules, hours of operation, and/or any Special Event, as defined below, occurring on or about the

Premises. However, the County acknowledges that Tenant has a right to operate the Project in accordance with this Lease to support the business hours of 5:00 A.M. to 10:00 P.M., and the Director will provide any written permit, document, or certificate or establish any exception necessary to allow Tenant's operation of the Project during such hours. Tenant shall coordinate with, and obtain prior approval from, the County's Parks and Recreation Department's Special Event staff for a Special Event occurring on the Premises. For the purposes of this Section, a "Special Event" shall be any Tenant activity or event for which Tenant is requesting the use of Lake Lytal Park's facilities outside of the Premises and Tenant's Parking Area or materially impacts or disrupts any entrances to Lake Lytal Park. Requests for approval shall follow County's Parks and Recreation Department's Policies and Procedures and be submitted no later than ninety (90) days prior to the anticipated start of the event. County's Special Events staff shall have fifteen (15) business days to review the request and approve or deny same. In the event that a request for use of the Lake Lytal Park facilities in conjunction with a Special Event is denied, the County will provide specific reasons for such denial and Tenant shall use good faith efforts to modify the operation, timing, logistics, etc. of the Special Event to address the County's reasons for such denial.

Section 8.14 Permits and Licenses Generally.

Tenant expressly covenants, warrants, and agrees that it shall, at its sole cost and expense, be strictly liable and responsible for obtaining, paying for, and maintaining current, and fully complying with, any and all permits, licenses and other governmental authorizations, however, designated, as may be required at any time throughout the entire term of this Lease or any extension thereof by any Federal, State, County or local governmental entity or any court of law having jurisdiction over Tenant or Tenant's operations and activities, for any activities of Tenant conducted on the Premises and for any and all operations conducted by Tenant including ensuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from Tenant's operations and activities on the Premises have been obtained and are in full legal compliance. Upon the written request by County, Tenant shall provide to County certified copies of any and all permits and licenses which County may request.

**ARTICLE IV
REPAIRS AND MAINTENANCE OF PREMISES**

Section 9.01 Responsibility of the County and Tenant.

Except with respect to the Aquatics Facility or as otherwise expressly set forth in this Lease, the County shall not be obligated or required to make or conduct any maintenance or repairs whatsoever to the Premises. The Tenant shall keep and maintain all portions of the Premises, and all alterations or improvements currently existing or constructed hereinafter on or about the Premises, in good condition and repair, at the Tenant's sole cost and expense.

Section 9.02 County's Right to Inspect.

The County or County's agents shall have the right, upon reasonable prior written notice to the Tenant (except that no notice need be given in case of emergency) to enter the Premises for the purpose of inspection of the Premises and the improvements located thereon. Any such entrance into the Premises shall be conducted by the County in a manner calculated to minimize interference with or disruption of the Tenant's operations within the Premises.

ARTICLE X UTILITIES

The Tenant shall be solely responsible for and promptly pay all costs and expenses relating to providing utility service to the Premises, and shall pay directly to the utility company or the provider of such service all charges and assessments for any utility services provided, including, without limitation, water, sewer, gas, electricity, trash collection and removal, or any other utility used or consumed on the Premises. In no event shall the County be liable for an interruption or failure in the supply of any such utility to the Premises.

ARTICLE XI INSURANCE

Tenant shall, at its sole expense, maintain in full force and effect at all times during the term of this Lease, the minimum insurance limits, coverage and endorsements required herein. Where applicable, coverage shall apply on a primary and non-contributory basis. Tenant agrees the requirements contained herein as well as County's review or acceptance of insurance shall not in any manner limit nor qualify the liabilities and obligations assumed under this Lease.

When requested, the Tenant shall provide a Certificate of Insurance evidencing at least the coverage required herein to County, and/or Ebix, Inc., the County's authorized insurance tracking contractor.

Certificate Holder shall read:

Palm Beach County Board of County Commissioners
Insurance Compliance
PO Box 100085 – DX
Duluth, GA 30096
Email: pbcounty@ebix.com

Section 11.01 Commercial General Liability.

Tenant shall maintain Commercial General Liability insurance with limits of liability not less than \$1,000,000 each occurrence including coverage for, Premises/Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability. Fire Legal liability with a limit not less than \$100,000.

Section 11.02 Business Auto Liability.

Tenant shall maintain Business Automobile Liability with limits of liability not less than \$500,000 each occurrence.

Section 11.03 Workers' Compensation & Employer's Liability.

Tenant shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440 Florida Statutes and applicable Federal Acts.

Section 11.04 Property, Wind, & Flood Insurance.

Tenant shall, upon issuance of the Certificate of Substantial Completion and/or termination of any builder's risk coverage maintain:

- (1) Property insurance in an amount not less than 100% of the total replacement cost of the building, betterments and improvements, including those made by or on behalf of Tenant as well as Tenant's contents located on the Premises. Coverage shall be written with a Special - Causes of Loss (All-Risk) form;
- (2) Flood insurance, regardless of the flood zone designation, in an amount as close to the total replacement cost of the building, betterments, and improvements as available;
- (3) Windstorm insurance, in an amount as close to the total replacement cost of the building, betterments and improvements as available.

Section 11.05 Additional Insured Endorsement.

Tenant shall cause, "Palm Beach County Board of County Commissioners", to be included as an Additional Insured on applicable liability insurance policies. The CG 2011 Additional Insured - Managers or Lessors of Premises or CG 2026 Additional Insured - Designated Person or Organization endorsements, or their equivalent, shall be endorsed to the Commercial General Liability. Other policies, when required, shall provide a standard Additional Insured endorsement as offered by the insurer.

Section 11.6 Certificate of Insurance.

Tenant shall provide County with a Certificate of Insurance evidencing limits, coverage and endorsements required herein. In the event coverage cancels or non-renews during the term of this Lease, Tenant agrees to notify County within ten (10) days of discovery, and shall obtain replacement coverage so there is no gap between coverage dates. A new Certificate of Insurance evidencing replacement coverage shall be provided to County as soon as possible. Failure of Tenant to maintain and evidence the required insurance shall provide the basis for termination of this lease.

Section 11.07 Waiver of Subrogation.

The Tenant agrees by way of entering this Lease in writing to a Waiver of Subrogation for each required policy providing coverage during the term of this Lease. When required by the insurer or should a policy condition not allow a pre-loss agreement

to waive subrogation without an endorsement, then Tenant shall agree to notify its insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition prohibiting such an endorsement, or voiding coverage should Tenant enter into such an agreement on a pre-loss basis.

Section 11.8 Deductibles, Coinsurance, & Self-Insured Retention.

Tenant shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expenses not covered due to an exhaustion of limits or failure to comply with the policy.

Section 11.9 Right to Review

Notwithstanding the foregoing, County's Risk Management Department, in its reasonable discretion reserves the right, to review, adjust, reject or accept insurance policies, limits, coverage, or endorsements throughout the term of this Lease. County reserves the right, to review and reject any insurer providing coverage because of such insurer's poor financial condition if such insurance is written by a company or companies rated "B" or lower by Best's Insurance Guide. County shall provide Tenant written notice of such rejection and Tenant agrees to cure or comply with such action within thirty (30) days receipt thereof.

Section 11.10 Insurance for Special Events and Outside Persons/Groups.

Excluding County or its affiliates, when Tenant permits or schedules the use of the Premises for a Special Event or outside persons/groups, Tenant shall agree to require the Special Event or outside person/group to maintain Commercial General Liability, as described in Section 11.01, with limits of liability not less than \$1,000,000 per occurrence. Tenant shall require group or event holder to include both County and Tenant as Additional Insureds. Upon request by County, and at least five (5) days prior the group or event holder's event, group or event holder shall provide evidence of coverage to County. Compliance with this Section does not relieve Tenant's duty to comply with Section 8.13 of this Lease.

Section 11.11 Insurance for Third-Party Contractor/s

Tenant shall require any third-party contracted by Tenant for Work at the site to provide at least the insurance coverage and minimum limits required for Tenant in this Article. Further, Tenant shall require such third-party to include both County and Tenant as Additional Insureds on applicable liability policies including the commercial general liability policy. For any ground-up construction projects, prior to issuance of the Authorization to Proceed for construction, Tenant shall ensure that a builder's risk policy for full completion value has been procured, and remains in place at least until the issuance of a Certificate of Substantial Completion. Proof of third-party's insurance shall be provided to County prior to the start of any Work on the premises and within three (3) days of a written request by County.

**ARTICLE XII
INDEMNIFICATION**

It is understood and agreed that the Tenant is merely a tenant of the County and is not an agent, servant, or employee of the County or its Board of County Commissioners. The Tenant shall indemnify, defend, and save harmless the County from and against any and all claims, suits, actions, damages, and/or causes of action arising as a result of the Tenant's use and occupancy of the Premises, any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises as a result of the use and occupancy of the Premises by the Tenant, its agents, employees, licensees and invitees, and from and against any orders, judgments, and/or decrees that may be entered thereon, and from and against all costs, attorney's fees, expenses, and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event the County shall be made a party to any litigation commenced against the Tenant in connection with the preceding sentence, then the Tenant shall protect and hold the County harmless and pay all costs and attorney's fees incurred by the County in connection with such litigation and any appeals thereof. Notwithstanding anything herein to the contrary, the Tenant shall not be obligated to indemnify or hold harmless the County for matters that are attributable to the negligent or intentional acts or omissions of the County or for the failure of the County to comply with any of the County's obligations or requirements under this Lease. The Tenant recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the County in support hereof in accordance with the laws of the State of Florida. This Section shall survive the termination of this Lease.

**ARTICLE XIII
DISCLAIMER OF LIABILITY**

COUNTY HEREBY DISCLAIMS, AND TENANT HEREBY RELEASES THE COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY TENANT, ITS EMPLOYEES, INVITEES, LICENSEES, CONTRACTORS AND SUPPLIERS (TENANT PARTY) DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF A TENANT PARTY THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A COUNTY PARTY'S SOLE NEGLIGENCE OR IS CAUSED BY COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE LEASING OF THE PREMISES PURSUANT TO THIS LEASE.

This Article shall survive the expiration or termination of this Lease.

**ARTICLE XIV
DESTRUCTION OF PREMISES AND IMPROVEMENTS**

Section 14.01 Damage or Destruction by Fire, War, or Act of God.

In the event the Premises are destroyed or damaged or injured by fire or other casualty during the Term of this Lease, the Tenant shall restore the Premises to the same or better condition than that which existed prior to such casualty. Tenant shall commence such restoration within a reasonable time after such casualty but in no event later than one hundred and eighty (180) days of such casualty, unless it is commercially unreasonable and/or practicably impossible to do so, in which case, the County shall agree to a reasonable extension of time to commence restoration. The Tenant shall thereafter diligently pursue such restoration to completion. The proceeds of any insurance payable on account of sudden destruction, damage or injury shall be used for restoration thereof.

**ARTICLE XV
ASSIGNMENT AND SUBLETTING**

Section 15.01 Consent Required.

The Tenant may not assign, mortgage, pledge, or encumber this Lease in whole or in part, nor sublet or rent all or any portion of the Premises nor grant any easements affecting the Premises without prior written consent of the County, which may be granted or withheld, at the County's absolute discretion. Any attempted assignment, mortgage, pledge, encumbrance, or subletting without such consent shall be null and void, without legal effect and shall constitute a breach of this Lease. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

**ARTICLE XVI
DEFAULT**

Section 16.01 Default by the Tenant.

The occurrence of any one or more of the following shall constitute an Event of Default by the Tenant under this Lease: (i) the Tenant's failure to pay any sum due hereunder within thirty (30) days after receipt of written notice from the County of such failure to pay; (ii) the Tenant's use of the Premises for a purpose other than that allowed under this Lease which continues for more than thirty (30) days after Tenant receives written notice from the County specifying such prohibited use; (iii) the Tenant's failure to perform or observe any of the agreements, covenants, or conditions contained in this Lease on the Tenant's part to be performed or observed if such failure continues for more than thirty (30) days after Tenant receives written notice from the County specifying such failure, unless the same is of such a nature that it cannot reasonably be cured within thirty (30) days, in which event the Tenant shall be entitled to a reasonable period of time under the circumstances in which to cure such failure; (iv) the Tenant's vacating or abandoning the Premises; (v) the Tenant's leasehold estate being taken by execution, attachment, or

process of law or being subjected to any bankruptcy proceeding; or (vi) failure to maintain the Premises substantially in accordance with the AMP and acceptable maintenance procedures with normal wear and tear excepted if such failure continues for more than thirty (30) days after Tenant receives written notice from the County of such failure, unless the same is of such a nature that it cannot reasonably be cured within thirty (30) days, in which event the Tenant shall be entitled to a reasonable period of time under the circumstances in which to cure such failure.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, the County may give the Tenant written notice that the County intends to terminate this Lease upon a specified date not less than thirty (30) days after the date notice is received by the Tenant, and if such notice is given, this Lease shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Lease. If, however, the default is cured within the thirty (30) day period and the County is so notified, this Lease will continue. Upon termination of the Lease pursuant to this Section, Tenant shall remove Tenant's non-real property or chattel, if so directed by the County, and shall surrender the Premises to the County.

Section 16.02 Default by the County.

The County shall not be in default unless the County fails to perform obligations required of the County within a reasonable time, but in no event later than thirty (30) days after written notice by the Tenant to the County, specifying wherein the County has failed to perform such obligations; provided, however, that if the nature of the County's obligations is such that more than thirty (30) days are required for performance, then the County shall not be in default if the County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

**ARTICLE XVII
ANNUAL BUDGETARY FUNDING**

The County's obligations under this Lease that involve the expenditure of money shall be subject to annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners.

**ARTICLE XVIII
QUIET ENJOYMENT**

County hereby represents and warrants that, unless Tenant is in default after all applicable notices and expiration of applicable cure periods, the Tenant shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by the County or any other person or persons lawfully or equitably claiming by, through, or under the County, subject, nevertheless, to the terms and conditions of this Lease.

**ARTICLE XIV
MISCELLANEOUS**

Section 19.01 Entire Agreement.

This Lease and any Exhibits attached thereto constitute all agreements, conditions, and understandings between the County and Tenant concerning the Premises. All representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, waiver, change, or addition to this Lease shall be binding upon the County or the Tenant, unless reduced to writing and signed by both parties.

Section 19.02 Notices.

All notices, consents, approvals, and elections (collectively "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained). The effective date of any such notice shall be the date of delivery of the notice if by personal delivery, courier service, or national overnight delivery service. The parties designate the following addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Property and Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Telephone: (561) 233-0217
Fax: (561) 233-0210

with a copy to:

Palm Beach County Attorney's Office
Attention: Parks Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Telephone: (561) 355-2225
Fax: (561) 355-4398

and a copy to:

Palm Beach County Parks and Recreation Department
Attention: Director
2700 6th Avenue South
Lake Worth, Florida 33461
Telephone: (561) 966-6614
Fax: (561) 963-6734

(b) If to the Tenant at:

YMCA of the Palm Beaches, Inc.
Attn: CEO
2085 S. Congress Ave.
Palm Springs, Florida 33406
Telephone: (561) 968-9622

With a copy to:

YMCA of the Palm Beaches, Inc.
Attn: General Manager
2085 S. Congress Ave.
Palm Springs, Florida 33406
Telephone: (561) 968-9622

and a copy to:

Greenberg Traurig, P.A.
Attn: Anthony P. Vernace, Esq.
777 South Flagler Drive, Suite 300
West Palm Beach, Florida 33401
Telephone No.: (561) 650-7928

Any party may from time to time change the address at which notices under this Lease shall be given such party, upon three (3) days' prior written notice to the other parties.

Section 19.03 County's Contract Administrator.

The County has delegated authority to the County's Director of Parks and Recreation, in conjunction with the Director of the County's Facilities, Development and Operations Department (FDO) to take any action necessary to implement and administer this Lease. Where review, approval and/or consent is assigned in this Lease to the Director, the Director of Parks and Recreation shall have authority therefor. Where review, approval and/or consent is assigned in this Lease to County, such review, approval and/or consent shall require sign off by both the Director of Parks and Recreation and the Director of FDO.

Section 19.04 Severability.

If any term of this Lease or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 19.05 Broker's Commission.

The County and Tenant each represent and warrant to the other party that it has not dealt with any real estate salesperson, agent, finder, or broker in connection with this Lease. Tenant agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker for a breach of the foregoing on Tenant's part. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 19.06 Recording.

The Tenant shall not record this Lease or any memorandum or short form thereof without the written consent and joinder of the County, which may be granted or withheld at the County's sole discretion. Notwithstanding the preceding provision, the County shall record a memorandum of this Lease within one (1) business day after the Effective Date in a form that is reasonably acceptable to the parties.

Section 19.07 Waiver of Jury Trial.

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS LEASE.

Section 19.08 Radon.

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

Section 19.09 Governing Law and Venue.

This Lease shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Lease will be held in a State court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 19.10 Time of Essence.

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

Section 19.11 Waiver.

The waiver by either party of any default of any term, condition, or covenant herein contained shall not constitute a waiver of such term, condition, or covenant for any subsequent default of the same or any other term, condition, or covenant herein

contained.

Section 19.12 Non-exclusivity of Remedies.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 19.13 Construction.

No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease, and the same shall remain in full force and effect.

Section 19.14 Incorporation by Reference.

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Lease by reference. The recitals in this Lease are correct and are incorporated herein by reference.

Section 19.15 Survival

Notwithstanding any early termination of this Lease, the Tenant shall remain obligated hereunder to perform any duty, covenant, or obligation imposed upon the Tenant hereunder arising prior to the date of such termination or surviving such termination.

Section 19.16 No Third-Party Beneficiary.

No provision of this Lease is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Lease, including, but not limited to, any citizen or employees of the County and/or Tenant.

Section 19.17 Office of the Inspector General.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General is authorized with the power to review past, present, and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

Section 19.18 Effective Date of Lease.

This Lease is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners ("Effective Date").

Section 19.19 Public Entity Crimes.

As provided in Section 287.132-133, Florida Statutes, a person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. By entering into this Lease or performing any work in furtherance hereof, Tenant certifies that it has not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the Effective Date hereof. This notice is required by Section 287.133(3) (a), Florida Statutes. Attorney question on deleted language

Section 19.20 Headings.

The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

Section 19.21 Condemnation.

If the Premises, or any part thereof, or any improvements thereto, shall be taken, appropriated, or condemned by exercise of the power of eminent domain, or conveyed or transferred pursuant to an agreement in lieu of condemnation, the County shall be entitled to that portion of the award relating to the County's reversionary interest in the fee simple estate. The Tenant shall be entitled to that portion of the award relating to the Tenant's leasehold estate, which includes any and all improvements made to the Premises by the Tenant, including depreciation deducted from the award total. In addition to the foregoing, the Tenant shall be entitled to pursue in such condemnation proceeding such award as may be allowed for moving expenses, and business damages. In the event of a total taking of the Premises, the rent shall abate, and this Lease shall terminate upon the date title vests in the condemning authority. Notwithstanding such termination, the Tenant shall remain liable for all matters arising under this Lease prior to such termination. In the event of a partial taking, Rent shall be reduced on a pro rata basis. In the event of a temporary taking, Rent shall be abated on a pro rata basis for the period of time the Tenant is unable to use the portion of the Premises temporarily taken. After such period, Rent shall be restored to the Rent that would have been then due without regard to such taking. The County shall have no obligation to restore the Premises or otherwise perform any work upon same as a result of any such taking.

Section 19.22 Project Publicity.

The Tenant shall recognize the County in all promotional materials, news releases or other type of publicity pertaining to the services performed by Tenant and at any event or workshop, for which County contributes funds or something in kind (excluding leasing

the Premises).

Section 19.23 Binding Effect.

County and Tenant agree that all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto and their successors and assigns.

Section 19.24 Governmental Authority.

Nothing in this Lease shall be construed to waive or limit County's governmental authority as a political subdivision of the State of Florida to regulate Tenant or its operations. County's obligations under this Lease are made in a proprietary capacity, rather than in a governmental capacity and such agreements shall not be construed as limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statues and laws, nor to alter or impair County's governmental functions, including, but not limited to, County's right to lawfully exercise its regulatory authority over the development of the Premises, nor as enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of County's governmental authority.

Section 19.25 Rights Reserved to County.

All rights not specifically granted Tenant by this Lease are reserved to County.

Section 19.26 Scrutinized Companies.

A. As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, the Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Tenant is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Lease may be terminated at the option of the County.

B. When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Lease or performing any work in furtherance hereof, the Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

C. If the County determines, using credible information available to the public, that a false certification has been submitted by the Tenant, this Lease may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of contract renewal, if applicable.

Section 19.27 Public Records.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Tenant: (i) provides a service; and (ii) acts on behalf of the County as provided

under Section 119.011(2) F.S., the Tenant shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Tenant is specifically required to:

A. Keep and maintain public records required by the County to perform services as provided under this Lease.

B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Tenant further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the lease term and following completion of the Lease, if the Tenant does not transfer the records to the County.

D. Upon completion of the Lease, the Tenant shall transfer, at no cost to the County, all public records in possession of the Tenant unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Tenant transfers all public records to the County upon completion of the Lease, the Tenant shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Tenant keeps and maintains public records upon completion of the Lease, the Tenant shall meet all applicable requirements for retaining public records. All records stored electronically by the Tenant must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Tenant to comply with the requirements of this article shall be a material breach of this Lease. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Tenant acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

Section 19.28 E-Verify - Employment Eligibility

Tenant warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and shall remain in compliance during the term of this Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease Agreement as of the day and year first above written.

COUNTY:

PALM BEACH COUNTY, a political
Subdivision of the State of Florida

Signed and delivered in the presence of:

By: _____
Dave Kerner, Mayor

Witness Signature

Print Witness Name

Witness Signature


Print Witness Name

ATTEST:

JOSEPH ABRUZZO
CLERK & COMPTROLLER

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: 
Assistant County Attorney
Car D. Falcon

**APPROVED AS TO TERMS AND
CONDITIONS**

By: 
Department Director

TENANT:

THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF THE PALM
BEACHES, INC., a Florida not-for-profit
corporation

Signed and delivered in the presence of:

By: *Timothy B. Coffield*

[Signature]

Witness Signature

Print Name: Timothy B. Coffield

DELIA MIRAY LA STERN

Print Witness Name

Title: CEO + President

[Signature]

Witness Signature

EDUARDO MENDEZ

Print Witness Name

EXHIBITS:

A. Conceptual Master Plan

B. Fundraising Plan

C. List of Permitted Uses

Exhibit "A"

CONCEPTUAL MASTER PLAN

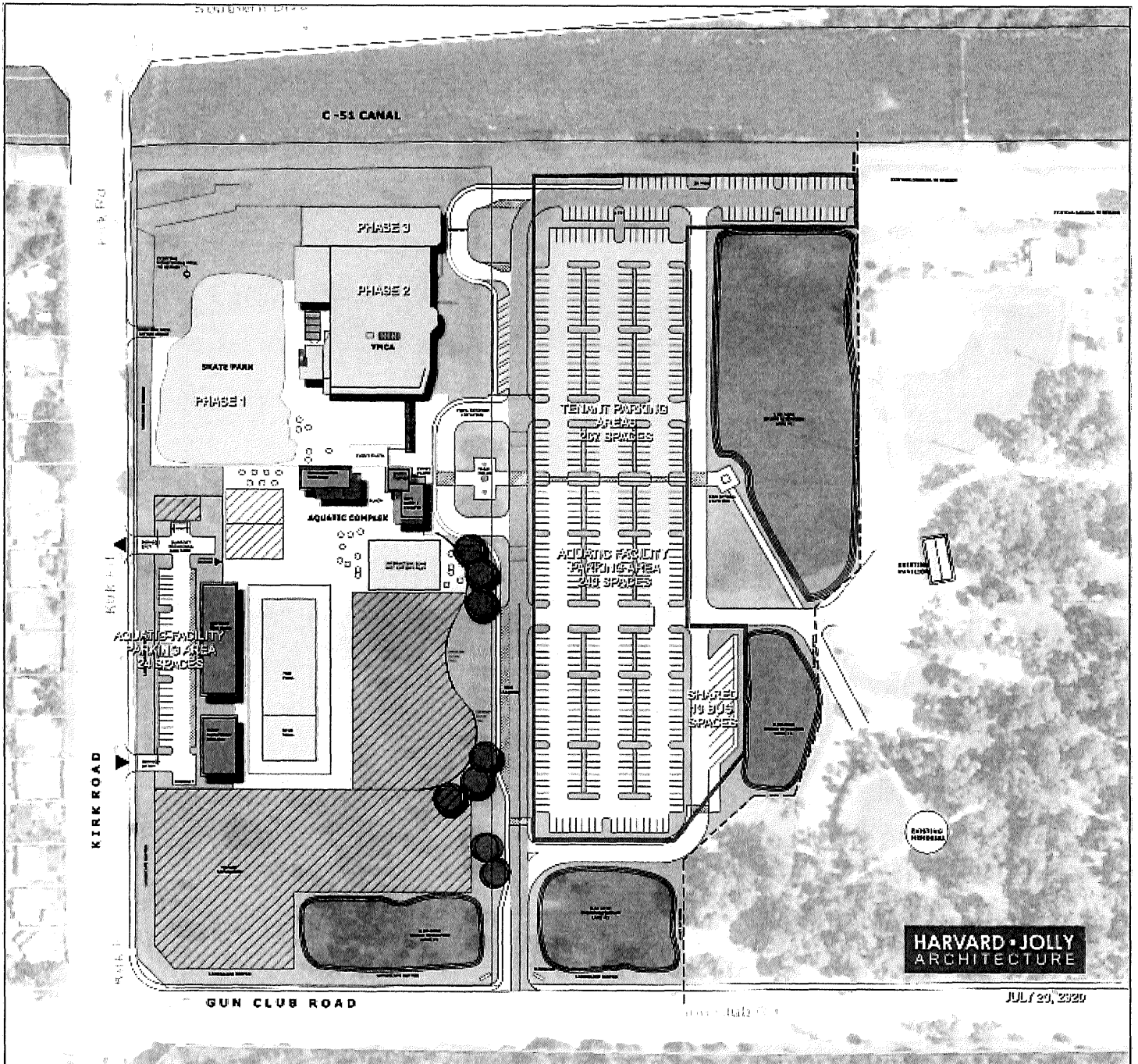


Exhibit "B"
FUNDRAISING PLAN

YMCA OF THE PALM BEACHES
FUNDRAISING PLAN AND SCHEDULE

The following sets forth the fundraising milestones, which are in line with the phased capital development timeline proposed by the YMCA of the Palm Beaches and accepted by the Palm Beach County's Parks and Recreation Director (the "Director").

The YMCA of the Palm Beaches shall submit a report to the Director, prepared by a certified public accountant, identifying the funds raised, pledged or committed related to the milestones identified below, and for every report subsequent to the initial report those funds raised since the previous report had been filed. The report need not identify the names of the donors; however, it must identify the donation and pledges, which are committed to in writing (without conditions which are contrary to the requirements of this Agreement) and/or actually received.

The report shall also describe the current stage of development and construction of the Facility and identify any potential issues that may impact the fundraising timeline. The report shall be submitted to the Director's office no later than thirty (30) days following each reporting/calendar year, as set forth below, beginning with the reporting year 2021. The Director will review the report for compliance with the milestones identified below.

Reporting Year	Phase	Milestone	Year Total	Accumulated Total
1	2021		\$2,000,000	\$2,000,000
2	2022		\$2,500,000	\$4,500,000
3	2023		\$3,000,000	\$7,500,000
4	2024	November 30, 2023	\$3,000,000	\$10,500,000
5	2025		\$4,000,000	\$14,500,000
6	2026		\$2,000,000	\$16,500,000
7	2027	November 30, 2026	\$2,000,000	\$18,500,000
8	2028		\$1,000,000	\$19,500,000
9	2029		\$2,000,000	\$21,500,000
10	2030		\$1,000,000	\$22,500,000
		November 30, 2030	\$1,000,000	\$21,500,000

A detailed formal selection process has already been conducted to identify a Construction Management firm to build both the proposed YMCA Skate Park and Community Center. With input from world renowned skate park design and construction firm, Team Pain, the capital development arm of Y-USA, GRO Development, and the chosen Construction Management firm ... The YMCA of the Palm Beaches has comprehensive cost estimates and the capital development plan will be executed in three phases.

Exhibit "C"

LIST OF PERMITTED USES

Permitted Uses

In addition to housing business and administrative operations, The YMCA of the Palm Beaches will use the Project to provide innovative and traditional YMCA programs and services to the community. These programs and services include, but are not limited, to the following:

Youth	Adult
Preschool Services	CPR, Lifeguard & First Aid Training
After School Services	Group Fitness Activities
Child Watch Services	Aqua Aerobics
Day Camp Services	Personal Fitness Training
Tutoring & Mentorship	Coaching/Role Model
Arts Education	Dance Lessons & Dance Cardio
Parent & Child Education	Weightlifting Programs
Youth Team Sports	Mat Based Exercises
Character Development & Goal Training	Martial Arts/Self Defense Instruction
Partnering with Area Youth Agencies (i.e. PAL)	Bootcamp Classes
Scheduled Parties (i.e., Birthdays)	Spin Cycling Classes
Martial Arts Classes	Cardio/Agility Courses
Children's Playscapes & Obstacle Courses	Balance Courses
Youth Cooking Class / Vocational Training	Financial Literacy
1-on-1 Coaching & Development	Adult Socialization/ Lounges
Skate Park Activities	Private Training Spaces
Youth/Teen Center/Snack Shack	Social Discussion Groups
Cheerleading & Gymnastics	Virtual Parent Connect
Teen Programming / Career Development	Language Lessons
Skateboard/BMX Lessons & Competition	Fitness Boot Camp
STEAM Programming	Adult Education
Recording Studio Activities	Vocational Training / Job Search
Teen Center - Socialization	Yoga / Relaxation Training
Senior	For All
Senior Aerobics	Athletic Club Programming
Interactive Programming (Bingo & Trivia)	Support Groups & Hobby Based Social Clubs
Tai Chi/Sit & Be Fit	Health & Nutritional Guidance/Cooking Classes
Technology Training	Community Kitchen and Healthy Food Truck Events
Senior Lounge	Adult Education Seminars/Luncheons
Balance & Core Development	Facility Rentals-Birthdays/Weddings/Anniversaries
Free Health Screening	Facility/Fitness Orientations
Zumba Gold/Line Dancing	Member Appreciations/Fitness Festivals/Health Fairs
Volunteer Opportunities	Community Education Room
Silver Sneakers Programming	Virtual Wellness Programming
Social Discussion Groups for Seniors	Career & Networking Events
Senior Educational Programming	Open & Reserved Access to Sports Courts & Fields
Senior Health & Resource Guidance	Holiday Festivals & Performances
Cards & Boardgames	Family Fun Days/Farmers Markets/Craft Vendor Fairs
Veteran Support	Tax Preparation/Financial Literacy Training
Senior/ADA Accessible Entrances & Rails	Medicare & Medicaid Education
Senior Support Line	Programming/Entertainment Space
Senior Wellness Check-in	Game Nights/Movie Nights/Indoor Concerts
Read to Children	Arts & Crafts Events & Classes
Cognitive Skills Reinforcement	Community Support/Volunteer Opportunities
Financial Literacy /Retirement Planning	Wellness Center/Health Coaching
Volunteer Placement	Computer Lab/Wifi/Print Zone
Vocational Training	Team Sports