

RESOLUTION 2020-03

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AUTHORIZING ENTERING INTO A LEASE AGREEMENT WITH THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF WEST CENTRAL FLORIDA, INC. FOR THE LETTING OF REAL PROPERTY LOCATED AT 1001 BURNS AVENUE, LAKE WALES, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Lake Wales, owner of certain real property located at 1001 Burns Avenue, Lake Wales, Florida, desires to lease this same property to Young Men's Christian Association of West Central Florida, Inc.; and

WHEREAS, Young Men's Christian Association of West Central Florida Inc., desires to lease certain real property located at 1001 Burns Avenue, Lake Wales, Florida, from the City of Lake Wales.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of the Constitution of the State of Florida; Chapter 166, Florida Statutes; the Charter of the City; and other applicable provisions of law.

SECTION 2. FINDINGS. The above stated recitals are hereby incorporated as part of this Resolution.

SECTION 3. APPROVAL. The City of Lake Wales, by and through its City Commission, does hereby agree to enter into the Lease Agreement with the Young Men's Christian Association of West Central Florida, Inc. "Exhibit A" for the lease of the real property located at 1001 Burns Avenue, Lake Wales, Florida.

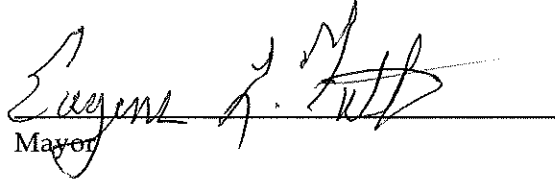
SECTION 4. INCIDENTAL ACTION. The Mayor, City Manager, Chief Financial Officer and Clerk of the City, and their designees are hereby authorized to take such actions as may be necessary to carry out the purposes of this Resolution.

SECTION 5. EFFECTIVE DATE. This Resolution shall become immediately effective upon its adoption.

DULY RESOLVED this 4th day of February 2020.

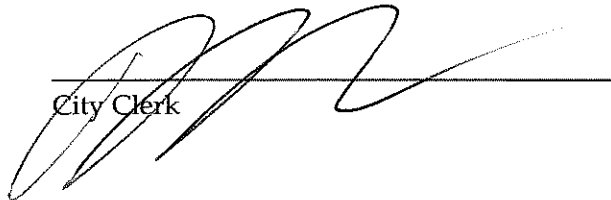
CITY COMMISSION OF THE CITY OF LAKE
WALES, FLORIDA

(SEAL)



Mayor

ATTEST:



City Clerk

**EXHIBIT A LEASE AGREEMENT BETWEEN
CITY OF LAKE WALES
AND
YOUNG MEN'S CHRISTIAN ASSOCIATION OF WEST CENTRAL FLORIDA,
INC.**

TABLE OF CONTENTS

DEFINITIONS 5

LETTING 7

TERM..... 9

RENT 9

RIGHTS AND USES OF TENANT..... 10

GROSS REVENUES 11

PROGRAMMING AND OPERATIONAL
REQUIREMENTS OF TENANT 12

USE OF PREMISES BY LANDLORD..... 12

OBLIGATIONS OF TENANT 13

COMPLIANCE WITH GOVERNMENTAL
PROCEDURES 14

MAINTENANCE AND REPAIR 15

INSURANCE REQUIREMENTS FOR TENANT 16

DAMAGE TO OR DESTRUCTION OF PREMISES . 17

INDEMNITY 18

RIGHTS OF ENTRY RESERVED..... 18

ASSIGNMENT; SUBLETTING AND MORTGAGING 19

DEFAULT; TERMINATION.....20

REMEDIES TO BE NON-EXCLUSIVE.....22

SURRENDER.....23

ACCEPTANCE OF SURRENDER OF LEASE.....23

REMOVAL OF PROPERTY.....23

NOTICES.....24

NON-LIABILITY OF INDIVIDUALS.....24

UTILITIES.....24
ABATEMENT.....25
ENVIRONMENTAL COMPLIANCE.....25
NON-DISCRIMINATION.....27
MISCELLANEOUS.....28

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") dated as of the ____ day of February, 2020, made by and between the CITY OF LAKE WALES, a Florida municipal corporation, having an address at 201 W. Central Ave , Lake Wales, FL 33853 ("Landlord" or the "City of Lake Wales"), and YOUNG MEN'S CHRISTIAN ASSOCIATION OF WEST CENTRAL FLORIDA, INC., a Florida not for profit corporation, having offices at 53 Lake Morton Drive, Suite 110, Lakeland, FL 33801 ("Tenant").

RECITALS

1. Landlord owns certain real property located in Lake Wales, Florida, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "Parcel").

2. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the "Premises" (as hereinafter defined) subject to the conditions of this Lease.

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms set forth below, when used in this Lease, shall be defined as follows:

- (a) "Additional Rent" shall mean all monetary obligations of Tenant to Landlord (other than Base Rent) payable pursuant to this Lease.
- (b) "Applicable Approvals" shall mean all Governmental Approvals (with all appeal periods having expired) required of Tenant for Proposed Improvements, including, but not limited to building permits.
- (c) "Approved Plans" shall mean plans and specifications for improvements to the Premises (as amended from time to time) that have received the prior written approval of Landlord.
- (d) "Base Rent" shall be One Dollar (\$1.00) per Lease Year.
- (e) "CO" and the date(s) that any improvements are deemed to be completely constructed, shall mean: (1) with respect to buildings constructed on the Premises, the date(s) upon which a shell certificate of occupancy (or similar permit) shall be issued by the appropriate governmental authority; or (2) with respect to other improvements to be constructed on the Premises, the date upon which the improvements may first be legally put into service for the intended use thereof (regardless of whether such is the actual first date of usage).
- (f) "County" shall mean Polk County, Florida.
- (g) "Effective Date" shall mean the date set forth on the first page of this Lease which is the date upon which Landlord has executed same.
- (h) "Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Lease and which is beyond the reasonable control of such party including, but not limited to fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions (provided that Landlord's actions cannot delay Landlord's

compliance hereunder).

- (i) "Governmental Approvals" shall mean all governmental and quasi-governmental approvals from applicable city, county and other agencies and authorities required to develop the Premises including, but not limited to, development of regional impact approvals, site plan approvals, comprehensive land use plan approvals, plat approvals and recordation, public dedications, environmental approvals, zoning approvals, building permits and all other governmental approvals required in connection with the development of such Improvements contemplated by the Conceptual Plan (and the expiration of all appeal periods with respect thereto), modification and/or vacation of easements and other matters pertaining to the Premises.
- (j) "Governmental Approval Date" shall mean the last day of the twenty-first (21st) month after the Inspection Completion Date.
- (k) RESERVED.
- (l) "Improvements" shall mean any and all buildings, pavements, fixtures, permanently affixed equipment, signs, landscaping, facilities, utilities (both above ground and below ground), and all other structures or improvements now or hereafter constructed on or offsite in connection with the Premises and all additions, alterations, modifications, renovations, and replacements thereto.
- (m) "Indemnitees" shall mean the party seeking indemnification from the other party and its applicable officers, directors, employees, agents or assigns.
- (n) RESERVED.
- (o) "Lease" or "Agreement" shall mean this Lease Agreement, including any supplements, modifications or amendments thereof.
- (p) "Lease Year" shall mean the twelve (12) month period beginning on the Effective Date and each anniversary thereof.
- (q) "Memorandum" shall mean memorandum of this Lease in a form described in this Lease to be maintained in the Public Records of the City of Lake Wales, Florida.
- (r) "Parcel" shall mean the real property as more particularly described on Exhibit A attached hereto and by this reference made a part hereof, together with all drains, culverts, ditches and catch basins located thereon, subject to non-exclusive easements and rights-of-way of record.
- (s) "Permitted Change" shall mean (i) a change which is required to be made to comply with applicable governmental requirements; (ii) a change which involves only substituting materials of comparable or better quality; (iii) any change with respect to the interior portions of the Improvements; (iv) a change required by the failure of the Plans to satisfy field conditions where the change will not have a material adverse effect on the quality, appearance or function of such Improvements; and (v) a change which is made to correct inconsistencies in various plans and specifications.
- (t) "Permitted Uses" shall mean the permitted uses which may be made of the Premises pursuant to the Rights and Uses Section of this Lease.
- (u) "Person" shall mean any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise. The reference in this Lease to any one of the foregoing types of persons, shall be deemed a reference to all other types of persons.

- (v) "Premises" shall mean the Parcel together with all buildings, structures, pavements, facilities and other improvements now or hereafter constructed thereon, the equipment permanently affixed therein, such as electrical, plumbing, sprinkler, fire protection and fire alarm, heating, steam, sewage, drainage, refrigerating, communications, gas and other systems and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures together with all appurtenances, rights, privileges, permits and easements benefiting, belonging or pertaining thereto.
- (w) "Rent" shall mean the Base Rent and any Additional Rent.
- (x) "State" shall mean the State of Florida.
- (y) "Surviving Obligations" shall mean those obligations which survive upon the termination of this Lease pursuant to the provisions of the Indemnity Section for matters arising prior to the date of termination of this Lease and those obligations set forth in Environmental Compliance Section.
- (z) "Tenant" shall mean Young Men's Christian Association of West Central Florida, Inc., a Florida not for profit corporation, its successors and assigns as permitted by this Lease.
- (aa) "Title Company" shall mean the title company selected by Tenant to issue any leasehold title insurance policy which Tenant may elect to obtain insuring its rights under this Lease.
- (bb) "Termination Date" shall mean the date as set forth in Term of this Lease.
- (cc) "Term of this Lease" or words of similar import shall mean the term set forth in Term Section hereof, including the initial term and any renewal term(s), as applicable.

LETTING

(a) Let. Landlord hereby lets to Tenant and Tenant hereby hires and takes from Landlord the Premises.

(b) Uses. Tenant agrees to operate the Premises only for the uses permitted pursuant to this Lease provided, however, Tenant shall, subject to the terms of this Lease, make the Premises available to the public, without discrimination; and refrain from imposing or levying excessive, discriminatory or otherwise unreasonable charges or fees for any service it may provide in connection with the Premises. Without limiting the foregoing, at all times during the Term of the Lease, Tenant shall (1) allow all residents of the County the same access to the Premises and its facilities as residents of City of Lake Wales, and (2) provide for all fees for entry to and use of the Premises and its facilities to be uniform for all residents of the City of Lake Wales (provided, however, subject to applicable governmental requirements, nothing contained herein shall limit the right of Tenant to institute a different fee structure for different groups of residents such as, for example, senior citizens or children and to preclude membership and program participation to those who do not meet Tenant's membership requirements). All charges shall be substantially consistent with other similar facilities operated by Tenant in other parts of the County.

(c) Reservation of Easements; Cross Access and Parking Easements. Provided that same do not materially adversely interfere with or materially adversely impair the use of the Parcel for the Permitted Uses, Landlord, in its sole and absolute discretion, may reserve such non-exclusive easements on the Premises as may now or in the future be necessary to serve the Premises or other real property owned by Landlord, and Tenant agrees to take the Premises subject to and/or to grant (as provided in this Lease) said non-exclusive

easement requirements and, upon Landlord's request, promptly execute such documents as may be necessary to effectuate such non-exclusive easements and, to the extent that such easement is for the benefit of Tenant, Tenant agrees to assume all risks relative thereto.

(d) As Is- Except as may be otherwise provided in this Lease the:

(1) Landlord makes no representations or warranties whatsoever as to: (a) the condition of the Premises, or (b) whether the Premises, or any part thereof, is in compliance with applicable federal, state, and local laws, ordinances, rules, or regulations; or (c) the permitted or available uses of the Premises under any applicable federal, state, or local laws, ordinances, rules, or regulations;

(2) Landlord makes no representations or warranties whatsoever as to the legality, permissibility or availability of any use of the Premises that may be contemplated by Tenant;

(3) **Landlord makes no representations or warranties concerning habitability or fitness for any particular purpose.** Tenant specifically obligates itself to conduct its own due diligence investigation as to the Premises and the suitability thereof for Tenant's purposes; and

(4) Premises and all components thereof, are hereby demised in "**AS IS CONDITION**" and "**WITH ALLEFAULTS**"

Following the Effective Date, Tenant shall **ASSUME ALL RISKS** with respect to the condition of the Premises and of non-compliance of the Premises, or any part thereof, with any federal, state, or local laws, ordinances, rules, or regulations, except as otherwise set forth in this Lease as the responsibility of the Landlord and except for matters arising from the action of Landlord, its agents or employees occurring prior to the Effective Date. From and after the Effective Date upon receipt of notice of any noncompliance with any such laws, ordinances, rules, or regulations, Tenant hereby agrees to make any and all repairs, alterations, and additions to the Premises and to take all corrective measures as may be necessary to bring the Premises into compliance with all laws, ordinances, rules and regulations subject to any applicable section of this Lease including, but not limited to, the Insurance Requirements for Tenant and Damage to or Destruction of Premises Sections of this Lease regarding casualty and condemnation of the Premises, respectively, subject to the monetary limits to Tenant's obligation to make repairs, replacements and improvements referenced in this Lease in the Maintenance and Repair Section below and the obligations of the Landlord to make repairs, replacements and improvements that exceed those monetary limits. Notwithstanding the foregoing, Tenant shall have the right to challenge any such laws, ordinances, rules and regulations and may defer compliance therewith provided that in doing so Tenant shall not subject Landlord to any liability in connection therewith and the Premises shall not be subject to any liens in connection therewith. Tenant shall not be entitled to any adjustment of any rentals hereunder on account of the condition of the Premises or because of any necessity of Tenant to repair or take corrective actions with respect to any part thereof or because of the inability of obtaining or any delay in obtaining any required development approvals from any governmental body having jurisdiction, including but not limited to Landlord, subject to the monetary limits to Tenant's obligation to make repairs, replacements and improvements referenced in this Lease in the Maintenance and Repair Section below and the obligations of the Landlord to make repairs, replacements and improvements that exceed those monetary limits.

(e) Quiet Enjoyment. Tenant, upon paying the Rent herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on Tenant's part to be performed and observed, shall peacefully and quietly have, hold and enjoy the Premises during the Term, subject to the rights of Landlord to enter upon

and use the Premises pursuant to the terms and conditions of this Lease specifically including, but not limited to, Landlord's rights under Use of Premises by Landlord Section hereof entitled "Use of Premises by Landlord."

TERM

(a) **Initial Term.** The initial term ("Initial Term") of this Lease shall commence on the Effective Date and shall terminate on the last day of the third (3rd) Lease Year of this Lease ("Termination Date"), unless sooner terminated as provided herein. The parties acknowledge and agree that it is their intent that the Premises be utilized for public parks and recreational purposes for a minimum of three years.

(b) **Renewal Options.** Provided that Tenant is not in default under this Lease, Tenant shall have the option to extend the Initial Term of this Lease perpetually, for renewal term(s) of one (1) year each (each, a "Renewal Term") upon written mutual agreement of both Landlord and Tenant. Tenant shall exercise its option to renew by giving Landlord written notice not less than 90 days prior to the expiration of the Initial Term or the Renewal Term then in effect as the case may be. If Tenant fails to exercise its options in the time periods or in the manner provided herein, such options shall be deemed to have lapsed, terminated and shall be of no further force or effect without any further action or notice required on the part of Landlord; provided, however, before such termination becomes effective, Landlord shall first make a good faith effort to notify Tenant of Tenant's failure to timely exercise an option to renew and Tenant shall then have fifteen days from receipt of Landlord's notice within which to provide the notice of exercise of such renewal which, if then timely provided, shall be deemed an effective renewal of this Lease. All of the terms and conditions of this Lease shall remain in full force and effect during any Renewal Term(s). If Tenant exercises its options as set forth herein, the Termination Date shall be the last day of the Renewal Term then in effect, unless sooner terminated as provided herein. The Initial Term of this Lease, as extended by any Renewal Term(s), if applicable, shall hereinafter be referred to as the "Term."

(c) **Termination on Notice and Operation Agreement.** Notwithstanding any contrary provision herein, either Landlord or Tenant may terminate this Lease on 180 days' notice provided, however, that the term of this Agreement shall be concurrent with the Operation Agreement of even date herewith between Landlord and Tenant so that any termination of this Lease shall terminate the Operation Agreement and any termination of the Operation Agreement shall terminate this Lease. Following any termination of this Lease, Tenant shall have no further obligations hereunder.

RENT

(a) **Base Rent.** Landlord hereby acknowledges receipt of payment from Tenant of the Base Rent for the Initial Term. Base Rent for any Renewal Term(s) shall be paid at the time Tenant exercises its option with respect to each Renewal Term.

(b) **Licenses, Fees and Taxes.** Tenant shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, county, and local taxes, assessments and fees, which are now or may hereafter be levied upon the Premises or the estate hereby granted, or upon Tenant, or upon any of Tenant's property used in connection therewith, if any, or upon any rentals or other sums payable hereunder, including, but not limited to any applicable ad valorem, sales or excise taxes, and shall maintain in current status all federal, state, county and local licenses and permits, now or hereafter, required for the operation of the business conducted by Tenant including, but not limited to, occupational licenses. To the extent permitted by Law, Tenant shall be permitted to pay any assessments in annual installments and to the extent such

assessments may be payable in installments then Tenant shall only be required to pay those installments which shall become due and payable during the Term.

(c) Proration. Taxes, assessments and other expenses in connection with the Premises, if any, shall be prorated as of the Effective Date and the last day of the Term with Tenant being responsible for its obligations pursuant to this Lease for the period between the Effective Date and the Termination Date.

(d) Utilities. From and after the Effective Date Tenant shall pay when due all water, wastewater, electric, telephone, solid waste, recycling, and all other utility and other expenses of any and all types whatsoever which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall pay all fees or charges relative to the foregoing promptly prior to delinquency.

(e) Additional Rent. If Landlord is required or elects to pay any sum or sums or incur any obligations or expense by reason of the failure, neglect or refusal of Tenant to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease which breach is not cured by Tenant within the applicable cure period, Tenant agrees to pay the reasonable sums so paid or the reasonable expense so incurred, including all interest, costs, damages and penalties, and reasonable attorneys' fees and costs, and each and every part of the same shall be and become Additional Rent payable within thirty (30) calendar days after written demand therefor.

(f) Late Payments - Interest. Landlord shall be entitled to collect interest at the highest non-usurious rate permitted by law per annum from the date any sum is due to Landlord until the date paid on any amounts that are not paid within ten (10) days of their due date under this Lease. The right of Landlord to require payment of such interest and the obligation of Tenant to pay same shall be in addition to and not in lieu of the right of Landlord to enforce other provisions herein and to pursue other remedies provided by law.

(g) Place of Payments. All payments of Rent required to be made by Tenant to Landlord under this Lease shall be made payable to "City of Lake Wales," and shall be paid to Landlord at P.O. Box 1320, Lake Wales, FL 33859, or to such other office or address as may be substituted therefor. All Rent (together with all applicable sales tax thereon) shall be payable without demand, offset or deduction, other than as set forth in this Lease.

RIGHTS AND USES OF TENANT.

(a) Permitted Uses. Tenant shall be permitted to utilize the Premises for the following uses ("Permitted Uses"), to wit:

(1) As a YMCA facility with its acknowledged quality recreational programming. The Tenant will consider the needs and desires of the residents of the City of Lake Wales that fit within the YMCA mission and purposes as Tenant reasonably determines on Landlord's request. Notwithstanding the foregoing, Landlord, in its sole discretion, shall not be required to consent to any use of the Premises that violates applicable laws including, but not limited to, the Code of Ordinances of the City of Lake Wales.

(2) Such other compatible uses as permitted under applicable law for which Landlord has given its prior written consent in its sole discretion.

(b) Prohibited Uses. Tenant shall be expressly prohibited from utilizing the Premises for the following:

(1) Adult arcade, adult bookstore/adult video store, adult booth, adult dancing establishment, adult entertainment establishment, adult motel, or adult theater.

(2) The retail sale of alcoholic beverages; provided the foregoing shall not prohibit (i) the sale of alcoholic beverage for consumption within a portion of the Premises in connection with special events conducted on the Premises, to the extent permitted under applicable law, or (ii) as may otherwise be approved in writing by Landlord.

(3) Any use that requires the storing of hazardous substances and/or materials at the Premises in violation of applicable law.

(4) Any use of the Premises for residential purposes or living quarters of any kind whatsoever.

(5) Any use which is not a Permitted Use as set forth in Paragraph (t) of the Definitions section above.

(6) Any use prohibited by law.

AUDIT

(a) Delivery of Audit; Right to Inspect. Tenant will furnish to Landlord upon written request annual audited financial statements from Tenant. Landlord shall have the right at a mutually agreeable time during normal business hours, to inspect and/or audit, or cause to be inspected and/or audited by Landlord at Landlord's sole cost and expense and/or a certified public accounting firm selected by Landlord ("Landlord's CPA Firm"), the business records, bookkeeping and accounting records, sales and income tax records and returns and any other records of Tenant with respect to the Premises including the books and records of Tenant. Tenant shall fully cooperate with Landlord and Landlord's CPA Firm

PROGRAMMING AND OPERATIONAL REQUIREMENTS OF TENANT

(a) Programs and Services. Tenant shall provide a variety of general recreational programs and services as a YMCA for children, teens, families, adults, and senior citizens residing in the City of Lake Wales in particular and the County in general, it being the intent of the parties that the programs and services meet the needs and desires of the residents of the City of Lake Wales. At other times during the Term of the Lease, Tenant may also add new programs and services upon reasonable notice to Landlord, and Landlord's consent shall not be required provided that such new programs and services are of a general recreational nature and satisfy the foregoing intent of the parties. The prior written consent of Landlord shall be required in each instance where a new program or service, or a modification, alteration, variance, supplement, replacement, and/or substitution of an existing program or service is of a non-recreational nature. By way of example, a program that is political in nature or a gun show would require Landlord's prior written consent. In those instances where Landlord's consent is required under this Programming and Operational Requirements of Tenant Section (a), it may be withheld in Landlord's reasonable discretion.

(b) Operating Schedule. Tenant shall provide its programs and services on a seven (7) day a week basis except for any holidays as approved by Landlord, it being the intent of the parties that the days and hours of operation meet the needs and desires of the residents of Lake Wales as mutually determined by the parties.

(c) Mutual Cooperation. The parties further agree to mutually cooperate with each other on a program by program and service by service basis, if necessary, during the Term of

this Lease relative to the provision of individualized programs and service needs including operating schedule modifications in order to effectuate the intent of the parties as expressed herein, and taking into account the economic feasibility of providing such programs and services as reasonably determined by Tenant and Landlord.

(d) Quality of Services. Tenant shall conduct its operations in a business-like manner and shall control the conduct, demeanor, performance and appearance of its officers, members, employees, agents, volunteers, independent contractors, representatives, guests, and invitees consistent with the operation of other facilities operated by Tenant and otherwise in accordance with applicable law and the provisions of this Lease.

USE OF PREMISES BY LANDLORD

(a) City Programs and Services. Subject to the mutual agreement of the parties, Landlord shall have the ability to use specific portions of the Premises for programs and services offered by the City of Lake Wales ("City Programs and Services") without charge to Landlord except as provided in Use of Premises by Landlord Section (d) below. If Landlord desires to use the Premises for City Programs and Services as set forth herein, Landlord shall provide Tenant with written notice thereof, the anticipated number of guests; specifying the nature of the City Programs and Services, the requested scheduling and space requirements thereof; provided, however, Tenant's approval or disapproval of Landlord's request shall be based upon whether requested scheduling and space availability for City Programs and Services conflict with Tenant's scheduled programs and services and/or programs and services planned to be implemented by Tenant; provided, however, the nature of the City Programs and Services shall not compete directly with those of Tenant or have a materially adverse effect on the status or reputation of Tenant or on the ability of Tenant to provide its scheduled programs and services to its guests. If Tenant properly and timely disapproves Landlord's request in accordance with this Use of Premises by Landlord Sections (a) and (b), Tenant shall provide Landlord with notice to that effect and said notice shall also specify alternative scheduling and space availability acceptable to Tenant for the requested City Programs and Services. Once Tenant provides its approval for City Programs and Services, such approval shall be deemed final and conclusive. Said approval cannot be withdrawn or revoked by Tenant except upon the express written consent of Landlord in each instance which consent may be withheld by Landlord in its sole and absolute discretion or conditioned upon terms acceptable to Landlord. Landlord shall be responsible to repair any damage to the Premises occurring during City Programs and Services caused by the City, its officials, employees, independent contractors, agents, guests and invitees.

(b) City Events. Subject to the mutual agreement of the parties as to scheduling only, Landlord has the right to use the Premises or any portion thereof for City of Lake Wales events without charge to Landlord ("City Event"). If approved by Tenant, some or all of the days allocated to City Events may require that no activities may be carried on at the Premises other than the scheduled City Event. If Landlord desires to use the Premises for City Events as set forth herein, Landlord shall provide Tenant with notice thereof specifying the nature of the City Event and the requested date(s) thereof; provided, however, Tenant's approval or disapproval of Landlord's request shall be based solely upon whether requested date(s) for a City Event conflict with Tenant's scheduled events, programs or services. If Tenant properly disapproves Landlord's request in accordance with this Use of Premises by Landlord Sections (a) and (b), Tenant shall provide Landlord with notice to that effect and said notice shall also specify alternative date(s) acceptable to Tenant for the requested City Event. Once Tenant provides its approval for a City Event, such approval shall be deemed final and conclusive. Said approval cannot be withdrawn or revoked by Tenant except upon the express written consent of Landlord in each instance which consent may be withheld by Landlord in its sole and absolute discretion or conditioned upon terms acceptable to Landlord. Landlord shall be responsible to repair any damage to the

Premises occurring during a City Event caused by the City, its officials, employees, independent contractors, agents, guests and invitees.

(c) Insurance. The parties occupy a different status when it comes to liability to the public. Landlord is a governmental entity that qualifies for sovereign immunity status – a status that can only be waived by legislative enactment or constitutional amendment. Tenant is a not-for-profit corporation with conventional responsibility to the public. Thus, these two parties serving the public in the same facility calls for a clear and unambiguous understanding as to their respective responsibilities to the public and to each other. The City is insured by the Florida Municipal Insurance Trust, a self-insurance pool composed of governmental entities. The FMIT is unable to extend its protections to an entity that is not a governmental agency and cannot qualify for sovereign immunity status. The City Programs and Services as well as City Events will be liable to the public up to the limits of sovereign immunity prevailing at the time of a given incident. Further, subject to the provisions and monetary limitations of sovereign immunity prevailing at the time of the incident in question, Landlord agrees to hold harmless and defend Tenant from and against any and all manner of loss, cost, damage, claim and demand for personal injury and property damage resulting from City Programs and Services as well as City Events. Notwithstanding the foregoing, the parties hereby acknowledge and agree that Tenant’s preschool and child care program and designated portion of the Premises dedicated to such programing shall not be subject to use for any City Programs and Service in light of State of Florida licensing requirements.

(d) Revenues. Landlord shall be entitled to all revenues generated from City Programs and Services and City Events. Landlord may solicit sponsors for City Programs and Services and City Events.

OBLIGATIONS OF TENANT

(a) Garbage. Tenant shall remove from the Premises or otherwise dispose of all garbage, debris and other waste materials (whether solid or liquid) arising out of the occupancy of the Premises or out of any operations conducted thereon in accordance with applicable law. Any of such as may be temporarily stored in the open, shall be kept in suitable garbage and waste receptacles. When effecting removal of all such waste, Tenant shall comply with all laws, ordinances, rules, regulations and procedures of all applicable governmental authorities. Landlord recognizes that during construction reasonable deviations from this Paragraph will be required consistent with similar construction practices in the County.

(b) Waste. Tenant shall commit no nuisance, waste or legal injury on the Premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such material nuisance, waste or legal injury on the Premises.

(c) Odor. Tenant shall not create nor permit to be caused or created upon the Premises any obnoxious odors or smokes or noxious gases or vapors which would constitute a real nuisance; provided, however, that fumes resulting from the normal operations of vehicles or normal business operation shall be excepted from this provision, unless same constitutes a legal nuisance or otherwise prohibited by applicable Law.

(d) Derelict Vehicles. Tenant shall not cause or allow the temporary or

permanent storage on the Premises of any derelict vehicle. A derelict vehicle is defined as a vehicle designed for use on the roadways that does not display a state license tag. Derelict vehicles shall be removed from the Premises to the extent permitted by applicable law within a reasonable period of time.

(e) Signs. Tenant shall have the right to install directional signage and monument and other signage identifying Tenant's name and/or project within the Premises, provided that such signage is approved by all applicable governmental authorities having jurisdiction. Any exterior signage other than as aforesaid shall require the approval of Landlord. Notwithstanding anything herein to the contrary, billboard signs are expressly prohibited.

COMPLIANCE WITH GOVERNMENTAL PROCEDURES

(a) Comply with Governmental Requirements. Tenant shall comply with any applicable federal, state, county, and municipal laws, ordinances, resolutions and governmental rules, regulations and orders including the Americans with Disability Act as may be in effect now or at any time during the Term of this Lease, all as may be amended, which are applicable to Tenant, the Premises, or the operations conducted at the Premises (other than as may be required specifically in connection with City Programs and Services or a City Event, which compliance shall be the obligation of Landlord at Landlord's sole expense); provided that Tenant shall not have any obligation to make repairs, replacements, or improvements to the Premises in an amount in excess of the limits per occurrence and in annual aggregate in the Maintenance and Repair Section below but Landlord shall make and pay for any such repairs to the extent that they exceed those limits. Landlord's failure or refusal to expeditiously make the repairs, replacement and improvements in excess of the amount of the limits applicable to Tenant shall be a material breach of this Lease, and in such event Tenant shall be entitled to exercise any and all rights and remedies hereunder at law and in equity. Tenant acknowledges that Landlord's responsibilities for repair and replacement of improvements are subject to appropriation or budgeting by the City Commission which may limit how expeditiously the Landlord may be able to act concerning repair and replacement requirements; provided that Tenant shall not be in breach of this Lease or liable for damages caused by any such delay or resulting from any actions of Tenant to mitigate or address any such delay. A violation of any of such laws, ordinances, resolutions, rules, regulations or orders, as amended, not cured within the applicable cure period shall constitute a material breach of this Lease by Tenant, provided that such violation is subject to repair, replacement or improvement by Tenant because the cost does not exceed the amount of the Tenant's obligation to repair, replace or improve as provided in the Maintenance and Repair Section below, and in such event Landlord shall be entitled to exercise any and all rights and remedies hereunder at law and in equity. The obligation of Tenant and Landlord to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property on the Premises. Such provision is not to be construed as a submission by Landlord to the application to itself of such requirements or any of them.

(b) Tenant agrees to the extent required by applicable law, to permit reasonable entry, inspection, and testing upon reasonable advance notice during business hours (unless an emergency exists), by inspectors of any federal, state, county and/or municipal agency having jurisdiction under any law, rule, regulation, or order, applicable to the Premises or the operations at the Premises. This right of entry, inspection and testing shall impose no duty on Landlord to take any such action and shall impart no liability on Landlord should it not take any such action.

MAINTENANCE AND REPAIR

(a) Tenant shall throughout the Term assume the entire responsibility and shall relieve Landlord from all responsibility for all repair, maintenance, replacements and capital improvements on the Premises when the cost does not exceed \$5,000.00 per occurrence (which shall include, without limitation, any buildings and improvements thereon such as access roads and drives, parking areas and landscaping), whether such repair, maintenance, replacements or capital improvements be ordinary or extraordinary, structural or otherwise provided, however, Tenant shall have the right to develop and redevelop the Premises as permitted pursuant to the terms of this Lease and, further provided, that Tenant shall not be obligated to repair or replace any portion of the Premises which is damaged as the result of the use by third parties of easements which encumber the Premises and which easements benefit other property except to the extent such damage is caused by Tenant or its employees, members, patrons, invitees, agents, servants and independent contractors. Maintenance, repairs, replacements and capital improvements shall be in quality and class comparable to similar properties, to preserve the Premises in good order and condition. Landlord agrees to assume the balance of the cost for all repair, maintenance, replacements and capital improvements on the Premises which exceed \$5,000.00 per occurrence. Landlord shall assume full cost responsibility for all repair, maintenance, replacements and capital improvements on the Premises after Tenant has expended a total of \$30,000 for maintenance and repair expenditures within any current calendar year (and prorated for any partial calendar year). Tenant shall assume full cost responsibility for all non-maintenance improvements or expansions initiated by Tenant. Maintenance and repair items, as defined by this section, are limited to structural, mechanical, electrical, and plumbing systems and does not include consumable operating supplies.

During the Term, subject to the limitations on Tenant's obligations as indicated above, Tenant shall be required to keep all buildings and other improvements in good, tenantable, useable condition throughout the Term of this Lease (subject to casualty, condemnation and the other provisions of this Lease with regard to development and the redevelopment of the Premises), and without limiting the generality thereof, Tenant shall:

- (1) Keep the Premises at all times in a clean and orderly condition and appearance.
- (2) Provide and maintain all lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.
- (3) Maintain all paved areas in good condition so that they can be used for the intended purposes consistent with other paved roads, drives and parking areas of similar building complexes in the County area.
- (4) Take anti-erosion measures, including but not limited to, the planting and replanting of grasses with respect to all portions of the Premises not paved or built upon to the extent required to avoid material erosion of the Premises.
- (5) Be responsible for the maintenance and repair of all utilities including but not limited to, service lines for the supply of water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the Premises which are controlled by Tenant.
- (6) Provide adequate security for the Premises and all portions thereof for the purpose of protecting persons and property, except while the Premises are being used for City Programs and Services or a City Event.

(b) During the Term of this Lease, the painting of the Improvements or any portion thereof in a color other than the color originally approved by Landlord in the

Approved Plans shall require the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion.

(c) During the Term of this Lease, the repair or replacement of the roof or any portion thereof in a material and/or color other than the material and/or color originally approved by Landlord in the Approved Plans shall require the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion

INSURANCE REQUIREMENTS FOR TENANT

(a) Tenant shall maintain during the Term of this Lease, Comprehensive General Liability Insurance to protect against bodily injury liability and property damage in an aggregate amount of not less than Three Million Dollars (\$3,000,000) per occurrence, combined single limit (which requirement may be satisfied by a primary policy of not less than \$1,000,000 and an umbrella policy of not less than \$2,000,000). Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: Premises and/or Operations, Independent Contractors and Broad Form Contractual Coverage covering all liability arising out of the terms of this Lease.

(b) Tenant shall maintain during the Term of this Lease Business Automobile Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: Owned, Non-owned and Hired vehicles.

(c) Tenant shall maintain during the Term of this Lease Workers' Compensation and Employer's Liability Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000) each accident.

(d) Landlord shall maintain during the Term of this Lease fire and extended coverage ("all-perils") insurance covering the Premises and Improvements and all machinery, equipment and other personal property used in connection with the Premises on a full replacement cost basis including flood coverage.

(e) Certificates. Tenant shall furnish to Landlord, certificates of insurance or endorsements evidencing the insurance coverages specified by this Article as of the Effective Date of this Lease provided the coverage set forth in Insurance Requirements for Tenant Section (a) shall not be required until obtaining the CO for the Improvements to be insured. The required certificates of insurance shall name the types of policies provided, refer specifically to this Lease, and state that such insurance is as required by this Lease. All policies of such insurance and renewals thereof shall name the Landlord as an additional insured.

(f) Cancellation. Coverage is not to cease and is to remain in force (subject to cancellation notice) throughout the term of this Lease and until all performance required hereunder is completed. All policies must be endorsed to provide Landlord with at least thirty (30) calendar days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the termination of this Lease, copies of renewal policies shall be furnished at least sixty (60) calendar days' prior to the date of their expiration.

(g) Deficiencies. When such policies or certificates have been delivered by Tenant or Landlord as aforesaid and at any time thereafter, Landlord may notify Tenant in writing that, in the reasonable opinion of Landlord the insurance represented thereby does not conform with the requirements of this Section either because the amount or because the insurance company or for any other reason does not comply, and Tenant shall have thirty (30) calendar days to cure such defect to the extent required pursuant to this Lease.

(i) Review of Coverage. The aforesaid minimum limits of insurance shall be reviewed from time to time by Landlord (but no more frequently than every five (5) Lease Years) and may be adjusted if Landlord reasonably determines that such adjustments are necessary to protect Landlord's interest, provided such coverages shall not exceed the amount of coverage required at the time of said review by similar quality projects in the County.

(j) Service of Process. The insurance shall be written by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida

(k) Continued Obligations. Compliance with the foregoing requirements shall not relieve Tenant of its liability and obligations under any other provision of this Lease.

(l) Waiver of Subrogation Rights. Notwithstanding any contrary provision in this Lease, neither Landlord nor Tenant shall be liable to the other for any business interruption, or for any loss of or damage to property or injury to or death of persons occurring in, upon, or about the Leased Property or in any manner arising out of or connected with Tenant's use and occupancy of the Premises, whether or not caused by the negligence or other fault of Landlord or Tenant, or their respective agents, employees, subtenants, licensees, or assignees, to the extent that such business interruption, loss of or damage to property, or injury to or death of persons is covered by insurance, regardless of whether or not such insurance is payable to or protects Landlord or Tenant, or both. Nothing in this paragraph shall be construed to impose any other or greater liability upon either Landlord or Tenant than would have existed in the absence of this paragraph. This release shall remain in effect only so long as it does not prevent the insured from recovering under such policies; provided, that Landlord and Tenant use reasonable efforts to obtain policies that allow a waiver of subrogation.

DAMAGE TO OR DESTRUCTION OF PREMISES

(a) Removal of Debris. If the Improvements located on the Premises or any part thereof shall be damaged by fire, the elements, or other casualty, Landlord shall promptly remove, or cause to be promptly removed, all debris resulting from such damage from the Premises, and Landlord shall promptly take such actions and cause such repairs to be made to the Premises as will place the Premises in a neat and orderly condition and as are necessary for the safety of persons entering upon the Premises. To the extent, if any, that the removal of debris under such circumstances is covered by Landlord's insurance, the proceeds thereof shall be paid to Tenant to the extent that Tenant has undertaken the cost and expense for such purpose.

(b) Minor Damage. If Improvements located on the Premises or any part thereof shall be damaged by fire, the elements, or other casualty but not rendered untenable or unusable, then there shall be no abatement of Rent and the Premises shall be repaired and restored with due diligence to the condition they were in prior to such casualty generally in accordance with the Approved Plans, by and at the expense of Landlord and, if such damage is covered by Landlord's insurance, the proceeds thereof shall be made available to Landlord or its mortgagee (as applicable) for that purpose.

(c) Major Damage to or Destruction of the Premises. If Improvements located on the Premises shall be destroyed or so damaged by fire, the elements, or other casualty as to render the Premises untenable or unusable, subject to the rights of any

affected Leasehold Mortgagee, then:

Landlord shall with due diligence make the necessary repairs or replacements for the restoration thereof to the condition existing prior to such casualty and it shall do so with reasonable dispatch and, if such destruction or damage was covered by insurance, the proceeds thereof shall be adjusted with and paid to Landlord or its mortgagee (as applicable) for that purpose. Rent shall equitably abate from the date of such casualty until such portion of the Premises have been restored to a usable condition. Such abatement shall be made pursuant to the provisions of Abatement Section hereof.

In the event during the last three (3) Lease Years of the Term of this Lease, any Improvements are damaged or destroyed by fire or casualty as to render the Premises untenable or unusable, then Landlord shall have the option to be exercised within ninety (90) days of such event to:

- (a) commence to repair or restore the Improvements as above provided, or
- (b) terminate the Lease by notice to Tenant, which termination shall be deemed to be effective as of the date of such casualty. If Landlord terminates this Lease pursuant to this Section, Tenant shall surrender the Premises to Landlord immediately and assign to Landlord.

INDEMNITY

Tenant shall, subject to the terms of this Lease, at all times hereafter indemnify, hold harmless and defend the Indemnitees against any and all claims, losses, liabilities, and expenditures of any kind, including reasonable attorneys' fees and costs at both the trial and appellate levels, court costs, and expenses, caused by negligent act or omission of Tenant, its employees, contractors, subcontractors, consultants, agents, servants, or officers, or accruing, resulting from, or related to Tenant's use and/or occupancy of the Premises or breach of Tenant's obligations under this Lease including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. Tenant further agrees to pay all fees, costs and expenses in defending against any claims made against the Indemnitees with counsel reasonably acceptable to the Indemnitees in connection with this Lease, recognizing that such counsel must be competent and not have a conflict of interest in connection with the matter as reasonably determined by the Indemnitees. In connection with any defense by Tenant, Indemnitees shall have the right to consent to any settlement of same; provided that such consent shall not be unreasonably withheld. Tenant and Indemnitees shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

The provisions of this Section shall survive the expiration or earlier termination of this Lease.

RIGHTS OF ENTRY RESERVED

(a) Access. Landlord, by its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times and upon reasonable advance notice to enter upon the Premises for the purpose of inspecting the same, for observing the performance by Tenant of its obligations under this Lease and for the doing of any act or thing which Landlord may be obligated or have the right to do under this Lease or otherwise, subject to the provisions of this Lease, provided in connection with such access, such party shall use reasonable efforts to minimize disruption to the operations being conducted upon the Premises.

During the last six months of the last Lease Year period preceding the termination

of this Lease, Landlord may place and maintain on the Premises (in locations reasonably acceptable to Landlord and Tenant) "To Let" signs, which signs Tenant shall permit to remain without molestation.

(b) **Maintenance.** Without limiting the generality of the foregoing, Landlord, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right upon reasonable advance notice (except in case of emergency, in which case no notice is necessary), at its own cost and expense, for its own benefit or for the benefit of others than Tenant, to maintain existing utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto as may, in the reasonable opinion of Landlord, be deemed necessary or advisable.

(c) **Minimum Disruption.** Landlord agrees and shall take such action as reasonably necessary to minimize any disruption caused in connection with Landlord activities upon the Premises and in the exercise of such rights of access, repair, alteration or construction, Landlord shall not unreasonably interfere with the actual use and occupancy of the Premises by Tenant.

(d) **No Eviction.** The exercise of any or all of the foregoing rights by Landlord or others to the extent permitted by this Lease shall not be or be construed to be an eviction of Tenant nor be made the grounds for any abatement of Rent nor any claim or demand for damages, consequential or otherwise, unless Landlord breaches its covenants with respect to such access as provided in this Lease.

(e) **Police Powers.** Nothing herein contained shall be deemed to in any way limit Landlord in the exercise of its police and regulatory powers or its powers of eminent domain.

ASSIGNMENT; SUBLETTING AND MORTGAGING

(a) **Assignment.** Tenant may not sell, convey, transfer or assign (all of the foregoing being deemed as an "Assignment") its interest in the Premises and the Improvements, or any portion thereof without the prior written consent of Landlord (which consent may be withheld by Landlord in its sole and absolute discretion), and further provided that no such Assignment shall be deemed valid or binding upon Landlord, and the assigning Tenant shall not be released from its obligations hereunder, until Landlord has consented to such Assignment, there shall have been delivered to Landlord a true copy of the instrument in a form and substance reasonably acceptable to Landlord in all respects effecting such Assignment, together with the address of each assignee therein named, and an original counterpart of an agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions of this Lease on Tenant's part to be performed. After the aforesaid instrument has been delivered to Landlord and Landlord has consented to such Assignment, then upon such assignee assuming the obligations of this Lease for all obligations arising from and after the date of such assumption, the assigning party shall be released of all further obligations under this Lease for the period from and after the date of such assumption. For purposes of this Section, an "Assignment" will include: (i) any transfer of the Lease by merger, consolidation or liquidation, or by operation of law, or (ii) if Tenant is a corporation, any change (other than to Affiliates of existing shareholders or partners of Tenant) in ownership or power to vote a majority of the outstanding voting stock thereof from those controlling the power to vote such stock on the date of the Lease, or (iii) if Tenant is a limited or a general partnership or joint venture, or a limited liability company, any transfer of an interest in the partnership or joint venture (other than to an existing partner or any Affiliates of existing partners) of greater than a majority of such partnership or joint venture interest from the interest of such partnership or joint venture on the date of the Lease.

(b) Subletting. Tenant may not sublet portions or the whole of the Premises and the Improvements, or grant licenses or concessions thereat without the prior written consent of Landlord (which consent may be withheld by Landlord in its sole and absolute discretion). The following terms and conditions shall apply in each instance where Landlord has consented to a sublease:

(1) Each such sublease shall contain a self-operative provision that it is subject and subordinate to this Lease and any amendments, modifications and extensions thereof, including, but not limited to, all use restrictions, subject to the terms of any non-disturbance agreement between Landlord and such sublessee.

(2) No sublease shall relieve Tenant from liability for any of its obligations hereunder, and in the event of any such sublease, Tenant shall continue to remain primarily liable for and continue to make payments for the payments required to be made pursuant to this Lease and for the performance and observance of the other agreements on its part herein contained.

(3) The form of such sublease shall be subject to the review and approval of Landlord and shall, at a minimum, contain all of the material provisions of this Lease with respect to the obligations of Tenant.

Notwithstanding any contrary provision herein, Tenant may allow outside groups to use the Premises for meetings and events consistent with Tenant's past practices and subject to Tenant's rules and regulations.

(c) Amendment to Lease. Landlord shall, from time to time, upon reasonable written request, provide a Leasehold Mortgagee with estoppel information as to the status of this Lease. Tenant and all Leasehold Mortgagees acknowledge and agree that any assignment of its interest as Tenant to any Leasehold Mortgagee does not give the Leasehold Mortgagee or its assignee any lien or encumbrance upon the fee simple ownership and interest in the Premises which is vested in Landlord. Landlord will consent to such modifications to this Lease as the Leasehold Mortgagee may hereinafter find necessary to make in order for it to mortgage financing, provided that such modifications

- i. do not change the Rent to be paid hereunder, the length of the Term demised or other material terms and obligations of Tenant hereunder,
- ii. do not impose obligations upon Landlord which are substantially or practically more burdensome to it than the obligations contained herein,
- iii. do not change the substance of the condemnation or insurance articles set forth herein, and
- iv. are reasonably acceptable to Landlord.

DEFAULT; TERMINATION

(a) Default. If any one or more of the following events shall occur, same shall be an event of default under this Lease:

(1) Tenant shall voluntarily abandon the Premises or discontinue its operations on the Premises for a period of thirty (30) consecutive calendar days, other than as a result of casualty, condemnation or acts of force majeure; or

(2) Any lien, claim or other encumbrance which is filed against Landlord's fee simple title to the Premises or the Improvements or both (other than that created by or through Landlord) is not removed, or if Landlord is not adequately secured by bond or otherwise with respect to any lien against the fee simple title of the Premises

(other than that created by or through Landlord), within thirty (30) calendar days after Tenant has received notice thereof, or

(3) Tenant shall fail to pay the Rent when due to Landlord and Tenant shall continue in its failure to make any such payments for a period of ten (10) calendar days after written notice is given to make such payments; or

(4) Tenant shall fail to make any other payment required hereunder when due to Landlord and shall continue in its failure to make any such other payments required hereunder for a period of ten (10) calendar days after written notice is given to make such payments; or

(5) Tenant shall fail to keep, perform and observe each and every non-monetary promise, covenant and term set forth in this Lease on its part to be kept, performed or observed within thirty (30) calendar days after receipt of written notice of default thereunder (except where fulfillment of its obligation requires activity over a greater period of time and Tenant shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without material interruption); or

(6) To the extent permitted by law, if Tenant makes an assignment for the benefit of creditors; or

(7) To the extent permitted by law, if Tenant files a voluntary petition under Title 11 of the United States Code (the "Bankruptcy Code") or if such petition is filed against Tenant and an order for relief is entered and not dismissed within sixty (60) days or if Tenant files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law; or

(8) To the extent permitted by law, if within sixty (60) days after the commencement of any proceeding against Tenant seeking to have an order for relief entered against its as debtor or to adjudicate it a bankrupt or insolvent, or seeking any reorganization, arrangement, composition, readjustment or adjustment, winding-up, liquidation, dissolution or similar relief under the Bankruptcy Code or any other present or future applicable federal, state or other statute or law of any jurisdiction, domestic or foreign, such proceeding is not dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator or liquidator of Tenant, or of all of any of the Premises or any interest of Tenant therein, such appointment is not vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment is not vacated; or

(9) Any revocation of the tax exempt status of Tenant or suspension thereof for more than one hundred twenty (120) days.

(b) Remedy. Then upon the occurrence of any event set forth in Default; Termination Section (a), above, or at any time thereafter during the continuance thereof, Landlord may at its option immediately terminate the rights of Tenant hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice and/or Landlord may exercise any and all other remedies available to Landlord hereunder or at law or in equity, subject to the terms of any non-disturbance agreement(s) executed by Landlord, provided the exercise by Landlord of such remedies shall not affect any non-disturbance agreement of Landlord. In the event of any such termination, Tenant shall have no further rights under this Lease and shall cease forthwith

all operations upon the Premises and shall pay in full all Rent and other charges as set forth in this Lease, then due and owing, through the date of termination Landlord may draw down on and enforce the Security in accordance with this Lease and Tenant shall be liable for all compensatory damages incurred by Landlord in connection with Tenant's default or the termination of this Lease upon such a default, including without limitation, all direct, indirect, and all other damages whatsoever, provided Landlord shall not be entitled to punitive or consequential damages.

(c) Habitual Default. Notwithstanding the foregoing, in the event that Tenant has defaulted in the performance of or breached the same obligation three or more times in a twelve (12) month period, and regardless of whether Tenant has cured each individual condition of breach or default, Tenant may be determined by Landlord to be an "habitual violator." At the time that such determination is made, Landlord shall issue to Tenant a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Tenant that there shall be no further notice or grace periods to correct any subsequent breaches or defaults of that particular obligation for the balance of such twelve month period and that any subsequent breaches or defaults of that particular obligation for the balance of such twelve month period, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default of that particular obligation for the balance of such twelve month period, for which Tenant has been deemed to be a habitual violator, Landlord may terminate this Agreement upon the giving of written notice of termination to Tenant, such termination to be effective upon delivery of the notice to Tenant.

(d) No Waiver. No acceptance by Landlord of Rent, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by Tenant shall be deemed a waiver of any right on the part of Landlord to terminate this Lease, or to exercise any other available remedies.

Failure by Landlord or Tenant to enforce any provision of this Lease shall not be deemed a waiver of such provision or modification of this Lease. A waiver of any breach of a provision of this Lease shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Lease.

(e) The rights of termination described above shall be in addition to any other rights provided in this Lease and in addition to any rights and remedies that the parties would have at law or in equity consequent upon any breach of this Lease (not cured within the applicable cure period) and the exercise of any right of termination shall be without prejudice to any other rights and remedies, subject to any limitations on such remedies otherwise set forth in this Lease.

REMEDIES TO BE NON- EXCLUSIVE

(a) Cumulative Remedies. All rights and remedies of the parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other, subject to the express limitations set forth in this Lease, if any. No waiver by either party of any failure to perform any of the terms, covenants, and conditions hereunder shall operate as a waiver of any other prior or subsequent failure to perform any of the terms, covenants, or conditions herein contained.

(b) Survival. Upon termination or expiration of this Lease, Landlord and Tenant shall remain liable for all of their respective obligations and liabilities that have accrued prior

to the date of termination or expiration.

SURRENDER

Tenant covenants and agrees to yield and deliver peaceably and promptly to Landlord, possession of the Premises, on the Termination Date or earlier termination of this Lease. Tenant shall surrender the Premises in the condition required pursuant to this Lease, reasonable wear, tear, casualty and condemnation accepted. All maintenance and repairs shall be completed prior to surrender. Tenant shall deliver to Landlord all keys to the Premises upon surrender. Additionally Tenant shall execute and deliver all documentation reasonably requested by Landlord to transfer Tenant's interest in the Improvements free and clear of all liens, judgments and encumbrances created by or through Tenant as well as all permits and approvals relating to the ownership, use, and operation of the Premises.

ACCEPTANCE OF SURRENDER OF LEASE

No agreement of surrender or to accept a surrender of this Lease shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of Landlord and of Tenant in a document of equal dignity and formality herewith. Except as expressly provided in this Lease, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of Landlord shall be deemed an acceptance of a surrender of letting under this Lease.

REMOVAL OF PROPERTY

- (a) Removal. Tenant shall have the right at any time during the Term to remove its trade fixtures and other personal property from the Premises. Tenant shall immediately repair any damage to the structure or exterior of the Premises caused by its removal of any personal property or trade fixtures. If Tenant shall fail to remove its inventories, trade fixtures, and personal property by the termination or expiration of this Lease, then, Tenant shall be considered to be holding over and subject to charges under Miscellaneous Section (m), hereof, and after fourteen (14) calendar days following said termination or expiration, at Landlord's option: (i) title to same shall vest in Landlord, at no cost to Landlord; or (ii) Landlord may remove such property to a public warehouse for deposit; or (iii) Landlord may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, second, to any sums owed by Tenant to Landlord, with any balance remaining to be paid to Tenant; or Landlord may dispose of such property in any manner permitted by law. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, Tenant shall pay such excess to Landlord upon demand.
- (b) Transfer of Interest. Upon the termination of this Lease the ownership of all Improvements shall vest in Landlord and Tenant agrees to execute such documentation required by Landlord to effectuate the foregoing.
- (c) Survival. The provisions of this Section shall survive the expiration or termination of this Lease.

NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section.

For the present, the parties designate the following:

FOR LANDLORD:

City of Lake Wales
P.O. Box 1320
Lake Wales, Florida 33859
Attn: City Manager

with a copies to:

Albert C. Galloway, Jr., P.A.
202 E. Stuart Ave.
Lake Wales, Florida 33853
Attn: Albert C. Galloway, Jr.

FOR TENANT:

Young Men's Christian Association of West Central Florida, Inc.
53 Lake Morton Drive Ste. 110
Lakeland, FL 33801

All notices, approvals and consents required hereunder must be in writing to be effective.

NON-LIABILITY OF INDIVIDUALS.

No partner, limited partner, director, officer, administrator, official, elected official, agent or employee of Landlord or Tenant shall be charged personally or held contractually liable under any term or provisions of this Lease or of any supplement, modification or amendment to this Lease or because of any breach thereof, or because of its or their execution or attempted execution.

UTILITIES

From and after the Effective Date, Tenant shall pay for all water, wastewater, electric, telephone, solid waste, recycling, and all other utility and other expenses of any and all types whatsoever which are now or hereafter charged or assessed with respect to operations at the Premises. Tenant shall pay all fees or charges relative to the foregoing promptly prior to delinquency.

No failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of Tenant or grounds for any diminution or abatement of rental or shall be grounds for any claim by Tenant under this Lease for damages, consequential or otherwise unless caused by Landlord's wrongful act or gross neglect.

ABATEMENT

If, at any time, Tenant shall become entitled to an abatement of Rent by the provisions of this Lease or otherwise, the abatement of Rent shall be made on an equitable basis taking into consideration the amount and character of the space, the use of which is denied Tenant as compared with the entire Premises, and the period of time for which such use is denied to Tenant.

ENVIRONMENTAL COMPLIANCE; ENVIRONMENTAL CONTAINMENT AND REMOVAL.

(a) No Knowledge of Environmental Pollution. Neither Landlord nor Tenant have any knowledge of any existence of any pollutants, or hydrocarbons contamination,

hazardous materials, or other contaminants or regulated materials (collectively, "Materials") on or in the Premises or the Improvements whether or not in violation of any federal, state, county or municipal law, administrative code provision, ordinance, rule or regulation, as amended, or in violation of any order or directive of any federal, state or local court or entity with jurisdiction of such matter. Landlord has obtained a phase I Environmental Site Assessment from Kimley-Horn and Associates, Inc. dated 2019 (the "Report") that has been provided by Landlord to Tenant and the parties are not aware of any further information related to Material on or in the Premises or the Improvements other than the information in the Report.

(b) **Compliance.** From and after the Effective Date, subject to the terms of Non-Liability of Individuals Section, Tenant (and Landlord to the extent Landlord uses the Premises in connection with a City Event or City Programs and Services) agree to comply with all existing and future federal, state, county, and municipal environmental laws, administrative code provisions, ordinances, rules and regulations, and the requirements of any development order covering the Premises issued pursuant to Chapter 380, Florida Statutes, all as may be amended, including without limitation those **addressing** the following:

(1) Proper use, storage, treatment and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials;

(2) Proper use, disposal and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms on the Premises, if applicable;

(3) Adequate inspection, licensing, insurance, and registration of existing and future storage tanks, storage systems, and ancillary facilities to meet all federal, state, as amended, and municipal standards, including the installation and operation of adequate monitoring devices and leak detection systems; and

(4) Adequate facilities on the Premises for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper disposal thereof.

(5) Compliance with reporting requirements of Title m of the Superfund Amendment, as applicable and as such laws may be amended from time to time.

(c) **Clean Up.** The release of any Materials on the Premises, or as a result of Tenant's operations at the Premises (other than any Materials created by or through Landlord or resulting from City Programs and Services or a City Event), that is in an amount that is in violation of any federal, state, county, municipal law, administrative code provision, ordinance, rule or regulation, as amended, or in violation of an order or directive of any federal, state, or local court or governmental authority, by Tenant or any of its or the officers, employees, contractors, subcontractors, invitees, or agents of Tenant committed subsequent to the Effective Date of this Lease, shall be, at Tenant's expense, and upon demand of landlord or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of applicable environmental laws, rules and regulations. If Tenant does not take action promptly to have such Materials contained, removed and abated to the extent required by law, Landlord may upon reasonable notice to Tenant (which notice shall be written unless an emergency condition exists) undertake the removal of the Materials; however, any such action by Landlord or any of its agencies shall not relieve Tenant of its obligations under this or any other provision of this Lease or as imposed by law. No action taken by either Tenant or

Landlord to contain or remove Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release.

(d) Notice of Release. Tenant shall provide Landlord with notice of releases of Materials occurring at the Premises or on account of Tenant's operations at the Premises. Tenant shall maintain a log of all such notices to Landlord and shall also maintain all records required by federal, state and local laws, rules and regulations and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with applicable laws, rules and regulations.

As required by law, Tenant shall provide the federal, state and local regulatory agencies with notice of spills, releases, leaks or discharges (collectively, "release") of Materials on the Premises which exceeds an amount required to be reported to any local, state or federal regulatory agency under applicable environmental laws, rules and regulations, which notice shall be in accordance with applicable environmental laws, rules and regulations. Tenant shall further provide Landlord and the Polk County Department of Natural Resource Protection (or successor agency) with written notice of not less than one (1) business day following commencement of same, of the curative measures, remediation efforts and/or monitoring activities to be effected on the Premises.

(e) Landlord, upon reasonable written notice to Tenant, shall have the right to inspect all documents relating to the environmental condition of the Premises which are in Tenant's possession, including without limitation, the release of Materials at the Premises, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under applicable environmental laws, rules and regulations or any development order issued to Landlord pertaining to the Premises, pursuant to Chapter 380, Florida Statutes, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental site assessments, and sampling and test results. Tenant agrees to allow reasonable inspection of the Premises by appropriate federal, state, county and municipal agency personnel in accordance with applicable environmental laws, rules and regulations and as required by any development order issued to Landlord pertaining to the Premises, pursuant to Chapter 380, Florida Statutes.

(f) Cures. If Tenant is in default of its obligation to remove the Materials in violation of applicable law and such breach is not cured within the applicable cure period, and Landlord arranges for the removal of any Materials on the Premises that were caused by Tenant or the officers, employees, contractors, subcontractors, invitees, or agents of Tenant, the costs of such removal incurred by Landlord shall be paid by Tenant to Landlord within ten (10) calendar days of Landlord's written demand, with interest at the highest non-usurious rate permitted by Florida law per annum thereafter accruing.

(g) Liability. Tenant shall not be liable for the release of any Materials caused by anyone other than Tenant or the officers, employees, contractors, subcontractors, or agents of Tenant. Nothing herein shall relieve Tenant of its general duty to cooperate with Landlord in ascertaining the source and, containing, removing and abating any Materials at the Premises. Landlord shall cooperate with Tenant with respect to Tenant's obligations pursuant to these provisions, including making public records available to Tenant in accordance with Florida law; provided, however, nothing herein shall be deemed to relieve Tenant of its obligations hereunder or to create any affirmative duty of Landlord to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with Landlord codes, ordinances, rules and regulations, federal laws and regulations, state and local laws and regulations, development orders and grant agreements. Landlord and its employees, contractors, and agents, upon reasonable written notice to Tenant, and the federal, state, local and other agencies, and their employees, contractors, and agents, at times in

accordance with applicable laws, rules and regulations, shall have the right to enter the Premises for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections and audits as it deems appropriate.

(h) Landlord Clean Up. In the event Landlord shall arrange for the removal of Materials on the Premises that are not the responsibility of Tenant to correct, and if any such clean-up activities by Landlord shall prevent Tenant from using the Premises for the purposes intended, the Rent shall be equitably abated, from the date that the use of the Premises for its intended purposes is precluded and until the Premises again become available for Tenant's use. Landlord shall use reasonable efforts to not disrupt Tenant's business; however, in no event shall Tenant be entitled to any amount on account of lost profits, lost rentals, or other damages as a result of Landlord's clean-up activities.

(i) Survival. The provisions of this Section shall survive the expiration or other termination.

NON-DISCRIMINATION

(a) Americans with Disabilities Act. Tenant shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, creed, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, familial status or physical or mental disability. In addition, Tenant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

(b) Tenant shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, familial status or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

(c) Tenant shall not engage in or commit any discriminatory practice in violation of applicable laws, statutes, ordinances, rules and/or regulations.

MISCELLANEOUS

(a) Headings. The section and paragraph headings in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof

(b) Jurisdiction. This lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Lease shall be in Polk County.

(c) Severance. In the event this Lease or a portion of this Lease is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective to the fullest extent permitted by law.

(d) Independent Contractor/Relationship of Parties. The relationship of

Landlord and Tenant hereunder is the relationship of landlord and tenant. Programs and services provided by Tenant shall be subject to the supervision of Tenant and such programs and services shall not be provided by Tenant, or its agents, as agents of Landlord. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Lease. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto.

(e) Third Party Beneficiaries. Neither Tenant nor Landlord intend to directly or substantially benefit a third party by this Lease. Therefore, the parties agree that there are no third party beneficiaries to this Lease and that no third party shall be entitled to assert a claim against either of them based upon this Lease.

(f) Force Majeure. Notwithstanding anything contained in this Lease to the contrary, neither Landlord nor Tenant shall be considered to be in default of this Lease if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid wherein the time for performance shall be extended by the period of such Force Majeure event(s).

(g) Negotiated Lease. Both parties have substantially contributed to the drafting and negotiation of this Lease and this Lease shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. The parties hereto acknowledge that they have thoroughly read this Lease, including all exhibits and attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

(h) Incorporation by Reference. The truth and accuracy of each "Recitals" clause set forth above is acknowledged by the parties. Any attached Exhibits to this Lease are incorporated into and made a part of this Lease and all exhibits subsequently attached to this Lease pursuant to the terms hereof shall be deemed incorporated into and made a part of this Lease.

(i) Estoppel Statement. The parties agree that from time to time, upon not less than fifteen (15) days prior request by a party hereto, the other party will deliver a statement in writing certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) that neither party is in default under any provisions of this Lease, or, if in default, the nature thereof in detail; and (d) such other information pertaining to this Lease as either party may reasonably request.

(j) Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Lease and executed by Landlord and Tenant.

(k) Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Lease that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with subparagraph (j), above.

(l) References. All personal pronouns used in this Lease shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Lease as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section of this Lease, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is made to a particular subsection or subparagraph of such Section.

(m) Holdover. It is agreed and understood that any holding over of Tenant after the termination of this Lease shall not renew and extend same, but shall operate and be construed as a license from month to month. At the option of Landlord, upon written notice to Tenant, Tenant shall be required to pay to Landlord during any holdover period, monthly license fees which shall be equal to double the amount of the monthly installment of rental that was due and payable for the month immediately preceding the termination date of this Lease. In addition, Tenant shall be required to pay to Landlord any other charges required to be paid hereunder during any such holdover period. Tenant shall be liable to Landlord for all loss or damage on account of any such holding over against Landlord's will after the termination of this Lease, whether such loss or damage may be contemplated at the execution of this Lease or not. It is expressly agreed that acceptance of the foregoing payments by Landlord in the event that Tenant fails or refuses to surrender possession shall not operate or give Tenant any right to remain in possession nor shall it constitute a waiver by Landlord of its right to immediate possession of the premises.

(n) Agent for Service of Process. It is expressly understood and agreed that if Tenant is not a resident of the State of Florida, or is an association, corporation or partnership without a registered agent for service of process in the State of Florida, then in any such event Tenant does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and Landlord arising out of or based upon this Lease, and the service shall be made as provided by the laws of the State for service upon a non-resident, who has designated the Secretary of State as agent for service. Tenant shall designate an agent for service process in Florida It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Tenant may be personally served with such process out of this State by certified mailing to Tenant at the address set forth herein. Any such service out of this State shall constitute valid service upon Tenant as of the date of mailing. It is further expressly agreed that Tenant is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

(o) Waiver of Claims. Except for Landlord's breach of this Agreement or as otherwise specifically provided for herein, Landlord shall not be liable for any loss, damage or injury of any kind or character to any third person or such third person's property

- i. arising from any use of the Premises or any part thereof;
- ii. caused by any defect in any building, structure, or other Improvements thereon or in any equipment or other facility located therein;
- iii. caused by or arising from any act or omission of Tenant, or of any of its agents, employees, commercial tenants, licensees or invitees;
- iv. arising from any accident on the Premises or any fire or other casualty thereon;
- v. occasioned by Tenant's failure to maintain the Premises in a safe condition; or
- vi. arising from any other cause; unless, in any of such events, caused by the negligence or willful act or omission of Landlord, its agents, employees, contractors or subcontractors. Tenant agrees that Landlord shall not be liable for injury to Tenant's business for any loss of income therefrom or from loss or damage for merchandise or property of Tenant or its employees, invitees, customers, commercial tenants or other persons in or about the Premises, nor

shall Landlord be liable for injuries to any persons on or about the Premises whether such damage is caused by or as a result of theft, fire, electricity, water, rain or from breakage, leakage, obstruction or other defect of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or for any other condition arising upon the Premises, or from any new construction or repair, alteration or improvement on the part of Tenant's improvements or the equipment, fixtures or appurtenance thereof, other than as a result of Landlord's default of its obligations under this Lease. Landlord does not waive any rights of sovereign immunity that it has under applicable law. Notwithstanding anything contained in this Lease to the contrary, in no event shall Landlord be liable for any consequential and/or punitive damages in connection with this Lease.

(p) Public Entity Crimes Act. Tenant represents that the execution of this Lease will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to Landlord, may not submit a bid on a contract with Landlord for the construction or repair of a public building or public work, may not submit bids on leases of real property to Landlord, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Landlord, and may not transact any business with Landlord in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Lease and recovery of any monies paid by Landlord, and may result in debarment from Landlord's competitive procurement activities. In addition to the foregoing, Tenant further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Tenant has been placed on the convicted vendor list.

(q) Drug-Free Workplace Certification. Tenant hereby covenants and agrees (a) to comply with all policies and procedures of Landlord with respect to maintaining a drug-free workplace as in effect from time to time and established by Landlord and/or any other governmental entity having jurisdiction over such matter, and otherwise to provide and maintain during the term of this Lease a drug-free workplace at the Premises and (b) that it will give written notice to Landlord within twenty-four (24) hours after receiving actual notice that any employee has been convicted of a criminal drug violation occurring at the Tenant covenants to undertake its best efforts to comply with this Section and the representations of Tenant set forth in a Drug-Free Workplace Certification.

(r) Successors and Assigns Bound. This Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Lease.

(s) Time of Essence. Time is expressed to be of the essence of this Lease.

(t) Written Approvals. All approvals and consents required to be obtained hereunder must be in writing to be effective. Unless otherwise specifically provided to the contrary, any consent or approval required by a party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

(u) Authority of Individuals. The individuals executing this Lease on behalf of Tenant warrant that they have full authority to execute this Lease in a representative capacity on behalf of Tenant for whom they are acting herein.

(v) No Set Off. Tenant acknowledges that, as of the Effective Date hereof, it

has no claims against Landlord with respect to any or the matters covered by this Lease and as of the Effective Date it has no claim of set off or counterclaims against any of the amounts payable by Tenant to Landlord under this Lease. Tenant is not entitled to setoff against the amounts payable by Tenant to Landlord payable pursuant to this Lease.

(w) Police/Regulatory Powers. Landlord cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Premises, any improvements thereon, or any operations at the Premises. Nothing in this Lease shall be deemed to create an affirmative duty of Landlord to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

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

(y) Each party represents to the other that it has not dealt with any broker or finder in connection with the execution of this Lease.


(z) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed to be an original.

[The remainder of this page intentionally left blank with signatures blocks to follow.]

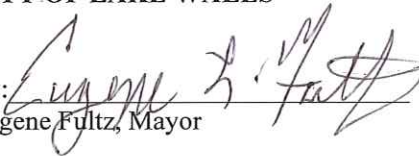
EXECUTED by Landlord's duly authorized representative this 4th day of February, 2020.

Signed in the presence of:


CITY OF LAKE WALES



Witness
Print Name: Zailat Suri

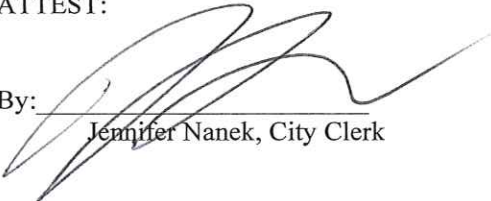
By: 

Eugene Fultz, Mayor



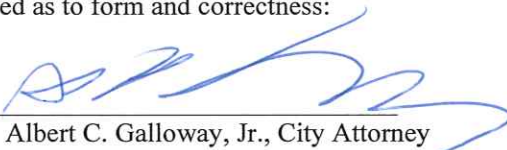
Witness
Print Name: Feromn Mulla

ATTEST:

By: 

Jennifer Nanek, City Clerk

Approved as to form and correctness:

By: 

Albert C. Galloway, Jr., City Attorney

EXECUTED by Tenant's duly authorized representative this 20th day of February, 2020.

Signed in the presence of
following two witnesses:

Young Men's Christian Association of
West Central Florida, Inc.

Renee Camper
Print Name: Renee Camper

By: 
Kirk Eich, CEO

James Slinton
Print Name: James Slinton

EXHIBIT A

LEGAL DESCRIPTION OF THE PARCEL

The legal description of the Parcel shall be prepared at Landlord's expense by a licensed surveyor. Upon Landlord's approval, the legal description of the Parcel shall be attached hereto as Exhibit A and incorporated herein.