GROUND SUBLEASE
FOR HEALTH AND WELLNESS FACILITY DEVELOPMENT
WSIA to YMCA

BUILDING ON LEASED GROUND

THIS GROUND SUBLEASE FOR HEALTH AND WELLNESS FACILITY PROJECT ("Sublease") is made and entered at Wichita, Kansas, by and between Wichita State Innovation Alliance, Inc. ("WSIA") and The Young Men's Christian Association of Wichita, Kansas, a Kansas not for profit corporation (the "Y" or "Tenant") (collectively, the "Parties"), to commence on this 28th day of December, 2017 ("Commencement Date").

WHEREAS, Wichita State University ("WSU") owns approximately one hundred twenty (120) acres of land west of Oliver Avenue between 17th Street and 21st Street in Wichita, Kansas. A master plan is in place to develop such land as a mixed-use master development, with plans for, among others, WSU business school, innovation center, student community center, experiential engineering building, residential facilities, hotel, mixed-use buildings, and buildings for businesses in partnership with WSIA. Such development is commonly known as the Wichita State Innovation Campus ("Innovation Campus") and depicted in Exhibit A, as amended from time to time and at the discretion of WSU or WSIA; and

WHEREAS, WSU is dedicated to improving the quality of student experiences through leisure time, recreational activities, health and fitness programs, and education and programs on wellness. WSU is interested in enhancing its recreational and fitness opportunities for its students, employees and community and believes this can be accomplished with a new facility designed to serve the student population and the innovative mission of WSU; and

WHEREAS, WSU has leased a portion of the Innovation Campus land to WSIA for the development of a Health and Wellness Facility for the benefit of WSU students, faculty, staff, visitors and the surrounding community ("Health and Wellness Facility Project"), pursuant to a master ground lease effective December 28, 2017 ("Master Ground Lease"); and

WHEREAS, the Y is a not-for-profit organization dedicated to serving the community in Youth Development, Healthy Living and Social Responsibility. The Y is experienced in building, operating and programming recreational, fitness and wellness centers and serving the needs of local communities; and

WHEREAS, the Y shares a common mission to provide recreational, educational, and cultural activities that enrich the community. In furtherance of the common mission of the Parties and WSU to provide recreational, educational and cultural activities that enrich the WSU and surrounding community, WSIA desires to sublease this same portion of the Innovation Campus land in furtherance of the Health and Wellness Facility Project to Tenant and Tenant desires to lease such land from WSIA on the terms and conditions set forth in this Sublease.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:
ARTICLE I

TERM

1.1 Lease Term. The term of this Sublease will begin on the Commencement Date and expire fifty (50) years from the Commencement Date ("Initial Term"), unless otherwise earlier terminated as set forth in this Sublease.

1.2 Renewal Option and Term. Unless this Sublease has expired or has been sooner terminated, or an event of default has occurred and is continuing at the time any renewal option is exercised, and provided that all other agreements necessary to the continued operation of WSU's business at the Building Site are extended for a period of not less than the applicable extension periods, Tenant shall have the right and option (each, a "Renewal Option") to extend the Initial Term for five (5) additional successive periods of ten (10) years each (each, a "Renewal Term"), pursuant to the terms and conditions of this Sublease then in effect. The Initial Term and all Renewal Terms referred collectively herein as "Term."

1.3 Termination. This Sublease shall be terminated upon an event of default, as set forth in Article 15, or upon the expiration or termination of the Operation, Maintenance and Use Agreement executed between WSU and Tenant, effective December 28, 2017.

ARTICLE II

LEASE GRANT, COMMONS, EASEMENTS, USE AND PARKING

2.1. Building Site. WSU is the owner of certain land located in the City of Wichita, county of Sedgwick, state of Kansas which is more particularly described in Exhibit B attached hereto and incorporated by reference herein, together with all rights, easements and appurtenances thereto or in anywise belonging (the "Building Site").

2.2. Master Ground Lease. WSU leased the Building Site to WSIA pursuant to a Master Ground Lease. WSIA represents and warrants and WSIA and Tenant hereby acknowledge, that WSU has reviewed and approved this sublease and sublease arrangement in support of the Health and Wellness Facility Project. Moreover, WSIA and Tenant do hereby acknowledge that they have each reviewed and approved the Operation, Maintenance and Use Agreement, YMCA Health and Wellness Facility at WSU by and between WSU and Tenant ("O&M Agreement").

2.3. Sublease Grant. WSIA hereby leases to Tenant, and Tenant hereby leases from WSIA, for the Term and upon and subject to the terms, conditions, covenants and provisions of this Sublease, the Building Site, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Building Site.

2.4. Possession of Building Site. WSIA will deliver, and Tenant will accept, possession of the Building Site on or after the Commencement Date in "pad-ready condition", with utility connections available at the Building Site, except that such delivery shall occur on or before September 1, 2018, unless otherwise agreed to by the parties ("Occupancy Date"). For the purpose of this Sublease, the phrase "pad-ready condition" means the Building Site will be in a condition that will allow the Tenant to immediately commence construction of the "Tenant Improvements" (defined hereafter) in accordance with the "Plans" (defined hereafter). The taking of possession of the Building Site by Tenant will be deemed conclusively to establish that the
Building Site is in good and satisfactory condition as of the date possession was so taken. Except as expressly represented, warranted, or covenanted in this Sublease, WSIA makes no representation or warranty with respect to the condition of the Building Site, or the suitability thereof for Tenant's business operations, and Tenant will accept the same in its "AS IS, WHERE IS" condition.

2.5. Deemed Common Areas. Pursuant to the CC&Rs (as defined in Article 16), and notwithstanding anything contained in this Sublease to the contrary, the areas that are of or for the benefit of the Innovation Campus (including any portions subject to an easement or right of way) together with appurtenant improvements, devoted to the common use and enjoyment of the owners and occupants of the Innovation Campus, including, but not limited to, vehicular parking areas, lakes, retention ponds, legal drains, parks, recreation areas, sidewalks, median strips, signage areas, traffic controls, entrances, traffic signals/signage and drainage areas ("Common Areas"). Those portions of the Building Site that are not from time to time used, or cannot be used due to the restrictions provided in the CC&Rs, for Tenant Improvements, will be deemed part of the Common Areas and will be improved, kept and maintained as Common Areas as provided in the CC&Rs. Notwithstanding anything to the contrary herein, the Parking Lot, as defined herein, shall not deemed part of the Common Areas.

2.6. Easements Granted to Tenant. WSIA grants to Tenant a non-exclusive license and, subject to the required approvals of any governmental entity or board as may be required, an easement, which shall be coterminous with the Term of this Sublease for the benefit of Tenant, Tenant's invitees, licensees and all occupants under permitted leases and the invitees and licensees of such occupants, over and across the Common Areas and the right to use such areas in connection with others for purposes of ingress and egress to and from all buildings and improvements on the Building Site. WSIA agrees to maintain and repair these easement areas consistent with WSIA's maintenance and repair procedures for similar areas on the University's main campus. At either party's request, the parties will execute and deliver in a form suitable for recording at the Sedgwick County Clerk's office an easement agreement consistent with the foregoing. WSIA and Tenant agree to reasonably cooperate with one another in good faith relative to the granting of additional easements or licenses on the Land and WSIA's adjacent property. Without limiting the generality of the foregoing, WSIA agrees to timely grant to Tenant sidewalk and or/utility easements (including without limitation electricity, water and sewer) and licenses over and across WSIA's adjacent property as are reasonably needed for Tenant's development, construction and operation on the Building Site and in connection with any buildings and improvements on the Building Site.

2.7. Easements Reserved by WSIA. WSIA retains such easements over and across the non-building portions of the Building Site as will permit pedestrian and vehicular ingress, egress, and parking, and such easements as will allow for the use, maintenance, and enjoyment of such areas as Common Areas of the Innovation Campus.

2.8. Permitted Use. Tenant's development, use and operation of the Building Site, including all Tenant Improvements, must further and support the operation, function and mission of WSU and WSIA, as well as the tax-exempt purposes of WSU and WSIA. This includes, but is not limited to, the development and operation of a health and wellness facility and parking for the WSU community and providing applied learning opportunities to further and support the WSU vision, including, without limitation, providing for student training and employment opportunities.

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No development, ownership, operation, business or use will be carried on or upon the Building Site that is contrary to the CC&Rs or any applicable law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be enacted or promulgated or which conflicts with any certificate of occupancy issued for any Tenant Improvement or any zoning or use restrictions, and Tenant will not permit anything to be done thereon to constitute a nuisance or which will increase fire hazard or insurance rates, or which will invalidate any policy of insurance on the Building Site or Common Areas. Tenant shall not convert the Building Site or any Tenant Improvements to an alternate use without WSIA’s prior written consent.

2.9. **Occupancy Rights.** Tenant agrees to lease a portion of the Tenant Improvements constructed on the Building Site to WSU, pursuant to a separate building lease (the “WSU Lease”), to allow WSU to occupy and operate a WSU wellness center. The building lease shall provide for a lease term equivalent to the Term set forth in this Sublease. The Parties shall mutually agree on the square footage of the WSU leased space, not to be less than 15,000 square feet or more than 18,000 square feet, unless otherwise agreed to by the Parties. The WSU Lease shall be entered into by Tenant, as Lessor, and WSU, as Lessee.

2.10. **Parking.** Subject to all proper approvals by WSU, and prior to the Occupancy Date, Tenant agrees to design, construct and install a surface parking lot upon to the Building Site (the “Parking Lot”) to service the Tenant Improvements constructed on the Building Site. Such Parking Lot shall be constructed to be completed by the Occupancy Date, shall be consistent with the Plans agreed to by the Parties, and shall comply with all local, state and federal laws, regulations, codes and ordinances, including, but not limited, the ADA Standards for Accessible Design and 28 CFR Parts 35 and 36 and all building codes and construction and parking ordinances. Tenant shall be responsible for the design, construction and installation of all parking signage in connection with the Parking Lot. All signage and the installation thereof must be approved by WSIA to ensure placement and design are consistent with the overall vision and design of the Innovation Campus and WSU. Tenant shall be responsible for the capital maintenance and improvements of the Parking Lot during the Term, which shall include, but not be limited to, restriping, repaving, resurfacing, and pot hole repair and patching. WSIA shall, as of the Occupancy Date, operate the Parking Lot at its own cost. WSIA shall provide, free of charge to Tenant and its patrons, convenient and sufficient parking on the Parking Lot, and, if needed and in the sole discretion of WSIA, additional parking on the WSU campus within close proximity of the Building Site. WSIA shall perform snow removal and applications of salt on the Parking Lot. Tenant shall be responsible for application of salt on the Building Site sidewalks and entryways to Tenant Improvements. The parties agree to the extent reasonably possible, the Parking Lot shall be restricted for the use of Tenant and WSU as subtenant, and their employees and invitees. WSIA agrees to coordinate with WSU to police the Parking Lot for safety purposes and to ensure the Parking Lot is available for Tenant’s use and enjoyment.

2.11. **Rezoning.** Tenant is not permitted nor authorized to seek or obtain rezoning of all or part of the Building Site.
ARTICLE III
TENANT IMPROVEMENTS, LIENS
AND FIRST OPTION FOR ADDITIONAL DEVELOPMENT

3.1 Tenant Improvements. All buildings, structures, improvements and fixtures constructed or placed on the Building Site by Tenant or any subtenants or assigns, including the Parking Lot, shall be referred herein as “Tenant Improvements.”

3.2 Responsibility for Tenant Improvements. Tenant will assume all risk and responsibilities for the design, construction, and opening of all Tenant Improvements, including, without limitation, all contractor, architect, engineering, attorney, accounting, licensing, testing, code enforcement, and inspection costs, except to the extent that such losses or damages result from the negligence or willful misconduct of WSU, or are determined by a court of competent jurisdiction to be outside of the control or knowledge of Tenant.

3.3 Tenant Improvement Costs. Except as stated herein, all Tenant Improvements shall be constructed at Tenant’s sole cost and expense, including all architectural, engineering and legal costs, and all costs to connect the Tenant Improvements to utility services (gas, electric, water and sewer, telecommunication, and internet) that are run to the Building Site boundary. All Tenant Improvements shall be diligently completed in a first-class, workmanlike manner and in accordance with the CC&R’s and all applicable laws, ordinances, and regulations, including, without limitation, the terms and conditions of the zoning requirements. WSIA shall, at WSIA’s expense, construct and install the following infrastructure prior to or during construction of Tenant Improvements: (1) storm water drainage, detention and management that will be required to adequately serve the Building Site and the Tenant Improvements as may be identified during the early stages of development; (2) utility services infrastructure (including, gas, electric, water, and sewer) within fifty feet (50’) of the building to be constructed on the Building Site; and (3) all paving and concrete necessary for sidewalks and entryways to the Building Site, except that Tenant shall be responsible for Parking Lot curbing, guttering, and related parking lot infrastructure. In addition, WSIA shall, at WSIA’s expense and in the capacity and scope designated by WSIA that are consistent with other telecommunication lines installed on the Innovation Campus, provide telecommunication lines to service the Tenant Improvements and fiber optic cable to provide access to the WSU network backbone to the Building Site as shown on the Plans, or otherwise in accordance with changes in the Plans, as defined herein, approved by the Parties. Tenant shall be responsible for all costs associated with labor and materials, including all fibers cables, routers, nodes, and other network and access equipment, that must be installed within any Tenant Improvement buildings to ensure connectivity from the WSU network backbone. Tenant shall also be responsible for all costs associated with Tenant-requested capacity expansion of the telecommunication infrastructure.

3.4 Tenant Improvement Plans.

3.4.1 All Tenant Improvements shall be in accordance with the plans and specifications approved by WSIA ("Plans"). Any material change to the Plans is subject to the prior written approval of WSIA, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall provide minimum design drawings and plans to WSIA, which shall include the following:
3.4.1.1 Design Narrative (Building Organization and Features);

3.4.1.2 Preliminary Site Plan showing building location, parking and site utility connections;

3.4.1.3 Preliminary Floor Plans with furnishings shown;

3.4.1.4 Exterior Elevations and/or renderings;

3.4.1.5 Structural System Design Criteria; and

3.4.1.6 Mechanical Systems Design Criteria.

3.4.1.7 Telecommunications and Internet Design and Capacity Criteria

3.4.2 The size and design of Tenant Improvements shall be determined by the Parties when funding is secured and committed, however, WSIA enters into this ground lease in reliance of and on the condition that, such Tenant Improvements shall include (unless otherwise agreed to by the parties in writing), at a minimum, a drop-in kid zone for short term child watch; offices; fitness and recreational space and amenities such as cardio and weight rooms, group exercise rooms, and a gymnasium; a space designated exclusively to be leased to WSU for health and wellness activities such as patient and exam rooms, counseling and testing rooms, offices, waiting room, and laboratory and/or x-ray rooms as deemed necessary by WSU.

3.4.3 Except as otherwise required by law, Tenant Improvements shall not be deemed by the parties as a WSU building and Tenant shall have all rights to name all Tenant Improvements and design and install all related signage identifying the Tenant Improvements as may be reasonably required by Tenant, subject to approval of WSIA and WSU, except that such approval shall not be unreasonably withheld. In addition, Tenant shall have the same rights as any other tenant on the Innovation Campus, to install, at Tenant’s sole cost, identifying signage on a monument sign located at the corner of 21st Street and Mike Oatman Drive.

3.5 Construction. Tenant will construct Tenant Improvements, including its signage, consistent with the Plans and all restrictive covenants, zoning laws and licenses.

3.6 ADA Compliance. Tenant shall be solely responsible for complying with all accessibility requirements under the Americans with Disabilities Act (ADA) and Uniform Federal Accessibility Standards (UFAS) in all development and construction completed on the Building Site, as applicable, and in all Tenant Improvements during the term of this Sublease. This may include, but shall not be limited to, abiding by the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG").

3.7 Commencement and Timeline for Construction. The parties shall include a timeline for commencement and completion in the Plans, subject to modification by mutual agreement. The Architectural Review Committee, as defined in the CC&Rs, will approve key milestones and design as determined to be reasonable and necessary by the Parties to stay within the timeline and facility needs of the Parties, except that such approval shall not be unreasonably withheld.
3.8 **Outside Date for Commencement of Construction.** Subject to mutual agreement of the parties in the Plans, Tenant must commence construction of Tenant Improvements within thirty (30) days of the date the building permit for the Tenant Improvements is ready to be picked up. If Tenant has not commenced construction of the Tenant Improvements on or before such date, then WSIA may terminate the Term of this Sublease by giving notice to Tenant of such termination. Such termination will be effective as of a date specified in such notice, which may not be less than thirty (30) nor more than ninety (90) days after the date such notice is given. Before such effective date, Tenant must restore the Building Site to its condition as of the Effective Date of this Sublease and will indemnify WSIA against and hold WSIA harmless from any liabilities arising from any acts or things done by Tenant on or related to the Building Site at any time before such effective date.

3.9 **Outside Date for Completion of Construction.** Unless otherwise expressly agreed to by the parties, if the Tenant Improvements are not substantially completed on or before January 31, 2020, then WSIA may assess a per-day penalty fee of $100 for every day after January 31, 2020 and through the date a certificate of occupancy is issued for the Tenant Improvement ("Penalty Fee"). WSIA shall provide WSIA with written notice of such Penalty Fee. Notwithstanding the foregoing, if Tenant fails to substantially complete Tenant Improvements due to delays beyond Tenant's reasonable control, Tenant's time to perform such obligation shall be extended for such period of time as may be determined by the parties to be reasonably necessary to perform such obligation. For purposes of this paragraph, the following delays are considered to be within Tenant's reasonable control: delays arising from Tenant's labor shortages unrelated to labor disputes, failure of Tenant's subcontractors or material suppliers to perform on time, correcting defective work or replacing defective materials, or severe weather that is not unusual in the area and does not exceed three or more days. Tenant will indemnify WSIA against and hold WSIA harmless from any liabilities arising from any acts or things done by Tenant on or related to the Building Site at any time before the effective date of a termination under this Section 3.7, including, but not limited to, reasonable attorney's fees, court costs and interest.

3.10 **Continuous Operations.** Tenant covenants that it will, from and after the issuance of a final certificate of occupancy, continually operate on the Building Site. For purposes of this Section, "continually operate" means to operate with no interruptions except for reasonable periods of closure due to reconstruction, renovation, repair, alteration, or Force Majeure. Provided however, the terms of this Section 3.8 will not be in effect during any periods of time that the Building Site, or any improvements thereon, are leased or subleased to either WSIA or WSU.

3.11 **Tenant's Rights and Obligations Upon Termination.**

3.11.1 Except as otherwise provided herein, once the Tenant Improvements have been completed, Tenant will have no right to demolish, rebuild, remodel, or alter such improvements, or to build additional improvements on the Building Site, without the express written consent of WSIA (and the Architectural Review Committee, if required under the CC&R's), except that such consent to remodel, alter or improve the Tenant Improvements will not be unreasonably withheld, conditioned, or delayed by WSIA.

3.11.2 In addition to the requirements set forth in Section 3.9.3 as applicable, upon termination of this Sublease for any reason, title, free and clear of all liens and
encumbrances, to all such permanent Tenant Improvements and fixtures, but not to trade fixtures and personal property, will immediately vest in WSIA, and Tenant must execute such deeds or other instruments reasonably required by WSIA to evidence such ownership of record.

3.11.3 Upon termination of this Sublease for any reason, if the facility condition index for the Tenant Improvement building is less than 80%, as such index is measured pursuant to Kansas Board of Regents or State of Kansas laws, policies, or procedures, Tenant shall demolish all such Tenant Improvements at the sole cost of Tenant, unless such requirement is waived in writing by WSU, in its sole discretion but subject to all required approvals by the Kansas Board of Regents or the State of Kansas.

3.12 Mechanic's, Laborer's or Materialman's Liens. Tenant shall promptly, and in any event no later than thirty (30) days of the date of filing, (1) obtain a release or discharge the lien, or (2) furnish a bond satisfactory for the release of any filed If any mechanic's, laborer's, or materialman's lien, other encumbrance lien or charge upon the Building Site or any Tenant Improvements or part thereof (a "Lien"). If Tenant fails to obtain a release, discharge or post a bond within the 30-day period, then WSIA may, in addition to any other right or remedy it may have, and without waiving its rights to declare a default, may discharge the Lien by bonding or otherwise. Any costs, expenses, charges, penalties, interest, allowances and reasonable attorney's fees incurred by WSIA in the course of discharging or bonding shall be paid by Tenant to WSIA on demand. Tenant agrees to indemnify and hold harmless WSIA against any and all damages, losses and expenses (including reasonable attorney's fees) arising from or incurred as a result of any Lien or claim asserted by a third party.

ARTICLE IV
RECORDABLE DOCUMENTS

4.1 Short Form Sublease. Upon request of either party, the other will execute a short form lease or memorandum of lease in proper form for recording, setting forth the Commencement Date and the basic provisions of this Sublease, except for the Rent payable hereunder or other similar proprietary matters.

4.2 Covenants. Tenant agrees and acknowledges that the Building Site is subject to the CC&Rs. The CC&Rs run with the land and extend the same to mortgagees, trustees, receivers, or other persons claiming a right, power, or interest in any contract issued under this Sublease or over Tenant's leasehold or building. Tenant agrees that Tenant will fully comply with the terms of the CC&Rs at all times during the Term. Any assignment or sublease of this Sublease, the Building Site, or any Improvements, will require acknowledgement of the assignee or subtenant that the terms of the CC&Rs are binding on such assignee or subtenant.

4.3 Default Under the CC&Rs. If written notice of a default under the CC&Rs is not provided directly to Tenant, WSIA will, after receipt of any such notice, promptly furnish Tenant with a copy thereof. If Tenant fails to perform any of the terms, provisions, covenants, or conditions of this Sublease on its part to be performed, which failure constitutes a default under the CC&Rs, then WSIA may, but will not be obligated to, perform any such term, provision, covenant or condition on Tenant's behalf if Tenant fails to cure the default within thirty (30) days
of receiving notice of such default. Any sums so paid by WSIA will be deemed to be Additional Rent owing by Tenant to WSIA and will be due and payable upon demand.

ARTICLE V
RENT

5.1 Annual Rent. During the Term, Tenant will pay WSIA a fixed annual rent ("Annual Rent") of One Dollar ($1) payable annually in advance, and without prior notice or request, beginning on the Commencement Date and continuing on the anniversary of the Commencement Date.

5.2 Additional Rent. The Tenant will also pay, without notice, and without abatement, deduction, or setoff, except as otherwise specifically allowed herein, as additional rent, all sums, taxes, assessments, costs, expenses, and other payments which the Tenant in any of the provisions of this Sublease assumes or agrees to pay ("Additional Rent").

5.3 Place of Payment. Except as otherwise provided herein, Annual Rent, and all Additional Rent and other charges owed by Tenant to WSIA under this Sublease (collectively, "Rent"), will be payable by Tenant to WSIA at WSIA's Notice Address set forth in Article 17 or to any other place designated by written notice delivered by WSIA to Tenant at least ten (10) days prior to the date such amount is due to WSIA.

ARTICLE VI
TELECOMMUNICATIONS, UTILITIES AND OPERATING EXPENSES

6.1 Security and Elevator Infrastructure and Services. WSIA shall provide, without additional charge to Tenant, wireless internet access for elevator, fire alarm and area of rescue assistance for WSU Police Department in accordance with the Plans. Tenant shall consult WSU in the design of the wireless network within the Building as a part of the Plans. Tenant shall be responsible for all costs to operate, maintain, certify and service the elevator, fire alarm, sprinklers and any security systems.

6.2 Telecommunications. As part of the infrastructure provided by WSU as set forth in Section 3.3, WSU shall provide during the Term and subject to the cost allocation noted below, connectivity to the internet through WSU's internet access system. Tenant and WSIA shall each, individually, be responsible for its own installation and usage costs and expenses for all telecommunication, internet and cable services, equipment, repair and maintenance, except that the Parties may allocate shared costs as deemed by the Parties to be fair and equitable. Tenant's use of WSU's internet access system shall be subject to WSU's terms, conditions, policies, and procedures, which shall be made available to Tenant in writing.

6.3 Utilities. Tenant shall be solely responsible for and covenants and agrees to pay for all utility deposits as well as all utility charges, including but not limited to natural gas, electricity, water, trash, garbage removal, and sewer. Such charges shall be deemed Additional Rent and shall be paid by Tenant in a timely manner as they may come due during the Term.

6.4 Operating Expenses. Tenant will pay, as Additional Rent during the Term, its proportionate share of Operating Expenses to the extent such expenses are incurred by WSIA.
“Operating Expenses,” shall include all insurance (to the extent Tenant has not secured all required insurance), fire protection, and security (“Operating Expenses”). WSIA, and not Tenant, shall be responsible for the service, repair, maintenance (including landscape replacement when needed) and other operating costs for the exterior landscaping and lawn care, and the annual servicing (but not the repair and maintenance) of the irrigation system, subject to the standards set forth in the CC&R’s. **WSIA shall also be responsible for snow removal from the Building Site, including the Parking Lot.**

6.5 **Abatement of Utilities.** Tenant agrees that WSIA will not be liable for damages, by abatement of Rent or otherwise, for failure, delay, diminution or interruption of any utilities or services for any reason other than WSIA’s negligence or intentional misconduct, and such failure, delay, diminution or interruption will not be deemed to constitute an eviction or disturbance of Tenant’s use and possession of the Building Site or relieve Tenant from paying Rent or performing any of its obligations under this Sublease.

**ARTICLE VII**

**PROPERTY TAXES AND COMMON EXPENSES**

7.1 **Taxes.** Tenant will pay as Additional Rent during the Term all ad valorem taxes and all other governmental taxes or charges that may be levied against the Building Site and any Tenant Improvements allocable to the Term (collectively, **“Taxes”**). If not billed directly to Tenant, WSIA will, after receipt of any tax bill or other notice of Taxes, promptly furnish Tenant with a copy thereof. Tenant will issue its check payable to the applicable taxing authority in the amount indicated and mail such check to the applicable taxing authority. Taxes for the first and last year hereof will be prorated. All personal property taxes are the responsibility of Tenant. Notwithstanding the foregoing, Tenant may make such applications and take such actions as may be required to obtain and maintain an exemption from the requirement to pay Taxes in connection with the Tenant Improvements and WSIA agrees to cooperate with Tenant in connection with such applications made by Tenant.

7.2 **Property Special Assessments.** WSIA shall be responsible for any property specials or assessments levied by any county, city or neighborhood entity that are not Taxes.

7.3 **Common Expenses.** The Parties agree that Tenant shall not be assessed any Common Expenses (as defined in the CC&R’s) that could otherwise be allocated to the Building Site under the CC&R’s.

7.4 **Payment by WSIA.** If Tenant should fail to pay any Taxes or Operating Expenses, that it is required to pay under this Sublease, on or before their respective due date, required to be paid by Tenant hereunder, in addition to any other remedies provided herein, WSIA may, if it so elects, pay such Taxes and Operating Expenses and any interest or penalties due thereunder. Any Operating Expenses, Taxes, interest, penalties and any attorney’s fees and costs so paid by WSIA to remedy Tenant’s nonperformance will be deemed to be Additional Rent owing by Tenant to WSIA and will be due and payable upon demand. Provided, however, that if Tenant timely protests the imposition of any Taxes and diligently pursues the contest of any such assessment, then WSIA will forbear any such payment of such Taxes until the protest is resolved or the taxing authority seeks to foreclose any tax lien.
ARTICLE VIII
HAZARDOUS MATERIALS

8.1 WSIA Disclosure. WSIA represents that, to the best of WSIA's actual knowledge, there are no “Hazardous Materials” (such term includes, without limitation, substances that are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products, and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any similar federal or state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the Building Site, or which have migrated to the Building Site from another source, or have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the Building Site by WSIA or any third person, nor has WSIA received any notice or communication regarding any alleged Hazardous Materials on or about the Building Site nor any notice that the Building Site is not in compliance with all federal and state laws, ordinances, rules, and regulations relating to any such Hazardous Materials.

8.2 WSIA Assumption of Liability. With respect to Hazardous Materials released, stored, or discharged in, on, under, or about the Building Site (excluding such as may have been introduced during the Term by Tenant and any subtenants) prior to the Term, or by WSIA during the Term, WSIA will bear all costs for the removal and remediation of the Hazardous Materials and will restore the Building Site to substantially the same condition as it was in immediately prior to such removal and remediation work. WSIA will immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by WSIA from any federal or state governmental or regulatory agency regarding Hazardous Materials on the Building Site and provide Tenant with a copy of the same within fifteen (15) business days of WSIA's receipt thereof.

8.3 WSIA Indemnification and Hold Harmless. Subject to and without waiving any immunities or defenses under the law, WSIA agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, to the extent the same arise out of, or in connection with, any Hazardous Materials which were or are released in, on or under the Building Site prior to the Term, or by WSIA during the Term.

8.4 Tenant's Compliance. Tenant will, at Tenant's expense, at all times and in all respects comply with all applicable environmental laws and regulations, including, without limitation all laws and regulations applicable to the handling, transportation, storage, treatment or usage of Hazardous Materials. Tenant will, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals relating to the presence of Hazardous Materials within, on, under or about the Building Site. In the event any Hazardous Materials are released, stored, or discharged in, on, under or about the Building Site by Tenant or any subtenant thereof, Tenant will bear all costs for the removal and remediation of the Hazardous Materials and will restore the Building Site to substantially the same condition as it was in immediately prior to such removal and remediation work. Tenant will
immediately notify WSIA in writing of any notice, complaint, warning, claim, report, or communication received by Tenant from any federal, state, or local governmental or regulatory agency regarding Hazardous Materials on the Building Site and provide WSIA with a copy of the same within ten (10) days of Tenant’s receipt thereof.

8.5 Tenant’s Indemnification and Hold Harmless. Tenant agrees, proportionate to its contribution of loss or damage, to indemnify and hold WSIA harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against WSIA, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys’ fees, to the extent the same arise out of, or in connection with, any Hazardous Materials which are hereafter released in, on or under the Building Site during the Term of this Sublease by Tenant (except as released in, on, or under the Building Site by WSIA).

8.6 Survival of Termination. The obligations of Tenant and WSIA in this Article 8 will survive the termination or expiration of this Sublease.

ARTICLE IX
REPAIRS, COMPLIANCE, ACCESS, SURRENDER

9.1 Repairs and Maintenance by Tenant. Tenant, at its sole cost and expense, shall make, manage and maintain all necessary repairs and maintenance to the Building Site and the Tenant Improvements thereon (excluding the Parking Lot and those areas on the Building Site deemed Common Areas). Tenant will keep all Tenant Improvements (excluding the Parking Lot and the improvements in the Building Site deemed Common Areas) clean, sanitary, safe, and in good condition and repair. WSIA shall keep and maintain the Parking Lot in a clean, safe and good condition and repair at all times.

9.2 Alterations by Tenant. From time to time during the Term, Tenant may make, at its own cost and expense, non-structural alterations or changes to Tenant Improvements in a good and workmanlike manner in compliance with all applicable requirements of law, it being understood that “nonstructural” will include moving of stud partitions, minor plumbing and electrical work, and modification and rearrangement of fixtures. WSIA agrees to cooperate with Tenant for the purpose of securing necessary permits for any changes, alterations or additions permitted under this Section without expense to WSIA. All costs of such work will be paid promptly by Tenant so as to prevent the assertion of any liens for labor or materials. Any and all structural improvements and alterations, including any alterations to the exterior of the building to be constructed as part of the Tenant Improvements, will require the prior written consent of WSIA, which consent will not be unreasonably withheld, conditioned or delayed, and if applicable, the Architectural Review Committee.

9.3 Compliance with Laws. Tenant will procure, at its expense, any permits and licenses required for the transaction of Tenant’s business in the Building Site, and otherwise comply with all laws, ordinances, codes, orders, and regulations applicable to the Building Site or to Tenant’s activities or business relating to the Building Site. Tenant will comply with the regulations, requirements, and recommendations of WSIA’s and Tenant’s insurance underwriter(s), inspection bureau or similar agency. Tenant will notify WSIA if Tenant has
received notice of, or has knowledge of any condition or occurrence that might result in liability to WSIA.

9.4 Access by WSU or WSIA. Provided that Tenant’s business operations are not unreasonably interfered with, WSU, WSIA or WSIA’s agents will have the right to enter the Building Site and Tenant Improvements at all reasonable times to examine the same. If Tenant is not personally present to open and permit an entry onto the Building Site or into Tenant Improvements at any time when for any reason an entry therein is necessary to protect the Building Site or Tenant Improvements from damage, WSU, WSIA or their respective agents, including the Wichita State University Police Department, may enter the same without rendering WSU or WSIA or such agents liable therefor and without, in any manner, affecting the obligations and covenants of this Sublease. Nothing herein contained, however, will be deemed or construed to impose upon WSU or WSIA any additional obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

9.5 Surrender of Building Site. Upon the termination or expiration of this Sublease, or earlier surrender of the Building Site, of this Sublease, Tenant will quit and surrender the Building Site together with all alterations, fixtures, installations, additions, and improvements that may have been made in or attached on or to the Building Site. Upon surrender, Tenant may remove its personal property and trade fixtures. Tenant covenants that upon the expiration or earlier termination of this Sublease, the Building Site will be free of all liens and encumbrances caused or created by Tenant.

9.6 Holding Over. If Tenant, with WSIA’s consent, remains in possession of the Building Site after the expiration or earlier termination of this Sublease, and without the execution of a new lease, it will be deemed to be occupying the Building Site as a tenant from month to month at a rental rate equal to the fair market rental value of the Building Site (including all improvements thereto), as reasonably determined by WSIA, and otherwise subject to all the conditions, provisions, and obligations of this Sublease insofar as the same are applicable to a month-to-month tenancy. If Tenant fails to surrender the Building Site on the termination of this Sublease without WSIA’s consent, Tenant will be deemed to be occupying the Building Site as a tenant holding over. The annual rental will be computed based on one hundred ten percent (110%) of the fair market rental value of the Building Site, as reasonably determined by WSIA. Tenant will, in addition to other liabilities to WSIA, indemnify, defend, and hold WSIA harmless from loss and liability resulting from that failure including, but not limited to, claims made by a succeeding tenant. The exercise of WSIA’s rights will not be interpreted to allow Tenant to continue in possession, nor will it be deemed an election to extend the Term beyond a month-to-month basis. If WSIA, in its sole discretion, determines to permit Tenant to remain in the Building Site on a month-to-month basis, the month-to-month tenancy will be terminable on thirty (30) days prior written notice given by either party to the other party.
ARTICLE X
MORTGAGES ON TENANT’S INTEREST;
NONDISTURBANCE AGREEMENTS;
ESTOPPEL CERTIFICATES

10.1 No Right to Encumber. Neither Tenant, nor any assignee, subtenant or
conveyance grantee of Tenant (each an “Assignee”) may mortgage, grant a collateral assignment
of or a security interest in, or otherwise encumber such party’s interest in this Sublease, the
Building Site, or any improvements thereto without the written notice to WSIA. Notwithstanding
the foregoing, with the written consent of WSIA, which consent will not be unreasonably withheld,
conditioned, or delayed, Tenant may grant a leasehold mortgage on the Tenant Improvements
(each a “Leasehold Mortgage”), provided that at no time during the Term will the Mortgage: (a)
encumber the underlying fee interest in the real estate or any other improvements thereto other
than the Tenant Improvements; or (b) extend or survive beyond the expiration of the Term. A
Leasehold Mortgagee (and anyone whose title derives directly or indirectly from a Leasehold
Mortgagee, including a purchaser of the leasehold interest at any foreclosure sale held under a
Leasehold Mortgage) may, without WSIA’s consent, hold a foreclosure sale, take title to this
Sublease, and transfer or assign this Sublease, either in its own name or through a nominee. Any
Leasehold Mortgage granted by Tenant, voluntarily or involuntarily, is subject and subordinate to
all rights and interests of WSIA, and the Leasehold Mortgage shall be an encumbrance or lien only
on Tenant’s interest in the Sublease and leasehold estate and not on WSU’s fee interest in the
property. Any Leasehold Mortgage shall be subject to the terms of this Sublease and the Master
Ground Lease and the Leasehold Mortgagee shall not acquire any rights greater than those of
Tenant.

10.2 Nondisturbance Agreement Regarding Assignee. Conditional upon the terms of
Section 10.3 below, in the event of any early termination by WSIA of this Sublease due to a Tenant
default prior to the ordinary expiration of the Term, WSIA grants the following nondisturbance
rights to each Assignee. So long as neither an Assignee’s possessory right in and to the Building
Site nor such lease, sublease, assignment or other instrument of conveyance (hereinafter in this
Article 10 each an “Assignment”) creating such Assignee’s right has been terminated due to a
breach or default of the Assignment by such Assignee, WSIA covenants to not diminish, disturb
or interfere with such possessory rights or such other rights of such Assignee pursuant to such
Assignment, except as may be permitted under the terms of such Assignment.

10.3 Conditions Precedent to WSIA Nondisturbance Obligation. WSIA’s
obligations and covenants pursuant to Section 10.2 above are expressly conditional and contingent
upon the benefiting Assignee accepting and agreeing to the following terms:

10.3.1 Attornment.

10.3.1.1 Such Assignee agrees that in the event of the termination,
cancellation, or expiration of its respective Assignment for any reason whatsoever,
such Assignee’s interest in and to the Building Site will be subject to the terms of
this Sublease, such Assignee will attorn to WSIA for the unexpired term of the
Assignment, subject to all of the terms and conditions of the Assignment, except as
hereinafter provided, and such attornment will be effective and self-operative
without the execution of any further instrument on the part of WSIA or such Assignee, and WSIA will accept such attornment. Upon request of either WSIA or such Assignee, the other party will execute and deliver a new assignment containing the same terms and conditions as contained in the Assignment (including all rights of renewal and extension) for the remaining term thereof, except that WSIA will be permitted to make any necessary modification to provide that any WSIA obligations arising thereafter will be limited to the extent that adequate funds may be available for the performance thereof from rents received on the Building Site.

10.3.1.2 WSIA will not be: (i) responsible or liable for any monetary damages as a result of, or obligated to cure, any defaults by the Tenant, WSIA, assignor, or other grantor to Assignee under Assignee's respective Assignment (hereinafter in this Article 10 each an “Assignor”), provided that the foregoing will not be deemed to relieve WSIA or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that WSIA or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Building Site; (ii) subject to claims, defenses or offsets under the Assignment or against Assignor which arose or existed prior to the time WSIA obtains possession of Assignor’s interest in the Building Site provided that the foregoing will not be deemed to (A) relieve WSIA or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that WSIA or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Building Site, or (B) modify or waive any rights of self-help, set-off, abatement, or termination expressly provided in the Assignment; (iii) bound by any rent paid more than thirty (30) days in advance; (iv) liable for the return of any security deposit paid to any prior party, including Assignor, unless WSIA has actually received the same; or (v) bound by any amendment or modification of the Assignment made without its prior written consent (WSIA agrees not to unreasonably condition, withhold, or delay its consent to any proposed amendment or modification which does not materially and adversely affect WSIA's interest). Nothing in this Section 10.3 will be deemed a waiver of any rights or remedies that such Assignee may possess or claim personally against Assignor for any defaults or acts of Assignor.

10.3.2 Right to Cure WSIA's Default.

10.3.2.1 Notwithstanding any provisions of the Assignment to the contrary, no notice of cancellation of the Assignment by such Assignee will be effective unless WSIA has first received notice of the default giving rise to such cancellation and has failed, for a period of thirty (30) days after receipt thereof, to cure such default. Tenant will forward to WSIA, at WSIA’s Notice Address set forth in this Sublease, copies of any statement, notice, claim, or demand given or
made by such Assignee to Assignor, in all cases by the same method as the statement, notice, claim or demand was given or made to Assignor.

10.3.2.2 WSIA may request an Assignee to execute a separate agreement specifically accepting or rejecting the terms of this Section 10.3, and if such Assignee does not execute and return such agreement accepting such terms to WSIA within thirty (30) days of delivery to such Assignee, such failure will be deemed conclusive evidence that WSIA’s obligations and covenants pursuant to Section 10.2 above do not run to the benefit of such Assignee.

10.4 Estoppel Certificates.

10.4.1 Delivery of Estoppel Certificates. Within twenty (20) days after each request by a party hereto, the other party will deliver an estoppel certificate without charge. Estoppel certificates will be in writing, will be acknowledged, and will be in proper form for recording. Each estoppel certificate will be certified to the requesting party, any mortgagee, any assignee of any mortgagee, any purchaser, or any other person reasonably requested by the requesting party (“Requesting Party”).

10.4.2 Notice of Estoppel. Unless otherwise directed by the Requesting Party, each estoppel certificate will contain, at a minimum, the following information certified by the person executing it on behalf of the certifying party: (i) whether or not Tenant or any subtenants are in possession of the Building Site; (ii) whether or not this Sublease is unmodified and in full force and effect (if there has been a modification of this Sublease, the certificate will state that this Sublease is in full force and effect as modified, and will set forth the modification); (iii) whether or not the party contends that the other party is in default under this Sublease in any respect; (iv) whether or not there are then existing set-offs or defenses against the enforcement of any right or remedy of the requesting party, or any duty or obligation of the certifying party (and if so, specify the same); (v) the dates, if any, to which any rent or charges have been paid in advance; and (vi) such other certification as may be reasonably requested.

10.5 Rights, Notices and Liability of Leasehold Mortgagee. A Leasehold Mortgagee may, as Tenant, exercise any or all of Tenant’s rights under this Sublease. No notice given by WSIA shall be effective against a Leasehold Mortgagee unless WSIA has given a copy of it to such Leasehold Mortgagee. No Leasehold Mortgagee shall have any personal liability under this Sublease unless and until it becomes Tenant under this Sublease.

10.6 Right of First Refusal. WSIA, or if WSIA does not exist then WSU, shall have a right of first refusal to: (1) receive by sale, assignment, transfer, conveyance, pledge or mortgage, Tenant Improvements, the Sublease, or any ownership or lease interest arising from the Ground Sublease, on the same terms and conditions offered to any third party; and (2) sublease any and all ground subleased by Tenant from WSIA or WSU that may become available for any reason, which shall include, but not be limited to, liquidation, bankruptcy, dissolution, or sale, during the Term ("Right of First Refusal").
ARTICLE XI
INSURANCE

11.1 Insurance. Tenant agrees, at Tenant’s cost and expense, to obtain and maintain the coverages set forth in this Article 11. Unless otherwise stated herein, the following coverages shall be maintained throughout the Term and for any “run-out” periods as applicable:

11.1.1 Commercial General Liability. Tenant agrees to secure and keep in full force and effect, general liability insurance against any and all claims for bodily injury, property damage and personal injury occurring in or upon the Building Site and any Tenant Improvements during the Term of this Sublease, or resulting from use of the Common Areas by Tenant, or Tenant’s agents, officers, employees, invitees or guests. Such policy or policies shall endorse, as Additional Insureds, WSIA and WSU. Such policy or policies will be maintained with limits of liability of not less than One Million Dollars ($1,000,000) per occurrence or claim and Five Million Dollars ($5,000,000) general aggregate, which aggregate limit may be satisfied in part by umbrella coverage.

11.1.2 Property Insurance. Tenant agrees to secure and keep in full force and effect, property insurance against any and all claims for property damage occurring in or upon the Building Site, Tenant Improvements, all equipment and other property used in connection with completing Tenant Improvements, and all alterations, additions or changes made by Tenant pursuant to the terms of this Sublease. Such policies shall endorse, as Additional Insureds, WSIA and WSU. Such policy, or policies, will provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, plate glass, and such other perils as WSIA reasonably deems advisable from time to time. Such insurance will be maintained with limits of liability of not less than 100% replacement cost on an Agreed Value Basis with a commercially reasonably deductible amount that is acceptable to WSIA.

11.1.3 Worker’s Compensation Insurance. Tenant agrees to secure and keep in full force and effect workers compensation insurance with minimum statutory coverages.

11.1.4 Commercial/Business Automobile Insurance. Tenant agrees to secure and keep in full force and effect, in the name of Tenant, Commercial and or Business Auto Liability Insurance, providing for coverage of any accident, injury or property damage arising out of any auto owned or hired by Tenant. Such insurance will be maintained with limits of liability of not less than One Million Dollars ($1,000,000) per accident.

11.1.5 Builder’s Risk Insurance. Tenant or Tenant’s contractors shall keep in force and effect through the conclusion of all construction of Tenant Improvements, Builder’s Risk Insurance with coverage equal at all times to no less than the construction contract sum. Such insurance shall also include Tenant, or Tenant’s contractors as applicable, overhead and profit.

11.2 Contractor Insurance Requirements. Tenant may not make any Tenant Improvements, alterations, repairs or installations, or perform any other work to the Building Site unless prior to the commencement of the work Tenant obtains or causes its contractors to obtain
(and during the performance of the work keep in force) public liability and worker’s compensation insurance to cover every contractor to be employed.

11.3 Policy Renewals and Proceeds. As often as any such policy or policies will expire or terminate, renewal or additional policies will be procured by Tenant in like manner and to like extent. Subject to any right to insurance proceeds as otherwise set forth in this Sublease, the Building Lease or the O&M Agreement, the Proceeds of any such policies, in the event of fire or other casualty, will be payable to WSIA and Tenant as their respective interest may appear.

11.4 Policy Requirements. Each policy required under this Article 11 will (i) be provided at Tenant’s expense; (ii) be issued by an insurance company with a minimum AM Best’s rating of “A-/VIII” or better during the Term; (iii) provide that said insurance may not be cancelled unless thirty (30) days’ prior notice (ten (10) days for non-payment of premium) has been given to WSIA; and (iv) will be primary, and any insurance maintained by WSIA or any other additional insureds will be excess and non-contributory. Policies and certificates evidencing such insurance coverage will be delivered to WSIA by Tenant within ten (10) calendar days of the execution of this Sublease and at least ten (10) days prior to each renewal of said insurance. If Tenant fails to provide such certificates or renewals thereof as required hereunder, and such failure continues for ten (10) days after notice thereof from WSIA, then WSIA may, in addition to its other rights and remedies under this Sublease, obtain such insurance coverages at the expense of Tenant.

11.5 Waiver of Subrogation. Anything in this Sublease to the contrary notwithstanding, WSIA and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action, or cause of action against each other, their agents, officers, and employees, for any loss or damage that may occur to the Building Site, improvements to the Building Site, or personal property within the Building Site, regardless of cause or origin, including negligence of WSIA or Tenant and their agents, officers and employees, but only to the extent insurance proceeds are actually received by the waiving party to cover such loss or damage. WSIA and Tenant agree immediately to give their respective insurance companies written notice of terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers.

ARTICLE XII
CASUALTY AND CONDEMNATION

12.1 Casualty. Subject to the rights and obligations of the parties as set forth in the O&M Agreement, if the Tenant Improvements now or hereafter situated on the Building Site (except improvements in Common Areas) should at any time during the term of this Sublease be damaged or destroyed by fire or otherwise, Tenant will take all reasonable steps to restore and rebuild the same as nearly as possible to the condition they were in immediately prior to such damage or destruction, and such restoration and rebuilding, prosecuted with due diligence, will be completed as soon as reasonably possible.

12.2 Total or Partial Taking. If WSIA’s entire title to the Building Site is taken (a “Total Taking”) for any public or any quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (herein, a “Taking”), then this Sublease will
terminate automatically as of the date possession is given to the condemning authority. If there is a Taking of any material part of the Building Site as to render the remainder thereof substantially unusable for the purposes for which the Building Site were leased (a “Partial Taking”), then either WSIA or Tenant will have the right to terminate this Sublease on fifteen (15) days’ notice to the other party. If this Sublease is not terminated by either party in the event of a Partial Taking, this Sublease will continue in full force and effect, and Tenant will continue to comply with Tenant’s obligations under this Sublease, except to the extent compliance is rendered impossible or impracticable by reason of the Taking.

12.3 Compensation for a Taking. All compensation awarded or paid upon a total Taking of the Building Site will be distributed pro rata based on the then fair market value to WSIA for the real estate and to Tenant for the Tenant Improvements. In the event of a Partial Taking, any award for Tenant Improvements will be paid to and held in trust by WSIA and will be used to restore or repair the Tenant Improvements to the extent necessary to make the Building Site usable and so that the remaining portions of the Building Site when complete will be substantially the same in character as prior to the Partial Taking. The restoration and repair of the Building Site will be done and accomplished by Tenant, and said total award will be disbursed to Tenant, or its contractor, from time to time as construction progresses. If the amount of the award is not sufficient for Tenant to so repair and restore, and Tenant elects not to so restore or repair, then Tenant will promptly raze and level the Tenant Improvements, remove any debris, and convert the Building Site into a parking area or level grassed area, at WSU’s election, and upon the completion of such work, the remaining compensation awarded will be released to WSIA and this Sublease will terminate.

12.4 Taking for Temporary Use. If there is a Taking of the Building Site for temporary use, this Sublease will continue in full force and effect, and Tenant will continue to comply with Tenant’s obligations under this Sublease, except to the extent compliance is rendered impossible or impracticable by reason of the Taking.

ARTICLE XIII
INDEMNITY AND LIABILITY

13.1 Definitions. As used in Article 13, “Claims” means any claims, suits, proceedings, actions, causes of action, mechanics or materialman’s liens, responsibility, liability, demands, judgments, and executions.

13.2 Indemnification and Hold Harmless.

13.2.1 Tenant hereby indemnifies and agrees to save harmless WSIA from and against all Claims that (i) arise from any work performed by Tenant on the Building Site; (ii) arise from or are in connection with Tenant’s possession, use, occupation, management, repair, maintenance, or control of the Building Site, Common Areas, or any portions thereof; (iii) arise from or are in connection with any act or omission of Tenant or Tenant’s agents; (iv) result from any default, breach, violation or nonperformance of this Sublease or any provision of this Sublease by Tenant; or (v) result, during the Term, from injury to person or property or loss of life sustained in or about the Tenant Improvements associated with the operation of Tenant’s business or businesses conducted on the Building.
Site, except to the extent arising out of any negligence or willful misconduct of WSIA or WSIA’s agents.

13.2.2 Subject to and without waiving any immunities or defenses under Kansas law, WSIA hereby indemnifies and agrees to save Tenant harmless from and against all claims that (i) arise from or are in connection with any act or omission of WSIA or WSIA’s agents; (ii) result from any default, breach, violation or nonperformance of this Sublease or any provision of this Sublease by WSIA; or (iii) result from injury to person or property or loss of life sustained in or about the Building Site to the extent arising out of any negligence or willful misconduct of WSIA or WSIA’s agents.

13.2.3 Subject to and without waiving any immunities or defenses under Kansas law, Indemnitor will defend any Claims against Indemnitee with respect to the foregoing at Indemnitor’s sole cost and with counsel reasonably satisfactory to Indemnitee. Subject to and without waiving any immunities or defenses under the law, Indemnitor will pay, satisfy, and discharge any judgments, orders and decrees which may be recovered against Indemnitee in connection with any Claims.

13.3 Survival of Termination. This Article 13 will expressly survive the termination or expiration of this Sublease.

ARTICLE XIV
COVENANT OF QUIET ENJOYMENT

14.1 WSIA Covenant of Quiet Enjoyment. WSIA covenants that WSIA has the authority to lease the Building Site to Tenant, and if Tenant pays the Rent and all other charges provided for in this Sublease, performs all of its obligations provided for under this Sublease, and observes all of the other provisions of this Sublease, Tenant may peaceably and quietly enjoy the Building Site in accordance with the terms of this Sublease without any interruption or disturbance from WSIA.

14.2 Encumbrances. This Sublease and the estate of Tenant hereunder will be subject and subordinate to any ground lease, deed of trust, mortgage lien or charge, or any easement agreement or other operating agreement entered into by or with the approval of WSIA which now encumbers or which at any time hereafter may encumber the Building Site (such ground lease, deed of trust, mortgage lien or charge or any easement agreement or other operating agreement and any replacement, renewal, modification, consolidation or extension thereof being hereinafter referred to as an “Encumbrance”). Any Encumbrance will be deemed prior and paramount to this Sublease and to the rights of Tenant hereunder and all persons claiming through or under Tenant, or otherwise, in the Building Site. Tenant, on Tenant’s behalf, and on behalf of all persons claiming through and under Tenant, covenants and agrees that, from time to time at the request of the holder of any Encumbrance, Tenant will execute and deliver any document reasonably necessary to acknowledge or confirm the priority of such Encumbrance over this Sublease and the subordination of this Sublease thereto provided such document does not modify the terms of this Sublease. Anything in this Sublease to the contrary notwithstanding, Tenant’s subordination to, and compliance with, any future easements, development or operating agreements, and similar future agreements is subject to the requirement that such agreements will not materially modify
Tenant’s rights or obligations per this Sublease. Nothing in this paragraph shall be construed to require WSU to subordinate its fee interest in the Building Site except where the mortgage, lease, trust, easement or operating agreement is to finance new construction or Tenant Improvements on the Building Site.

ARTICLE XV
DEFAULT

15.1 Tenant Default.

15.1.1 Events of Tenant Default. Each of the following events will be a default hereunder by Tenant and a breach of this Sublease:

15.1.1.1 If Tenant is dissolved, or makes an assignment for the benefit of creditors;

15.1.1.2 If Tenant vacates or abandons the Building Site for a continuous period of ninety (90) days or longer, provided however, the terms of this Section 15.1.2 will not be in effect during any periods of time that the Building Site, or any improvements thereon, are leased or sublease to either WSIA or WSU;

15.1.1.3 If involuntary proceedings under any such bankruptcy law, or insolvency act, or for the dissolution of a corporation are instituted against Tenant, or if a receiver or trustee is appointed of all or substantially all of the property of Tenant, and such proceedings are not dismissed, or such receivership or trusteeship vacated within one hundred (100) days after such institution or appointment;

15.1.1.4 If Tenant makes an assignment, transfer, lien or mortgage without right and approval under this Sublease;

15.1.1.5 If Tenant fails to pay WSIA any Annual Rent or Additional Rent within twenty (20) days after receipt of written notice from WSIA that the same are due and payable; notwithstanding the foregoing, WSIA shall not be required to give more than two (2) written notices within any 12-month period that Rent was not timely paid; or

15.1.1.6 If Tenant materially breaches or fails to perform any of the agreements, terms, covenants, or conditions hereof, including the CC&Rs, on Tenant’s part to be performed other than the payment of Annual Rent or Additional Rent, and such nonperformance continues for a period of thirty (30) days after receipt of written notice thereof by WSIA to Tenant (provided, however, that Tenant will not be in default hereunder if Tenant, within such thirty (30) day cure period, commences and at all times thereafter diligently pursues all practicable efforts to cure the default).

15.1.2 WSIA’s Remedies in the Event of Tenant Default. If any such default occurs and is not cured within the applicable cure period, if any, in addition to all other
rights WSIA has under this Sublease, under law, or in equity, WSIA will have the right to cancel and terminate this Sublease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant written notice of such cancellation and termination, and upon such notice, this Sublease and the Term hereof, as well as all of the right, title, and interest of Tenant hereunder, will terminate. Both will be relieved of any further obligation to the other under the terms of this Sublease except that Tenant shall not be relieved of any obligation for any provision or obligation that survives the termination or expiration of this Sublease and shall not be relieved of any additional remedy available to WSIA, including, but not limited to, unpaid Rent, attorney's fees and related costs incurred to mitigate its damages. In the event of a Tenant default, WSIA will also have the right, but not the obligation, to pursue any other remedy available to WSIA at law or in equity.

15.1.3 Non-curable Defaults. Upon the occurrence of those non-curable defaults described in subsections 15.1.1.1, 15.1.1.2, 15.1.1.3 and 15.1.1.4 above, this Sublease shall forthwith and without notice terminate and all rights of Lessee hereunder shall cease subject to the provisions of subsection 15.1.2 hereof.

15.2 WSIA's Right to Cure. Upon any uncured default, WSIA at its option may, but will not be obligated to, make any payment required of Tenant herein, or comply with any agreement, term, covenant, or condition required hereby to be performed by Tenant and the amount so paid, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by WSIA, will be deemed to be Additional Rent hereunder payable by Tenant and collectible as such by WSIA. WSIA will have the right to enter the Building Site for the purpose of correcting or remedying any such default and to remain therein until the same has been corrected or remedied, but neither any such expenditure, nor any such performance, by WSIA will be deemed to waive or release Tenant's default or the right of WSIA to take such action as may be otherwise permissible hereunder in the case of such default.

15.3 WSIA Default; Tenant Remedies. If WSIA fails to pay any amount due under this Sublease, or breaches or fails to perform any other agreement, term, covenant or condition of this Sublease, and such failure continues for a period of thirty (30) days after WSIA's receipt of written notice from Tenant of such failure, WSIA will be in default and in breach of this Sublease (provided, however, that WSIA will not be in default hereunder if WSIA, within such thirty (30) day cure period, commences and at all times thereafter diligently pursues all practicable efforts to cure the default). In the event of a WSIA default, Tenant will have the right, but not the obligation, to cancel and terminate this Sublease immediately by providing WSIA with written notice of such termination, and upon such notice, this Sublease will be deemed null, void, and of no force and effect, and, except as otherwise provided in this Sublease, both parties will be relieved of performing any further obligation under the terms of this Sublease. In the event of a WSIA default, Tenant will also have the right, but not the obligation, to cure such default (which cure costs are due from WSIA to Tenant upon demand) and offset Tenant's cure costs or any damages incurred by Tenant hereunder.

15.4 WSIA's Liability. Anything contained in this Sublease to the contrary notwithstanding, Tenant agrees that Tenant will look solely to the estate and property of WSIA in the land and buildings comprising the Building Site and the rentals therefrom for the collection of any judgment (or other judicial process) requiring the payment of money by WSIA in the event of
any default or breach by WSIA with respect to any of the terms and provisions of this Sublease to be observed or performed by WSIA, and no other assets of WSIA will be subject to levy, execution or other judicial process for the satisfaction of Tenant’s claims. In the event WSIA conveys or transfers its entire interest in the Building Site or in this Sublease, except as collateral security for a loan, upon such conveyance or transfer, WSIA (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) will be entirely released and relieved from all liability with respect to the performance of any covenants and obligations on the part of WSIA to be performed hereunder from and after the date of such conveyance or transfer; it being intended hereby that the covenants and obligations on the part of WSIA to be performed hereunder will, subject as aforesaid, be binding on WSIA, its successors and assigns only during and in respect of their respective period of ownership of an interest in the Building Site or in this Sublease.

15.5 Leasehold Mortgagee Rights in the Event of Tenant Default. If Tenant defaults and has failed to cure such default within the time periods afforded to cure such default, then WSIA shall so notify all Leasehold Mortgagees. WSIA shall not terminate this Sublease for Tenant’s default unless and until WSIA has given all Leasehold Mortgagees notice of such default and thirty (30) days in which to cure it. If it cannot reasonably be cured within thirty (30) days after notice to Leasehold Mortgagees, then each Leasehold Mortgagee shall have such additional time as it shall reasonably require, so long as it is proceeding with reasonable diligence, except that the right to cure shall in no event exceed one hundred and twenty (120) days after notice. For any default that cannot be cured without possession of the Premises, WSIA shall allow such additional time as Leasehold Mortgagees shall reasonably require to prosecute and complete a foreclosure of the leasehold interest or equivalent proceeding and obtain such possession. If a Leasehold Mortgagee completes a foreclosure of this Sublease, then WSIA shall waive any non-curable defaults. If this Sublease terminates because of Tenant’s default or because Tenant rejects it in bankruptcy or similar proceedings, then WSIA shall upon request enter into a new lease with the Leasehold Mortgagee on the same terms and with the same priority as this Sublease.

ARTICLE XVI
COMPLIANCE WITH LAWS AND RESTRICTIVE COVENANTS

16.1 Compliance with Laws and Restrictive Covenants. Tenant shall comply with all laws, ordinances, statutes, restrictive covenants, by-laws, codes or regulations and orders of all federal, state and local governments and quasi-governmental agencies having jurisdiction applicable to this Sublease; the Building Site or Tenant’s use thereof; and Tenant’s equipment located on the Building Site or Tenant’s use thereof. This shall include, but not be limited to, the “Declaration of Restrictive Covenants” first recorded June 8, 2015, against the Innovation Campus in the Sedgwick County Register of Deeds Office at Doc.#/Fim-Pg: 29531979, as restated and amended by the “Declaration of Restrictive Covenants” recorded October 7, 2015, in the Sedgwick County Register of Deeds Office at Doc.#/Fim-Pg: 29562395, as amended by the “Amendment to the Declaration of Restrictive Covenants” recorded November 24, 2015, with corrected legal description refilled, and as further amended by the “Second Amendment to the Declaration of Restrictive Covenants” recorded October 4, 2016, and as amended from time to time by WSU (“CC&Rs”).
ARTICLE XVII
NOTICES

17.1 Notices. All notices, requests, demands, consents or other communications hereunder shall be made in writing and mailed by registered or certified mail, postage prepaid, addressed to the following addresses, unless such other address as designated in writing:

If to WSIA:
Wichita State Innovation Alliance, Inc.
Attn: President
1845 Fairmount
Wichita, Kansas 67260-0093

With a copy to:
Wichita State University
Attn: General Counsel
1845 Fairmount
Wichita, Kansas 67260-0205

If to Tenant:
YMCA
Attn: President and Chief Executive Officer
402 N. Market
Wichita, KS 67202

17.2 Prompt Notice of Threatened Adverse Action. Each party shall provide the other with prompt written notice of any actual or threatened rezoning, resubdivision, casualty, event of loss, eminent domain or condemnation action or proceeding, litigation or claim affecting title, revocation of any permit, or any other claim or action adversely affecting title or use of the or any part thereof or interest therein, or any litigation or claim threatened against either party.

17.3 Effective Date of Notice. No notice, request, consent, approval, waiver or other communication under this Sublease is effective unless and until the same is delivered pursuant to this Article 17. The effective date of all notices shall be three (3) business dates from the date of mailing as evidenced by the delivery receipt.

ARTICLE XVIII
PERMITTED LEASES; ASSIGNMENT AND TRANSFER

18.1 Permitted Leases.

18.1.1 Tenant is authorized to enter into written occupancy leases ("Permitted Leases") for the use or occupancy in any building constructed on the Building Site except that such leases must be approved by WSIA to ensure such leases conform to the uses permitted, and the mission and vision of WSIA and WSU, and shall not unreasonably compete with any existing programs or services of WSIA or WSU. Such approval shall not be unreasonably withheld.

18.1.2 The terms of all Permitted Leases shall comply with the terms of this Sublease and all applicable laws and regulations and WSU rules and shall be on forms approved by WSIA, in its reasonable discretion.
18.2 Assignments and Transfers. Tenant may not, directly or indirectly, transfer, assign, enter into license or concession agreements, change ownership or hypothecate this Sublease or Tenant's interest in and to the Building Site in whole or in part, or otherwise permit occupancy of all or any part of the Building Site by anyone with, through or under it (each a "Transfer"), without first procuring the written consent of WSIA, which consent will not be unreasonably withheld, conditioned or delayed. All rights to and transfers or assignments shall be subordinate to WSIA's Right of First Refusal. The transfer of a direct or indirect controlling interest in Tenant will be deemed to be a Transfer requiring WSIA's consent. Any attempt at a Transfer without WSIA's written consent will be null and void and confer no rights upon any third person. The general prohibition contained herein against Transfers will be construed to include a prohibition against any assignment by operation of law.

18.3 Health and Wellness Facility Project Minimum Standards. It is the parties' intent that any Assignee must satisfy WSIA's standards for reputation and creditworthiness, and the Assignee must agree to further and support the WSU and WSIA vision for Applied Learning and the tax-exempt purposes of WSU and WSIA, including, without limitation, providing health, fitness and wellness services or applied learning opportunities to the WSU community ("Fundamental Transfer Criteria"). Therefore, WSIA shall not be deemed to have unreasonably withheld, delayed, or conditioned its consent to a Permitted Sublease or Transfer if a proposed Assignee does not satisfy the Fundamental Transfer Criteria in WSIA's reasonable determination. No consent to a Transfer by WSIA will operate to relieve Tenant from primary liability for the performance of Tenant's obligations under the terms of this Sublease. Tenant may not amend or modify any sublease, license or other Transfer agreement without the written consent of WSU, which consent will not be unreasonably withheld, conditioned or delayed.

ARTICLE XIX
GENERAL TERMS

19.1 Severability. If any provision of this Sublease or the application of any provision of this Sublease to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby; and each provision of this Sublease will be valid and be enforced to the fullest extent permitted by law.

19.2 Counterparts. This Sublease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19.3 Governing Law and Jurisdiction. This Sublease and any sublease, assignment or other instrument of conveyance, will be governed by and construed in accordance with the laws of the State of Kansas, without giving effect to conflict of laws principles.

19.4 Interpretation. The various captions and section headings in this Sublease are for the sole purpose of ready identification and reference for the convenience of the parties hereto and will not be considered or construed as part of this Sublease or be utilized or considered in interpreting or construing the same. This Sublease may not be construed more or less favorably with respect to
either party as a consequence of this Sublease or various provisions hereof having been drafted by one of the parties hereto.

19.5 Successors and Assigns. Except as otherwise provided, this Sublease binds and inures to the benefit of the parties and their respective permitted successors, representatives, heirs and assigns. Nothing in this Section 19.5 shall be interpreted to permit any assignment or transfer otherwise limited, prohibited or in any way regulated under this Sublease.

19.6 Brokers. WSIA and Tenant each warrant and represent to the other that they have not contacted, engaged or dealt with any real estate agent or broker with reference to the Building Site.

19.7 Time of the Essence. The time of the performance of all of the covenants, conditions and agreements of this Sublease is of the essence of this Sublease.

19.8 CC&R’s. It is understood and agreed that this Sublease is subject and subordinate in all respects to the CC&R’s. Tenant acknowledges that Tenant has read and is familiar with all of the terms of the CC&R’s.

19.9 Authority. The undersigned both represent and warrant they have authority to bind the respective parties to all of the terms of this Sublease.

19.10 Entirety of Agreement. This instrument incorporates all of the obligations, agreements, and understandings of the parties hereto, and there are no oral agreements or understandings between the parties hereto concerning the property covered by this Sublease. This Sublease may not be changed or terminated orally.

19.11 Modification; Waiver. Neither this Sublease nor any of the rights secured to any of the parties hereto may be waived, modified, supplemented, or otherwise altered, unless in writing, duly signed by all of the parties hereto. A violation overlooked or condoned by one party will not operate as an estoppel or prevent that party from enforcing this Sublease regarding any subsequent violation.

19.12 Disclosure. It is mutually agreed by the parties that this Agreement, once fully executed, shall not be deemed Proprietary Information and may be subject to disclosure pursuant to the Kansas Open Records Act (KORA) K.S.A. 45-215 et seq., as applicable.

19.13 Execution. Signature pages may be executed via “wet” signature, authorized signature stamp or electronic mark or signature. If an electronic signature is used, the Parties agree that it is the legally binding equivalent to the signing Party’s handwritten signature. Whenever either Party executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature. The Parties agree that neither Party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding. The executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.
IN WITNESS WHEREOF, Wichita State Innovation Alliance, Inc., has executed this Lease and/or authorized same to be executed by their duly authorized representatives to be effective as of the date shown above in the opening paragraph.

WICHITA STATE INNOVATION ALLIANCE, INC.  
(“TENANT”)

/SIGNATURE/

Dr. John Tomblin

PRINTED NAME

President

TITLE

STATE OF KANSAS )

) ss:

SEDGWICK COUNTY )

This instrument was acknowledged before me on this 28th day of December, 2017, by Dr. John Tomblin, as President of Wichita State Innovation Alliance, Inc., a Kansas corporation.

My Appointment Expires:

/Belinda Bishop/

Notary Public

Notary Printed Name: Belinda Bishop

Signature Page
IN WITNESS WHEREOF, The Young Men’s Christian Association of Wichita, Kansas, has executed this Sublease and/or authorized same to be executed by their duly authorized representatives to be effective as of the date shown above in the opening paragraph.

THE YOUNG MEN'S CHRISTIAN ASSOCIATION
OF WICHITA, KANSAS (“TENANT”)

Ronn McMahon, President & CEO

Steve Cox, Chairman of the Board

STATE OF KANSAS )
) ss:
SEDGWICK COUNTY )

This instrument was acknowledged before me on this 29 day of December 2017, by Ronn McMahon, as President & CEO of The Young Men’s Christian Association of Wichita, Kansas, a Kansas not for profit corporation.

JESSICA HENDERSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt Exp. 9/9/21

Notary Public
Notary Printed Name: Jessica Henderson

My Appointment Expires:

September 19, 2021

STATE OF KANSAS )
) ss:
SEDGWICK COUNTY )

This instrument was acknowledged before me on this 29 day of December 2017, by Steve Cox, as Chairman of the Board of The Young Men’s Christian Association of Wichita, Kansas, a Kansas not for profit corporation.

JESSICA HENDERSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt Exp. 9/9/21

Notary Public
Notary Printed Name: Jessica Henderson

My Appointment Expires:

September 19, 2021

Ground Sublease – WSIA/YMCA
Signature Page
EXHIBIT A
INNOVATION CAMPUS

Below is a rendering of the Wichita State University campus, and the "Innovation Campus" development shown in color. This is intended only to be an illustration of the entire development that exists on or about the execution of this Sublease. This illustration is merely a demonstrative exhibit and may be changed from time to time without notice to Tenant and at the discretion of WSU or WSIA.
EXHIBIT B
BUILDING SITE DESCRIPTION

LEGAL DESCRIPTION:

A tract of land lying in the Northeast Quarter of Section 11, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the Northwest Corner of the Northeast Quarter of Section 11, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas; thence along the west line of said Northeast Quarter on a Kansas coordinate system of 1983 south zone bearing of S00°55'32"E, 719.50 feet; thence N88°40'39"E, 58.56 feet to the Point of Beginning; thence N88°40'39"E, 310.86 feet; thence S01°18'09"E, 581.39 feet; thence S88°40'39"W, 313.92 feet; thence N01°00'01"W, 581.40 feet to the Point of Beginning.

Said tract of land contains 181,620 square feet or 4.17 acres, more or less.