

City of Palm Coast, Florida Agenda Item

Agenda Date: October 20, 2026

Agenda Item: H.2

Department CITY ADMINISTRATION Division	Amount Org/Account #
Subject: RESOLUTION 2026-XX APPROVING A LEASE AGREEMENT WITH THE VOLUSIA-FLAGLER FAMILY YOUNG MEN’S CHRISTIAN ASSOCIATION (“YMCA”) FOR PROPERTY LOCATED AT 1580 CENTRAL AVENUE	
Presenter: Kyle Berryhill, Fire Chief	
Attachments: 1. Resolution 2. Lease Agreement	
Background: <u>UPDATED BACKGROUND FROM THE OCTOBER 13, 2026, WORKSHOP MEETING:</u> City Council received a presentation on the item at the October 13, 2026, Workshop Meeting and provided direction. The requested changes are attached to the item for consideration. <u>ORIGINAL BACKGROUND FROM THE OCTOBER 13, 2026, WORKSHOP MEETING:</u> At a prior City Council Meeting, City Council directed staff to develop a Lease Agreement with the YMCA, which is attached to the agenda item for consideration.	
Recommended Action: ADOPT RESOLUTION 2026-XX APPROVING A LEASE AGREEMENT WITH THE VOLUSIA-FLAGLER FAMILY YOUNG MEN’S CHRISTIAN ASSOCIATION (“YMCA”) FOR PROPERTY LOCATED AT 1580 CENTRAL AVENUE	

RESOLUTION 2026-__
LEASE AGREEMENT WITH THE YMCA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A LEASE AGREEMENT WITH THE VOLUSIA-FLAGLER FAMILY YOUNG MEN'S CHRISTIAN ASSOCIATION ("YMCA") FOR PROPERTY LOCATED AT 1580 CENTRAL AVENUE; PROVIDING FOR CITY FINANCIAL CONTRIBUTIONS AND LEASE TERMS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the YMCA has expressed a desire to provide a YMCA Recreation Facility and its services to the Citizens of the City of Palm Coast; and

WHEREAS, the City of Palm Coast ("CITY") is the owner in fee simple absolute of certain property located at 1580 Central Avenue, Palm Coast, Florida 32164; and

WHEREAS, the YMCA desires to collaboratively develop the property in conjunction with the CITY into a YMCA Recreational Facility located at 1580 Central Avenue, Palm Coast, Florida 32164; and

WHEREAS, the YMCA has expressed a willingness to build and operate a YMCA for the purpose of allowing public use of the facilities and programs in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the City Council of the City of Palm Coast finds and determines that a public purpose would be met by assuring the public of the benefits of healthy and wholesome recreation programs for all ages provided by the YMCA for the benefit of the Palm Coast community; and

WHEREAS, the parties desire to agree to certain terms and conditions relative to the collaborative development of a YMCA on the property; and

WHEREAS, this Agreement serves a legitimate and important public purpose; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF PALM COAST, FLORIDA:

SECTION 1. RECITALS. The above recitals (whereas clauses) are incorporated herein, and constitute a material inducement to the CITY to enter into this Lease Agreement.

SECTION 2. APPROVAL OF LEASE AGREEMENT AND TERMS. The City Council of City of Palm Coast hereby approves the terms and conditions of the Lease Agreement with the YMCA, as attached hereto and incorporated herein by reference as Exhibit “A” to this resolution.

SECTION 3. AUTHORIZATION. The City Manager, or designee, is hereby authorized to execute the Lease Agreement along with any necessary supporting or administrative documents to effectuate the intent of this Resolution. Further, the City Manager has the authority to execute amendments to the Master Services Agreement on behalf of the City for any other changes that may be necessary.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or provision of this Resolution is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Resolution.

SECTION 5. CONFLICTS. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

SECTION 6. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 7. EFFECTIVE DATE. This Resolution shall become effective immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of City of Palm Coast, Florida, on
this 20th day of October 2026

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

MICHAEL NORRIS, MAYOR

APPROVED AS TO FORM AND LEGALITY

MARCUS DUFFY, CITY ATTORNEY

Attachment: Exhibit "A" Lease Agreement with the YMCA



AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 2026, the "Effective Date", by and between the **CITY OF PALM COAST**, a Florida municipal corporation, whose address is 160 Lake Avenue, Palm Coast, Florida, 32164, hereinafter referred to as "**CITY**," and the **VOLUSIA/FLAGLER FAMILY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC. ("YMCA")** a Florida non-profit corporation, whose address is 761 E. International Speedway Blvd, Deland, FL 32724. CITY and YMCA shall be collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the YMCA has expressed a desire to provide a YMCA Recreation Facility and its services to the Citizens of City of Palm Coast; and

WHEREAS, the following recitals are true and constitute a material inducement to the CITY to enter into this Lease agreement:

WHEREAS, The CITY is the owner in fee simple absolute of certain property located at 1580 Central Avenue, Palm Coast, Florida 32136; and

WHEREAS, the YMCA desires to collaboratively develop the property in conjunction with CITY into a YMCA Recreational Facility located at 1580 Central Avenue, Palm Coast, Florida 32164.

WHEREAS, the YMCA has expressed a willingness to build and operate a YMCA for the purpose of allowing public use of the facilities and programs in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the City Council of the City of Palm Coast finds and determines that a public purpose would be met by assuring the public of the benefits of healthy and wholesome recreation programs for all ages provided by the YMCA for the benefit of the Palm Coast community; and

WHEREAS, the parties desire to agree to certain terms and conditions relative to the collaborative development of a YMCA on the property; and

WHEREAS, this Agreement serves a legitimate and important public purpose; and

WHEREAS, this Agreement conforms with all applicable provisions of State law and the Charter, codes and ordinances of CITY.

NOW, THEREFORE, in consideration of the premises, mutual covenants, agreement and promises herein contained, the parties hereby covenant and agree as follows:

SECTION 1. RECITALS. The following recitals are true and constitute a material inducement to the CITY to enter into this Lease Agreement: The Parties hereby acknowledge that the YMCA shall be the lessee under the Lease Agreement. The CITY is the owner in fee simple absolute of certain property located at 1580 Central Avenue, Palm Coast Florida, 32164, ("Property") and is more particular described in Exhibit "A," attached hereto and made a part of this Lease Agreement. The CITY is agreeable to leasing the underlying land to the YMCA, and the YMCA hereby agrees to lease said land from the CITY and to construct, own, and operate a YMCA Recreational Facility (along with any future improvements) situated thereon, with such facility to be owned exclusively by the YMCA. The Parties will collaborate together to develop a YMCA Recreation Facility on the Property and any future development proposals or construction must be approved by the CITY. It is intended that CITY will permit the YMCA to operate the YMCA Recreational Facility once it is developed subject to the lease that sets forth all terms and conditions of use and compensation to the CITY in the amount of ONE DOLLAR (\$1.00) per year. The City Agrees to contribute two hundred fifty thousand dollars (\$250,000.00) from State appropriations toward the construction and development of the YMCA Recreational Facility. In addition, the City agrees to contribute two million dollars (\$2,000,000.00) in fiscal year 2027, five hundred thousand dollars (\$500,000.00) in fiscal year 2028, and five hundred thousand dollars (\$500,000.00) in fiscal year 2029 towards the construction of the YMCA Recreation Center. Each payment will be received by the YMCA on April 1st of the designated fiscal year. The CITY finds that such activities serve a public purpose for the betterment of the citizens of the CITY.

(A) Notwithstanding anything to the contrary contained herein, the CITY's obligations under this Lease Agreement including but not limited to the disbursement of any CITY funding contributions set forth above are expressly contingent and conditional upon the YMCA entering into a binding, fully executed agreement with the Flagler County School District (the "School District"). Pursuant to said agreement, the School District must commit to contribute a minimum financial sum of Three Million Dollars (\$3,000,000.00) toward the construction, development, or operation of the YMCA Recreational Facility. In the event the YMCA fails to execute such an agreement and secure the School District's \$3,000,000.00 financial commitment within 30 days of the effective date of this Agreement, this Lease Agreement shall automatically terminate, and neither Party shall have any further obligation or liability hereunder.

SECTION 2. TERM OF LEASE. The term of the lease shall be for thirty-five (35) years, commencing on the 1st day of ~~Month~~November 1, 2026, and extending until midnight on ~~Month~~October 31, 2061, and for any additional period of time during which the property and YMCA Recreational Facility is leased by the YMCA.

SECTION 3. USE OF THE PROPERTY.

(A) CITY agrees that the YMCA shall use the Property exclusively for the construction, operation, and maintenance of a YMCA Recreation Facility. The YMCA Recreation Facility shall mean the approximately ~~464~~64,000+/- square foot facility and all related improvements, which includes, but is not limited to, an Olympic-size swimming pool, family pool, wellness center, sports gym, locker rooms, childcare area, group exercise rooms, kids zone, and all related amenities. No other use shall be permitted without prior written consent of the City. YMCA shall comply with all federal, state, and local laws, rules and regulations applicable to developing a YMCA Recreational Facility and for the use of the Property. Parties hereto agree to coordinate any special events and/or programs within their operations, subject to the terms and conditions contained herein. The YMCA shall apply for all necessary construction and development permits for the YMCA facility, swimming pool, and all planned amenities within six (6) months of the effective date of this ~~A~~agreement, and shall have all such facilities fully constructed, operational, and open to the public within three (3) years of the date of the permit application unless both parties to this agreement mutually agree in writing to extend either above date. Failure to have the YMCA Recreation Facility fully constructed,

operation, and open to the public within the specified three (3) year timeline (or any mutually agreed-upon written extension) to meet these requirements shall constitute a material default under this Lease. In the event of such default, the YMCA shall refund and repay to the City the entire three million two hundred fifty thousand dollars (\$3,250,000.00) contributed under this agreement within thirty (30) days of written notice from the City.

(B) The CITY may use the YMCA Recreational Facility or any portion thereof and its parking area at no cost for Official City Activities, provided the City Preschedules the use with the YMCA and it does not conflict with existing YMCA events or prior commitments/programs. Administrative and technical personnel from the YMCA's staff will be made available to the CITY for these activities. Any city requirement in excess of normal staffing and resources of YMCA shall be paid by the CITY.

(C) **FLAGLER COUNTY SCHOOL DISTRICT RIGHTS AND EXCEPTIONS.** The YMCA shall grant the Flagler County School District ("District") perpetual usage rights for Physical Education programming and District-sanctioned sports team practices and competitions_pursuant to a separate agreement between the District and the YMCA.

(D) **YOUTH CLUB ACCESS.** The YMCA shall permit youth sports clubs located within the City of Palm Coast to access the facility for practices and sporting events at nominal rates, subject to scheduling availability and prior coordination with the YMCA. For the purpose of this Agreement "nominal" or "nominal rates" shall mean a minimum fee charged exclusively to cover the actual cost for the YMCA to provide the service, limited strictly to direct, out-of-pocket operational expenses incurred (including, but not limited to, incremental staffing for supervision/security, direct utility usage during event hours, and post-event cleaning supplies and labor.) Nominal rates shall strictly exclude commercial markups or standard market rental rates, provided that a reasonable allocation for direct facility wear-and-tear or minor administrative tracking may be included but shall strictly exclude any profits margins, commercial mark-ups, or standard market rental rates.

(E) **SCHEDULE OF OPERATIONS.** The YMCA Management will determine the hours of operation of the Palm Coast YMCA. The same shall be in accordance with nationwide and local YMCA practices and policies.

(F) **CONCESSIONS.** The YMCA may, but shall not be required to, dispense food and ~~and/or~~ drink on the Premises for consumption by users of the YMCA facilities.

(G) **PARKING.** The YMCA will share a parking lot with the Stage at Town Center. The City will provide notice of 14 calendar days of all scheduled special events at the Stage. Notwithstanding the foregoing, if the parking lot (or any portion thereof) is located within the legal description of the Property leased to the YMCA under this Lease Agreement, the YMCA shall be solely responsible for the operation, management, repair, and all maintenance of the parking lot (or the portion thereof within said legal description) at its sole expense.

(H) **FEES.** The right to set and control fees charged to members and non-members by the YMCA shall remain with the YMCA and shall not be within the control or directive of the CITY.

(I) **COMPATIBILITY.** The YMCA agrees to operate, maintain and promote the operation and maintenance of the facility in a manner consistent with nationwide and local YMCA policies and practices. The YMCA's operation of the facility shall be in accordance with applicable CITY regulations. The YMCA further agrees to comply with the reasonable request of the CITY pertaining to the operation and promotion of the facility in order to provide for the safety of YMCA members and the public. YMCA agrees that its operation of the facility as a YMCA facility will not unreasonably interfere with the use of the contiguous park area by members of the general public or by the CITY. It is the Parties' intention that the operation of the facility will be compatible with the Parks and Recreation programs of the CITY and/ or programs within their operations. Nothing in this Lease Agreement shall prohibit the CITY from providing any and all programming it deems necessary to meet the needs of the Palm Coast community. YMCA agrees that it will not discriminate in its hiring or promotional practices.

(J) **ADDITIONAL TAXES.** The Parties acknowledge that as a YMCA facility, YMCA presently enjoys a tax exempt status, however, to the extent the same may be applicable, YMCA shall pay all taxes, including all personal property taxes, all real property taxes, leasehold improvement and/or leasehold interest taxes, sales taxes which may be assessed against or arise by reason of YMCA's leasing of the Demised Premises or its operation of the facilities as a YMCA facility.

SECTION 4. YMCA ADDITIONS AND IMPROVEMENTS. The YMCA shall not, without first obtaining the written consent of the CITY, through the City Manager, make any alterations, additions or improvements (collectively, "Alterations") in, to or about the Property, except as stated herein. Unless the Alterations affect the Properties common facilities or systems or would otherwise require a building permit, CITY shall not unreasonably withhold or delay its consent to non-structural or non-mechanical Alterations. YMCA may perform minor Alterations that would be considered exclusively cosmetic improvements, having no impact on the structure or the mechanical systems, such as painting, carpet, and/or window coverings, without the prior consent of the CITY. Except as stated herein, all Alterations to the Property shall be subject to review for compliance and written approval by the CITY prior to such Alterations being made.

(A) Prior to making any Alterations, YMCA shall submit to CITY detailed plans and specifications for Alterations. All Alterations shall be accomplished in accordance with the following conditions:

1. For all contemplated Alterations to the components of the building and surrounding site improvements of the Property, YMCA shall obtain written approval from the City Manager.

2. YMCA shall apply for and obtain such permits as may be required under the Land Development Code of the City of Palm Coast, Florida and other governing entities, if applicable. YMCA shall provide performance and payment bonds equal to the value of all contracts for improvements naming the CITY as an insured.

3. YMCA shall do all things necessary to prevent the filing of any liens for work, labor, services or materials performed or supplied or claimed to have been performed or supplied to YMCA, or anyone holding the Property, or any part of them, through or under YMCA. If any claim of lien is filed, YMCA shall have it canceled of record within thirty (30) days after the date of the filing or, if YMCA in good faith determines that the lien should be contested, YMCA shall furnish security to release the claim of lien as a lien against the property and to prevent any foreclosure, pending resolution of the contest.

4. If YMCA does not release the claim of lien, the CITY may, but shall not be obligated to, release the claim of lien either by paying the amount claimed to be due or by procuring the release of claim

of lien by giving security or in such other manner as may be prescribed by law. YMCA shall repay to the CITY all sums disbursed or deposited by the CITY pursuant to the foregoing provisions of this paragraph, including the CITY's cost, expenses and attorneys' fees reasonably incurred in connection therewith as additional rent hereunder on demand. Nothing contained herein shall imply any consent or agreement of the CITY to subject their interests to liability under any mechanics' or other lien law whether or not the performance or the furnishing of such work, labor, services, or materials to YMCA or anyone holding the Property, or any part of them, through or under YMCA has been consented to by the CITY.

SECTION 5. MAINTENANCE AND REPAIRS TO PROPERTY.

(A) YMCA MAINTENANCE RESPONSIBILITY.

1. YMCA shall be responsible for all costs, expenses and obligations related to day-to-day operations, repairs, replacements, and all routine maintenance necessary to develop and maintain the components of the YMCA Recreational Facility, including but not limited to day-to-day, routine maintenance, janitorial and cleaning services, electric, water, and sanitary sewer services, telecommunications services, and maintenance of the surrounding grounds areas within the YMCA Recreational Facility which may arise or become due during the term of this Lease Agreement. Ground maintenance shall include but not be limited to mowing, edging, landscaping and any necessary replacement thereof, irrigation and irrigation system, and tree trimming within the Property. YMCA shall be responsible for the routine maintenance of parking areas, drives and sidewalks, including but not limited to the grass/tree median areas throughout the parking lot area. It shall be the responsibility of the YMCA to notify the CITY of any necessary repairs to the parking areas, drives and sidewalks, as described hereinabove.

2. It shall be the responsibility of the YMCA to keep the Property clean, sanitary, and free from trash and debris. The complete upkeep and maintenance shall be borne by YMCA and YMCA agrees to maintain the Property in accordance with the terms and conditions of this Lease Agreement, continuing service agreements, if any, the City's Land Development Code and consistent with prudent, well-reasoned maintenance procedures and techniques.

3. Notwithstanding any language to the contrary, the Parties agree that the YMCA shall be solely responsible for the routine, ongoing maintenance of the Property to the reasonable standards established by, and to the satisfaction of, the CITY, judged by the standards established in other facilities of similar nature in the local area and as set forth in this Lease Agreement. The CITY shall have reasonable access to the Property during normal operating hours for purposes as set forth herein, and shall timely give YMCA written notice of any maintenance deficiency along with a time period of sixty (60) calendar days from date of notice to correct such deficiency.

SECTION 6. SIGNS. YMCA, at YMCA's expense, shall have the right to place upon the Property such signs or signs as may be necessary to designate the Property. Such signs shall be maintained in good condition and repair at all times by the YMCA, at YMCA's expense, and shall comply with all zoning and sign requirements of the City of Palm Coast. All permits necessary for such signs shall be obtained by YMCA at YMCA's expense.

SECTION 7. UTILITIES SERVICES. YMCA shall be responsible for all utility services and shall maintain an individual account with all the various providers. YMCA shall be responsible for arranging access to and all fees associated with telecommunications services, including but not necessarily limited to, telephone service, fire and security system monitoring, facsimile, and internet connection.

SECTION 8. ASSIGNMENT AND SUBLEASING. YMCA shall not sell, assign, sublet or in any manner transfer this Lease Agreement or any estate or interest thereunder and shall not sublet the Property or any part thereof, without prior written consent of the CITY in each instance, which consent may be withheld for any reason. The consent by the CITY to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Should YMCA assign or attempt to assign this Lease Agreement or sublet any portion of the Premised without prior written consent of the CITY, this Lease Agreement shall be terminated forthwith, without prior notice to YMCA. No consent to assignment or encumbrance shall constitute a waiver of the provisions of this Section. However, nothing in this Section shall prohibit YMCA from engaging independent vendors, contractors, or concessionaires to provide ordinary goods, services, or programs (including, but not limited to, food/beverage concessions, athletic coaching, or health services) to facility members and the public *within* the YMCA facility, provided

that such arrangements are structured strictly as operational licenses rather than real estate subleases or assignments, grant no permanent or exclusive land rights, and fully comply with all prohibited use restrictions outlined below in section 8 (A).

(A) Prohibited Commercial and Operational Uses: Notwithstanding any other provision of this Lease Agreement to the contrary, neither YMCA nor any permitted vendor, licensee, concessionaire, or other party shall use, or permit the Property, the facility, or any improvements thereon to be used for, any of the following commercial or operational activities:

(1) Regulated Retail & Controlled Substances: Smoke shops, vape shops, tobacco-related retail establishments, dispensaries, or businesses engaged in the retail sale, distribution, or marketing of THC, delta-8, cannabis, or any psychoactive hemp-derived products.

(2) Alcohol & Adult Beverages: Any retail sale or commercial distribution of alcoholic beverages of any kind (including bars, taverns, lounges, and package sales).

(3) Firearms & Weapons: Gun shops, firearm sales, ammunition sales, or indoor/outdoor shooting ranges.

(4) General Compliance Mandate: Any use, operation, or activity that is prohibited or restricted by zoning regulations, local municipal ordinances, Community Development District (CDD) regulations, or any applicable State of Florida or Federal laws and regulations.

SECTION 9. PUBLIC RECORDS COMPLIANCE. YMCA, when acting on behalf of the CITY for rehabilitation and completion of the improvements provided for herein, shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(A) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(B) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(C) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(D) Meet all requirements for retaining public records and transfer to the CITY, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

SECTION 10 .DEFAULT, REMEDIES, AND ABANDONMENT.

(A) **Events of Default.** The following shall be considered "Events of Default":

Unless otherwise stated herein, YMCA's failure to perform, or YMCA's material violation or material breach of, any of the terms, covenants, or conditions of this Lease Agreement, which said failure, violation or breach shall continue un-remedied by YMCA for a period of sixty (60) days after CITY has delivered written notice thereof to YMCA. YMCA shall take immediate steps to remedy the breach and shall diligently pursue such steps until completed and reasonably accepted by the CITY. No default as set forth under this Section shall be deemed to continue if and so long as YMCA diligently proceeds to cure in good faith or is delayed in or prevented from curing by facts or circumstances beyond YMCA's control. If said failure, violation or breach continues after the expiration of a reasonable time to cure, as provided herein, then the CITY may terminate YMCA's right to possession of the Premises and enter the Premises and remove all persons, furniture and equipment located therein, and may seek any and all other remedies available to the CITY by statute or law.

(B) **Effect of an Event of Default and Remedies of the City.** Upon the occurrence of any Event of Default, as a result thereof and without other action by CITY, CITY shall have the following options:

1. Declare the rights of YMCA under this Lease Agreement terminated, and thereafter recover possession of the Premises and remove all persons, furniture and equipment located therein through legal process;

2. Pursue any other remedies available at law or in equity to City on account of the Event of Default. City agrees to use reasonable efforts to mitigate damages on account of any default by YMCA. All of the remedies herein before given to City and all rights and remedies given to it by law and equity shall be cumulative and concurrent. The taking or recovering of the Demised Premises shall not deprive City of any of its remedies or actions against YMCA for rent or any and all other sums due, nor shall the bringing of any action for rent or for breach or default under any term, condition or covenant, or the resort to any other remedy herein provided for the recovery of rent, be construed as a waiver of the right to obtain possession of the Demised Premises.

3. The Parties hereto agree that for purposes of this Lease Agreement, the determination of the materiality of any violation or default shall be governed by Florida law and shall include the following criteria:

- a. The extent to which the injured party will be deprived of the benefit which can reasonably be expected;
- b. The extent to which the injured party can be adequately compensated for the part of the benefit of which the injured party will be deprived;
- c. The extent to which the breaching party will suffer forfeiture;
- d. The likelihood that the breaching party will cure; and
- e. The extent to which the behavior of the breaching party comports with the standards of good faith and fair dealing.

(C) **Abandonment.** If the CITY has actual knowledge YMCA has abandoned the Premises, or the CITY reasonably believes YMCA has been absent from the Premises for a period of thirty (30) consecutive days then the CITY may serve written notice of abandonment upon YMCA, and after ten (10) days have elapsed since service of such notice, then the CITY may declare this Lease Agreement abandoned and shall, in such event, make reasonable efforts to relet the Premises. Damages shall include but shall not be limited ~~to all~~ to all actual damages suffered by the CITY until the Premises is relet, including reasonable expenses incurred in reletting or in attempting to relet.

(D) Reversion Upon Vacation. If the YMCA ceases operations and vacates the Premises at any time, all improvements, including the building, swimming pool, and any fixtures, shall immediately revert to the ownership of the CITY at no cost to the CITY. The YMCA shall execute any documents necessary to effectuate such transfer and shall ensure the property is free of liens or encumbrances at the time of reversion.

(E) City's Right to Cure Mortgage Default. The CITY shall have the absolute right, but not the obligation, to cure any default by YMCA under any mortgage, deed of trust, or other security instrument encumbering the leasehold interest or Premises. The CITY may exercise this right to cure within thirty (30) days after receiving notice of default, or prior to the expiration of the mortgagee's applicable cure period, whichever is later.

(G) Condition of Mortgage; Lender Notice Covenant. Any mortgage, deed of trust, or security instrument placed upon the leasehold interest shall expressly require the mortgagee/lender to deliver a duplicate copy of any notice of default or notice of acceleration directly to the CITY simultaneously with its delivery to YMCA. Any leasehold mortgage that fails to include or provide for this direct notice requirement shall be deemed an unauthorized encumbrance and a material default of this Lease Agreement.

SECTION 11 .LOSS OR DESTRUCTION OF YMCA RECREATIONAL FACILITY. If the YMCA Recreational Facility becomes s, as a practical matter, totally unten~~antable~~ able after a casualty loss such as fire, storm, explosion, earthquake, or other casualty loss, this Lease Agreement shall be at an end from such time, except for the purpose of enforcing rights and obligations that may have then accrued under this Lease Agreement, including but not limited to, the payment of insurance claims, indemnity, and any remaining rental credit. The rental shall then be accounted for between the City and YMCA up to the time of such loss or destruction of the YMCA Recreational Facility, YMCA paying up to such date and the City crediting to YMCA the rents collected beyond such date, if any. Should only a part of the YMCA Recreational Facility be rendered untenable, the rental minus any rental credit shall abate in the proportion which the injured bears to the whole YMCA Recreational Facility, and such part so damaged shall be restored by the

City-YMCA , at YMCA's sole cost and expense, as speedily as practicable, after which the full rent minus any rental credit shall recommenced and the Lease Agreement shall continue according to its terms.

SECTION 12. AS-IS CONDITION. YMCA, being the occupant of the Property pursuant to this Lease, acknowledges that it will accept and occupy the Property under this Lease Agreement in "AS IS" condition as the Property exists on the date of this Lease Agreement, and that CITY shall have no obligation to improve, repair or prepare the Property, prior to the Commencement Date or, except as otherwise expressly set forth in this Lease Agreement, after the Commencement Date, for occupancy by YMCA under this Lease Agreement. YMCA ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, NEITHER CITY NOR ANY AGENT OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE PRESENT OR FUTURE SUITABILITY OF THE PROPERTY FOR THE CONDUCT OF YMCA USES THEREON.

SECTION 13. DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a formal party hereto. The obligations of the YMCA shall not be obligations of CITY and the YMCA shall ensure that no liens, of any type or nature whatsoever, are placed upon the property.

SECTION 14. CITY'S RIGHT TO STRICTLY ENFORCE. Any law, usage or custom to the contrary notwithstanding, CITY shall have the right at all times to enforce all terms, conditions and covenants hereof in strict accordance herewith, notwithstanding any conduct or custom on the part of the CITY in refraining from so doing at any time or times. Further, the failure of CITY at any time or times to enforce its rights hereunder strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to any specific term, condition or covenant hereof, or as having in any way or manner modified the same.

SECTION 15. NOTICES.

(A) Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when either (1) hand delivered to the official hereinafter designated, or (2) upon receipt of

such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall specify by written notice to the other party delivered in accordance with.

YMCA: Volusia/Flagler Family Young Men's
Christina Association, Inc.
Attn: Christopher J. Seilkop, President & CEO
Address: 761 E International Speedway Blvd
Deland, FL 32724

CITY: City of Palm Coast
Attn. City Manager
160 Lake Avenue
Palm Coast, Florida 32164

(B) The parties may change the person or notice address for the provisions of this section by providing notice of same as set forth in this Agreement.

SECTION 16. RECORDATION. This lease shall not be recorded by YMCA without the consent of the CITY.

SECTION 17. WASTE. YMCA agrees to commit or suffer no act that would result in damage to or waste of the Property.

SECTION 18. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be affected. To that end, the terms of this Agreement are declared severable.

SECTION 19. PARTIES NOT PARTNERS. It is expressly understood that neither the CITY nor YMCA shall be construed or held to be a partner or associate of the other in the conduct of their respective business. The relationship between the Parties hereto is and shall remain at all times that of Landlord and tenant.

SECTION 20. INDEMNIFICATION.

(A) YMCA shall indemnify, hold harmless, and defend the CITY, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage

to persons or property, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of YMCA, its agents, servants, officers, officials, employees, or subcontractors.

(B) Nothing herein shall be deemed to affect the rights, privileges, and immunities of the CITY as set forth in Section 768.28, Florida Statutes.

(C) In claims against any person or entity indemnified under this Section by an employee of the YMCA or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the YMCA or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

(D) The execution of this Agreement by the YMCA shall obligate the YMCA to comply with the indemnification provision in this Agreement, however, the YMCA must also comply with the provisions of this Agreement relating to insurance coverages.

SECTION 21. INSURANCE. Without limiting any of the other obligations or liabilities of YMCA, YMCA shall provide, pay for, and maintain in force, throughout the term of this Lease Agreement, the insurance coverages set forth in this Section:

(A) COMPREHENSIVE. YMCA shall maintain Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, together with \$1,000,000 in Excess (Umbrella) Liability insurance over and above the underlying general liability limits.

(B) ADDITIONAL INSURED. The policy(ies) shall name the CITY as an additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the CITY thirty (30) days prior written notice, except for nonpayment of premium which, by law, is ten (10) days notice. The insurance shall be evidenced by a certificate in a form acceptable to the CITY, stating the amount of any "deductible" written by an insurance company with a minimum rating of A+, to the CITY and a copy of

the policy or certificate of insurance shall be delivered to the CITY prior to the commencement of this Restated Lease Agreement.

(CB) FAILURE TO PROCURE. In the event YMCA fails to procure the insurance required herein, the CITY may, but shall be under no obligation to, procure insurance in which event YMCA agrees to pay the CITY, in addition to rent, the amount of the premium on the first day of the month following the month in which the CITY notifies YMCA of the amount of the premium due.

SECTION 22. APPLICABLE LAW.

(A) This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the law of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, FL., if in federal court.

(B) Time is of the essence in the performance of this Agreement.

SECTION 23. NONDISCRIMINATION. The YMCA agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The YMCA, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of State law related thereto.

SECTION 24. FURTHER DOCUMENTS. Each of the Parties hereto hereby agree that they will execute and deliver such further instruments and do such further acts and things as may be necessary or desirable to carry out the purpose of this Agreement.

SECTION 25. FAILURE TO ENFORCE NOT WAIVER OF RIGHT. Failure by CITY to enforce any provision contained herein shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to any breach occurring prior or subsequent thereto.

SECTION 26. FORCE MAJEURE. The CITY's obligations hereunder shall be subject to the concept of force majeure. Accordingly, in the event of Acts of God, riot, weather disturbances, permitting, war, terrorism, civil disobedience, geologic subsidence, electrical failure, malfunctions, and events of a similar nature, the CITY shall be excused from providing continual utility service until the cause or causes thereof have been remedied.

SECTION 27. HEADINGS/CAPTIONS. Section headings and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement, or any provision hereto.

SECTION 28. INTERPRETATION. The CITY and the YMCA agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this Agreement. This Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both Parties have contributed to the drafting of this Agreement.

SECTION 29. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each which shall be deemed an original, but all of which, taken together, shall constitute one (1) and the same document.

SECTION 30. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between Parties relating to the subject matter of this Agreement. This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith, approved by the City Council of the CITY and the YMCA and executed by all Parties to this Agreement in a formal Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**VOLUSIA/FLAGLER FAMILY YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC**

By: _____

Print: _____

Title: _____

Date: _____

CITY OF PALM COAST

By: _____

Print: _____

Title: _____

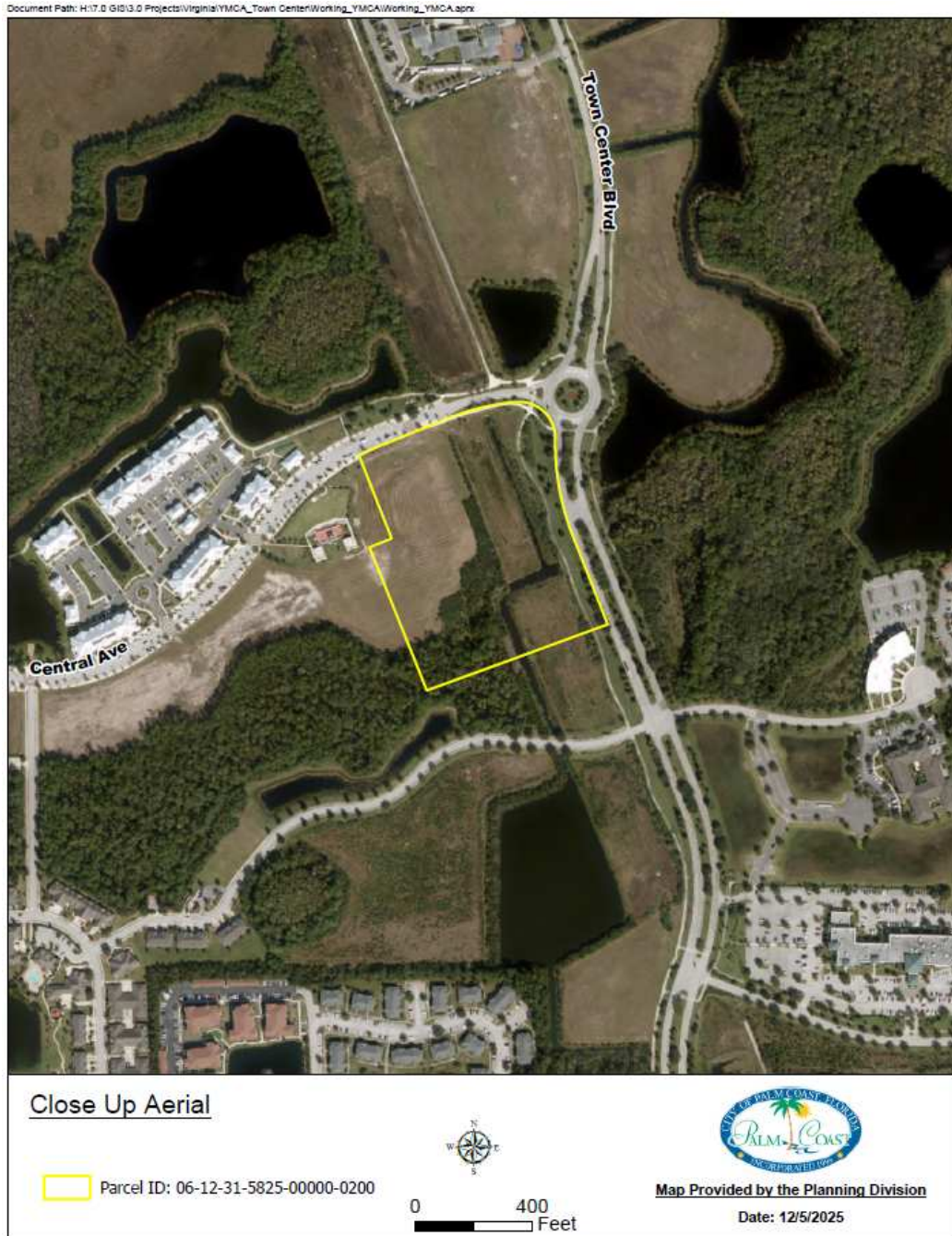
Date: _____

EXHIBIT “A”

EXHIBIT A

Legal Description of Parcel 06-12-31-5825-00000-0200

Lot 20, of the subdivision plat of Town Center at Palm Coast Phase 2, according to the plat thereof, as recorded in Map Book 35, Pages 63 through 68, of the Public Records of Flagler County, Florida





AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2026, the "Effective Date", by and between the **CITY OF PALM COAST**, a Florida municipal corporation, whose address is 160 Lake Avenue, Palm Coast, Florida, 32164, hereinafter referred to as "**CITY**," and the **VOLUSIA/FLAGLER FAMILY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC. ("YMCA")** a Florida non-profit corporation, whose address is 761 E. International Speedway Blvd, Deland, FL 32724. CITY and YMCA shall be collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the YMCA has expressed a desire to provide a YMCA Recreation Facility and its services to the Citizens of City of Palm Coast; and

WHEREAS, the following recitals are true and constitute a material inducement to the CITY to enter into this Lease agreement:

WHEREAS, The CITY is the owner in fee simple absolute of certain property located at 1580 Central Avenue, Palm Coast, Florida 32136; and

WHEREAS, the YMCA desires to collaboratively develop the property in conjunction with CITY into a YMCA Recreational Facility located at 1580 Central Avenue, Palm Coast, Florida 32164.

WHEREAS, the YMCA has expressed a willingness to build and operate a YMCA for the purpose of allowing public use of the facilities and programs in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the City Council of the City of Palm Coast finds and determines that a public purpose would be met by assuring the public of the benefits of healthy and wholesome recreation programs for all ages provided by the YMCA for the benefit of the Palm Coast community; and

WHEREAS, the parties desire to agree to certain terms and conditions relative to the collaborative development of a YMCA on the property; and

WHEREAS, this Agreement serves a legitimate and important public purpose; and

WHEREAS, this Agreement conforms with all applicable provisions of State law and the Charter, codes and ordinances of CITY.

NOW, THEREFORE, in consideration of the premises, mutual covenants, agreement and promises herein contained, the parties hereby covenant and agree as follows:

SECTION 1. RECITALS. The following recitals are true and constitute a material inducement to the CITY to enter into this Lease Agreement: The Parties hereby acknowledge that the YMCA shall be the lessee under the Lease Agreement. The CITY is the owner in fee simple absolute of certain property located at 1580 Central Avenue, Palm Coast Florida, 32164, ("Property") and is more particular described in Exhibit "A," attached hereto and made a part of this Lease Agreement. The CITY is agreeable to leasing the underlying land to the YMCA, and the YMCA hereby agrees to lease said land from the CITY and to construct, own, and operate a YMCA Recreational Facility (along with any future improvements) situated thereon, with such facility to be owned exclusively by the YMCA. The Parties will collaborate together to develop a YMCA Recreation Facility on the Property and any future development proposals or construction must be approved by the CITY. It is intended that CITY will permit the YMCA to operate the YMCA Recreational Facility once it is developed subject to the lease that sets forth all terms and conditions of use and compensation to the CITY in the amount of ONE DOLLAR (\$1.00) per year. The City Agrees to contribute two hundred fifty thousand dollars (\$250,000.00) from State appropriations toward the construction and development of the YMCA Recreational Facility. In addition, the City agrees to contribute two million dollars (\$2,000,000.00) in fiscal year 2027, five hundred thousand dollars (\$500,000.00) in fiscal year 2028, and five hundred thousand dollars (\$500,000.00) in fiscal year 2029 towards the construction of the YMCA Recreation Center. Each payment will be received by the YMCA on April 1st of the designated fiscal year. The CITY finds that such activities serve a public purpose for the betterment of the citizens of the CITY.

(A) Notwithstanding anything to the contrary contained herein, the CITY's obligations under this Lease Agreement including but not limited to the disbursement of any CITY funding contributions set forth above are expressly contingent and conditional upon the YMCA entering into a binding, fully executed agreement with the Flagler County School District (the "School District"). Pursuant to said agreement, the School District must commit to contribute a minimum financial sum of Three Million Dollars (\$3,000,000.00) toward the construction, development, or operation of the YMCA Recreational Facility. In the event the YMCA fails to execute such an agreement and secure the School District's \$3,000,000.00 financial commitment within 30 days of the effective date of this Agreement, this Lease Agreement shall automatically terminate, and neither Party shall have any further obligation or liability hereunder.

SECTION 2. TERM OF LEASE. The term of the lease shall be for thirty-five (35) years, commencing on the 1st day of November 1, 2026, and extending until midnight on October 31, 2061, and for any additional period of time during which the property and YMCA Recreational Facility is leased by the YMCA.

SECTION 3. USE OF THE PROPERTY.

(A) CITY agrees that the YMCA shall use the Property exclusively for the construction, operation, and maintenance of a YMCA Recreation Facility. The YMCA Recreation Facility shall mean the approximately 46,000+/- square foot facility and all related improvements, which includes, but is not limited to, an Olympic-size swimming pool, family pool, wellness center, sports gym, locker rooms, childcare area, group exercise rooms, kids zone, and all related amenities. No other use shall be permitted without prior written consent of the City. YMCA shall comply with all federal, state, and local laws, rules and regulations applicable to developing a YMCA Recreational Facility and for the use of the Property. Parties hereto agree to coordinate any special events and/or programs within their operations, subject to the terms and conditions contained herein. The YMCA shall apply for all necessary construction and development permits for the YMCA facility, swimming pool, and all planned amenities within six (6) months of the effective date of this Agreement, and shall have all such facilities fully constructed, operational, and open to the public within three (3) years of the date of the permit application unless both parties to this agreement mutually agree in writing to extend either above date. Failure to have the YMCA Recreation Facility fully constructed, operation, and open to the public within the specified three (3) year timeline (or any mutually agreed-upon

written extension) shall constitute a material default under this Lease. In the event of such default, the YMCA shall refund and repay to the City the entire three million two hundred fifty thousand dollars (\$3,250,000.00) contributed under this agreement within thirty (30) days of written notice from the City.

(B) The CITY may use the YMCA Recreational Facility or any portion thereof and its parking area at no cost for Official City Activities, provided the City Preschedules the use with the YMCA and it does not conflict with existing YMCA events or prior commitments/programs. Administrative and technical personnel from the YMCA's staff will be made available to the CITY for these activities. Any city requirement in excess of normal staffing and resources of YMCA shall be paid by the CITY.

(C) **FLAGLER COUNTY SCHOOL DISTRICT RIGHTS AND EXCEPTIONS.** The YMCA shall grant the Flagler County School District ("District") perpetual usage rights for Physical Education programming and District-sanctioned sports team practices and competitions pursuant to a separate agreement between the District and the YMCA.

(D) **YOUTH CLUB ACCESS.** The YMCA shall permit youth sports clubs located within the City of Palm Coast to access the facility for practices and sporting events at nominal rates, subject to scheduling availability and prior coordination with the YMCA. For the purpose of this Agreement "nominal" or "nominal rates" shall mean a minimum fee charged exclusively to cover the actual cost for the YMCA to provide the service, limited strictly to direct, out-of-pocket operational expenses incurred (including, but not limited to, incremental staffing for supervision/security, direct utility usage during event hours, and post-event cleaning supplies and labor.) Nominal rates shall strictly exclude commercial markups or standard market rental rates, provided that a reasonable allocation for direct facility wear-and-tear or minor administrative tracking may be included but shall strictly exclude any profits margins, commercial mark-ups, or standard market rental rates.

(E) **SCHEDULE OF OPERATIONS.** The YMCA Management will determine the hours of operation of the Palm Coast YMCA. The same shall be in accordance with nationwide and local YMCA practices and policies.

(F) **CONCESSIONS.** The YMCA may, but shall not be required to, dispense food and/or drink on the Premises for consumption by users of the YMCA facilities.

(G) **PARKING.** The YMCA will share a parking lot with the Stage at Town Center. The City will provide notice of 14 calendar days of all scheduled special events at the Stage. Notwithstanding the foregoing, if the parking lot (or any portion thereof) is located within the legal description of the Property leased to the YMCA under this Lease Agreement, the YMCA shall be solely responsible for the operation, management, repair, and all maintenance of the parking lot (or the portion thereof within said legal description) at its sole expense.

(H) **FEES.** The right to set and control fees charged to members and non-members by the YMCA shall remain with the YMCA and shall not be within the control or directive of the CITY.

(I) **COMPATIBILITY.** The YMCA agrees to operate, maintain and promote the operation and maintenance of the facility in a manner consistent with nationwide and local YMCA policies and practices. The YMCA's operation of the facility shall be in accordance with applicable CITY regulations. The YMCA further agrees to comply with the reasonable request of the CITY pertaining to the operation and promotion of the facility in order to provide for the safety of YMCA members and the public. YMCA agrees that its operation of the facility as a YMCA facility will not unreasonably interfere with the use of the contiguous park area by members of the general public or by the CITY. It is the Parties' intention that the operation of the facility will be compatible with the Parks and Recreation programs of the CITY and/ or programs within their operations. Nothing in this Lease Agreement shall prohibit the CITY from providing any and all programming it deems necessary to meet the needs of the Palm Coast community. YMCA agrees that it will not discriminate in its hiring or promotional practices.

(J) **ADDITIONAL TAXES.** The Parties acknowledge that as a YMCA facility, YMCA presently enjoys a tax exempt status, however, to the extent the same may be applicable, YMCA shall pay all taxes, including all personal property taxes, all real property taxes, leasehold improvement and/or leasehold interest taxes, sales taxes which may be assessed against or arise by reason of YMCA's leasing of the Demised Premises or its operation of the facilities as a YMCA facility.

SECTION 4. YMCA ADDITIONS AND IMPROVEMENTS. The YMCA shall not, without first obtaining the written consent of the CITY, through the City Manager, make any alterations, additions or improvements (collectively, "Alterations") in, to or about the Property, except as stated herein. Unless the Alterations affect the Properties common facilities or systems or would otherwise require a building permit, CITY shall not unreasonably withhold or delay its consent to non-structural or non-mechanical Alterations. YMCA may perform minor Alterations that would be considered exclusively cosmetic improvements, having no impact on the structure or the mechanical systems, such as painting, carpet, and/or window coverings, without the prior consent of the CITY. Except as stated herein, all Alterations to the Property shall be subject to review for compliance and written approval by the CITY prior to such Alterations being made.

(A) Prior to making any Alterations, YMCA shall submit to CITY detailed plans and specifications for Alterations. All Alterations shall be accomplished in accordance with the following conditions:

1. For all contemplated Alterations to the components of the building and surrounding site improvements of the Property, YMCA shall obtain written approval from the City Manager.

2. YMCA shall apply for and obtain such permits as may be required under the Land Development Code of the City of Palm Coast, Florida and other governing entities, if applicable. YMCA shall provide performance and payment bonds equal to the value of all contracts for improvements naming the CITY as an insured.

3. YMCA shall do all things necessary to prevent the filing of any liens for work, labor, services or materials performed or supplied or claimed to have been performed or supplied to YMCA, or anyone holding the Property, or any part of them, through or under YMCA. If any claim of lien is filed, YMCA shall have it canceled of record within thirty (30) days after the date of the filing or, if YMCA in good faith determines that the lien should be contested, YMCA shall furnish security to release the claim of lien as a lien against the property and to prevent any foreclosure, pending resolution of the contest.

4. If YMCA does not release the claim of lien, the CITY may, but shall not be obligated to, release the claim of lien either by paying the amount claimed to be due or by procuring the release of claim

of lien by giving security or in such other manner as may be prescribed by law. YMCA shall repay to the CITY all sums disbursed or deposited by the CITY pursuant to the foregoing provisions of this paragraph, including the CITY's cost, expenses and attorneys' fees reasonably incurred in connection therewith as additional rent hereunder on demand. Nothing contained herein shall imply any consent or agreement of the CITY to subject their interests to liability under any mechanics' or other lien law whether or not the performance or the furnishing of such work, labor, services, or materials to YMCA or anyone holding the Property, or any part of them, through or under YMCA has been consented to by the CITY.

SECTION 5. MAINTENANCE AND REPAIRS TO PROPERTY.

(A) YMCA MAINTENANCE RESPONSIBILITY.

1. YMCA shall be responsible for all costs, expenses and obligations related to day-to-day operations, repairs, replacements, and all routine maintenance necessary to develop and maintain the components of the YMCA Recreational Facility, including but not limited to day-to-day, routine maintenance, janitorial and cleaning services, electric, water, and sanitary sewer services, telecommunications services, and maintenance of the surrounding grounds areas within the YMCA Recreational Facility which may arise or become due during the term of this Lease Agreement. Ground maintenance shall include but not be limited to mowing, edging, landscaping and any necessary replacement thereof, irrigation and irrigation system, and tree trimming within the Property. YMCA shall be responsible for the routine maintenance of parking areas, drives and sidewalks, including but not limited to the grass/tree median areas throughout the parking lot area. It shall be the responsibility of the YMCA to notify the CITY of any necessary repairs to the parking areas, drives and sidewalks, as described hereinabove.

2. It shall be the responsibility of the YMCA to keep the Property clean, sanitary, and free from trash and debris. The complete upkeep and maintenance shall be borne by YMCA and YMCA agrees to maintain the Property in accordance with the terms and conditions of this Lease Agreement, continuing service agreements, if any, the City's Land Development Code and consistent with prudent, well-reasoned maintenance procedures and techniques.

3. Notwithstanding any language to the contrary, the Parties agree that the YMCA shall be solely responsible for the routine, ongoing maintenance of the Property to the reasonable standards established by, and to the satisfaction of, the CITY, judged by the standards established in other facilities of similar nature in the local area and as set forth in this Lease Agreement. The CITY shall have reasonable access to the Property during normal operating hours for purposes as set forth herein, and shall timely give YMCA written notice of any maintenance deficiency along with a time period of sixty (60) calendar days from date of notice to correct such deficiency.

SECTION 6. SIGNS. YMCA, at YMCA's expense, shall have the right to place upon the Property such signs or signs as may be necessary to designate the Property. Such signs shall be maintained in good condition and repair at all times by the YMCA, at YMCA's expense, and shall comply with all zoning and sign requirements of the City of Palm Coast. All permits necessary for such signs shall be obtained by YMCA at YMCA's expense.

SECTION 7. UTILITIES SERVICES. YMCA shall be responsible for all utility services and shall maintain an individual account with all the various providers. YMCA shall be responsible for arranging access to and all fees associated with telecommunications services, including but not necessarily limited to, telephone service, fire and security system monitoring, facsimile, and internet connection.

SECTION 8. ASSIGNMENT AND SUBLEASING. YMCA shall not sell, assign, sublet or in any manner transfer this Lease Agreement or any estate or interest thereunder and shall not sublet the Property or any part thereof, without prior written consent of the CITY in each instance, which consent may be withheld for any reason. The consent by the CITY to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. Should YMCA assign or attempt to assign this Lease Agreement or sublet any portion of the Premised without prior written consent of the CITY, this Lease Agreement shall be terminated forthwith, without prior notice to YMCA. No consent to assignment or encumbrance shall constitute a waiver of the provisions of this Section. However, nothing in this Section shall prohibit YMCA from engaging independent vendors, contractors, or concessionaires to provide ordinary goods, services, or programs (including, but not limited to, food/beverage concessions, athletic coaching, or health services) to facility members and the public *within* the YMCA facility, provided

that such arrangements are structured strictly as operational licenses rather than real estate subleases or assignments, grant no permanent or exclusive land rights, and fully comply with all prohibited use restrictions outlined below in section 8 (A).

(A) Prohibited Commercial and Operational Uses: Notwithstanding any other provision of this Lease Agreement to the contrary, neither YMCA nor any permitted vendor, licensee, concessionaire, or other party shall use, or permit the Property, the facility, or any improvements thereon to be used for, any of the following commercial or operational activities:

(1) Regulated Retail & Controlled Substances: Smoke shops, vape shops, tobacco-related retail establishments, dispensaries, or businesses engaged in the retail sale, distribution, or marketing of THC, delta-8, cannabis, or any psychoactive hemp-derived products.

(2) Alcohol & Adult Beverages: Any retail sale or commercial distribution of alcoholic beverages of any kind (including bars, taverns, lounges, and package sales).

(3) Firearms & Weapons: Gun shops, firearm sales, ammunition sales, or indoor/outdoor shooting ranges.

(4) General Compliance Mandate: Any use, operation, or activity that is prohibited or restricted by zoning regulations, local municipal ordinances, Community Development District (CDD) regulations, or any applicable State of Florida or Federal laws and regulations.

SECTION 9. PUBLIC RECORDS COMPLIANCE. YMCA, when acting on behalf of the CITY for rehabilitation and completion of the improvements provided for herein, shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(A) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(B) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(C) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(D) Meet all requirements for retaining public records and transfer to the CITY, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

SECTION 10 .DEFAULT, REMEDIES, AND ABANDONMENT.

(A) **Events of Default.** The following shall be considered "Events of Default":

Unless otherwise stated herein, YMCA's failure to perform, or YMCA's material violation or material breach of, any of the terms, covenants, or conditions of this Lease Agreement, which said failure, violation or breach shall continue un-remedied by YMCA for a period of sixty (60) days after CITY has delivered written notice thereof to YMCA. YMCA shall take immediate steps to remedy the breach and shall diligently pursue such steps until completed and reasonably accepted by the CITY. No default as set forth under this Section shall be deemed to continue if and so long as YMCA diligently proceeds to cure in good faith or is delayed in or prevented from curing by facts or circumstances beyond YMCA's control. If said failure, violation or breach continues after the expiration of a reasonable time to cure, as provided herein, then the CITY may terminate YMCA's right to possession of the Premises and enter the Premises and remove all persons, furniture and equipment located therein, and may seek any and all other remedies available to the CITY by statute or law.

(B) **Effect of an Event of Default and Remedies of the City.** Upon the occurrence of any Event of Default, as a result thereof and without other action by CITY, CITY shall have the following options:

1. Declare the rights of YMCA under this Lease Agreement terminated, and thereafter recover possession of the Premises and remove all persons, furniture and equipment located therein through legal process;

2. Pursue any other remedies available at law or in equity to City on account of the Event of Default. City agrees to use reasonable efforts to mitigate damages on account of any default by YMCA. All of the remedies herein before given to City and all rights and remedies given to it by law and equity shall be cumulative and concurrent. The taking or recovering of the Demised Premises shall not deprive City of any of its remedies or actions against YMCA for rent or any and all other sums due, nor shall the bringing of any action for rent or for breach or default under any term, condition or covenant, or the resort to any other remedy herein provided for the recovery of rent, be construed as a waiver of the right to obtain possession of the Demised Premises.

3. The Parties hereto agree that for purposes of this Lease Agreement, the determination of the materiality of any violation or default shall be governed by Florida law and shall include the following criteria:

a. The extent to which the injured party will be deprived of the benefit which can reasonably be expected;

b. The extent to which the injured party can be adequately compensated for the part of the benefit of which the injured party will be deprived;

c. The extent to which the breaching party will suffer forfeiture;

d. The likelihood that the breaching party will cure; and

e. The extent to which the behavior of the breaching party comports with the standards of good faith and fair dealing.

(C) Abandonment. If the CITY has actual knowledge YMCA has abandoned the Premises, or the CITY reasonably believes YMCA has been absent from the Premises for a period of thirty (30) consecutive days then the CITY may serve written notice of abandonment upon YMCA, and after ten (10) days have elapsed since service of such notice, then the CITY may declare this Lease Agreement abandoned and shall, in such event, make reasonable efforts to relet the Premises. Damages shall include but shall not be limited to all actual damages suffered by the CITY until the Premises is relet, including reasonable expenses incurred in reletting or in attempting to relet.

(D) **Reversion Upon Vacation.** If the YMCA ceases operations and vacates the Premises at any time, all improvements, including the building, swimming pool, and any fixtures, shall immediately revert to the ownership of the CITY at no cost to the CITY. The YMCA shall execute any documents necessary to effectuate such transfer and shall ensure the property is free of liens or encumbrances at the time of reversion.

(E) **City's Right to Cure Mortgage Default.** The CITY shall have the absolute right, but not the obligation, to cure any default by YMCA under any mortgage, deed of trust, or other security instrument encumbering the leasehold interest or Premises. The CITY may exercise this right to cure within thirty (30) days after receiving notice of default, or prior to the expiration of the mortgagee's applicable cure period, whichever is later.

(G) **Condition of Mortgage; Lender Notice Covenant.** Any mortgage, deed of trust, or security instrument placed upon the leasehold interest shall expressly require the mortgagee/lender to deliver a duplicate copy of any notice of default or notice of acceleration directly to the CITY simultaneously with its delivery to YMCA. Any leasehold mortgage that fails to include or provide for this direct notice requirement shall be deemed an unauthorized encumbrance and a material default of this Lease Agreement.

SECTION 11 LOSS OR DESTRUCTION OF YMCA RECREATIONAL FACILITY. If the YMCA Recreational Facility becomes, as a practical matter, totally untenable after a casualty loss such as fire, storm, explosion, earthquake, or other casualty loss, this Lease Agreement shall be at an end from such time, except for the purpose of enforcing rights and obligations that may have then accrued under this Lease Agreement, including but not limited to, the payment of insurance claims, indemnity, and any remaining rental credit. The rental shall then be accounted for between the City and YMCA up to the time of such loss or destruction of the YMCA Recreational Facility, YMCA paying up to such date and the City crediting to YMCA the rents collected beyond such date, if any. Should only a part of the YMCA Recreational Facility be rendered untenable, the rental minus any rental credit shall abate in the proportion which the injured bears to the whole YMCA Recreational Facility, and such part so damaged shall be restored by the

YMCA , at YMCA's sole cost and expense, as speedily as practicable, after which the full rent minus any rental credit shall recommence and the Lease Agreement shall continue according to its terms.

SECTION 12. AS-IS CONDITION. YMCA, being the occupant of the Property pursuant to this Lease, acknowledges that it will accept and occupy the Property under this Lease Agreement in "AS IS" condition as the Property exists on the date of this Lease Agreement, and that CITY shall have no obligation to improve, repair or prepare the Property, prior to the Commencement Date or, except as otherwise expressly set forth in this Lease Agreement, after the Commencement Date, for occupancy by YMCA under this Lease Agreement. YMCA ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, NEITHER CITY NOR ANY AGENT OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE PRESENT OR FUTURE SUITABILITY OF THE PROPERTY FOR THE CONDUCT OF YMCA USES THEREON.

SECTION 13. DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a formal party hereto. The obligations of the YMCA shall not be obligations of CITY and the YMCA shall ensure that no liens, of any type or nature whatsoever, are placed upon the property.

SECTION 14. CITY'S RIGHT TO STRICTLY ENFORCE. Any law, usage or custom to the contrary notwithstanding, CITY shall have the right at all times to enforce all terms, conditions and covenants hereof in strict accordance herewith, notwithstanding any conduct or custom on the part of the CITY in refraining from so doing at any time or times. Further, the failure of CITY at any time or times to enforce its rights hereunder strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to any specific term, condition or covenant hereof, or as having in any way or manner modified the same.

SECTION 15. NOTICES.

(A) Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when either (1) hand delivered to the official hereinafter designated, or (2) upon receipt of

such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall specify by written notice to the other party delivered in accordance with.

YMCA: Volusia/Flagler Family Young Men's
Christina Association, Inc.
Attn: Christopher J. Seilkop, President & CEO
Address: 761 E International Speedway Blvd
Deland, FL 32724

CITY: City of Palm Coast
Attn. City Manager
160 Lake Avenue
Palm Coast, Florida 32164

(B) The parties may change the person or notice address for the provisions of this section by providing notice of same as set forth in this Agreement.

SECTION 16. RECORDATION. This lease shall not be recorded by YMCA without the consent of the CITY.

SECTION 17. WASTE. YMCA agrees to commit or suffer no act that would result in damage to or waste of the Property.

SECTION 18. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be affected. To that end, the terms of this Agreement are declared severable.

SECTION 19. PARTIES NOT PARTNERS. It is expressly understood that neither the CITY nor YMCA shall be construed or held to be a partner or associate of the other in the conduct of their respective business. The relationship between the Parties hereto is and shall remain at all times that of Landlord and tenant.

SECTION 20. INDEMNIFICATION.

(A) YMCA shall indemnify, hold harmless, and defend the CITY, from and against any and all claims, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of or resulting from the performance or provision for services required under this Agreement, including damage to persons or property, provided that same is caused in whole or part by the error, omission, negligent act,

failure to act, malfeasance, misfeasance, conduct, or misconduct of YMCA, its agents, servants, officers, officials, employees, or subcontractors.

(B) Nothing herein shall be deemed to affect the rights, privileges, and immunities of the CITY as set forth in Section 768.28, Florida Statutes.

(C) In claims against any person or entity indemnified under this Section by an employee of the YMCA or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the YMCA or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

(D) The execution of this Agreement by the YMCA shall obligate the YMCA to comply with the indemnification provision in this Agreement, however, the YMCA must also comply with the provisions of this Agreement relating to insurance coverages.

SECTION 21. INSURANCE. Without limiting any of the other obligations or liabilities of YMCA, YMCA shall provide, pay for, and maintain in force, throughout the term of this Lease Agreement, the insurance coverages set forth in this Section:

(A) COMPREHENSIVE. YMCA shall maintain Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, together with \$1,000,000 in Excess (Umbrella) Liability insurance over and above the underlying general liability limits.

(B) ADDITIONAL INSURED. The policy(ies) shall name the CITY as an additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the CITY thirty (30) days prior written notice, except for nonpayment of premium which, by law, is ten (10) days notice. The insurance shall be evidenced by a certificate in a form acceptable to the CITY, stating the amount of any "deductible" written by an insurance company with a minimum rating of A+, to the CITY and a copy of the policy or certificate of insurance shall be delivered to the CITY prior to the commencement of this Restated Lease Agreement.

(C) **FAILURE TO PROCURE.** In the event YMCA fails to procure the insurance required herein, the CITY may, but shall be under no obligation to, procure insurance in which event YMCA agrees to pay the CITY, in addition to rent, the amount of the premium on the first day of the month following the month in which the CITY notifies YMCA of the amount of the premium due.

SECTION 22. APPLICABLE LAW.

(A) This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the law of the State of Florida. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be of the Seventh Judicial Circuit in and for Flagler County, Florida, or the Middle District of Florida in Orlando, FL., if in federal court.

(B) Time is of the essence in the performance of this Agreement.

SECTION 23. NONDISCRIMINATION. The YMCA agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. The YMCA, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of State law related thereto.

SECTION 24. FURTHER DOCUMENTS. Each of the Parties hereto hereby agree that they will execute and deliver such further instruments and do such further acts and things as may be necessary or desirable to carry out the purpose of this Agreement.

SECTION 25. FAILURE TO ENFORCE NOT WAIVER OF RIGHT. Failure by CITY to enforce any provision contained herein shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to any breach occurring prior or subsequent thereto.

SECTION 26. FORCE MAJEURE. The CITY's obligations hereunder shall be subject to the concept of force majeure. Accordingly, in the event of Acts of God, riot, weather disturbances, permitting, war, terrorism, civil disobedience, geologic subsidence, electrical failure, malfunctions, and events of a similar nature, the CITY shall be excused from providing continual utility service until the cause or causes thereof have been remedied.

SECTION 27. HEADINGS/CAPTIONS. Section headings and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement, or any provision hereto.

SECTION 28. INTERPRETATION. The CITY and the YMCA agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this Agreement. This Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both Parties have contributed to the drafting of this Agreement.

SECTION 29. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each which shall be deemed an original, but all of which, taken together, shall constitute one (1) and the same document.

SECTION 30. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between Parties relating to the subject matter of this Agreement. This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith, approved by the City Council of the CITY and the YMCA and executed by all Parties to this Agreement in a formal Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**VOLUSIA/FLAGLER FAMILY YOUNG MEN'S
CHRISTIAN ASSOCIATION, INC**

By: _____

Print: _____

Title: _____

Date: _____

CITY OF PALM COAST

By: _____

Print: _____

Title: _____

Date: _____

EXHIBIT "A"

EXHIBIT A

Legal Description of Parcel 06-12-31-5825-00000-0200

Lot 20, of the subdivision plat of Town Center at Palm Coast Phase 2, according to the plat thereof, as recorded in Map Book 35, Pages 63 through 68, of the Public Records of Flagler County, Florida

