ORDINANCE NO. 4268

AN ORDINANCE of the City of Kent, Washington, providing for the design and construction of a YMCA community center in the City’s Morrill Meadows/East Hill Park; approving the conveyance of a parcel within the park and the lease and lease-back of a portion of the park; approving a development agreement for the design and construction of a multi-purpose community facility and related park improvements; approving an agreement for the operation and maintenance of the constructed improvements; delegating authority to approve the final terms of the project agreements, including a lease with principal payments over the term of the lease not to exceed $8,500,000; and authorizing other matters related thereto.

RECITALS

A. The City and the YMCA of Greater Seattle ("YMCA") previously entered into a Memorandum of Understanding to explore how best to achieve their mutual goal to construct and operate a community center within the Morrill Meadows/East Hill Park.

B. Under its home rule authority, other statutory authority, and in accordance with the procedures in Chapter 35.42 of the Revised Code of Washington, the City published a Request for Proposals ("RFP") soliciting applications for the design, construction, and financing of a community center and related park improvements (the "Project").

1 Approve & Authorize the Execution of All Conveyance and Project Agreements for the Kent YMCA Project
C. The YMCA was the only party to respond to the RFP, agreeing to finance Project construction, take all risk of cost overruns or delay, design and construct the Project, and provide specific community benefits.

D. To accomplish the Project and in consideration of the community benefits to be provided, the City now desires to deed a portion of park property in fee to the YMCA to construct the community center, subject to a reversionary interest in favor of the City; to lease and lease-back a portion of the park to construct adjoining park improvements; and to enter into related project documents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS-follows:

SECTION 1. - Findings Regarding Project.

A. Project Description. The City Council finds that it is in the best interests of the residents of the City to proceed with the Project, which will provide a multi-purpose community facility including, among other things, a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool (the "Kent YMCA"), as well as parking for 250 vehicles, a storm drainage system, outdoor multi-use sport courts, lawn and dog park areas, and other park and site improvements, including frontage improvements (the “Ground Lease Improvements”).

B. Project Agreements. The Project will require the following

2 Approve & Authorize the Execution of All Conveyance and Project Agreements for the Kent YMCA Project
agreements and related and ancillary documents:

1. A Quit Claim Deed with Grantee Covenants, Releases and Indemnity (the “Conveyance Agreement”), conveying a parcel in the Morrill Meadows and East Hill Parks, which parcel will be formed through the pending lot line adjustment process, to the YMCA in consideration for the YMCA’s obligations under the Project documents, including the YMCA’s obligation to design, construct, and finance the Project and provide specified community benefits. The City will retain a reversionary interest under the Conveyance Agreement so that, if the YMCA ceases to provide the Kent YMCA, the parcel will revert to the City.

2. A lease ("Ground Lease") and lease-back ("Project Lease") of a portion of the Morrill Meadows and East Hill Parks to allow for construction of the Ground Lease Improvements. Under the Project Lease, the City will pay Monthly Rent as defined in the Project Lease. The principal component of Monthly Rent payable over the term of the lease will not exceed $8,500,000.

3. A development agreement ("Development Agreement") requiring the YMCA to finance, design, and construct the Kent YMCA and the Ground Lease Improvements.

4. An operating agreement ("Operating Agreement") to establish the parties’ operational and maintenance expectations and provide for specified community benefits.

5. Collectively, the Ground Lease, the Development

Approve & Authorize the Execution of All Conveyance and Project Agreements for the Kent YMCA Project
Agreement, the Project Lease, the Operating Agreement, and all documents and exhibits incorporated in those agreements, constitute the “Project Agreements.”

C. Community Benefits. Under Section 2(b) of the Development Agreement, the YMCA agrees to provide specified Community Benefits as defined in the Development Agreement, including completing the Kent YMCA, at a cost of approximately $24,000,000, and all Ground Lease Improvements, at a cost of approximately $8,500,000, at the YMCA’s sole cost and risk of liability, except for Significant Unexpected Underground Conditions and Costs Resulting From City-Caused Delay, each as defined in the Development Agreement. In addition, the YMCA will agree to construct a larger aquatics center than the YMCA normally would build in a facility of the size of the Project so that the Kent YMCA can absorb the uses of the aging Kent-Meridian Pool. The YMCA will agree to operate the Kent YMCA for a term of fifty years, providing increased health and recreation services in the community and providing an indoor, year-round aquatics facility to meet the community’s aquatics needs, including water safety, aquatic fitness activities, therapeutic aquatics programs, high school swim teams, recreational swimming, and job training in aquatics-related careers. The YMCA will agree to provide specified financial assistance, free passes, and free or reduced fee memberships, including at least $1,000,000 annually in financial assistance to low- and moderate-income Kent residents, to ensure membership access to the Kent YMCA.
regardless of household income level. This financial assistance will include access to swim lessons, certain annual free passes to encourage Kent residents to find new ways to exercise and engage in healthy lifestyle behaviors, access to the Kent YMCA through City of Kent Parks and Recreation Department programs, community swims, City access to community meeting rooms, indoor restrooms that will be available to park users for no charge during Kent YMCA operating hours, and no-cost or highly subsidized social services to Kent residents. The City Council hereby finds that these Community Benefits provide sufficient consideration for the City's obligations under the Project Agreements.

SECTION 2. - Monthly Rent a General Obligation. The obligation of the City to pay Monthly Rent under the Project Lease is a general obligation of the City. The City irrevocably covenants and agrees that each year it will include in its budget and levy an ad valorem tax upon all the property within the City subject to taxation in an amount that will be sufficient, together with other revenues and money of the City legally available for such purposes, to pay Monthly Rent when due.

The City pledges that the annual tax to be levied for the payment of Monthly Rent shall be within and as a part of the regular property tax levy permitted to cities without a vote of the people, and that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the Monthly Rent will be and is set aside, pledged, and
appropriated for the payment of Monthly Rent. The full faith, credit, and resources of the City are pledged for the annual levy and collection of said taxes and for the prompt payment of the Monthly Rent when due.

The City reserves the right to prepay Monthly Rent in full or in part, at any time, without penalty or premium. Upon full payment of all outstanding Monthly Rent, the Ground Lease and the Project Lease shall terminate, and unencumbered fee simple title to the premises and Ground Lease Improvements will revert to the City.

SECTION 3. - Authorization of Project Agreements. The Conveyance Agreement and Project Agreements are approved in substantially the forms submitted to the City Clerk and attached as Exhibits to this Ordinance. The City Council has determined that it would be in the best interest of the City to delegate to the Mayor, or his or her designee (the “Designated Representative”), the authority to approve the final Conveyance Agreement and Project Agreements.

The Designated Representative is hereby authorized to approve the Conveyance Agreement and Project Agreements in substantially the forms attached, subject to those changes, not inconsistent with the material terms of this ordinance, that are approved by the City Attorney, but only if:

(i) The term of the Ground Lease commences no earlier than the effective date of this ordinance and expires approximately
twenty-two years from the date the Ground Lease is signed, unless earlier terminated pursuant to its terms;

(ii) The term of the Project Lease commences no earlier than the effective date of this ordinance and expires approximately twenty years from the date of the final acceptance of Project Improvements, unless earlier terminated pursuant to its terms;

(iii) The principal component of Monthly Rent paid over the term of the lease does not exceed $8,500,000, and the interest component of Monthly Rent reflects an interest rate that does not exceed five percent, and

(iv) the Conveyance Agreement and Project Agreements conform to all other terms of this ordinance.

Based on these parameters, the Council finds that Monthly Rent payable under the Project Lease will not exceed prevailing rental rates for space comparable to the Ground Improvements.

Subject to the terms and conditions set forth in this section, the Designated Representative is authorized to execute the Conveyance Agreement and Project Agreements. Following the execution of the Conveyance Agreement and Project Agreements, the Parks, Recreation and Community Services Director shall provide a report to the Council describing the final terms of the Conveyance Agreement and Project Agreements, including Monthly Rent, approved pursuant to the authority delegated in this section.

7 Approve & Authorize the Execution of All Conveyance and Project Agreements for the Kent YMCA Project
SECTION 4. - General Authorization; Ratification. The Designated Representative; the Parks, Recreation and Community Services Director; the Finance Director; the Chief Administrative Officer; the City Clerk; and other appropriate officers of the City are authorized to take any actions and to execute documents as in their judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified.

SECTION 5. - Certain Amendments. Upon approval of the City Attorney and without further action of the City Council, the City Clerk and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbers; or references to other local, state or federal laws, codes, rules, or regulations.

SECTION 6. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 7. - Effective Date of Ordinance. This ordinance shall take effect thirty (30) days after its passage as provided by law.

Suzette Cooke, Mayor

Date Approved

8 Approve & Authorize the Execution of All Conveyance and Project Agreements for the Kent YMCA Project
ATTEST:

KIMBERLEY A. KOMOTO, CITY CLERK

12/12/17
Date Adopted

12/15/17
Date Published

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

9 Approve & Authorize the Execution of All Conveyance and Project Agreements for the Kent YMCA Project
QUIT CLAIM DEED WITH GRANTEE COVENANTS, RELEASES, AND INDEMNITY

Reference numbers of related documents: N/A

GRANTOR: CITY OF KENT, a Washington municipal corporation

GRANTEE(S): THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation

ABBREVIATED LEGAL:

Situate in the County of King, State of Washington.

ASSESSOR'S TAX PARCEL NO(S): __________________

I. Grant.

The Grantor, City of Kent, a Washington municipal corporation (“Grantor”), for and in consideration of Ten Dollars ($10.00), in hand paid, the covenants, releases and indemnity set forth herein, other consideration in the form of Grantee’s covenant to design and construct a multi-purpose community facility consisting of a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool and to provide the Community Benefits as defined and set forth in the Development Agreement dated of even date herewith between the parties (the “Development Agreement”), and that certain Project Lease Agreement between the Grantor and Grantee, hereby conveys and quit claims to The Young Men’s Christian Association of Greater Seattle, a Washington nonprofit corporation (“Grantee”), that certain real property located in King County, Washington, and legally described on Exhibit A attached hereto (“Property”), subject to:

a. the permitted exceptions described on Exhibit B attached hereto;
b. the condition that in the event the Grantee ceases to use the Property primarily for the construction, operation and/or maintenance of a multi-purpose community facility to be located thereon and consisting of, among other things, a gymnasium, community meeting rooms, and swimming pool, then the Property shall revert to the Grantor, or its assigns, free and clear of any claims of the Grantee; and

c. the terms and conditions set forth below.

**Grantee's Covenants, Releases and Indemnity ("Covenant")**

The Property is conveyed AS-IS, WHERE-IS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO ITS CONDITION, ENVIRONMENTAL OR OTHERWISE, OR ITS SUITABILITY OR SUFFICIENCY FOR THE GRANTEE'S INTENDED USES AND PURPOSES. Grantee acknowledges that adverse physical, economic or other conditions (including without limitation, adverse environmental soils and groundwater conditions), either latent or patent, may exist on the Property and assumes Grantor's responsibility for all environmental conditions of the Property, known or unknown, including but not limited to responsibility, if any, for investigation, removal or remediation actions relating to the presence, release or threatened release of any Hazardous Substance as defined in the Development Agreement or other environmental contamination on, under, emanating from or otherwise relating to the Property, except to the extent the Grantor has expressly agreed, in the event of a Significant Unexpected Underground Conditions, to pay for the incremental increase in Project Costs caused by the Significant Unexpected Underground Conditions in excess of ten percent of the Project Budget all as defined and set forth in the Development Agreement.

Grantee also releases, covenants not to sue, and shall indemnify, defend, and hold Grantor and its past, present and future officials, employees, and agents, harmless from and against any and all claims, demands, penalties, fees, damages, losses, expenses (including but not limited to fees and costs of regulatory agencies, attorneys, contractors and consultants), and liabilities arising out of, or in any way connected with, the condition of the Property including but not limited to any alleged or actual past, present or future presence, release or threatened release of any Hazardous Substance in, on, under or emanating from the Property, or any portion thereof or improvement thereon, from any cause whatsoever; it being intended that Grantee shall so indemnify Grantor and such other persons without regard to any fault or responsibility of Grantor, Grantee, or such other persons, except to the extent the Grantor has expressly agreed, in the event of a Significant Unexpected Underground Conditions, to pay for the incremental increase in Project Costs caused by the Significant Unexpected Underground Conditions in excess of ten percent of the Project Budget all as defined and set forth in the Development Agreement. Grantee is aware of the rights it might otherwise have to seek recovery from Grantor for costs of remediation and cleanup of Hazardous Substances under applicable law, including without limitation the Washington Model Toxics Control Act ("MTCA") and the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and...
Grantee hereby knowingly waives all such rights, now existing or hereafter arising, and voluntarily relinquishes those rights and forever releases the Grantor from any such obligation.

Grantee's release and covenant not to sue shall include both claims by Grantee as original plaintiff against Grantor and any cross-claims, third-party claims or counterclaims claims against Grantor by Grantee related to claims made against Grantee by any parties, including Grantor. This release and covenant not to sue mean that Grantee has no recourse against Grantor or any of its officers, employees or agents for any claim or liability with respect to the Property. The obligation to indemnify and defend shall include, but not be limited to, any liability of Grantor to any and all federal, state or local regulatory agencies or other persons or entities for remedial action costs and natural resources damages claims.

This Covenant shall apply regardless of whether or not Grantee is culpable, negligent or in violation of any law, ordinance, rule or regulation, and whether or not Grantor or its officials, employees or agents had as of the date hereof any information or documents related to the condition of the Property not known to Grantee, any statement or omission in any other document or disclosure form notwithstanding.

This Covenant is the entire agreement of the parties with respect to the subject matters of this Covenant, and supersedes any prior agreements, understandings, representations or warranties as to such matters; however, the release and indemnity herein are in addition to, and shall neither impair nor be affected by, any other release or indemnity by Grantee or its successors now in effect or hereafter made for the benefit of Grantor.

This Covenant is not intended to, nor shall it release, discharge or affect any rights or causes of action that Grantor or Grantee may have against any other person or entity, except as otherwise expressly stated herein, and each of the parties reserves all such rights including, but not limited to, claims for contribution or cost recovery relating to any Hazardous Substance in, on, under or emanating from the Property.

II. Nondiscrimination.

Grantee further covenants that there shall be no discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy, of the Property or any improvements erected or to be erected thereon. This paragraph shall run with the land and bind Grantee and Grantee's successors and assigns.

This document shall be construed and enforced in accordance with the laws of the State of Washington as they apply to transactions between Washington residents wholly within such State. If any provision hereof shall be held invalid or unenforceable in whole or in part then the terms of this Covenant shall nonetheless remain in effect to the full extent permitted by applicable law. Grantee irrevocably consents to the jurisdiction of the courts of the State of Washington and agrees that venue of any action hereunder shall be in King County, Washington.
III. Miscellaneous.

Time is of the essence of all of the provisions hereof.

IV. Notices.

Any notice required or permitted to be given to the parties hereunder shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service, with receipt acknowledgment requested, (iii) upon receipt if transmitted by facsimile telecopy, with a copy sent on the same day by one of the other permitted methods of delivery, or (iii) upon receipt or refused delivery deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

Grantor’s Address:

The City of Kent
Attn: City Attorney
220 Fourth Avenue South
Kent, WA 98032

Grantee’s Address:

YMCA of Greater Seattle
Attention: SKC Regional Vice President
900 4th Avenue
Seattle, WA 98104

[Signatures appear on following page]
This Quit Claim Deed is dated this _____ day of ________, 2018.

**GRANTOR:**

CITY OF KENT

By: ________________________________
Name: ______________________________
Its: ________________________________

**GRANTEE:**

THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF GREATER SEATTLE

By: ________________________________
Name: ______________________________
Its: ________________________________
On this day personally appeared before me ________, to me known to be _________ of the City of Kent, a Washington municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said individual is authorized to execute said instrument.

GIVEN under my hand and official seal this ___ day of ______, 2018.

______________________________
Name:
NOTARY PUBLIC in and for the State of Washington, residing at _________________.
My commission expires: ____________________

On this day personally appeared before me ________, to me known to be _________ of The Young Men’s Christian Association of Greater Seattle, a Washington nonprofit corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said individual is authorized to execute said instrument.

GIVEN under my hand and official seal this ___ day of ______, 2018.

______________________________
Name:
NOTARY PUBLIC in and for the State of Washington, residing at _____________________.
My commission expires: ____________________
Exhibit A

**Legal Description of Kent YMCA Land**

Parcel __ of that certain Boundary Line Adjustment recorded in King County, Washington as recording number __________.
Exhibit B

Title Exceptions
GROUND LEASE AGREEMENT

between

CITY OF KENT,
a Washington municipal corporation

as Lessor

and

The Young Men’s Christian Association of Greater Seattle,
a Washington nonprofit corporation

as Lessee

______________, 2018

Kent YMCA Project
Kent, Washington
KENT COMMUNITY CENTER PROJECT  
GROUND LEASE AGREEMENT  

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Exhibit A: Legal description of Morrill Meadows and East Hill Parks, with attached drawing
Exhibit B: Access Easement
Exhibit C: Legal description of City Land with attached drawing
Exhibit D: Legal description of Project Land with attached drawing
Exhibit E: Insurance Requirements
GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Ground Lease”) is dated for reference purposes ______________, 2018, and is made by and between the CITY OF KENT, a Washington municipal corporation (“Lessor”), and THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation (“Lessee”).

RECITALS

A. Lessor is the owner of the real estate known as Morrill Meadows and East Hill Parks described on EXHIBIT A and located in the City of Kent, King County, Washington.

B. Lessor has completed a boundary line adjustment to create a parcel (the “Kent YMCA Land”) within a portion of the Morrill Meadows and East Hill Parks to be conveyed to the Lessee pursuant to a “Quit Claim Deed with Grantee Covenants, Releases and Indemnity” (the “Conveyance Agreement”).

C. The Lessor intends to lease a portion of the Morrill Meadows and East Hill Parks described on Exhibit C (“City Land”) to Lessee pursuant to this Ground Lease to allow Lessee to construct parking for 250 vehicles, a storm drainage system, outdoor multi-use sport courts, lawn and dog park areas, and other park and site improvements, including frontage improvements (the “Ground Lease Improvements”), as more particularly described in the Project Lease Agreement (“Project Lease”).

D. Pursuant to the Development Agreement (the “Development Agreement”), the Lessee will design and construct a multi-purpose community facility including, among other things, a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool (the “Kent YMCA”) on the Kent YMCA Land and also will design and construct the Ground Lease Improvements. The design and construction of the Kent YMCA and the Ground Lease Improvements are referred to together as the “Project,” and the Kent YMCA Land and the City Land are referred to together as the “Project Land,” which is described on Exhibit D.

E. After all Project construction is complete, Lessee intends to lease the City Land to Lessor in accordance with the procedures established in the Municipal Leasing Act, RCW ch. 35.42, and pursuant to the Project Lease.

F. Lessee intends to pay the Project costs through one or more means including, without limitation, tax credits, philanthropic contributions, construction financing and/or draws on its available lines of credit (collectively, the “Construction Financing”).

G. When Lessor has completed Project construction and the parties have approved all improvements, Lessee will operate the Kent YMCA for up to fifty (50) years under the terms of an agreement that establishes the parties’ operational expectations and provides for specified community benefits (the “Operating Agreement”).

H. All capitalized terms used in this Ground Lease but not otherwise defined will have the meanings given to such terms in the Project Lease and Development Agreement.
Collectively, this Ground Lease, the Development Agreement, the Project Lease, the Operating Agreement, and all documents and exhibits incorporated in those agreements constitute the “Project Agreements.”

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Lessor and Lessee agree as follows:

1. **The Demise.**

   1.1 **Demise.** In consideration of the rent, covenants and agreements contained in the Project Agreements, Lessor leases the City Land to Lessee, and Lessee leases the City Land from Lessor upon and subject to the conditions set forth in this Ground Lease, all other Project Agreements, and subject to all encumbrances and matters of record as of the date of this Ground Lease.

   1.2 **Use of the City Land.** The City Land will be used and occupied only for the purpose of the development, operation, use, repair and maintenance of the Project but, until Lessee commences use and occupancy, Lessor reserves the right to continue to use and occupy the City Land for its purposes at no cost. Lessee shall not use or permit the City Land to be used for any other purpose without the prior written approval of Lessor. Lessee is authorized to lease back to Lessor the City Land as improved by the Project pursuant to the Project Lease.

   1.3 **Access and Utilities.** Lessor and Lessee shall mutually cooperate to provide reciprocal temporary and permanent pedestrian and vehicular access and utilities to, from, and over the Project Land to, from, and over adjacent lands of Lessor as reasonably necessary to facilitate the Project. Lessor and Lessee shall also mutually cooperate regarding the use of parking on the Project Land and Lessor’s adjacent lands during Project construction. Lessor and Lessee agree in writing, on mutually acceptable terms, as necessary to provide for pedestrian and vehicular access, parking and utilities and agree to cooperate in their location.

   1.4 **Construction Activity.** Lessor will grant Lessee permission to perform construction activity related to the Project on Lessor’s adjacent lands only if mutually agreed. Lessee and Lessor agree to mutually cooperate as to the timing, use, and location of such construction activity in order to ensure completion of the Project in a timely manner.

2. **Term.** The term of this Ground Lease will start on the Effective Date and will end on the earlier of ______________ or the date the Project Lease terminates, unless sooner terminated (“Term”).

3. **Rent.** In consideration for the lease of the City Land under this Ground Lease, and taking into account the mutual consideration provided by the Lessor under the Project Agreements, specifically including the Community Benefits to be provided under Section 2(b) of the Development Agreement, Lessee shall pay to Lessor as rent for the Term the sum of $100.00 payable in whole in advance on or before the first day of the Term.

4. **Development of Project.**
4.1 Construction. Lessee will construct and develop the Project as required under the Project Lease and the Development Agreement. Lessee will not permit any development or construction on the City Land except as set forth in the Project Lease and Development Agreement or as otherwise specifically approved in writing by Lessor.

4.2 Ownership of Improvements. During the Term, all improvements on the City Land paid for by Lessee shall be owned by Lessee. Upon the expiration of the Term of this Ground Lease, the City Project and all other improvements on the City Land shall become the property of Lessor.

5. Taxes and Utilities.

5.1 Lessee’s Responsibility. Lessee will be solely responsible for the payment of and shall pay and discharge all utility charges and all real estate taxes and assessments, if any, that are imposed upon the City Land.

5.2 Lessor’s Responsibility. Lessor will pay all utility charges and all real estate taxes and assessments, if any, that are not part of Project Costs. In accordance with RCW 35.42.090, Lessor intends that this Ground Lease will be exempt from any taxes imposed under the authority of RCW ch. 82.45, RCW 82.04.040, and RCW 82.08.090, and by rules and regulations of the Washington State Department of Revenue issued pursuant to these statutes.


6.1 “As Is”. Except as set forth in Section 6.3 below, Lessee accepts the City Land “as is” in its existing condition.

6.2 Lessor’s Right to Inspect. Lessor shall have the right to inspect the City Land at any time.

6.3 Significant Unexpected Underground Conditions. Lessee has reviewed and analyzed soil conditions, including geotechnical studies, on the Project Land to determine the existence (or not) of underground conditions or Hazardous Substances (as defined in the Project Lease) that could affect the Project Schedule and/or the Project Budget. Relying on this review, Lessor has determined that soil conditions on the Project Land are acceptable and has developed a Project Budget and Project Schedule. However, in the event of a Significant Unexpected Underground Conditions, the Lessor will be solely responsible for the incremental increase in Project Costs caused by the Significant Unexpected Underground Conditions in excess of ten percent of the Project Budget. The Lessor will either (1) pay the incremental increase in Project Costs caused by the Significant Unexpected Underground Conditions in excess of ten percent of the Project Budget by entering into a City-initiated change order under the Development Agreement or (2) agree to suspend, modify, or terminate the Project.

Notwithstanding the foregoing, Lessor will not be responsible for any claims, judgments, damages, penalties, fines, expenses, liabilities or losses caused by Lessee or Lessee’s General Contractor’s negligence, including the release or disposal of Hazardous Substances introduced on the City Land by Lessee or General Contractor during Project construction, and the responsibility for the same will remain with Lessee or General Contractor, as applicable.
7.  Liens; Security Interest.

7.1  No Liens of Any Kind. Except for encumbering Lessee’s interest in this Ground Lease as security for the Construction Financing for the Project or as specifically approved in writing by Lessor, Lessee will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the City Land.

7.2  No Liens Against Lessor’s Fee Title. Nothing in this Ground Lease authorizes Lessee to do any act that will encumber the fee simple title of Lessor in and to the City Land or to those parts of the Morrill Meadows/East Hill Parks outside the Project Land, nor shall Lessor’s fee simple estate in those lands be in any way subject to any claim of lien or encumbrance, whether claimed by operation of law or by virtue of any express or implied contract by Lessee. Any claim to a lien upon the City Land or any improvements constructed on the City Land by Lessee, arising from any act or omission of Lessee, shall accrue only against the leasehold estate and shall in all respects be subject to the paramount fee simple title of Lessor.

7.3  Lien Indemnification. Lessee shall indemnify, defend and hold harmless Lessor and the City Land from and against all claims of lien arising by virtue of or relating to construction of the Project and any other improvements or repairs made at any time to the City Land (including repairs, restoration and rebuilding) by, or at the direction of, Lessee. Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to the work and materials.

7.4  No Lessor Consent. Nothing in this Ground Lease will be construed as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, sub-contractor, laborer or material provider for any performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Project Land or any part of the Project Land, or the construction, alteration or repair of any building or other improvement on the Project Land, nor as giving Lessee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any liens against the fee of the City Land or buildings or other improvements on the City Land.

7.5  Lessee’s Duty to Remove All Liens. In the event any such claims or liens of any kind whatsoever shall be asserted or filed by any persons, firms or corporations performing labor or furnishing material in connection with the Project work, Lessee shall pay or cause the same to be discharged of record within thirty (30) days of receiving notice or alternatively, in the event Lessee disputes the validity or amount of any claim, Lessee shall post or provide Lessor with a bond or other security in a form and in an amount reasonably required by Lessor to ensure Lessor that title to the City Land (or any portion of the Morrill Meadows/East Hill Parks outside the Project Land) and any improvements remains free of the lien claimed as now or later amended.
8. **Indemnity.** Lessor and Lessee mutually agree that in any and all causes of action and/or claims or third-party claims arising out of or in connection with the terms, activities, use and/or operations of this Ground Lease, including the City Land and the Project, each party shall be responsible to the other only to the extent of each other’s comparative fault in causing the alleged damage or injuries. As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a party to this Ground Lease (“Indemnifying Party”), the Indemnifying Party shall have the duty to defend, save and hold the other party harmless and upon failure to do so, the Indemnifying Party shall pay the reasonable attorneys’ fees, costs and expenses incurred by the other party to this Ground Lease in defense of such claims and/or actions. Nothing contained within this Section 8 shall affect and/or alter the application of any other provision contained within this Ground Lease.

9. **Minimum Scope of Insurance Coverage for Lessee.** Lessee shall procure and maintain throughout the life of the Project and of this Ground Lease, insurance of the types and in the amounts attached on Exhibit E.

10. **Condemnation.** In the event of any taking, partial or whole, proceeds of the condemnation shall be paid as specified in the Project Lease.

11. **Events of Default by Lessee and Lessor’s Remedies.**

   11.1 **Events of Default.** The following occurrences or acts will constitute an event of default under this Ground Lease:

   (a) **Failure to Perform.** If Lessee (i) defaults in making payment when due of any rent or any other amount payable by Lessee under this Ground Lease, or (ii) defaults in the observance or performance of any other substantial provision of this Ground Lease or any of the Project Agreements by Lessee, and, in either case, if that default continues for thirty (30) days after Lessor has given Lessee written notice specifying the default and demanding that it be cured; except that, with respect to a default under subsection (ii), if by reason of the nature of the default, it cannot be cured by the payment of money and cannot with due diligence be wholly cured within the thirty (30) day period, so long as Lessee proceeds promptly to cure the default and prosecute the curing the default with all due diligence, the time to cure the default will be extended as may be necessary to complete the curing of the default with all due diligence; or

   (b) **Lessee’s Financial Condition.** If Lessee makes a general assignment for the benefit of creditors; or files a petition in bankruptcy; or is adjudicated as bankrupt or insolvent; or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation; or files an answer admitting or fails seasonably to contest the material allegations of a petition filed against it in any such proceeding; or seeks, consents to, or acquiesces in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its properties.

   11.2 **Remedies Upon Lessee’s Default.** In the event of any default by Lessee that remains uncured after the expiration of the respective period set forth above, Lessor may
exercise any remedy available to it at law or equity, including but not limited to actions for damages, and/or injunctive relief.

11.3 Cumulative Rights and Remedies. The rights and remedies reserved to Lessor in this Ground Lease, including those not specifically described, are cumulative, and except as provided by Washington statutory law in effect at the time, Lessor may pursue any and all of its rights and remedies at the same time or independently.

12. Quiet Enjoyment. If and so long as Lessee pays all rent and all other amounts payable when due and keeps all of the covenants and conditions required by it to be kept during this Ground Lease and performs all its other obligations, Lessor covenants and agrees that, except as may otherwise be provided in the Project Lease, Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the City Land by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

13. Lessee to Comply with Applicable Laws and Agreements.

13.1 Compliance with Laws. Lessee will not use the City Land or permit anything to be done in or about the City Land that will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or may later be enacted or promulgated. Lessee will, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or that may later be in force, and will obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee will further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or later constituted, relating to or affecting the condition, use, or occupancy of the City Land.

13.2 Compliance with Agreements. Lessee shall comply with all insurance policies and applicable agreements to which Lessee is a party or by which it is bound and all agreements that Lessee has notice of and are now in effect and applicable to the City Land.

14. Waiver Limitations. No delay or omission of Lessor to exercise any right or remedy will, except as expressly provided in this Ground Lease, be construed as a waiver of any such right or remedy or of any default by Lessee. The waiver by either party of any term, covenant or condition in this Ground Lease on the part of the other party to be performed shall not be deemed a waiver of that term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition. The subsequent acceptance of rent will not be deemed a waiver of any preceding breach by Lessee of any term, covenant or condition of this Ground Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor’s knowledge of the preceding breach at the time of acceptance of rent.

15. Notices. All notices or requests required or permitted under this Ground Lease shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid or by nationally recognized overnight courier and shall be deemed given when so delivered or received. All notices or requests shall be sent as follows:
If to Lessor:  City of Kent
Attention:  Parks, Recreation and Community Services
Director
220 Fourth Ave S.
Kent, WA  98032

If to Lessee:  YMCA of Greater Seattle
Attention:  SKC Regional Vice President
900 4th Avenue
Seattle, WA  98104

Any party may change the address to which notices shall be sent by notice to the other party in
the manner and with the effect set forth in this Section 15.

16.  Assignment and Subleasing.

16.1 Subleasing.  Lessor and Lessee intend that Lessee will enter into the
Project Lease with Lessor.  Any other proposed subleases of the City Land will be subject to the
review and written approval of Lessor.

16.2 Assignment.  Lessee may not assign, mortgage, or encumber this Ground
Lease or delegate the duties of Lessee under this Ground Lease without Lessor’s prior written
consent.  A consent to one assignment will not be deemed a consent by Lessor to any subsequent
assignment by another person.  This Ground Lease or any interest of Lessee in the Ground Lease,
may not be assigned by operation of law, without Lessor’s prior written consent.

17.  Miscellaneous.

17.1 Time of Essence.  Time is of the essence in regard to performance of the
covenants and agreements in this Ground Lease.

17.2 No Joint Venture or Agency.  Nothing contained in this Ground Lease
nor any of the acts of the parties will be construed nor is it the intent of the parties, to create a
joint venture or partnership between Lessor and Lessee, nor is either party the agent or
representative of the other, and nothing in this Ground Lease will be construed to create any
agency relationship or to hold either party liable to anyone for goods delivered or services
performed at the request of the other party.

17.3 Amendments.  No change in or addition to or waiver or termination of
this Ground Lease or any part of this Ground Lease, will be valid unless made in writing and
signed by or on behalf of the parties.  Lessor and Lessee agree to negotiate in good faith any
amendments to this Ground Lease that may be requested or required for Lessee to finance the
Project.

17.4 Governing Law.  This Ground Lease will be construed in accordance with
and governed by the laws of the State of Washington.
17.5 **Jurisdiction/Venue.** In the event any action is brought to enforce any of the provisions of this Ground Lease, the parties agree to be subject to exclusive in personam jurisdiction in the King County Superior Court for the State of Washington and agree that in any action, venue shall lie exclusively in King County, Washington.

17.6 **Headings.** The article, section and paragraph headings are for the purposes of identification and reference convenience only and may not be considered in construing this Ground Lease.

17.7 **Successors and Assigns.** Subject to the provisions restricting the sublease or assignment by Lessee, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

17.8 **No Merger.** In no event will Lessee’s leasehold interest merge with any estate of Lessor in or to the City Land or the leasehold interest of Lessor under the Project Lease. In the event Lessor acquires Lessee’s leasehold interest, that leasehold interest will not merge with Lessor’s fee interest in the City Land or Lessor’s leasehold interest under the Project Lease, and this Ground Lease and the Project Lease will remain in full force and effect.

17.9 **Counterparts; Recording of Memorandum.** This Ground Lease may be executed in several counterparts, each of which will be deemed an original for all purposes. Both Lessor or Lessee have the right to record a memorandum of this Ground Lease in a form comparable to that provided in the Project Lease and the parties will cooperate in the execution of the memorandum.

17.10 **Schedule of Exhibits.** This Ground Lease includes the following exhibits, attached and incorporated by this reference.

- **Exhibit A:** Legal description of Morrill Meadows and East Hill Parks, with attached drawing
- **Exhibit B:** Access Easement
- **Exhibit C:** Legal description of City Land with attached drawing
- **Exhibit D:** Legal description of Project Land with attached drawing
- **Exhibit E:** Insurance Requirements

17.11 **Paramount Title of Lessor.** Notwithstanding any provision of this Ground Lease permitting Lessee to assign or sublease all or any portion of this Ground Lease or the City Land or permitting Lessee's encumbrance of Lessee's leasehold interest under this Ground Lease by deed of trust or mortgage to any lender providing Construction Financing, and notwithstanding any consent or approval that Lessor may give to any assignment, sublease or mortgage, all those interests are subordinate to Lessor's paramount fee simple title to the City Land and, all those interests are subject to extinguishment by Lessor's exercise of any termination rights accorded under this Ground Lease or the expiration of this Ground Lease.
18. **Access Easement.** Consistent with the provisions of Section 1.3 of this Ground Lease, Lessor conveys to Lessee for the Term of this Ground Lease a non-exclusive easement ("Easement") over, under and across the easement area described and depicted on the attached Exhibit B for ingress to and egress from the City Land. Lessor further grants Lessee the right to construct, maintain, repair and reconstruct an access drive within the easement area. Any work or activity within the easement area shall be subject to the same terms and conditions applicable to the City Land pursuant to this Ground Lease. Any work within the easement area shall be performed in accordance with the provisions of the Project Lease applicable to the Project. Lessor specifically reserves for itself, its successors, assigns and grantees, the right to construct improvements over the easement area so long as such improvements do not unreasonably interfere with the use of the easement area for ingress to and egress from the garage to be constructed on the land by Lessee.]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Ground Lease as of the dates set forth below to evidence their agreement to the terms of this Ground Lease.

LESPOR:

CITY OF KENT,  
a Washington municipal corporation

APPROVED AS TO FORM:

By ________________________________  
Name: ________________________________  
Title: ________________________________  
Date: ____________________________ , 2018

By ________________________________  
City Attorney
STATE OF WASHINGTON  
COUNTY OF KING  

I certify that I know or have satisfactory evidence that ___________________________ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the ________________ of the CITY OF KENT, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given Under My Hand and Official Seal this _____ day of ________________, 2018.

Printed Name ___________________________________

NOTARY PUBLIC in and for the State of Washington, residing at ______________________________________
My Commission Expires ___________________________
LESSEE:

THE YOUNG MEN’S CHRISTIAN ASSOCIATION,
a Washington nonprofit corporation

By ___________________________________

Date: ____________________, 2018

STATE OF WASHINGTON COUNTY OF KING

I certify that I know or have satisfactory evidence that ________ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the __________ of THE YOUNG MEN’S CHRISTIAN ASSOCIATION, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ______ day of ____________, 2018.

Printed Name __________________________________

NOTARY PUBLIC in and for the State of Washington, residing at _________________________________

My Commission Expires ___________________________
EXHIBIT A

LEGAL DESCRIPTION OF MORRILL MEADOWS AND EAST HILL PARKS, WITH ATTACHED DRAWING
EXHIBIT B

Access Legal Description
EXHIBIT C

LEGAL DESCRIPTION OF CITY LAND WITH ATTACHED DRAWING
EXHIBIT D

LEGAL DESCRIPTION OF PROJECT LAND WITH ATTACHED DRAWING
EXHIBIT E
INSURANCE REQUIREMENTS
PROJECT LEASE AGREEMENT

between

THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE,
a Washington nonprofit corporation

as Landlord

and

CITY OF KENT,
a Washington municipal corporation

as Tenant

_____________, 2018

Kent YWCA Project
Kent, Washington
# PROJECT LEASE AGREEMENT

(City of Kent)

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PROJECT LEASE AGREEMENT

This Project Lease Agreement (“Lease”) is dated for reference purposes _____________, 2018 and is made by and between THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation (“Landlord” or “Developer”), and CITY OF KENT, a Washington municipal corporation (“City” or “Tenant”). Landlord and Tenant agree as follows:

RECITALS

A. The City is the owner of the real estate known as the Morrill Meadows and East Hill Parks, described on Exhibit D-1 and located in the City of Kent, King County, Washington.

B. The City has completed a boundary line adjustment to create a parcel (the “Kent YMCA Land”) within a portion of the City’s Morrill Meadows and East Hill Parks, more specifically described in Exhibit D-2, to be conveyed pursuant to the “Quit Claim Deed with Grantee Covenants, Releases and Indemnity,” dated _________, 2018 (“Conveyance Agreement”) on which the City, in consideration for conveying the Kent YMCA Land to Developer, desires that the Developer, at its cost, construct a multi-purpose community facility including, among other things, a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool, all pursuant to the Preliminary Plans and Outline Specifications (the “Kent YMCA Project”).

C. The City is the lessor under that certain Ground Lease dated _____________, 2018 (“Ground Lease”), pursuant to which City leases that certain real property located in the City of Kent, King County, Washington (“City Land”) more specifically described in Exhibit D-3, attached.

D. Pursuant to a Development Agreement by and between the City and the Developer, dated _________, 2018 (the “Development Agreement”) the Developer will construct, or cause to be constructed, the Kent YMCA Project on the Kent YMCA Land, and also will construct or cause to be constructed on the City Land, parking for 250 vehicles, a storm drainage system, outdoor multi-use sport courts, lawn and dog park areas, and other park and site improvements, including frontage improvements, also pursuant to the Preliminary Plans and Outline Specifications (“Ground Lease Improvements”).

E. Landlord and Tenant desire to enter into this Lease so that the Tenant will lease the Premises defined under this Lease and, when the Ground Improvements are substantially complete, occupy the Premises at the rent and subject to all of the terms, covenants and conditions set forth in this Lease.
AGREEMENT

1. Definitions. As used in this Lease, the following capitalized terms shall have the following meanings:

“Additional Rent” means any other monetary sum to be paid by Tenant to Landlord or to third parties under the provisions of this Lease (other than Monthly Rent).

“City Land” means the real property located in the City of Kent, King County, Washington, more particularly described in the Ground Lease and legally described in Exhibit D-3.

“Code” means the Internal Revenue Code of 1986, as amended, or any successor federal income tax statute or code. Any reference to a provision of the Code shall include the applicable Department of Treasury regulations.

“Commencement Date” means the first day of the calendar month following the Initial Occupancy Date, which is also the date upon which Tenant’s obligation to pay Monthly Rent under this Lease commences.

“Construction Contracts” means (i) the General Construction Contract and (ii) all other contracts for construction services entered into between Developer and any contractor, including General Contractor, for construction of any portion of the Project not covered by the General Construction Contract.

“Developer” means The Young Men’s Christian Association of Greater Seattle, a Washington nonprofit corporation and its successors and permitted assigns under the Development Agreement.

“Developer Obligation Date” means ________, [20__]. The Developer Obligation Date may be extended as provided in the Development Agreement.

“Development Agreement” means that certain Development Agreement between the parties, dated ________, 2018, as amended from time to time, which provides for the development, design, permitting and construction of the Project.

“Effective Date” means the date that this Lease is fully executed, acknowledged and delivered by Landlord and Tenant.

“Existing Hazardous Substances” means any Hazardous Substances existing on, in or under the Project Land, structures on the Project Land or the soil and groundwater under the Project Land, excluding any Hazardous Substances which may have been brought on site by Developer or contractor(s) during construction.

“Existing Hazardous Substances Costs” means any and all costs of every type and description relating to Existing Hazardous Substances, including without limitation, costs included in the Project Costs for remediation of Existing Hazardous Substances.

“Event(s) of Default” has the meaning set forth in Section 22 of this Lease.

“Expiration Date” means __________, unless adjusted as set forth in Section 3 of this Lease, or unless sooner terminated pursuant to this Lease.

“Final Acceptance” means the City’s written approval and concurrence that certain events, more fully defined in Section 10 of the Development Agreement, have occurred.

“Frontage Improvements” means those improvements to 248th Street to improve a portion of that street in the vicinity of the Project, under City of Kent regulatory requirements, including sidewalk improvements, undergrounding of utilities, street lighting, signage, striping and lane markings, and other required street improvements.

“General Construction Contract” means the agreement between Landlord and the General Contractor for construction of the Project.

“General Contractor” means Abbot Construction, a Washington _________.

“Ground Lease” means the long-term ground lease entered into, or to be entered into, by The Young Men’s Christian Association of Greater Seattle, as tenant, and City of Kent as landlord for the City Land.

“Ground Lease Improvements” means the design and construction of parking for 250 vehicles, a storm drainage system, outdoor multi-use sport courts, lawn and dog park areas, and other park and site improvements, including the Frontage Improvements, to be completed pursuant to the Development Agreement.

“Hazardous Substance” means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.
“Initial Occupancy Date” means the date upon which each of the following events shall have occurred such that the Tenant may begin its occupancy of the Premises and Tenant shall commence payment of Monthly Rent:

(a) General Contractor shall have notified Developer in writing that the Project is ready for occupancy, in accordance with the Construction Contracts, subject only to the completion of normal Punch List items (except that City and Developer may mutually agree to delayed completion of Frontage Improvements after the Initial Occupancy Date);

(b) The City of Kent shall have issued a Certificate of Occupancy such that Developer and the Tenant are permitted to and could, pursuant to such issued Certificate of Occupancy, physically occupy the Kent YMCA (in the case of the Developer) and the Ground Lease Improvements (in the case of the Tenant) for Permitted Uses (if Frontage Improvements are not completed by the Initial Occupancy Date, a Temporary Certificate of Occupancy for the rest of the Project will suffice);

(c) General Contractor (and to the extent required by Tenant, any subcontractors) shall have issued, with respect to the Project, its partial and/or conditional release of lien for work performed prior to the date of the Initial Occupancy Date in form satisfactory to Developer, with Tenant concurrence (except as may apply to Frontage Improvements); and

(d) Developer, with Tenant concurrence, which will not be unreasonably delayed, shall have accepted the Kent YMCA as ready for occupancy, and Tenant shall have accepted the Ground Lease Improvements, subject to completion of the Punch List items and any remaining Frontage Improvements agreed upon by Developer, with Tenant concurrence.

“Kent YMCA” means the community center facility to be constructed on the Kent YMCA Land. The Kent YMCA will contain a multi-purpose community facility including, among other things, a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool, as more fully described in the Preliminary Plans and Outline Specifications, and includes all HVAC, electrical and other building systems.

“Kent YMCA Project” means the project to design and construct the Kent YMCA.

“Kent YMCA Land” means the real property and improvements described on Exhibit D-2.


“Laws” means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of this Lease or at any time during the Term, including without limitation, any regulation or order of a quasi-official entity or body
(e.g., board of fire examiners or public utilities) and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

“Lease Year” means each succeeding year of the Term, commencing with the Commencement Date and ending with the date which is one (1) day less than one (1) year later.

“Monthly Rent” means the rent payable by Tenant under this Lease from the Commencement Date to and including the Expiration Date in the amounts for each Lease Year as set forth on the Schedule of Monthly Rent attached as EXHIBIT A and by this reference incorporated in this Lease.

“Mortgage” means any leasehold mortgage or deed of trust securing the Developer’s construction financing for the Project.

“Notice Address” means, as to each of the Notice Parties, its respective address as specified in or pursuant to Section 32.7 of this Lease.

“Notice Parties” means each of Landlord and Tenant.

“Operating Costs” has the meaning given to it in Section 5 of this Lease.

“Preliminary Plans and Outline Specifications” are the renditions for the Project (i.e., the [seventy percent (70%)] design development documents), schedules of which plans and specifications are attached as EXHIBIT B and incorporated into this Lease by this reference.

“Premises” means the Ground Lease Improvements to be constructed on the City Land and a leasehold interest in the City Land pursuant to the Ground Lease.

“Project” means the total design and construction, including demolition of existing improvements on the Project Land, all professional design services, and all labor, materials and equipment used or incorporated in such design and construction of the Project pursuant to the Development Agreement. The Project shall include work consistent with and reasonably inferable from the approved Preliminary Plans and Outline Specifications as necessary to produce the intended results.

“Project Budget” means the budget for the Project as revised from time to time, in accordance with the Development Agreement.

“Project Contingency” means the contingency by that name set forth in the Project Budget.

“Project Costs” has the meaning set forth in the Development Agreement. “Project Land” means, together, the real property and improvements consisting of the Kent YMCA Land and the City Land, as more particularly described on Exhibits D-2 and D-3.
“Project Schedule” means the schedule for development and construction of the Project as revised from time to time in accordance with the Development Agreement; provided, however, that in no event shall the Project Schedule provide for the Initial Occupancy Date to occur later than the Developer Obligation Date without the written concurrence of Tenant hereunder and City under the Development Agreement. The initial Project Schedule is set forth in EXHIBIT C attached to this Lease and by this reference incorporated into this Lease.

“Punch List” means a list of items required to be completed prior to Final Acceptance, that are minor items which do not affect the parties’ ability to use the applicable portion of the Project for the Permitted Use.

“Significant Unexpected Underground Conditions” means unexpected underground conditions (such as discovery of archeologically significant materials, Existing Hazardous Substances not reflected in Tenant’s soil studies, or other unexpected underground conditions) that cause the total Project Budget to increase by more than ten percent or delay the Project Schedule by more than six months.

“Rent” means the sum of Monthly Rent and Additional Rent, if any, each as defined in this Lease.

“Requirements of Law” means all requirements relating to land and building construction (including those specifically applicable to parties’ contemplated use of the Project for the Permitted Use, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Project Land or any part of the Project Land.

“State Nonprofit Corporation Act” means the Washington Nonprofit Corporation Act, Chapter 24.03 RCW, as amended from time to time.

“Taxes” means all real property taxes and assessments (including assessments for special improvements), license and permit fees, charges for public utilities, [leasehold excise taxes], other excise taxes, levies, sales, use and occupancy taxes, any tax or charge assessed against the Rent or fair market value of the Premises and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of every kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen of every character (including interest and penalties thereon) which at any time from and after the Commencement Date may be imposed, levied upon or assessed against or which arise with respect to or constitute a lien upon the City Land, the Premises (or any part thereof), the leasehold estate created by this Lease or any part thereof, or any estate, right or interest therein, or any occupancy, use or possession of or activity conducted on the Premises or any part thereof. Taxes shall not include any tax computed on the basis of Landlord’s net income.
“Tenant” means the City of Kent, a Washington municipal corporation, and its successors and permitted assigns, as the tenant under this Lease.

“Tenant’s Personal Property” means Tenant’s furniture, equipment and movable property placed in the Premises by the Tenant and any property installed in or about the Premises by Tenant. Tenant shall provide Tenant’s Personal Property at Tenant’s sole cost and expense.

“Term” means the period beginning on the Effective Date and ending on the Expiration Date.

“Unavoidable Delays” means any delay in the performance by Developer or the General Contractor of its obligations with respect to construction of the Project caused by strikes (other than those directly caused by Developer’s acts, omissions or failure to negotiate in good faith), acts of God, force majeure, unusually severe weather conditions, unavoidable casualties, acts of the public enemy, acts of terrorists, governmental embargo restrictions, or causes beyond the reasonable control of Developer or the General Contractor, which, after the exercise of due diligence to mitigate the effects thereof, delay construction of the Project. Unavoidable Delays will entitle Developer to an extension of the Developer Obligation Date but will in no way entitle Developer to compensation from the City.

“Utilities” means all utilities and services furnished to the Premises, including without limitation, gas, electricity, water, sewer, garbage collection, and telephone service.

2. Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. Tenant shall not, however, be entitled to occupy the Premises until the Initial Occupancy Date.

3. Term. The Term shall commence on the Effective Date and shall expire on the Expiration Date; provided, however, that the obligation of the Tenant to pay Monthly Rent shall not commence until the Commencement Date. Landlord and Tenant shall confirm the Commencement and Expiration Dates by executing within fifteen (15) days after the Commencement Date, a written Confirmation of Commencement and Expiration Dates in the form attached as EXHIBIT E, which Confirmation of Commencement and Expiration Dates shall become a part of this Lease and be binding upon Landlord and Tenant to establish the actual Commencement Date and Expiration Date of the Term. Notwithstanding that the obligation of Tenant to pay Monthly Rent under this Lease shall not commence until the Commencement Date, all of the other terms and provisions of this Lease shall be effective from and after the Effective Date (except as otherwise provided in this Lease).


4.1 Obligation to Pay Rent. Commencing on the Commencement Date, Tenant shall pay without deduction, offset, prior notice or demand, in advance on the first day of each month during the Term an amount equal to Monthly Rent. Tenant acknowledges that time is of the essence in payment of Monthly Rent. The Schedule of Monthly Rent shall be amended to reflect reductions of rent (prorated over a period of [36] months) reflecting unexpended Project Contingency and receipt of federal New Market Tax Credits as provided in the
Development Agreement. In such event, the Schedule of Monthly Rent shall be replaced with a new Schedule of Monthly Rent reflecting such reductions.

4.2 Proration of Rent. Monthly Rent for any partial month shall be prorated on a daily basis at the rate of 1/30th of the Monthly Rent. All Monthly Rent shall be paid to Landlord at Landlord’s Notice Address or as otherwise directed in writing by Landlord.

4.3 Rent a General Obligation. The aggregated portions of Monthly Rent payments over the term of the Lease that are allocable to principal constitute a general indebtedness of the Tenant. Payments of Monthly Rent, and any Additional Rent that shall from time to time become due under this Lease, are payable from tax revenues of the Tenant and such other money as is lawfully available for the making of such payments. For as long as the Lease is in effect, the Tenant irrevocably pledges to include in its annual regular property tax levy amounts sufficient, together with other money that is legally available, to pay the Monthly Rent as the same shall become due. The full faith, credit and resources of the Tenant are irrevocably pledged for the prompt payment of Monthly Rent under the Lease, and that pledge shall be enforceable in mandamus against the Tenant.

5. Payment of Operating Costs, Taxes and Utilities.

5.1 Absolute Net Lease. From and after the Commencement Date, this Lease shall be an absolute net lease. From and after the Commencement Date, Tenant shall (i) provide for and pay costs of maintenance and operation in accordance with Section 10.1, (ii) pay Taxes, (iii) pay Utilities, and (iv) pay all Operating Costs, except as modified by the Operating Agreement. Prior to the Commencement Date, all Operating Costs, if any, Taxes and Utilities related to construction of the Project shall be paid or caused to be paid by Developer pursuant to the Development Agreement.

5.2 Operating Costs. Tenant shall pay all Operating Costs from and after the Commencement Date. Operating Costs means any and all costs and expenses directly related to ownership and operation of the Premises, excluding those costs described in Section 5.3.

5.3 Exclusions from Operating Costs. Operating Costs shall exclude:

(a) Project Costs, including the cost of construction;

(b) fines, penalties and interest penalties incurred as a result of Landlord’s negligence or unwillingness to make payments when due or take such other actions as may be required;

(c) legal fees, accountant’s fees and other expenses of Landlord incurred in connection with (i) disputes with Tenant or associated with the interpretation of the terms of this Lease; or (ii) legal proceedings arising out of Landlord’s violation of the terms of this Lease;

(d) costs of any service provided to Tenant for which Landlord is reimbursed, or any other expense for which Landlord is or will be reimbursed, by another source (e.g., expenses covered by insurance or warranties);
(e) repairs or replacements made to rectify or correct any latent defect(s) in the original design, materials or workmanship of the Project;

(f) repairs or replacements necessitated by the negligence or willful misconduct of Landlord, Landlord’s employees, contractors or agents; and

(g) any cost of repair, replacement, operation and/or maintenance of the Premises incurred as a direct result of the ongoing construction of the Project following the Initial Occupancy Date, all of which shall be payable as part of the Project Costs.

5.4 Payment of Taxes by Tenant. Tenant shall be liable only for Taxes that accrue from and after the Commencement Date. Tenant shall pay all Taxes directly to the applicable governmental agency prior to delinquency and shall provide proof of such payment promptly to Landlord. To the extent Taxes or other charges can be paid in installments, Tenant may pay such Taxes in installments. With respect to any general or special assessments which may be levied against or upon the Premises, or which under the Laws then in force may be evidenced by improvement or other bonds or may be paid in annual installments, only the amount of such annual installment, and interest due thereon, shall be included within the computation of Taxes.

5.5 Real Property Tax Statements. Tenant shall make appropriate arrangements to receive directly from the applicable governmental agency assessment notices and real property tax statements for the current year, and Tenant shall provide a copy thereof promptly to Landlord.

5.6 Right to Contest Taxes. If Landlord receives prior notice that an appraisal of the Premises, or any portion thereof, will be conducted for real property tax purposes, Landlord shall so notify Tenant and permit Tenant to be present during such appraisal if Tenant so elects. Tenant shall have the right in Landlord’s name and stead, and at Tenant’s sole expense, to contest the validity or amount of any real property taxes provided all such taxes are paid when and as due. Landlord shall cooperate with Tenant and provide reasonable assistance with respect to any such contest, including, without limitation, such information and supporting documents as may be reasonably requested by Tenant. Notwithstanding any provision of this Lease to the contrary, Tenant shall not be required, nor shall Landlord have the right, to pay, discharge or remove any such real property tax so long as no Event of Default has occurred and Tenant is contesting the existence, amount, applicability or validity thereof by appropriate proceedings conducted in good faith with due diligence. In the event Landlord shall obtain a tax refund as a result of any such tax appeal or other proceedings Tenant shall be entitled to, and Landlord shall promptly pay to Tenant, all such tax refunds.

5.7 Payment of Operating Costs. From and after the Commencement Date, Tenant shall in accordance with Section 5.2, pay all Operating Costs. If Tenant fails to pay Taxes or Utilities, Landlord may pay such items and demand reimbursement from Tenant within ten (10) days after making such advance.

5.8 Warranties. During the Term of this Lease, Landlord shall exert its good faith and diligent efforts to enforce any and all applicable warranties, express or implied, in
connection with defects which may arise in the original design, materials or workmanship of the Ground Lease Improvements as originally constructed. Following Final Acceptance, at Tenant’s request, Landlord shall assign to Tenant any warranty right held by Landlord with respect to the original design, materials or workmanship of the Premises, as originally constructed. After expiration of any applicable warranty period, Tenant shall be fully responsible for the cost of the maintenance and repair of the Premises pursuant to the terms of this Lease.

6. Utilities. From and after the Commencement Date, Tenant shall be solely responsible for and shall pay separately for all charges for Utilities used or consumed in the Premises. Landlord shall not be required to provide any Utilities to Tenant, and Tenant shall make any necessary arrangements to have all such Utilities billed directly to and paid for directly by Tenant.

7. Use. Tenant intends to use the Premises for park and recreation purposes, and may use the Premises for any other lawful use.

7.1 No Insurance Cancellation. Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises.

7.2 Compliance with Laws. From and after the Commencement Date, Tenant shall comply with all Laws concerning the Premises and Tenant’s use of the Premises, including without limitation, Environmental Laws. Tenant shall not use the Premises for the transportation, storage or generation of any Hazardous Substances in violation of Environmental Laws. From and after the Commencement Date or such earlier date as Tenant occupies the Premises, and to the extent permitted by law, Tenant shall absolutely and unconditionally indemnify, defend and hold Landlord harmless from and against any and all debts, demands, obligations, liens, judgments, claims, liabilities, losses, damages, cleanup costs and expenses (including reasonable attorneys’ fees) now or later arising in connection with the presence, transportation, storage, disposal or handling of Hazardous Substances located in, on or about the Premises or Land caused by or resulting from the actions of Tenant, its agents or employees after the Commencement Date or such earlier date as Tenant occupies the Premises, excluding (a) any such debt, demand, obligation, lien, judgment, claim, liability, loss, damage, cleanup cost or expense resulting from the negligent actions or omissions of Landlord and its respective agents, employees, contractors, subcontractors or invitees; or (b) any debt, demand, obligation, lien, judgment, claim, liability, loss, damage, cleanup cost or expense as a result of Landlord’s violation of any contractual obligation under this Lease. This indemnification shall survive the Expiration Date.

7.3 No Waste, Nuisance or Damage. Tenant shall not use the Premises in any manner that will constitute waste of the Premises or nuisance and Tenant shall not do anything on the Premises that will cause damage to the Premises.

7.4 Tax Covenants. At all times from and after the Effective Date, Landlord (a) shall maintain its purposes and engage only in activities which are in furtherance of its purposes and which are permitted by the State Nonprofit Corporation Act; (b) will maintain its status as a nonprofit corporation under the State Nonprofit Corporation Act; (c) shall not encumber, pledge, hypothecate or grant a security interest in all or any part of the Premises or
except as consented to by Tenant in writing; and (d) shall not allow any of its income to inure to
the benefit of a private person. At all times during the term of this Lease, Landlord shall not
assign its rights under this Lease without the prior written consent of Tenant.

8. Liens.

8.1 Covenant Against Liens. Landlord shall not during the Term of this
Lease suffer or permit any liens to be attached to, upon or against the Premises, or any portion
thereof or any Rent payable under this Lease for any reason, including without limitation, liens
arising out of the possession, use, occupancy, acquisition, construction, repair, or rebuilding of
the Premises or by reason of the furnishing of labor, services, materials, or equipment to the
Premises or to Landlord. Landlord shall indemnify, protect, defend and hold Tenant harmless
from and against all liabilities, losses, damages, expenses and costs (including reasonable
attorneys’ fees and costs) incurred in connection with any such lien. Landlord’s obligations
pursuant to this Section 8.1 shall survive the expiration of this Lease. From and after the
Commencement Date, Tenant shall not during the Term of this Lease suffer or permit any liens
to be attached to, upon or against the Premises, or any portion thereof or its leasehold interest in
the Premises for any reason, including without limitation, liens arising out of the possession, use,
occupancy, acquisition, maintenance, operation, repair, or rebuilding of the Premises or by
reason of the furnishing of labor, services, materials, or equipment to the Premises or to Tenant.

8.2 Covenant to Remove Liens. Landlord will promptly, and in all events
within thirty (30) days following the attachment of same, remove and discharge any and all liens
which attach to, upon or against the Premises or any portion thereof, or any leasehold interest of
Tenant created under this Lease (other than liens or encumbrances arising through the actions of
Tenant). Landlord reserves the right to contest the validity or amount of any such Lien in good
faith provided that, within thirty (30) days after the filing of such lien, Landlord discharges said
lien of record or records a bond which complies with the requirements of RCW 60.04.161
eliminating said lien as an encumbrance against the Premises. In the event Landlord shall fail to
so remove any such lien, Tenant may take such action as Tenant shall reasonably determine to
remove such lien and all costs and expenses incurred by Tenant including, without limitation,
amounts paid in good faith settlement of such lien, and attorneys’ fees and costs shall be paid by
Landlord to Tenant together with interest thereon at the rate of twelve percent (12%) interest per
annum from the date advanced until paid. Landlord’s obligations pursuant to this Section 8.2
shall survive the expiration of this Lease.

8.3 Tenant’s Disclaimer. Notwithstanding the consent or request of Tenant,
express or implied, for the performance of any labor or services or for the furnishing of any
materials or equipment for any construction, alteration, addition, repair or demolition of or to the
Premises (or any part thereof), LANDLORD AND TENANT AGREE AND NOTICE IS
HEREBY GIVEN THAT TENANT WILL NOT BE LIABLE FOR ANY LABOR, SERVICES,
MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO LANDLORD,
GENERAL CONTRACTOR OR ANYONE HOLDING AN INTEREST IN THE PREMISES
(OR ANY PART THEREOF) THROUGH OR UNDER LANDLORD OR GENERAL
CONTRACTOR, AND THAT NO CONSTRUCTION OR OTHER LIENS FOR ANY SUCH
LABOR, SERVICES, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT
THE INTEREST OF TENANT IN THE PREMISES. Nothing in this Section 8.3 shall relieve Tenant of its obligations to pay Rent under this Lease.

9. Construction of Project. Tenant would not have entered into this Lease but for the agreement by Landlord to provide the Community Benefits defined and set forth in the Development Agreement and to undertake, at Landlord’s sole cost and expense, the construction of the Ground Lease Improvements, including without limitation (i) the obtaining of financing for the Project, (ii) the acquisition of a leasehold interest in the City Land by way of the Ground Lease, and (iii) the construction and equipping of the Premises for use by Tenant. Accordingly, with no part of the cost of construction of the Project becoming an obligation of the Tenant, Landlord shall diligently cause the Project to be designed, constructed and prosecuted to completion in a good and workmanlike manner and in accordance with the Development Agreement, free and clear of all liens and otherwise in accordance with the requirements of this Lease, all as provided in the Development Agreement.

9.1 Savings. In the event that Tenant determines, pursuant to Section 3 of the Development Agreement, to apply Tenant’s share of the equity contribution to reduce its obligation to pay Monthly Rent, and/or in the event that excess Project Contingency is applied pursuant to Section 7(f) of the Development Agreement to reduce Tenant’s obligation to Monthly Rent, the Schedule of Monthly Rent shall be replaced with a new Schedule of Monthly Rent reflecting such reductions pursuant to Section 4.1.

9.2 Termination of Lease. As provided in Section 7(b) of the Development Agreement, the Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays; (ii) City-Caused Delays, (iii) delay from Significant Unexpected Underground Conditions delays; and (iv) permit related delays, all as provided in the Development Agreement. Upon sixty (60) days’ prior written notice to Landlord and in the event that the Initial Occupancy Date has not occurred for any reason whatsoever including, but not limited to, Unavoidable Delays described in Section 9.17 above by [Outside Date], Landlord shall be in default under this Lease and Tenant shall have the right to terminate this Lease, without further liability to Landlord.

10. Maintenance and Modification.

10.1 Maintenance and Repair. Except as provided under the Development Agreement and except for damage caused by the negligent acts or omissions of Landlord, from and after the Commencement Date, Tenant shall, at Tenant’s sole cost and expense, maintain or cause to be maintained the Premises and appurtenances and every part thereof in good order, condition and repair and will take all action and will perform all interior and exterior, structural and non-structural, foreseen and unforeseen, ordinary and extraordinary, maintenance and repairs required to keep all parts of the Premises in good repair and condition, subject only to ordinary wear and tear. Except as otherwise expressly provided in this Lease and except for warranty claims which Landlord shall cure or remedy in accordance with the provisions of the Development Agreement, Landlord shall not be required to pay for the cost required to maintain all or any part of the Premises in good order, condition and repair.
10.2 Management of Premises; Accounting.

(a) Property Management. Tenant may at any time following Final Acceptance request that Landlord enter into a property management agreement in form and substance satisfactory to Landlord and Tenant under which the appointed property manager may assume some or all of the obligations of a property manager for all or a portion of the Premises. Landlord may also enter into a property management agreement in form and substance satisfactory to Landlord in accordance with the provisions of Section 10.3 of this Lease. The appointed property manager shall at all times operate the Premises in compliance with all Requirements of Law and in compliance with the terms and provisions of this Lease and the property management agreement.

(b) Financial Statements; Certifications. Upon request and annually thereafter within ninety (90) days after the close of each fiscal year of Landlord, Landlord shall deliver to Tenant the (i) annual audited financial statements of Landlord; and (ii) a certificate executed by an officer of Landlord certifying compliance by Landlord with the requirements of this Lease.

10.3 Landlord’s Remedies. Tenant shall diligently pursue all necessary or appropriate maintenance and repairs in accordance with its obligations under Section 10.1, but failure to do so shall not constitute an Event of Default. However, if, based on inspections of the Premises permitted under Section 25, Landlord becomes aware of needed maintenance or repairs, Landlord shall provide Tenant written notice of any maintenance or repair required to the Premises. Tenant shall have sixty (60) days after receipt of notice from Landlord detailing the need for maintenance or repair, to commence to perform such maintenance and repair, except that Tenant shall perform its obligations as soon as reasonably possible if the nature of the problem presents a hazard or emergency. If Tenant does not perform such maintenance and repair within the time limitations set forth in this Section 10.3, provided written notice has been given to Tenant as provided in this Section 10.3, Landlord may, with the prior written consent of Tenant, perform such maintenance and repair and shall, in that event, have the right to be reimbursed by Tenant for the sum it actually expends in the performance of such work. In connection with Landlord’s exercise of default remedies under Section 22, Landlord shall have the right, but not the obligation, upon thirty (30) days’ written notice to Tenant, to enter into a property management agreement in form and substance satisfactory to Landlord under which the appointed property manager shall assume all obligations of a property manager for the Premises. Any such property management agreement shall comply with the requirements of Section 10.2(a).

10.4 Modifications, Alterations and Additions. From and after the Commencement Date, Tenant may, at Tenant’s sole cost and expense, make modifications, alterations and additions to the Premises provided that such modifications, alterations and additions do not decrease the value of the Premises, and such modifications, alterations and additions shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Laws and the requirements of all insurance policies required to be maintained by Tenant, without further consent from Landlord. Landlord shall, upon reasonable notice, have access to all plans and specifications relating to alterations and modifications made by Tenant to the Premises.
11. **Landlord Financing of Project.** Landlord shall not mortgage, pledge, encumber or assign the Premises in whole or in part except with the prior written approval of the Tenant.Copies of the Mortgage shall be provided to and shall be approved by Tenant, which approval shall not be unreasonably withheld. Any Mortgage shall expressly provide that so long as Tenant is not in default under any of the terms, covenants or conditions of this Lease, the beneficiary under the Mortgage shall not disturb Tenant’s possessory rights in the Premises in the event such beneficiary should foreclose the Mortgage.

12. **Construction Liens.** From and after the Commencement Date, Tenant shall pay all costs for modifications, alterations and additions done by it or caused to be done by it on the Premises as permitted by this Lease (other than the construction of the Project) and Tenant shall keep the Premises free and clear of all construction liens resulting from modifications, alterations and additions done by or for Tenant; provided, however, Tenant shall have the right to contest the correctness or validity of any such lien by appropriate proceedings conducted in good faith with due diligence. Within thirty (30) days following written notice from Landlord, Tenant shall discharge said lien of record or record a bond which complies with the requirements of RCW 60.04.161 eliminating said lien as an encumbrance against the Premises if in the reasonable exercise of Landlord’s judgment the protection of the Premises or Landlord’s interest therein shall require such payment. In the event Tenant shall fail to so remove any such lien, Landlord may take such action as Landlord shall reasonably determine to remove such lien and all costs and expenses incurred by Landlord including, without limitation, amounts paid in good faith settlement of such Lien and attorneys’ fees and costs shall be paid by Tenant to Landlord. Tenant’s obligations pursuant to this Section 12 shall survive the Expiration Date.

13. **Indemnity and Hold Harmless.** In any and all causes of action and/or claims or third party claims arising out of or in connection with the terms, activities, use and/or operations of this Lease, including the Premises, Landlord and Tenant shall each be responsible to the other only to the extent of its own comparative fault in causing the alleged damages or injuries, to the extent permitted by law. As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a party to this Lease, the indemnifying party shall have the duty to defend, save and hold the other party harmless and upon failure to do so, the indemnifying party shall pay reasonable attorneys’ fees, costs, and expenses incurred by the other party to this Lease in defense of said claims and/or actions.

Nothing contained within this Section 13 shall affect and/or alter the application of any other provision contained within this Lease.

14. **Minimum Scope of Insurance Coverage for Landlord.** [To be reviewed by risk management personnel] During the Term of this Lease, Landlord shall at a minimum maintain the insurance provided on Exhibit G.

15. **Minimum Scope of Insurance Coverage for Tenant.**

15.1 **General Liability.** During the Term of this Lease, Tenant, at its sole cost and expense, shall obtain and keep in force throughout the Term of this Lease a Commercial General Liability insurance policy on an occurrence basis insuring Tenant against claims for injuries to persons and property damage liability. “Commercial General Liability” insurance
shall mean Insurance Services Office form number (CG00 01) with a limit of not less than $1,000,000 combined single limit per occurrence, and $2,000,000 general aggregate. Tenant shall add Landlord as additional insureds to its Commercial General Liability insurance policy. In addition, until Final Acceptance, Tenant shall add General Contractor as additional insureds to its Commercial General Liability insurance policy.

15.2 Municipal Insurance Coverage by Tenant. Tenant’s insurance requirements in Sections 15.1, 18.1 and 18.2 shall be fulfilled by Tenant’s membership in and coverage under Washington Cities Insurance Authority, a municipal insurance pool created in accordance with RCW 48.62.020 and RCW 39.34, or any other similar intergovernmental insurance pool.

15.3 Workers’ Compensation. Tenant retains the right to be self-insured for all of its workers’ compensation liability exposure. If Tenant determines to be self-insured for its workers’ compensation liability, Tenant shall, at its own expense, maintain through its self-insurance program coverage for its workers’ compensation liability exposure for the duration of the Term of this Lease. Tenant shall provide Landlord with at least thirty (30) days’ prior written notice of any change in the Tenant’s workers’ compensation insurance status and shall provide Landlord with a certificate of self-insurance as adequate proof of insurance.


16.1 Builders Risk Insurance. No later than commencement of construction of the Project, Landlord shall maintain Builders All Risk Coverage as provided in Exhibit G.

16.2 Coverage for Premises. From and after the Commencement Date, Tenant shall cause the Premises to be insured at 100% of replacement value for fire and other perils currently covered by a special causes of loss commercial property insurance form. Such coverage shall include twelve (12) months of rental interruption coverage. Tenant shall cause the Premises to be insured against the perils of earth movement and flood, either as part of the aforementioned commercial property policy, or under a separate policy or policies. Such earth movement and flood insurance shall include twelve (12) months of rental interruption coverage. Tenant shall cause coverage to be maintained against loss arising from earth movement and flood so long as such coverage is available at a commercially reasonable cost and in coverage amounts which are commercially available, but shall not be in default under this Lease if coverage is no longer written, is unavailable for properties comparable to the Premises or is not available at commercially reasonable premium amounts. Tenant shall provide Landlord with thirty (30) days’ prior written notification of material changes in coverage. Tenant shall, upon request, furnish Landlord with satisfactory evidence that such coverage is in effect.

16.3 Coverage for Tenant’s Personal Property. Landlord shall have no obligation to insure any of Tenant’s Personal Property.

17. Waiver of Subrogation. Landlord and Tenant shall cause their respective property insurance carriers to release and waive all rights of subrogation against the other to the extent a loss is covered by property insurance in force. Landlord and Tenant mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against
under their respective fire insurance policies, including any extended coverage endorsements hereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of Landlord or Tenant.

18. Other Insurance Matters.

18.1 Insurance Requirements. Each party shall furnish the other party with certificates of insurance and endorsements as required by this Lease. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for Landlord’s insurance are to be on forms approved by Tenant and are to be received and approved by the Tenant prior to the Effective Date of this Lease. The certificate and endorsements for Tenant’s insurance are to be received and approved by the Landlord prior to the Effective Date or Commencement Date as appropriate. Tenant and Landlord each reserves the right to require complete certified copies of all required policies at any time.

18.2 Insurance Prior to the Commencement Date. Prior to the Commencement Date, Landlord will obtain and maintain insurance of the types and in the amounts attached in Exhibit G to the Development Agreement and will require the General Contractor to maintain the same types and limits of insurance, naming the Tenant as an additional insured.

19. Destruction. In the event that the Premises are damaged or destroyed by fire or other casualty following the Commencement Date, this Lease shall not terminate nor shall there be any abatement of Monthly Rent or Additional Rent otherwise payable by Tenant under this Lease; provided, however, that Tenant may elect to prepay Monthly Rent in accordance with Section 35; and provided further that all insurance proceeds shall be applied to replace or repair the City Project.

20. Condemnation.

20.1 Total Condemnation. If there is a taking or damaging of all or substantially all of the Premises by the exercise of any governmental power, whether by legal proceedings or otherwise, by a governmental agency with jurisdiction over the Premises or a transfer by Landlord either under threat of condemnation or while legal proceedings for condemnation are pending (a “Condemnation”) such that there can be no reasonable use of the Premises by Tenant, as reasonably determined by Tenant, this Lease shall terminate on the date the condemnor has the right to possession of the property being condemned. The entire award with respect to a taking of the Premises (including Tenant’s leasehold estate under this Lease) shall be paid to Tenant.

20.2 Partial Condemnation. If, prior to Final Acceptance of the Project, there is a partial taking of the Premises by Condemnation and Landlord reasonably determines that the Project can be completed in accordance with the Construction Contracts, such condemnation proceeds shall be used to pay Project Costs of the Project. Following Final Acceptance, if there is a partial taking of the Premises by Condemnation, the condemnation proceeds shall be applied to pay the costs of restoration of the Premises. In no event shall this Lease terminate as a result
of a partial taking nor shall there be any abatement of Monthly Rent or Additional Rent otherwise payable by Tenant under this Lease; provided, however, that Tenant may elect to prepay Monthly Rent in accordance with Section 35.

21. **Assignment of Project; Subletting.** Landlord shall not assign its interest in this Lease or in the Premises without the prior written consent of Tenant and any attempted assignment in violation of the consent requirements under this Section 21 shall be null and void. Tenant shall not assign its interest in this Lease or in the Premises without the prior written consent of Landlord. Tenant may sublease the Premises or any portion thereof, to the extent and on the terms and conditions set forth under Section 7 of this Lease and so long as the execution of such sublease would not violate the provisions of Section 7; provided, however, that under no circumstances shall Tenant be released or relieved from any of its obligations under this Lease. Any such assignment or sublease as provided for in this Section shall be in writing and shall require such assignee or subtenant to comply fully with the terms of this Lease, including, without limitation, the provisions of Section 7 regarding use of the Premises. Tenant shall provide Landlord with written notice of any such assignment or sublease and a copy of any such assignment or sublease documentation.

22. **Default by Tenant.** The occurrence of any of the following shall constitute an Event of Default by Tenant under this Lease:

22.1 **Payment.** Failure (a) to make any Monthly Rent payments due under this Lease if the failure to pay is not cured within seven (7) days after written notice of such failure has been given by Landlord to Tenant, or (b) failure to make any other payment required if the failure to pay is not cured within ten (10) days after written notice of such failure has been given by Landlord to Tenant.

22.2 **Other Failure to Perform.** Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such default has been given by Landlord to Tenant. If the default cannot reasonably be cured within thirty (30) days, then Tenant shall not be in default under this Lease if Tenant commences to cure the default within thirty (30) days and diligently and in good faith continues to cure the default; provided, however, that if such default is of a nature such that it cannot be cured within ninety (90) days Tenant shall obtain the written approval of Landlord to continue its efforts to cure such default following the ninety (90) day cure period.

22.3 **Late Charges; Interest on Past Due Monthly Rent.** Tenant acknowledges that a late payment of Monthly Rent under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which are difficult to ascertain. Therefore, in the event Tenant shall fail to pay any installment of Monthly Rent due under this Lease for fifteen (15) days after the date such amount is due, Tenant shall also pay Landlord a late charge equal to two percent (2%) of the amount then owing and past due together with interest on such past due amount at an interest rate of twelve percent (12%) per annum commencing eight (8) days after the date such amount is due until paid. Payment of such late charges and/or default interest shall not excuse or cure any default by Tenant under this Lease.
22.4 Remedies for Tenant Default. If Tenant commits a default under Section 22.1(a) above and fails to cure such default within the time period provided, then Landlord, by providing Tenant with ten (10) days’ advance written notice, may cancel and terminate this Lease, evict the Tenant and re-enter the Premises, but notwithstanding such re-entry by Landlord, Tenant covenants and agrees to make good to Landlord any deficiency arising from a re-entry and reletting of the Premises at a lesser Rent than the Rent agreed to through the Term of this Lease, provided Landlord has taken all reasonable measures to ensure that a maximum rental rate was obtained for reletting. Landlord shall provide notice to Tenant of any amount by which rentals from such reletting are less than the Rent and the due dates of such Rent. The deficiency amount for each such Rent payment shall be paid by Tenant on or before the due date for such Rent payment. In addition to the remedy specified above for Tenant’s failure to pay Monthly Rent, if Tenant commits any default and fails to cure such default within the time period provided under this Section 22, Landlord shall have the right to pursue any and all remedies available at law or in equity.

23. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform its obligations (i) within five (5) business days after notice by Tenant specifying the obligation which Landlord has failed to perform if such failure occurs prior to the Commencement Date and (ii) within thirty (30) days after notice by Tenant specifying the obligation which Landlord has failed to perform if such failure occurs after the Commencement Date; provided, that if the nature of Landlord’s obligation is such that more than five (5) business days or thirty (30) days, as applicable, are required for performance, Landlord shall not be in default if Landlord commences performance within such period following Tenant’s notice and thereafter completes performance within a reasonable time. If the nature of the obligation presents a hazard or emergency, Landlord shall commence performance as soon as reasonably possible. In the event that Landlord fails to cure any such default, Tenant shall have the right to pursue any and all remedies available at law or in equity.

24. Signs. Tenant may place identification signage, other signage, advertisements, awnings, banners or other exterior decorations on the exterior of the Premises without any further consent or approval from Landlord. Any sign that Tenant has the right to place, construct and maintain shall comply with all Laws, and Tenant shall obtain any approval required by such Laws. Landlord makes no representation with respect to Tenant’s ability to obtain such approval.

25. Landlord’s Right to Enter the Premises. Landlord shall have the right to enter the Premises at reasonable times during Tenant’s normal business hours for the below listed purposes; provided, however, Landlord acknowledges and agrees to comply with Tenant’s requests regarding security. Landlord shall conduct its activities on the Premises as allowed in this Section in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant. Landlord shall not be liable in any manner for any inconvenience, annoyance, disturbance, loss of business, nuisance, or other damage arising out of Landlord’s entry on the Premises as provided in this Section, except damage resulting from the negligent acts or omissions of Landlord. Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any right reserved in this Section:
25.1 **Condition.** To determine whether the Premises are in good condition, whether Tenant is complying with its obligations under this Lease and to perform any maintenance, repair or replacement obligations of Landlord pursuant to Section 10 above.

25.2 **Notices.** To serve, post or keep posted any notices required or allowed under the provisions of this Lease.

26. **No Encumbrances by Landlord.** Except to the extent expressly authorized in Sections 11 and 21 of this Lease, Landlord shall not at any time during the Term of this Lease sell, transfer, lease (other than to Tenant pursuant to this Lease), convey, encumber (other than pursuant to the Mortgage), pledge, hypothecate or otherwise grant a security interest in the Premises or any portion of the Premises.

27. **Right to Estoppel Certificates.** Each party, within fifteen (15) days after notice from the other party, shall execute and deliver to the other party, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications. Failure to deliver the certificate within such fifteen (15) day period shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate.

28. **Surrender.** Landlord shall, on the Expiration Date, surrender and deliver up the Premises, including all improvements then located thereon and the appurtenances thereto, into the possession of Tenant, in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than those existing on the date of this Lease and those, if any, created by Tenant, without any payment or allowance whatsoever by Tenant. Landlord shall execute, acknowledge and deliver to Tenant such instruments of further assurance as are reasonably necessary or desirable to confirm or perfect Tenant’s right, title and interest in and to all of the above-described property. The provisions of this Section shall survive the expiration or termination of this Lease.

29. **Broker.** Landlord and Tenant each represent to the other that neither is represented by any broker, agent or finder with respect to this Lease in any manner. Each party agrees to indemnify and hold the other party harmless from and against any and all liability, costs, damages, causes of action or other proceedings instituted by any other broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in any manner whatsoever in connection with this Lease.

30. **Miscellaneous Provisions.**

30.1 **Entire Agreement.** This Lease sets forth the entire agreement of the parties as to the subject matter of this Lease and supersedes all prior discussions and understandings between them. This Lease may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized officer or representative of each party.
30.2 Severability. Should any of the provisions of this Lease be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Lease shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the parties.

30.3 Governing Law. This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

30.4 Jurisdiction/Venue. In the event any action is brought to enforce any of the provisions of this Lease, the parties agree to be subject to exclusive in personam jurisdiction in the King County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively in King County, Washington.

30.5 Waiver. No waiver of any right under this Lease shall be effective unless contained in writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or of any other right arising under this Lease.

30.6 Captions. Section captions contained in this Lease are included for convenience only and form no part of the agreement between the parties.

30.7 Notices. All notices or requests required or permitted under this Lease shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by nationally recognized overnight courier or by facsimile transmission and shall be deemed given when so delivered, received or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests to any party shall be sent to all other parties as follows:

If to Landlord: YMCA of Greater Seattle
Attention: SKC Regional Vice President
900 4th Avenue
Seattle, WA 98104
Facsimile: 

If to Tenant: City of Kent
Attention: Parks, Recreation and Community Services
Director
220 Fourth Ave S.
Kent, WA 98032
Facsimile: 

Any party may change the address to which notices shall be sent by notice to the other party in the manner and with the effect set forth in this Section 30.7.

30.8 Binding Effect. Subject to the provisions of Sections 11 and 21, this Lease shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. No permitted assignment of this Lease or Tenant’s rights under this
Lease shall be effective against Landlord unless and until an executed counterpart of the instrument of assignment shall have been delivered to Landlord and Landlord shall have been furnished with the name and address of the assignee. The term “Tenant” shall be deemed to include the assignee under any such permitted assignment. The term “Landlord” shall include any successors to or assigns of the Landlord’s interest in the Premises following any foreclosure of the Mortgage, including trustee or any purchaser at a trustee’s or sheriff’s sale of the Premises.

30.9 Gender and Number. As used in this Lease, words of any gender shall include all genders, the singular shall include the plural and the plural shall include the singular, as the context may require.

30.10 Nondiscrimination. Landlord and Tenant each agree it will not discriminate in employment at the Premises on the basis of race, color, religion, sex, national origin, veteran status, sexual orientation or physical and mental disability in regard to any position for which the prospective employee is qualified, nor will Landlord or Tenant maintain facilities which are segregated on the basis of race, color, religion, sex or national origin at the Premises.

30.11 Recording; Memorandum of Lease. Neither Landlord nor Tenant shall record this Lease without the written consent of the other; provided, however, that Tenant shall have the right to record a Memorandum of this Lease in the form attached as EXHIBIT F and by this reference incorporated in this Lease upon the Effective Date. Such Memorandum of Lease may be amended by the parties or a new Memorandum recorded once the Commencement Date and Expiration Date has been determined.

30.12 Amendment of Lease for Easements, etc. Landlord and Tenant may, without the consent of any other party, amend this Lease as necessary to reflect changes in the legal description of the City Land due to the granting of setback, right of way or sidewalk rights in favor of the City of Kent, other government agencies, or utility providers, whether through the grant of easements or the conveyance of fee interests, provided in all cases Monthly Rent shall not be changed as a result.

30.13 Time Is of the Essence. Time is of the essence in the performance of each party’s obligations under this Lease. Each party will carry out its obligations under this Lease diligently and in good faith.

31. Prevailing Wage. Landlord agrees and covenants with Tenant that the Construction Contracts shall obligate General Contractors to require contractors and subcontractors of such Contractors in connection with such contracts as may be let regarding the construction of the Project to pay prevailing wages to the workers, laborers and mechanics as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area in accordance with RCW ch. 39.12.

32. Authority. Landlord is a Washington nonprofit corporation, duly organized, validly existing and in good standing under the laws of the State of Washington. Tenant is a municipal corporation and political subdivision of the State of Washington.
33. **Option to Prepay Lease.**

33.1 **Option to Partially Prepay Lease.** Tenant shall have the option to prepay all or a portion of Monthly Rent without penalty or premium. Notice of such intent to prepay shall be given to Landlord in writing not less than [forty-five (45)] days in advance of the intended prepayment date. The notice of partial prepayment shall be substantially in the form set forth on **EXHIBIT H**. By 10:00 a.m. Pacific time on the date set for such prepayment, Tenant shall pay or cause to be paid to Landlord in cash or same-day available funds, an amount equal to the Monthly Rent to be prepaid. Upon such prepayment, such prepaid Monthly Rent shall be deemed satisfied, and the term of this Lease shall be deemed modified such that this Lease terminates on the payment date for the last outstanding Monthly Rent not prepaid.

33.2 **Prepayment in Full.** Notwithstanding anything to the contrary contained in this Lease, upon full payment of all outstanding Monthly Rent, the Ground Lease and this Lease shall terminate, and unencumbered fee simple title to the Premises and Ground Lease Improvements will revert to the Tenant.

DATED the date first above written.

THE YOUNG MAN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, 
a Washington nonprofit corporation

By___________________________________

Date: ___________________, 2018

TENANT:

CITY OF KENT, 
a Washington municipal corporation

By___________________________________

Name: __________________________
Title: __________________________

Date: ___________________, 2018

APPROVED AS TO FORM:

By___________________________________

Date: ___________________, 2018

APPROVED AS TO FORM:

By___________________________________

Date: ___________________, 2018
STATE OF WASHINGTON
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the ___________ of THE YOUNG MAN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ______ day of __________, 2018.

Printed Name ___________________________________
NOTARY PUBLIC in and for the State of Washington, residing at ______________________________________
My Commission Expires ___________________________

STATE OF WASHINGTON
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that ____________ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the ______________________________________ of the CITY OF KENT, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of ____________, 2018.

Printed Name ___________________________________
NOTARY PUBLIC in and for the State of Washington, residing at ______________________________________
My Commission Expires ___________________________
EXHIBIT A
MONTHLY RENT
EXHIBIT C

PROJECT SCHEDULE

Project Estimated Milestone Dates
EXHIBIT D-1

LEGAL DESCRIPTION OF COMMUNITY CENTERMORRILL MEADOWS AND EAST HILL PARK LAND
EXHIBIT D-2

LEGAL DESCRIPTION OF KENT YMCA LAND
EXHIBIT D-3

CITY LAND
EXHIBIT E

CONFIRMATION OF COMMENCEMENT AND EXPIRATION DATES

In accordance with the provisions of Section 3 of the Lease as of this _____ day of ________________, 20___, Landlord and Tenant acknowledge, agree and confirm the following:

The Commencement Date of the Lease is: ____________________.

The Expiration Date of the Lease is: ____________________.

The foregoing agreement and confirmation shall be binding upon Landlord and Tenant and shall supersede and control over any other provision in the Lease regarding the Commencement Date and Expiration Date which might be construed other than as set forth in this Confirmation.

AGREED the day and year first above written.

LANDLORD:

THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE,
a Washington nonprofit corporation

By: ____________________________________
    Name: ___________________________
    Title: ___________________________
    Date: ______________________, 20___

TENANT:

CITY OF KENT,
a Washington municipal corporation

By: ____________________________________
    Name: ___________________________
    Title: ___________________________
    Date: ______________________, 20___
MEMORANDUM OF PROJECT LEASE

When Recorded Return to:

MEMORANDUM OF PROJECT LEASE

Grantor(s): THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF GREATER SEATTLE

Grantee(s): CITY OF KENT

Legal Description (abbreviated): X Complete legal on EXHIBIT A

Assessor’s Tax Parcel Identification No(s):

Reference No. of Related Documents: n/a

THIS MEMORANDUM OF PROJECT LEASE (“Memorandum”) is dated for reference purposes _____________, 2018 and is made by and between THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation, a Washington nonprofit corporation (“Landlord”), and CITY OF KENT, a Washington municipal corporation (“Tenant”).

1. Lease. Landlord has leased to Tenant the Premises described in Exhibit A and by this reference incorporated in this Memorandum (“Premises”) at a rent and on the terms and conditions set forth in that certain Project Lease Agreement dated ______________, 2018 by and between Landlord and Tenant (“Lease”). The Lease is for
a term expiring __________ unless sooner terminated pursuant to the terms of the Lease; provided, however, that the Tenant’s duty to pay Monthly Rent shall not commence until the Commencement Date.

2. **Definition of Terms.** All capitalized terms not otherwise defined in this Memorandum shall have the same meaning as set forth in the Lease.

3. **Tax Exemption.** In accordance with RCW 35.42.090, the Lease shall be exempt from any taxes imposed under the authority of RCW ch. 82.45, RCW 82.04.040 or RCW 82.08.090.

4. **Lien Notice.** Notice is given that Tenant will not be liable for any labor, services, materials or equipment furnished or to be furnished to Landlord or anyone holding an interest in the Premises (or any part of the Premises) through or under Landlord, and that no construction or other liens for any such labor, services, materials or equipment shall attach to or affect the interest of Tenant in the Premises.

5. **Purpose of Memorandum.** This Memorandum is prepared for purposes of recordation only and does not set forth all of the terms and conditions set forth in the Lease. In the event there is any conflict between the terms and conditions of the Lease and this Memorandum, the Lease shall control.

[Signatures on following page]
DATED the date first above written.

THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE,
a Washington nonprofit corporation

By: _______________________________
   Name: __________________________
   Title: ____________________________

Date: ____________________________, 2018

TENANT:

CITY OF KENT,
a Washington municipal corporation

APPROVED AS TO FORM:

By: _______________________________
   Name: __________________________
   Title: ____________________________

Date: ____________________________, 2018
STATE OF WASHINGTON
COUNTY OF KING

} ss.

I certify that I know or have satisfactory evidence that ________ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the ________ of THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of ___________ , 2018.

Printed Name
NOTARY PUBLIC in and for the State of Washington, residing at
My Commission Expires

STATE OF WASHINGTON
COUNTY OF KING

} ss.

I certify that I know or have satisfactory evidence that __________________________ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the __________________________________ of CITY OF KENT, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of ___________ , 2018.

Printed Name
NOTARY PUBLIC in and for the State of Washington, residing at
My Commission Expires
EXHIBIT A

PREMISES

The Premises means Ground Lease Improvements to be constructed on the City Land described below, together with a leasehold interest in the City Land:
EXHIBIT G

FORM OF NOTICE OF ELECTION
OF OPTION TO PURCHASE

[date]

To: Landlord

You are notified that the City of Kent has elected to exercise on [date of payment] its option to purchase the Premises currently leased by the City of Kent pursuant to the Project Lease Agreement (“Lease”) by and between the CITY OF KENT and THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation dated _____________, 2018. This purchase option is being exercised pursuant to Section 35.2 of the Lease. The City of Kent is now, and on the date set forth above for payment will be, in full compliance with all terms and conditions of the Lease. In accordance with Section 35.2 of the Lease, the City of Kent shall purchase the Premises for an amount equal to the outstanding and unpaid Monthly Rent, without penalty or premium. On or prior to the date set forth above, the City of Kent shall also pay any Additional Rent then due and owing under the Lease.

APPROVED AS TO FORM:

By___________________________________
Name: _________________________
Title: _________________________
Date: ___________________________

TENANT:

CITY OF KENT,
a Washington municipal corporation

By___________________________________
Name: _________________________
Title: _________________________
Date: ___________________________
EXHIBIT H

FORM OF NOTICE OF ELECTION
TO PARTIALLY PREPAY MONTHLY RENT

[date]

To: Landlord

You are notified that the City of Kent has elected to exercise its option to prepay a portion of the Monthly Rent due under that certain Project Lease Agreement (“Lease”) by and between the CITY OF KENT and THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, a Washington nonprofit corporation dated _____________, 2018. In accordance with Section 35.1 of the Lease, the date of prepayment shall be ________________, and the portion of Monthly Rent to be prepaid on such date is ___________________. By 10:00 a.m. Pacific time on such date, the City of Kent shall pay to Landlord in cash or same-day available funds, an amount equal to the portion of Monthly Rent to be prepaid, without penalty or premium, together with any other amounts payable under the Lease on such date.

APPROVED AS TO FORM:

By___________________________________
Name: _________________________
Title: _________________________
Date: _________________________

TENANT:

CITY OF KENT,
a Washington municipal corporation

By___________________________________
Name: _________________________
Title: _________________________
Date: _________________________
# SCHEDULE OF PORTION OF MONTHLY RENT TO BE PREPAID

<table>
<thead>
<tr>
<th>Date Monthly Rent Due</th>
<th>Amount to be Prepaid*</th>
</tr>
</thead>
</table>

*If applicable.*
DEVELOPMENT AGREEMENT

Between
THE CITY OF KENT, WASHINGTON
(“City”)

and

THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE
a Washington nonprofit corporation
(“Developer”)

Kent YMCA Project

Dated as of
___________, 2018
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) dated as of _____________, 2018, is by and between THE CITY OF KENT, a Washington municipal corporation (“City”), and [THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE], a Washington nonprofit corporation (“Developer”).

RECITALS

A. The City is the owner of the real estate known as the Morrill Meadows and East Hill Parks, described on Exhibit A and located in the City of Kent, King County, Washington.

B. The City has completed a boundary line adjustment to create a parcel (the “Kent YMCA Land”) within a portion of the City’s Morrill Meadows and East Hill Parks, more specifically described in Exhibit B, to be conveyed pursuant to the “Quit Claim Deed with Grantee Covenants, Releases and Indemnity,” dated _____________, 2018 (“Conveyance Agreement”) on which the City, in consideration for conveying the Kent YMCA Land to Developer, desires that the Developer, at its cost, construct a multi-purpose community facility including, among other things, a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool, all pursuant to the Preliminary Plans and Outline Specifications (the “Kent YMCA Project”), and provide the community benefits described in this Agreement.

C. The City is the lessor under that certain Ground Lease dated _____________, 2018 (“Ground Lease”), pursuant to which City leases that certain real property located in the City of Kent, King County, Washington (“City Land”) more specifically described in Exhibit C, attached.

D. A Project Lease Agreement between the parties, dated this same date, provides for the construction on the City Land of parking for 250 vehicles, a storm drainage system, outdoor multi-use sport courts, lawn and dog park areas, and other park and site improvements, including frontage improvements, also pursuant to the Preliminary Plans and Outline Specifications and pursuant to this Agreement (“Ground Lease Improvements”).

E. The Developer will construct, or cause to be constructed, the Kent YMCA Project and the Ground Lease Improvements as a single construction project pursuant to this Agreement to achieve efficiencies in cost and time (the “Project”).

NOW, THEREFORE, in order to fulfill the foregoing objectives, City and Developer desire to enter into this Agreement and proceed in accordance with its terms.

1. Definitions.

The following terms used in this Agreement shall have the following meanings:
“Architect” collectively means the architects employed by the City for preliminary Project design and employed by the Developer for final Project design. The Developer’s final design architect for the Project is Miller Hayashi Architects, LLC, supported by landscape architect MacLeod Reckord, PLLC, with civil architectural and engineering work for undergrounding and some street frontage, PACE Engineers, Inc.

“City” means the City of Kent, Washington, a Washington municipal corporation, its successors and permitted assigns.

“City-Caused Delay” means any period of delay in the overall progress of design, construction, and completion of the Project (not including any delay by the City of Kent acting in its capacity as permitting authority), that is caused by City-initiated change orders to the General Construction Contract after that Contract is executed, or the City’s failure to approve, disapprove, decide, or otherwise respond to Developer with respect to a particular item under this Agreement or the General Construction Contract that requires a timely City response, or the City’s failure to timely deliver plans, information, specifications, or other information within the time frames required under this Agreement or the General Construction Contract. “Any period of delay,” as used in this definition, means a delay that impacts the Project’s critical path, meaning that a material portion of the Project work could not continue because of the City-caused Delay. However, City-Caused Delay will not include delay to the extent caused by the existence of reasonable cause to suspect that construction of the Project or any other services provided by Developer have not been performed in accordance with the Construction Contracts and other requirements, in which case City-Caused Delay will not include the amount of additional time the City reasonably needed to determine whether construction or other services conform to all requirements, so long as the City proceeds with all reasonable diligence to make its determination. Nothing in this definition alters the parties responsibilities and obligations established under Section 6.3, “Significant Unexpected Underground Conditions,” of the Ground Lease.

“City Land” means the real property leased to Developer under the Ground Lease and leased back to the City under the Project Lease (described in Exhibit C).

“Community Benefits” means, in addition to creating approximately 150 local jobs, from entry-level part-time positions to full-time executive and management positions, and serving approximately 22,000 local residents annually with a variety of services, including housing, health and wellness, counseling, education, case management, child care, and sports programs, the specific Project enhancements and services required to be provided for the benefit of Kent residents under Section 2(b) of this Agreement.

“Construction Contracts” means (i) the General Construction Contract and (ii) all other contracts for construction services entered into between Developer and any contractor, including General Contractor, for construction of any portion of the Project not covered by the General Construction Contract.

“Costs Resulting From City-Caused Delay” means the incremental increase in costs of constructing the Project resulting from City-Caused Delay.
“CPI” means the Seattle-Tacoma-Bellevue Consumer Price Index for All Urban Consumers (CPI-U).

“Design Development Drawings” means drawings that are a consistent development of the Schematic Drawings and further define and describe all important aspects of the Project. The Design Development Drawings will serve as the basis for the construction drawings.

“Detailed Specifications” means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project.


“Developer Obligation Date” means ________, [20__], as may be extended to the extent of (i) Unavoidable Delays; (ii) City-Caused Delays; (iii) delays resulting from Significant Unexpected Underground Conditions; and (iv) permit-related delays as set forth in Section 6(c).


“Existing Hazardous Substances” means any Hazardous Substances existing on, in or under the Project Land, structures on the Project Land or the soil and groundwater under the Project Land, excluding any Hazardous Substances which may have been brought on site by Developer or contractor(s) during construction.

“Existing Hazardous Substances Costs” means any and all costs of every type and description relating to Existing Hazardous Substances, including without limitation, costs included in the Project Costs for remediation of Existing Hazardous Substances.

“Final Acceptance” means the City’s written approval and concurrence that certain events, more fully defined in Section 10 of this Agreement, have occurred.

“Frontage Improvements” means those improvements to 248th Street to improve a portion of that street in the vicinity of the Project, under City of Kent regulatory requirements,
including sidewalk improvements, undergrounding of utilities, street lighting, signage, striping and lane markings, and other required street improvements.

“General Construction Contract” means the agreement between Developer and the General Contractor for construction of the Project.

“General Contractor” means Abbot Construction, a Washington ________.

“Ground Lease Improvements” means the design and construction of parking for 250 vehicles, a storm drainage system, outdoor multi-use sport courts, lawn and dog park areas, and other park and site improvements, including the Frontage Improvements, to be completed pursuant to this Agreement.

“Hazardous Substances” means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

“Initial Occupancy Date” means the date upon which each of the following events shall have occurred such that the Developer may begin its occupancy of the Kent YMCA, the City may begin its occupancy of the Ground Lease Improvements, and the City may begin receiving the Community Benefits:

(a) General Contractor shall have notified Developer in writing that the Project is ready for occupancy, in accordance with the Construction Contracts, subject only to the completion of normal Punch List items (except that City and Developer may mutually agree to delayed completion of Frontage Improvements after the Initial Occupancy Date);

(b) The City of Kent shall have issued a Certificate of Occupancy such that Developer and the City are permitted to and could, pursuant to such issued Certificate of Occupancy, physically occupy the Kent YMCA (in the case of the Developer) and the Ground Lease Improvements (in the case of the City) for Permitted Uses (if Frontage Improvements are not completed by the Initial Occupancy Date, a Temporary Certificate of Occupancy for the rest of the Project will suffice);

(c) General Contractor (and to the extent required by City, any subcontractors) shall have issued, with respect to the Project, its partial and/or conditional release of lien for work performed prior to the date of the Initial Occupancy Date in form satisfactory to Developer, with City concurrence (except as may apply to Frontage Improvements); and

(d) Developer, with City concurrence, which will not be unreasonably delayed, shall have accepted the Kent YMCA as ready for occupancy, and City shall have accepted the Ground Lease Improvements, subject to completion of the Punch List items and any remaining Frontage Improvements agreed upon by Developer, with City concurrence.
“Kent YMCA” means the community center facility to be constructed on the Kent YMCA Land. The Kent YMCA will contain a multi-purpose community facility including, among other things, a gymnasium, community meeting rooms, and a six-lane, twenty-five yard swimming pool, as more fully described in the Preliminary Plans and Outline Specifications, and includes all HVAC, electrical and other building systems.

“Kent YMCA Project” means the project to design and construct the Kent YMCA.

“Kent YMCA Land” means the real property and improvements described on Exhibit B.

“Laws” means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Project, or both, in effect at the time of execution of this Agreement, including without limitation, any regulation or order of a quasi-official entity or body (e.g., board of fire examiners or public utilities) and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

“Permits” means all land use approvals, permits and approvals required for construction of the Project include on site and off site permits required by any agency with jurisdiction over the Project.

“Permitted Use” means the intended use of the Kent YMCA Project by Developer as a community center and the Ground Lease Improvements by the City for any lawful use.

“Preliminary Plans and Outline Specifications” are the renditions for the Project (i.e., the [seventy percent (70%)] design development documents), schedules of which plans and specifications are attached as EXHIBIT E and incorporated in this Agreement by this reference.

“Project” means the total design and construction, including demolition of existing improvements on the Project Land, all professional design services, and all labor, materials and equipment used or incorporated in such design and construction of the Project. The Project shall include work consistent with and reasonably inferable from the approved Preliminary Plans and Outline Specifications as necessary to produce the intended results.

“Project Budget” means the budget for the Project attached to this Agreement as EXHIBIT D, as revised from time to time in accordance with this Agreement.

“Project Contingency” means the contingency by that name set forth in the Project Budget.

“Project Costs” means all costs for the completion of the development, design, permitting and construction of the Project, including without limitation, all demolition costs, all site work, including Frontage Improvements, utility relocation and installation of utilities as required to serve the Project, all permit fees, all costs of the Kent YMCA Project, the Ground Lease Improvements, HVAC, electrical and other building systems, all costs of fixtures, furnishing and equipment described in the Construction Contracts, all costs of architectural
services provided by the Architect under the Architect’s Agreement, all other professional design and other services provided by contractors or other professionals engaged by the Developer or the General Contractor, all amounts paid to General Contractor under the General Construction Contract including all labor, material, and equipment used or incorporated in such design and construction, all amounts paid to other contractors and subcontractors, if any, under any other Construction Contract or subcontract entered into by Developer in connection with the Project, including all labor, material, equipment used or incorporated in such design and construction, services provided by engineers, environmental consultants, surveyors and other professionals and consultants retained by Developer in connection with the Project, insurance, bonds, real estate brokerage and leasing commissions, if any, art work approved by City under any City of Kent public arts policy or program, applicable state and local retail sales, and business and occupation and other taxes.

“Project Land” means, together, the real property and improvements consisting of the Kent YMCA Land and the City Land, as more particularly described on Exhibits B and C.

“Project Lease” means the Project Lease Agreement dated _____________, 2018 between City (as tenant under the Project Lease) and the Developer (as landlord under the Project Lease) for occupancy of the City Land.

“Project Schedule” means the schedule for development and construction of the Project as set forth on EXHIBIT F to this Agreement, as revised from time to time in accordance with this Agreement, provided, however, that in no event shall the Project Schedule provide for the Initial Occupancy Date to occur later than the Developer Obligation Date without written concurrence of City under this Agreement and the City as tenant in accordance with the Project Lease.

“Punch List” means a list of items required to be completed prior to Final Acceptance that are minor items which do not affect the parties’ ability to use the applicable portion of the Project for the Permitted Use.

“Significant Unexpected Underground Conditions” means unexpected underground conditions (such as discovery of archeologically significant materials, Existing Hazardous Substances not reflected in City’s soil studies, or other unexpected underground conditions) that cause the total Project Budget to increase by more than ten percent or delay the Project Schedule by more than six months.

“Requirements of Law” means all requirements relating to land and building construction (including those specifically applicable to parties’ contemplated use of the Project for the Permitted Use, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Project Land or any part of the Project Land.
“Unavoidable Delays” means any delay in the performance by Developer or the General Contractor of its obligations with respect to construction of the Project caused by strikes (other than those directly caused by Developer’s acts, omissions or failure to negotiate in good faith), acts of God, force majeure, unusually severe weather conditions, unavoidable casualties, acts of the public enemy, acts of terrorists, governmental embargo restrictions, or causes beyond the reasonable control of Developer or the General Contractor, which, after the exercise of due diligence to mitigate the effects thereof, delay construction of the Project. Unavoidable Delays will entitle Developer to an extension of the Developer Obligation Date but will in no way entitle Developer to compensation from the City. Nothing contained in this Agreement shall prevent Developer from allocating the Project Contingency to increased costs of constructing the Project caused by Unavoidable Delays.

“Warranty Period” shall mean (i) as to the General Contractor’s warranty pursuant to Section 7(h) below that period commencing on the Initial Occupancy Date and expiring two (2) years thereafter and (ii) as to manufacturer warranties, that period commencing on the Initial Occupancy Date and expiring two (2) years thereafter unless otherwise specified in the Construction Contracts. However, if the parties agree to allow a later completion date for Frontage Improvements, the Warranty Period for those Frontage Improvements will start on the agreed date those Frontage Improvements are completed.

2. Development of the Project.

(a) Developer Responsibility. In consideration for the conveyance of the Kent YMCA Land pursuant to the Conveyance Agreement and the City Land pursuant to the Ground Lease, Developer agrees to oversee and manage design, permitting, entitlement and construction phases of the Project in accordance with the terms and conditions of this Agreement. Developer agrees to perform development and construction management services, including but not limited to oversight and management of all design, entitlement, permitting and construction in connection with the Project, all in accordance with the terms and conditions of this Agreement. Developer warrants that it will achieve the Initial Occupancy Date on or before the Developer Obligation Date, constructed in a good and workmanlike manner and in substantial accordance with the Construction Contracts, free and clear of all liens. All Project Costs shall be paid by Developer. The City shall not be liable for payment of any portion of the Project Costs.

(b) Community Benefits. In further consideration for the conveyance of the Kent YMCA Land pursuant to the Conveyance Agreement, and the City Land pursuant to the Ground Lease, the Developer shall provide the Community Benefits following Final Acceptance and thereafter as follows:

(i) Completing the Kent YMCA Project, at a cost of approximately Twenty-Four Million dollars, and all Ground Lease Improvements, including Frontage Improvements, at a cost of approximately Eight Million Five Hundred Thousand dollars, at the Developer’s sole cost and risk of liability, except for Significant Unexpected Underground Conditions and Costs Resulting From City-Caused Delay.
(ii) Constructing a larger aquatics center than the Developer normally would build in a facility of this size so that the Kent YMCA can absorb the uses of the aging Kent-Meridian Pool (the City will pay a portion of the cost of operating the Kent YMCA pool pursuant to the Operating Agreement).

(iii) Operating the Kent YMCA for a term of fifty years, at Developer’s sole cost [except as expressly set forth in the Operating Agreement], providing increased health and recreation services in the community and providing an indoor, year-round aquatics facility to meet the community’s aquatics needs, including water safety, aquatic fitness activities, therapeutic aquatics programs, high school swim teams, recreational swimming, and job training in aquatics-related careers.

(iv) Providing (and reporting at least annually to the City) the following financial assistance, free passes and free or reduced fee public and City access to the Kent YMCA for a period of at least fifty (50) years:

(A) At least $1 million annually (adjusted annually based on CPI) in financial assistance provided by Developer to low- and moderate-income Kent residents, to ensure membership access to the Kent YMCA regardless of household income level.

(B) At least $14,000 annually (adjusted annually based on CPI) in financial assistance provided by Developer to low- and moderate-income Kent residents, for swim lessons to ensure access regardless of household income level.

(C) Free passes annually to the Kent YMCA to encourage Kent residents to find new ways to exercise and engage in healthy lifestyle behaviors, with a minimum value, calculated based on rates Developer charges for member guests, of $100,000 per year (adjusted annually based on CPI).

(D) Access to the Kent YMCA pools through City of Kent Parks and Recreation Department programs at no cost to the City (e.g., adaptive swim, day camp swim sessions, etc.), with a value calculated based on 10 participants of at least $18,000 annually (adjusted annually based on CPI).

(E) Free/reduced cost community swims hosted at least twice a month, at hours accessible and convenient for the public, with a value of at least $14,000 annually (adjusted annually based on CPI).

(F) City access to the community resources in the community wing (e.g., community meeting rooms, etc.) of the Kent YMCA and (depending upon availability), no less than eight (8) hours per month, City use of the community meeting room at no cost, with a value of at least $1,900 annually (adjusted annually based on CPI).

(v) Constructing and operating indoor restrooms that will be available to park users for no charge during Kent YMCA operating hours.

(vi) Providing no-cost or highly subsidized social services in the amounts and with the value to Kent residents such as:
(A) school-based enrichment programs for low-income students  
(B) licensed mental health counseling  
(C) licensed drug & alcohol treatment  
(D) student feeding programs  
(E) school-aged childcare programs at reduced rates for low-income families  
(F) young adult violence prevention programs (gang prevention)  
(G) community health programs  
(H) chronic disease prevention programs (diabetes, childhood obesity, etc).

(c) Diligent Efforts; Relationship of the Parties. Developer accepts the relationship of trust and confidence established with City by this Agreement and agrees that in providing the services set forth in this Agreement, Developer shall use its diligent efforts and shall furnish its skill and judgment and shall cooperate with, coordinate, manage, direct and oversee the General Contractor, Architect, all other contractors, all other engineers, design consultants, managers and other persons retained in connection with the design, permitting, development and construction of the Project so as to achieve Initial Occupancy Date on or before the Developer Obligation Date in an expeditious and economic manner consistent with the best interests of City, and otherwise in a good and workmanlike manner and in substantial accordance with the Construction Contracts, free and clear of all liens.

(d) Mutual Cooperation. Developer and City shall fully and in good faith cooperate with each other to accomplish each of the activities provided in this Agreement, including, without limitation, obtaining permits and third-party rights and approvals for the design, permitting, development and construction of the Project.

(e) Term. The rights and obligations of the Developer and City under this Agreement shall commence on the date of execution of this Agreement and shall continue until the latest date on which Developer is required to provide Community Benefits under Section 2(b) [fifty years].

(f) Significant Unexpected Underground Conditions. The Developer has reviewed and analyzed soil conditions, including geotechnical studies, on the Project Land to determine the existence (or not) of underground conditions or Hazardous Substances that could affect the Project Schedule and/or the Project Budget. Based on this review, Developer has determined that soil conditions on the Project Land are acceptable and has developed the Project Budget and Project Schedule. However, in the event of a Significant Unexpected Underground Conditions, the City will be solely responsible for the incremental increase in Project Costs caused by the Significant Unexpected Underground Conditions in excess of ten percent of the
Project Budget. The City will either (1) pay the incremental increase in Project Costs caused by the Significant Unexpected Underground Conditions in excess of ten percent of the Project Budget by entering into a City-initiated change order or (2) agree to suspend, modify, or terminate the Project. The Developer will provide notice of any Significant Unexpected Underground Conditions as provided in Section 8(b).

3. Project Financing; Federal New Market Tax Credits. City would not have entered into the Conveyance Agreement, the Ground Lease or this Agreement but for the agreement by Developer to undertake, at Developer’s sole cost and expense, the construction of the Project, including without limitation obtaining all financing for the Project and paying all Project Costs. Accordingly, with no part of the cost of construction of the Project becoming an obligation of the City, Developer shall diligently cause the Project to be designed, constructed and prosecuted to completion in a good and workmanlike manner and in accordance with the provisions of this Agreement, free and clear of all liens and otherwise in accordance with the requirements of this Agreement. The Developer intends to apply for federal New Market Tax Credits to provide up to Eleven Million dollars of funding for the Project. In the event that the Developer is successful in securing federal New Market Tax Credits in connection with the Project, the equity contribution of the tax credit investors shall be applied as mutually agreed by the Developer and City to pay Project costs or to add components to the Project, including any bid alternate items not accepted in the original bid award to General Contractor. If the Developer and City are not able to mutually agree on how to allocate the equity contribution to pay Project costs or to add components to the Project, then the equity contribution will be applied proportionately as follows: Developer share: 75% to be applied as directed by the Developer; City share 25% to be applied as directed by the City (for example to reduce its obligation to pay Monthly Rent under the Project Lease as set forth in the Project Lease).

4. Project Design/Preconstruction Phase. Developer and City will cooperatively work with the Architects to complete Project design, plans, and Detailed Specifications. The Developer’s use of all Project designs and plans will be deemed acceptance and approval of those designs, plans, and Detailed Specifications.

(a) City Review. City may, at its sole discretion, participate in any and all design meetings with Developer, Architect, and other design professionals as appropriate in the course of the development of the construction documents. The City will provide, or cause to be provided, final design and construction documents for the Ground Lease Improvements and the Frontage Improvements for Developer’s acceptance. Upon Developer’s acceptance, Developer will incorporate the Ground Lease Improvements and the Frontage Improvements into the Project Budget, Project Schedule and Preliminary Plans and Outline Specifications. Developer shall submit the final Project Budget, Project Schedule and all final construction drawings and Detailed Specifications to the City for its review and approval. City shall promptly review the final Project Budget, final Project Schedule and all final construction drawings and Detailed Specifications and shall give Developer written notice within seven (7) business days following its receipt of the Project Budget and/or construction drawings, Project Schedule and Detailed Specifications of its approval or disapproval thereof, specifying in the case of its disapproval, its reason therefore. City shall have the right to disapprove the final Project Budget, final Project Schedule or construction drawings and Detailed Specifications which (i) do not meet
more than X variance with] the Preliminary Plans and Outline Specifications, (ii) do not comply with Requirements of Law. If no objections or comments are received within such seven (7) business day period, then the submittals shall be deemed approved.

(b) Resubmittals. If objections or comments are submitted in writing within the time frame and in accordance with the requirements set forth in the preceding Section, Developer shall cause the Architect to make changes in the construction drawings and/or Detailed Specifications consistent with reasonable objections or comments made by the City and shall resubmit the same to City in accordance with the foregoing schedule for further review. The process of resubmittal and review shall continue until the submittals have been approved by all the parties. There shall be no change to the final construction drawings and Detailed Specifications that have been approved by City except as set forth in Section 8 below.

(c) Permit and Construction Documents. Developer shall cause the Architect and other design professionals to prepare construction documents as required for submittal of the building permit and other permit applications in accordance with Section 6, and as required for construction of the Project.

5. Construction Management Services. Developer shall provide all construction administration and construction management services necessary to cause the Initial Occupancy Date to occur on or before the Developer Obligation Date, all in a good and workmanlike manner and in substantial accordance with the Construction Contracts, including, without limitation, the following:

(a) Construction Contracts. Developer shall administer all Construction Contracts for the Project. Developer shall notify and consult with City regarding any material breaches or defaults by any party to a Construction Contract relating to the Project.

(b) Review of Work. Developer shall oversee the course of construction and shall conduct such inspections of the course of construction and testing of work to insure that the work of each contractor is being performed in substantial accordance with the requirements of the Construction Contracts in a good and workmanlike manner, free of defects and deficiencies in work, and free and clear of all liens. With respect to the Ground Lease Improvements and Frontage Improvements, Developer shall, with City concurrence, reject all work which does not conform to the requirements of the Construction Contracts and cause corrective action to be taken.

(c) Ground Lease Improvements; City Approval. With respect to the Ground Lease Improvements including the Frontage Improvements, Developer shall provide shop drawings, product data, samples and other submittals for City approval. The City must approve these submittals as soon as reasonably possible, but in not less than seven (7) calendar days, unless Developer and City agree to a different time period for review and approval. If the City does not approve any of these submittals, Developer may take up to seven (7) calendar days, unless the parties otherwise agree, to resubmit the disapproved submittal. If necessary, this submittal process will repeat until Developer obtains City’s approval on the submittal.
(d) **Progress Reports.** Developer shall record the progress of the Project. Developer shall cause the General Contractor to submit written monthly progress reports to City and Developer, including information on each Contractor and each Contractor’s work, as well as the entire Project, showing percentages of completion. Developer shall maintain at the Project site or at Developer’s offices in __________, for City one record copy of all Construction Contracts, all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction together with approved shop drawings, product data, samples and similar required submittals.

(e) **Coordination of Work.** Developer shall cause the General Contractor to coordinate the correction and completion of the work, including all Punch List items, and shall evaluate the completion of the work of the Contractors when the Project or any designated portion has achieved Final Acceptance.

6. **Permits.**

   (a) **Responsibility for Obtaining Permits.** Developer shall obtain all Permits necessary to construct the Project, with the exception of the civil permit for Frontage Improvements, which the City will obtain prior to the commencement of Project construction. For those Permits yet to be acquired as of the date of the execution of this Agreement, City may request in writing to review any Permit application Developer intends to submit. City failure to object to terms or conditions of a Permit application shall not be construed as approval of the same but shall constitute City authorization for Developer to submit the Permit application. For those Permit applications already submitted by Developer prior to the execution of this Agreement, City shall receive a copy upon request. Developer shall pursue issuance of such Permits with all due diligence.

   (b) **Costs.** All costs associated with issuance of the Permits (except the civil permits for Frontage Improvements the City will obtain), including the cost of any required off-site improvements, shall be Project Costs.

   (c) **Schedule and Delays.** City and Developer anticipate issuance of Permits by the City of Kent and Commencement of Construction within the time set forth in the Project Schedule set forth in Exhibit F. The Project Schedule shall be updated from time to time as reasonably required to reflect the current status of the Project. In the event that Permits are not obtained as anticipated in the Project Schedule, through no fault of City, Developer, General Contractor or any entity for which they are responsible, Developer shall be entitled to an extension of the Developer Obligation Date by a number of days equal to the number of days the Permit, or Permits, is delayed beyond the anticipated issuance date reflected in the Project Schedule.

7. **Construction.**

   (a) **Commencement of Construction.** Developer shall cause the completion of the Project such that the Initial Occupancy Date is achieved on or before the Developer Obligation Date, in a good and workmanlike manner, free from defects in work or materials and
in substantial accordance with the Project Agreements and Construction Contracts, and free and clear of all liens. As soon as reasonably practical following issuance of the Permits, Developer shall cause commencement of construction of the Project and shall diligently and continuously prosecute such work to Final Acceptance. Developer shall coordinate the sequencing of all construction and shall cause all other contractors to commence construction of that portion of the work covered under their respective Construction Contracts and diligently and continuously prosecute such work to Final Acceptance.

(b) Delays.

(i) The Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays; (ii) City-Caused Delays, (iii) delays from Significant Unexpected Underground Conditions; and (iv) permit related delays as set forth in Section 6(c) above.

(A) Unavoidable Delays. Developer shall provide City with written notice immediately upon commencement of any condition Developer believes may result in Unavoidable Delays. Developer acknowledges and understands that excessive rain and occasional strong winds or snow are a common occurrence in the region, that those conditions can be expected to occur during Project construction, and accordingly, they will not be cause for Unavoidable Delay. If extremely severe weather conditions beyond those described in the preceding sentence occur, then those conditions may be cause for Unavoidable Delay. Developer shall notify City in writing as soon as possible but in no event later than ten (10) days after learning of any extremely severe weather conditions that may have caused an Unavoidable Delay and provide the data supporting the Unavoidable Delay together with an explanation of how the conditions delayed Developer’s construction progress. City shall respond within ten (10) calendar days as to whether City accepts or disagrees with Developer’s position. Any disagreements that cannot be resolved by Developer and City shall be resolved in accordance with Section 18, but work shall continue pending resolution of the dispute.

(B) City-Caused Delays; Delays from Significant Unexpected Underground Conditions. To facilitate timeliness in City communications with Developer over matters relating to design or construction of the Project and to minimize the possibility of City-Caused Delay and incremental increases in Project Costs caused by Significant Unexpected Underground Conditions, Developer shall alert City to deadlines for approvals, decisions or other responses City must provide under this Agreement, including, among other methods, attachment of “deadline cover sheets” on any submissions to City that require response by a particular deadline or distribution of weekly calendars that show deadlines imposed on City. If Developer at any time believes that an instance of City-Caused Delay or a Significant Unexpected Underground Condition has occurred that has directly caused or will directly cause an increase in Project Costs or extension of the Developer Obligation Date, Developer shall send a written notification to City within ten (10) calendar days of learning of the occurrence of such alleged City-Caused Delay or Significant Unexpected Underground Condition explaining the alleged event that constituted such City-Caused Delay or Significant Unexpected Underground Condition, specifying the period of alleged City-Caused Delay or delay from a Significant Unexpected Underground Condition, describing how the alleged City-Caused Delay or or Significant Unexpected Underground Condition adversely impacted the Project Schedule and identifying any incremental increase in Project Costs that are identifiable or reasonably
foreseeable as a direct result of such City-Caused Delay or Significant Unexpected Underground Condition. Any increase in Project Costs incurred as a direct result of such City-Caused Delay shall be the responsibility of the City who shall issue a change order for the increased costs and/or time extension. (Increases in Project Costs incurred as a result of a Significant Unexpected Underground Condition are addressed under Section 2(f)). Any disputes between Developer and City over Project Costs attributable to City-Caused Delay or a Significant Unexpected Underground Condition shall not be a reason to stop or delay construction of the Project and shall be resolved by the parties as expeditiously as possible, either by mutual agreement of the parties or in accordance with the dispute resolution mechanisms described in Section 18.

(ii) Liquidated Damages. Time is of the essence for this Agreement. The City considers it imperative that the Developer substantially complete all work by the Developer Obligation Date. The Developer's commitment to completing these tasks on time comprises valuable consideration for entering into this Agreement.

If the Developer fails to complete the Project (except for all required frontage improvements) by the Developer Obligation Date, the Developer will be in breach, and the City, as representative of the public in general, its citizens, property owners and businesses, will suffer damages as a result of this breach. Without limiting the foregoing, among the damages that these persons and entities will suffer include loss of valuable park and recreational use and programming activities at the Morrill Meadows/East Hill Park.

Because the parties find it extremely difficult or impractical to calculate the actual cost of this delay, the Developer will pay liquidated damages as follows:

(A) If the Developer completes the Project (excluding required frontage improvements) at any time within the six-month period after the Developer Obligation Date, the City will receive a twenty-five percent rent reduction on the monthly rent due for each month the Project is not complete.

(B) If the Developer completes the Project (excluding required frontage improvements) at any time more than six months after the Developer Obligation Date, the City will receive a fifty percent rent reduction on the monthly rent due for each month the Project is not complete.

The parties have used their best efforts to fix this amount of liquidated damages as a reasonable forecast of just compensation for the harm that will be caused from the breach; it is not intended as a penalty.

(c) Construction Contracts. All Construction Contracts shall include recitations or provisions requiring the following:

(i) All Contractors and subcontractors employed on the Project shall pay the prevailing rate of wages as defined in Chapter 39.12 of the Revised Code of Washington.

(ii) Provisions for initiating, maintaining, and providing supervision of safety precautions and programs in connection with construction of the Project.
(iii) Provisions for indemnifying City and Developer for claims arising out of the negligence or willful misconduct of such contractor and its employees, agents and subcontractors.

In addition, City shall have the right to review and approve the process for, and selection of, public art to be installed on the City Land, which approval shall not be unreasonably withheld; provided, however, that Developer may condition or withhold approval for the installation of any public art on the City Land if it would have a material and adverse effect on the construction of the Project or on the Project Schedule.

(d) Protection of Persons and Property.

(i) Developer shall oversee General Contractor’s responsibility for initiating, maintaining and providing supervision of safety precautions and programs in connection with the construction of the Project.

(ii) Developer shall or shall cause the General Contractor to take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) all persons working on the Project construction site and all other persons who may be affected thereby; (2) the Project and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.

(iii) Developer shall or shall cause the General Contractor and all other Contractors to give notices and comply with all applicable laws, ordinances, rules, regulations, and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.

(iv) Developer shall be liable for all damage or loss (other than damage or loss insured under the property insurance) to the Project.

(e) Insurance During Construction. Developer will obtain and maintain insurance of the types and in the amounts attached in Exhibit G, and will require the General Contractor to maintain the same types and limits of insurance, naming the City as an additional insured.

(f) Use of Project Contingency. The amounts set forth in the various line items of the Project Budget are estimates only of Project Costs to be incurred. Developer has allocated the Project Contingency in different proportions for the Kent YMCA Project and for the Ground Lease Improvements (including Frontage Improvements). The General Construction Contract addresses the use of a Project Contingency of approximately four percent of the Project Budget (representing the allocation of the Project Contingency to the Kent YMCA Project). Accordingly, the remainder of the Project Contingency is allocated to the Ground Lease Improvements including the Frontage Improvements. To the extent the actual Project Costs in any line item of the Project Budget exceed the amount shown for such line item, Developer shall first allocate amounts in other line items, in which the actual known Project Costs shall have been less than the amount in the Budget, to the line item in which the excess Project Cost(s) has occurred. Following the allocation by Developer with respect to all line
items, Developer has the sole discretion and shall be fully entitled to draw upon the Project Contingency line item of the Project Budget and use the portion of the Project Contingency allocated to the Kent YMCA Project in its entirety to cover the Project Costs for the Kent YMCA Project and to use the remaining Project Contingency to pay for excess Project Costs incurred to construct the Ground Lease Improvements (including Frontage Improvements). Any Project Contingency allocated to the Ground Lease Improvements (including Frontage Improvements) remaining after Project completion will be reflected in a reduction in the City's Monthly Rent as provided in Section 4.1 of the Project Lease, and any Project Contingency allocated to the Kent YMCA Project remaining after Project completion will be returned to the Developer.

(g) **Warranties.** Developer shall cause the General Contractor to secure all warranties and guarantees of the work by Contractors, suppliers and manufacturers of components of the Project. Upon Final Acceptance, Developer shall cause the General Contractor to assign such warranties to Developer. After Final Acceptance of the Project and during the Warranty Period, Developer shall enforce any warranties or guarantees with respect to the Project upon request. The General Construction Contract shall provide a warranty of materials and workmanship with respect to each major component of the work for the Warranty Period.

(h) **Correction of Work.** During the Warranty Period, Developer shall promptly correct or cause to be corrected work properly rejected by Developer or known by Developer to be defective or failing to conform to the Construction Contracts, whether observed before or after Final Acceptance and whether or not fabricated, installed or completed, and shall correct or cause to be corrected work found to be defective or non-conforming within the Warranty Period.

(i) **Developer Default.** If Developer defaults or neglects to carry out the work in accordance with the Construction Contracts and fails within ten (10) calendar days after receipt of written notice from City to commence and continue correction of such default or neglect with diligence and promptness, then City may, without prejudice to other remedies City may have, act to correct such deficiencies at the cost of the Developer. Such action by the City shall be without prejudice to any other rights or remedies to which City may be entitled under this Agreement or applicable law.

8. **Changes to the Work.**

(a) **No Changes Without City Approval.** Following approval of the construction documents by City there shall be no changes in the work except in accordance with this Section 8. Changes in the work covered by the General Construction Contract and approved by City shall be processed in accordance with the General Construction Contract.

(b) **Developer Approved Changes in the Work.** It is anticipated that there will be field orders and change orders which shall result in changes to the scope of work. Developer shall use its reasonable efforts to apprise City of proposed changes in the work and its recommendations regarding them prior to any action being taken. It is anticipated that it may not always be possible to receive City’s prior approval to these changes in a timely manner.
Therefore, field orders and change orders may be approved by the Developer, without prior City approval, but only if the changes authorized by these field orders and change orders shall not have the effect of extending the Developer Obligation Date or materially altering the work. As soon as practical, Developer shall provide City with all field orders and/or change orders approved by Developer. For the purposes of this Section an alteration shall be deemed to be “material” if it would reduce the intended quality of the Project, result in an increase in operational costs over time, or result in a substitution of any of the systems in the Project (including but not limited to HVAC, plumbing, electrical, elevators, roofing, fire and life safety, security systems, and infrastructure components). In the case of either a material alteration or a change that would result in failure to achieve the Initial Occupancy Date by the Developer Obligation Date, prior written approval by the City of the proposed change must be received.

(c) Review and Inspections. City shall have the right, but not the obligation, to have such additional independent consulting architects, engineers or any other appropriate consultants retained and paid by the City (not as a Project Cost), to inspect the construction work as it progresses and to review the Construction Contracts. Such inspections shall be coordinated with Developer so as to not interfere with or delay construction of the Project. If during the course of such construction City shall determine that the construction is not proceeding in accordance with the Construction Contracts, City shall give notice in writing to Developer that includes City best efforts to specify the particular deficiency or omission and Developer shall thereupon take, or cause to be taken, all steps necessary to correct same. The failure to give such notice shall not give rise to any liability for City and shall not be considered a waiver of any right of City under this Agreement, including, without limitation, the enforcement of the representations and warranties of Developer under this Agreement and the requirements with respect to construction of the Project in accordance with the Construction Contracts.

9. Other Services by Developer. Services may be performed by the Developer at the written request of City that are not included as part of the Project. Such services shall be performed and paid pursuant to a separate written agreement between City and Developer.

10. Completion of the Project.

(a) Final Acceptance. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which the Project shall be ready for Final Acceptance; however, the parties may, by mutual agreement, exempt the completion of the Frontage Improvements from Final Acceptance for the remainder of the Project and address completion and acceptance of Frontage Improvements by an amendment to this Agreement. “Final Acceptance” means that each of the following items shall have occurred with respect to the Project:

(i) The City of Kent, Washington has issued a certificate of occupancy for the Project and the City will have approved final completion of all Ground Lease Improvements;

(ii) Each Contractor shall have issued its “Certificate of Substantial Completion” together with its “Affidavit of Payment of Debts and Claims” (AIA Forms 706.
and 706A) together with final waivers and releases of lien in form satisfactory to Developer from contractors and all subcontractors who have performed work on site;

(iii) All Punch List items shall have been completed.

(iv) General Contractor shall have submitted its application for final payment together with evidence reasonably satisfactory to City that all construction costs for the Project have been paid in full including evidence of full payment for any personal property installed on the Project Land as part of the Project Costs.

(v) The period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to Developer have been obtained by the Developer from all contractors in accordance with all Construction Contracts and from such laborers, contractors and subcontractors performing work on site as Developer may require;

(vi) The General Contractor shall have issued a certificate that (1) the Project has been finally completed in substantial accordance with the Construction Contracts, and (2) no Hazardous Substances as defined in said certificate were incorporated into the structure of the Project;

(vii) Developer shall have delivered to City a written report showing the allocation of Project Costs among the categories of the Project Budget, including specifically between the Ground Lease Improvements and the Kent YMCA Project, and the remaining specified dollar amount of the Project Contingency (and the allocation of the Project Contingency between the Kent YMCA Project and the Ground Lease Improvements);

(viii) No action shall have prevented Developer from receiving an endorsement to its Title Policy dated as of and issued on the date of Final Acceptance, which shall insure Developer (1) against any liens for labor or materials, whether or not of record, which may have arisen in connection with the construction of the Project, and (2) show no additional exceptions to the Title Policy other than those approved by or arising through Developer;

(ix) Developer shall have delivered to City its affidavit that the Construction Contracts for the Project required the contractors under those contracts and their subcontractors to pay the prevailing wage in accordance with Section 8(c)(i);

(x) Developer shall have completed and delivered the matters set forth in Section 11.

11. **Developer Representations; Warranties.** Prior to Final Acceptance of the Project, Developer shall represent and warrant as follows:

(a) The Project has been completed in substantial accordance with the Construction Contracts (as revised by Project change orders set forth in Section 8) and is, and at all times during the Warranty Period shall be, free from defects in workmanship and materials in connection with the construction thereof.
(b) Developer has no knowledge of any structural defects, latent defects or building systems defects within the Project.

(c) The Project has been constructed in accordance with all Requirements of Law, all Permits and all insurance laws, regulations and requirements in effect at the time of construction of the Project.

(d) The Ground Lease Improvements (including the Frontage Improvements) are served by water, storm and sanitary sewage facilities, telephone, electricity, fire protection and other required public utilities adequate to serve the Ground Lease Improvements (including the Frontage Improvements).

(e) The General Contractor, Architect, and all Contractors, suppliers, material suppliers and consultants have been paid in full for work related to construction of the Project billed to date and there are no liens, encumbrances or other defects affecting title to the Project Land which has been or will be filed against the Project Land with respect thereto.

(f) Developer is not aware of any physical defect in the Project Land or Frontage Improvements that would affect use for the Permitted Use.

(g) To the best of Developer’s knowledge and except as disclosed in writing there are no condemnation, zoning or other land use regulation proceedings currently instituted which could detrimentally affect the use and operation of the Project for its intended purpose. Subject to Existing Hazardous Substances, if during the term of this Agreement any such proceedings have been instituted, Developer shall have used its best efforts and due diligence to resolve them prior to Final Acceptance of the Project.

(h) Except as disclosed to City in writing, there is no litigation pending, or to the best knowledge of Developer, threatened, with respect to the Project for matters undertaken by Developer under this Agreement.

(i) To the best of Developer’s knowledge and except as disclosed in writing, (i) no Hazardous Substances have been released following the date of this Agreement on the Project Land, (ii) any such Hazardous Substance which has been so released has been remediated in accordance with applicable law, and (iii) no Hazardous Substances have been incorporated into the structure of the Project except as may be required in construction of the Project and only then to the extent permitted by applicable law.

(j) To the best of Developer’s knowledge, after due and diligent inquiry, all Permits necessary for the construction, use and occupancy of the Project have been obtained and are in full force and effect.

12. **Indemnification.** In any and all causes of action and/or claims or third party claims arising out of or in connection with the terms, activities, use and/or operations of this Agreement, including the Project Land and the Project, Developer and City shall each be responsible to the other only to the extent of its own comparative fault in causing the alleged damages or injuries, to the extent permitted by law. As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a party to this Agreement, the
indemnifying party shall have the duty to defend, save and hold the other party harmless and upon failure to do so, the indemnifying party shall pay reasonable attorneys’ fees, costs, and expenses incurred by the other party to this Agreement in defense of said claims and/or actions.

Nothing contained within this Section 12 shall affect and/or alter the application of any other provision contained within this Agreement.

13. Representatives.

(a) Developer Representatives. Developer shall consult with City on initial assignments of personnel assigned to the Project. The Developer’s representative with overall responsibility for the work for the Project will be Nathan Phillips.

(b) City Representative. City designates Julie Parascondola as City’s Representative authorized to act on the City’s behalf with respect to the Project. City shall promptly render decisions to avoid delay in the orderly process of design and construction of the Project. City shall communicate with the Contractor and the Architect only through Developer or with Developer’s permission.

(c) In the event either Developer or City change representatives, the other party will, to the extent within that party’s control, provide at least ten (10) days’ advance written notice of that change.

14. Accounting, Inspection and Audit.

(a) Accounts. Developer shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

(b) Inspection and Audit. City may, at its sole discretion, from time to time whether before or after Final Acceptance or termination of this Agreement inspect all books and records of Developer or any Contractor relating to the Project and/or elect to have an audit conducted to verify Project Costs through the date of the latest progress payment. If City so elects to conduct such an audit, it shall give three (3) days written notice to Developer, and such audit shall be conducted as soon as is reasonably feasible thereafter, but progress payments to Developer shall not be delayed pending the outcome of the audit. Such audit shall be conducted by an auditor selected by City, and City shall pay the cost of such audit provided, however, that such auditor shall not be retained on a contingent fee basis. Developer agrees to cooperate with the auditor and make available for examination at its principal office all of its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor.

(c) Preservation of Records. Developer shall preserve all Project development records for a period of six years after Final Acceptance.

15. Damage and Destruction; Condemnation.

(a) Damage and Destruction. After the happening of any casualty to the Project, Developer shall give City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Project.
Developer and City acknowledge, agree and assign all insurance proceeds which Developer may be entitled to receive prior to Final Acceptance of the Project with respect to damage or destruction to the Project. Developer and the insurance carrier are irrevocably instructed in accordance with this Section. Such insurance proceeds shall be used to pay Project Costs, including increases in the Project Costs caused by such casualty, and in that event, Developer shall proceed diligently to reconstruct and restore the Project in accordance with the Construction Contracts and the provisions of this Agreement. All costs of such repair or restoration of the Project exceeding the amount of the insurance proceeds shall be paid by Developer.

(b) Condemnation. In the event of a partial condemnation of the Project to the extent that the Project may still be constructed in accordance with the Construction Contracts, or may be constructed in accordance with the Construction Contracts as modified by changes acceptable to City and Developer, Developer shall proceed diligently to construct the Project in accordance with the Construction Contracts, as modified, if applicable. Any such partial condemnation proceeds shall be applied to pay Project Costs. In the event of a condemnation of all of the Project or so much thereof that the Project may no longer be constructed in accordance with the Construction Contracts, this Agreement shall terminate and the parties shall have no further obligations under this Agreement.

16. Payment of Taxes/Assessments.

(a) Real Property Taxes. Prior to Final Acceptance any and all real property taxes and assessments (including [leasehold excise tax]) levied against the Project Land and the Project or any portion thereof shall be paid by Developer. Following Final Acceptance, any and all real property taxes and assessments levied against the Kent YMCA Land and the Kent YMCA Project or any portion thereof shall be paid by Developer, and any and all real property taxes and assessments levied against the Ground Lease Improvements and the City Land shall be paid as provided under the Ground Lease and Project Lease.

(b) Other State and Local Taxes. Developer shall pay any and all state and local taxes assessed in connection with the Project, including, but not limited to, state and local retail sales taxes and business and occupation taxes. Developer shall complete all necessary tax returns relating to such taxes and file the same with the applicable state or local governmental agency and remit, on or before the date such tax payment is due, payment of such state and local taxes to the proper taxing authority.

17. Default.

(a) Developer Default. The following events shall constitute an “Event of Default” by Developer:

(i) If Developer shall fail to perform any material obligation under this Agreement;

(ii) If Developer persistently or repeatedly refuses or fails to cause to be supplied to the Project enough properly skilled workers or proper materials reasonably necessary to complete the Project, or if Developer ceases work on the Project for a period of
fourteen (14) consecutive days (unless due to Unavoidable Delays, City-Caused Delays or Significant Unexpected Underground Conditions);

(iii) If Developer misappropriates any funds received by Developer pursuant to the provisions of this Agreement;

(iv) If Developer persistently disregards and fails to comply with laws, ordinances or rules, regulations or orders of a public authority having jurisdiction over the Project.

(v) If, due to the actions of Developer, any Permit required for construction of the Project shall be revoked or canceled;

(vi) If there shall occur any lien or other encumbrance on the Project Land or the Project caused by Developer which is not bonded and removed within [thirty (30)] days;

(vii) If there shall have occurred defective workmanship or materials within the Kent YMCA Project which is not cured within the time period provided in Section 8(g) of this Agreement;

(viii) If Developer shall have assigned, pledged or encumbered its rights, duties or obligations under this Agreement in violation of this Agreement;

(ix) If any warranty made by Developer under this Agreement shall be untrue or breached in any material respect; or

(x) If Developer files a petition for bankruptcy or if it makes a general assignment for the benefit of Developer’s creditors, or if a receiver is appointed on account of Developer’s insolvency and any such petition or appointment is not dismissed within sixty (60) days.

(b) City Remedies upon Developer Event of Default. Upon any Event of Default by Developer, City shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently complete such cure within a reasonable period of time not to exceed sixty (60) days), except with respect to Events of Default set forth in Section 18(a)(iii) and (viii) for which the cure period shall be ten (10) business days, or Section 18(a)(x) for which no cure period exists beyond the time period stated therein; provided however, that such cure period shall not apply to failure of Developer to achieve the Initial Occupancy Date on or before the Developer Obligation Date for the Project. In the event Developer fails to cure such Event of Default within the time period set forth above, City shall be entitled to the following remedies:

(i) To take over and complete the Project. City is irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to incur obligations, enforce contracts or agreements made by Developer and to do any and all things
that are necessary and proper to complete the Project] To terminate the Ground Lease [and/or cause the Kent YMCA Land to revert to the City, or its assigns, free and clear of any claims of the grantee under the Conveyance Agreement and, in the sole discretion of the City, to require the Developer to remove improvements thereon at its cost]; or

(ii) In addition to a claim for damages for such breach or default, and in addition to and without prejudice to any other right or remedy available under this Agreement or at law or in equity, to commence an action for specific performance of this Agreement;

(iii) To bring an action for damages; or

(iv) To terminate this Agreement upon ten (10) days written notice.

(c) **City Default.** The following shall constitute an “Event of Default” by City:

(i) City shall have assigned, pledged or encumbered its rights, duties or obligations under this Agreement in violation of this Agreement; or

(ii) City shall have failed to perform any other material obligation under this Agreement.

(d) **Developer Remedies Upon City Event of Default.** Upon any Event of Default by City, Developer shall give City written notice of the same. Upon receipt of such written notice, City shall have ten (10) business days to cure any such Event of Default. In the event City fails to cure such Event of Default within said ten (10) business day period, Developer shall be entitled to stop all work relating to the Project, if Developer so desires, and shall further be entitled to pursue its rights and remedies at law and in equity under this Agreement, including without limitation, specific performance of City’s obligations under this Agreement.

(e) **Remedies Not Exclusive.** No remedy conferred upon either party in this Agreement is intended to be exclusive of any other remedy under this Agreement or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or later existing at law or in equity or by statute.

18. **Disputes.** City and Developer agree to follow the independent resolution process set forth in this Section 18 to resolve disputes regarding preparation of the construction drawings and Detailed Specifications and changes to construction documents in an economic and time efficient manner so that such documents conform to the requirements of this Agreement, the Project Schedule is not adversely impacted, and the Project as constructed will satisfy the Preliminary Plans and Outline Specifications. In the event that a dispute arises between City and Developer during the design or construction of the Project, the parties shall attempt to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may, by delivering written notice to the other, refer the matter to a dispute resolution mediator, which will be non-binding but a condition
precedent to having the dispute decided in court. If the dispute is not resolved pursuant to the following procedures within _______ (__) days, the parties may proceed with any remedy available at law or equity. The City and Developer will mutually designate a mediator to resolve such dispute. The mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute; however, the mediator’s recommendations concerning any such dispute are advisory only. The Mediator’s recommendations shall be based on the pertinent provisions of this Agreement, and the facts and circumstances involved in the dispute. The Mediator’s recommendations shall be furnished in writing to the parties. The fees charged by the Mediator shall be shared equally by the parties.

19. **Modifications.** This Agreement may only be modified by mutual, written agreement, signed by both parties.

20. **Miscellaneous.**

   (a) **Waiver.** Any waiver by either of the parties of any breach of any covenant under this Agreement contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

   (b) **Neutral Authorship.** In connection with the execution and delivery of this Agreement, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

   (c) **Severability.** If any portion or portions of this Agreement is declared void or unenforceable, it shall not affect the other provisions of this Agreement.

   (d) **Relationship of Parties.** Developer and City shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Nothing in this Agreement shall be construed as reserving to City the right to control Developer’s business. Nothing contained in this Agreement shall be construed as granting or conveying to Developer any interest in or possession of or to the Land, or any portion of the Land.

   (e) **Reasonableness.** If the approval or consent of City or Developer is required by any provision of this Agreement, such approval or consent shall not be unreasonably withheld, conditioned or delayed unless the provision specifies that the decision to grant such approval or consent is in the sole discretion of the party making the decision or otherwise states that a reasonableness standard does not apply.

   (f) **No Third Party Rights.** The provisions of this Agreement are intended solely for the benefit of, and may only be enforced: (i) by the parties and their respective successors and assigns, including, as to City, and (ii) with respect to rights expressly granted to
City as tenant under the Project Lease in this Agreement, by the City as tenant. None of the rights or obligations of the parties under this Agreement set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any Contractor, Architect, subcontractor, worker, supplier, mechanic, architect, insurer, surety, guest, member of the public, or other third parties having dealings with either of the parties or involved, in any manner, in the Project.

(g) Assignment; Encumbrance or Pledge. Neither this Agreement nor any rights or duties under this Agreement nor any benefits derived from this Agreement may be assigned, delegated, pledged or encumbered to any other person or entity by either party without the express written consent of the other, which consent may be withheld by either in the exercise of its absolute discretion.

(h) Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via e-mail, or sent via facsimile transmission with received invoice followed by a “hard copy” mailed, regular mail, within one (1) business day to the fax number listed as follows:

City: City of Kent
Attention: Parks, Recreation and Community Services Director
220 Fourth Ave S.
Kent, WA  98032

Developer: YMCA of Greater Seattle
Attention: SKC Regional Vice President
900 4th Avenue
Seattle, WA  98104

Either party may change its address for the purposes of this section by giving written notice of such change to the other party in the manner provided in this Section.

(i) Entire Agreement. This Agreement (and the exhibits referred to in this Agreement) constitute the entire agreement between the parties with respect to the subject matter of this Agreement and may be amended only in writing signed by both parties.

(j) Time is of the Essence. Time is of the essence of this Agreement.

(k) Employees of Developer. Developer is acting under this Agreement as an independent contractor and nothing in this Agreement contained, or any acts of Developer or City, nor any other circumstances, shall be construed to establish Developer as an agent of City. Developer shall be responsible for each of Developer’s employees or other persons performing
services to be performed by Developer under this Agreement and for determining the manner and time of performance of all acts to be performed by Developer under this Agreement. Developer shall maintain all required industrial and worker’s compensation insurance for all employees of Developer and shall cause all Contractors, Architect and all design professionals and other persons, firms and corporations employed to perform services in connection with the Project to provide worker’s compensation and similar insurance with respect to their respective employees.

(l) **Exhibits.** The Exhibits to this Agreement are: [To be Revised]

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(m) **Governing Law; Venue.** This Agreement and all provisions of this Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, State of Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
DATED the day and year first above written.

CITY:
THE CITY OF KENT
a Washington municipal corporation

By: _____________________________
Name: __________________________
Its: ____________________________

DEVELOPER:
THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE
a Washington nonprofit corporation

By: _____________________________
Name: __________________________
Its: ____________________________

EXHIBIT A

Legal Description of Morrill Meadows and East Hill Park Land
EXHIBIT B

Legal Description of Kent YMCA Land
EXHIBIT C

Legal Description of City Land
EXHIBIT E
Schedule of Preliminary Plans and Outline Specifications
EXHIBIT F

Project Schedule

Project Estimated Milestone Dates
EXHIBIT G

Required Insurance
KENT YMCA OPERATING AGREEMENT

THIS KENT YMCA OPERATING AGREEMENT is entered into between The Young Men’s Christian Association of Greater Seattle, a Washington non-profit corporation (YMCA), and the City of Kent, a Washington municipal corporation (City).

Recitals

A. The City and the YMCA began preliminary discussions to construct a YMCA facility in Kent, eventually deciding that the City’s Morrill Meadows/East Hill Park would be an optimal location for a YMCA community center.

B. The City entered into a Memorandum of Understanding with the YMCA and began negotiations to determine how best to achieve their mutual goal to construct and operate a community center facility in the park (the “Kent YMCA”). Negotiations progressed, and the City eventually published a Request for Proposals, seeking applicants to construct the project. The City issued the RFP under its home rule authority, other statutory authority, and in accordance with the procedures in Chapter 35.42 Revised Code of Washington. The project, as envisioned in the RFP, sought applicants to construct and largely fund a community center facility and related park improvements (the “Project”).

C. The YMCA was the only party to respond to the RFP. Accordingly, the City selected the YMCA and entered into detailed negotiations.

D. The parties agreed that the YMCA will fully fund Project construction and take all risk of cost overruns or delay, plus provide facility and programming amenities in the Kent YMCA that will provide the City’s residents extensive community benefits (the “Development Agreement”).

E. The City will deed one park parcel in fee to the YMCA to construct the Kent YMCA, subject to a reversionary interest in favor of the City should the YMCA ever stop operating the facility (once constructed) as a YMCA. The City will also lease a portion of the park adjacent to the Kent YMCA under a twenty-year leasehold term (the “Ground Lease”) to construct adjoining park improvements that will be either impacted or displaced by the Kent YMCA or that complement the new facility (the “Ground Lease Improvements”).

F. When construction of the Kent YMCA and the adjoining park improvements is complete, the YMCA will lease back the adjoining park improvement area to the City (the “Project Lease”). Under this lease-leaseback arrangement, the City will rent the Ground Lease Improvements area from the YMCA until the Ground Lease term expires, unless the City exercises certain early termination provisions by paying all rent due under the Project Lease.

F. Throughout Project negotiations, the parties have developed, and intend to maintain a collaborative relationship based on mutual trust, respect, honesty, and commitment.
**Agreement**

NOW THEREFORE, in consideration of the rights and obligations encompassed in this Agreement, the Development Agreement, the Ground Lease, the Project Lease, and all other related project agreements referenced in those agreements (the “Project Agreements”), which the parties mutually acknowledge, the City and the YMCA enter into and agree to be bound by all the terms and conditions of this Operating Agreement (“Agreement”).

1. **Purpose and Principles.** Because the Kent YMCA is located within a City park, and because both the YMCA and the park exist to benefit and serve the surrounding community, the parties view this Project and its operation as a collaboration. In this context, the parties intend future operational decisions to be guided under the following principles:

   1.1 The parties serve the same community and will work together to meet its diverse needs.

   1.2 The parties may mutually take on new goals over time.

   1.3 The collaborative relationship will be characterized on mutual trust, respect, honesty, and commitment.

   1.4 The parties will maintain clear and ongoing communication as a priority, striving to understand each other’s unique vision, needs, and interests, balancing community and YMCA user expectations.

   1.5 The parties will mutually discuss and agree to ongoing collaborative principles and processes, especially during decision-making and conflict resolution.

   1.6 The parties will regularly communicate to continuously improve partnership goals and outcomes.

   1.7 The parties will strive to maintain an ethical, open, and honest relationship, respecting the history that led to the development of the Project and the collaborative relationship.

   1.8 The parties will nurture a diverse Kent community, will support innovating approaches to enhance access for underrepresented populations, and will seek to connect different community groups by fostering inter-group dialogue.

2. **Definitions.** Unless the context clearly indicates otherwise and except for terms defined in this Agreement, the terms used in this Agreement will have the same meaning given to those terms in the Development Agreement, attached as Exhibit A.
3. **Term.** This Agreement will remain in effect for fifty years from its Effective Date and will automatically extend for additional five-year periods until the YMCA stops operating the Kent YMCA as a community center as described in the Project Agreements. The extension or expiration of the terms of the Ground Lease or the Project Lease will not affect the term of this Agreement.

4. **Management and Operations in General.** Specific management and operational responsibilities are described below, but generally, the YMCA will operate and maintain the Kent YMCA building and the Kent YMCA Land and the City will operate and maintain the Ground Lease Improvements and the City Land, as well as all remaining areas of the Morrill Meadows/East Hill Park.

   4.1 **YMCA Managerial Discretion.** Except as provided in this Agreement, the YMCA will have discretion and control in all matters relating to the management and operation of the Kent YMCA, including, without limitation, staffing decisions, employment policies, procurement of and payment for inventories, supplies, services, repairs, and maintenance decisions.

   4.2 **City Managerial Discretion.** Except as provided in this Agreement, the City will have discretion and control in all matters relating to the management and operation of the Ground Lease Improvements, the City Land, and the remainder of the Morrill Meadow/East Hill Park, including, without limitation, staffing decisions, employment policies, procurement of and payment for inventories, supplies, services, repairs, and maintenance decisions.

5. **Operating Standards in General.** Except as may be amended or re-allocated below, the YMCA will maintain the Kent YMCA building and the City will maintain the Ground Lease Improvements, the City Land, and all remaining areas of Morrill Meadows/East Hill Park under these general operating standards:

   5.1 Maintain in a clean, attractive, first-rate, safe, and habitable condition
   
   5.2 Keep in good repair and proper working order
   
   5.3 Maintain compliance with all applicable laws, regulations, and rules
   
   5.4 Maintain in a manner intended to prevent and minimize closures
   
   5.5 Maintain in a manner consistent with industry standards for facilities of similar size and scope to the Kent YMCA and Morrill Meadows/East Hill Park that are located elsewhere in the greater Puget Sound region.

6. **Communication and Collaboration.** As stated in the purposes and principles above, the parties intend to maintain open and robust communications so that the Kent YMCA and the Morrill Meadows/East Hill Park facilities and programs consistently support and enhance those purposes and principles.

   6.1 If the YMCA creates a local Kent advisory or other type of board or committee, one of the members must be a representative selected by the Kent Parks, Recreation, and Human Services Director.
6.2 City and the Kent YMCA representatives will meet annually, preferably in October, to discuss joint operating concerns, develop new opportunities through joint curriculum, programs, or other collaboration that would benefit both organizations, changes in fees or access charges, and generally communicate to maintain open and transparent communications.

6.3 The City will notify the Kent YMCA manager of any events (e.g., a large picnic gathering) or park programs that may have over seventy-five persons attending, and the City will use its best efforts to provide notification of other events or park programs the City believes may directly or indirectly impact the Kent YMCA’s normal operations.

6.4 The City and the YMCA will work together, when appropriate, on joint marketing or other promotional efforts.

6.5 If either party wishes to use the other party’s logo, whether for marketing, signage, or any other purpose, the party intending to use the logo must first obtain the other party’s prior written consent.

7. Parking Facilities. Three parking areas may, to some degree, be used or affected by the Project.

7.1 East Parking Lot (primary lot to serve the Kent YMCA).

7.1.1 The East Parking lot will serve both the Kent YMCA and City park visitors, and neither party may assign or otherwise reserve exclusive parking stalls, except the YMCA may park up to two YMCA vans used for YMCA programs at any time, day or night, but at the YMCA’s sole risk of damage, vandalism, or other liability.

7.1.2 The City will provide, at its cost, the following routine maintenance in accordance with its Park Operations Maintenance Level A, attached as Exhibit B:

(a) Parking lot sweeping, through an independent contractor at the City’s option, twice annually

(b) Leaf blowing as needed during peak season (April—Sept.) and two to four times per month during non-peak season

(c) De-icing and salting as needed during cold weather

(d) Landscape planter bed maintenance five to six times per year, which will include irrigation (and ongoing irrigation maintenance, repairs, scheduling, and winterizing), and, as needed, pruning, weeding, plant replacement and herbicide application

(e) Installation and replacement of all signage, including disability parking, electric charging stations, or any other signage.
7.1.3 The YMCA will be responsible for snow removal throughout the parking lot.

7.1.4 The YMCA will pay all power utility charges associated with the parking lot lighting and electric charging stations.

7.1.5 The City and the YMCA will equally share the cost to re-stripe the parking lot and to re-seal the parking lot; the parties expect re-striping to occur once every two to three years and resealing to occur every three to five years.

7.1.6 The City and the YMCA must mutually agree on anticipated major lifecycle maintenance or capital repair and replacement.

(a) Typically, the parties will mutually determine needed major lifecycle maintenance or capital repair and replacement need during the annual City/YMCA planning meeting

(b) The parties must mutually agree on the improvements needed.

(c) For all agreed improvements, the parties will negotiate appropriate cost allocations, but in the event the parties cannot agree on cost allocation within sixty calendar days from the date they determine the repairs are needed, the costs will be allocated equally between the parties.

(d) The City will be the lead project manager for re-striping, resealing, and all major lifecycle maintenance or capital repair and replacement projects and will be responsible to invoice the YMCA pursuant to the agreed or default cost allocation.

7.1.7 Parking will be free of charge and available on a first-come, first-served basis.

7.1.8 As provided by city code, the City may tow improperly parked vehicles, including without limitation, vehicles parked on sidewalks, vehicles left parked over twenty-four hours, vehicles not associated with park use, and unauthorized vehicles left in the park after YMCA closing or before opening.

7.2 West Parking Lot. The City also maintains a separate parking lot on the western end of the Morrill Meadows/East Hill Park, which is intended for use exclusively by park visitors.

7.2.1 The YMCA will communicate with its members to use the East Parking Lot only when using the Kent YMCA.

7.2.2 The City is completely responsible for use and maintenance, whether minor or major, of this lot.

7.2.3 The lot is not lighted, and the City has no current plans to add lighting to this lot.
7.2.4 The City may use this lot exclusively for park events or rentals.

7.3 Overflow Parking at Kent United Methodist Church. The City has entered into a separate agreement with the Kent United Methodist Church, located across SE 248th St., to allow use of up to fifty parking spaces on the church’s parking lot on an overflow basis.

7.3.1 Neither party may use the overflow spaces on Sunday mornings before noon.

7.3.2 The City’s agreement with the church is permissive. The City will endeavor to maintain this agreement with the church throughout the life of the Kent YMCA, but cannot guarantee the church parking lot will always be available for overflow use.

8. Stormwater Treatment. The East Parking Lot drains to an underground stormwater retention vault generally located beneath the multi-sport court. Because of its construction and design, the vault needs regular maintenance to operate properly.

8.1 The City will replace the filter installed as part of the vault according to manufacturer specifications.

8.2 The City will vacuum the vault at least annually.

8.3 In the event the vault needs major lifecycle maintenance or capital repairs, the parties will mutually agree on the cost allocation for the maintenance or repairs, and the City will be the lead project manager and will be responsible to invoice the YMCA pursuant to the agreed cost allocation.

9. Kent YMCA Joint-Use Restrooms. The Kent YMCA, during operating hours, will keep all its front entry rest room facilities open to the public for park visitors’ use.

9.1 The YMCA will operate, maintain, repair, remodel, and supply the front entry rest rooms at its sole cost.

9.2 All public use will be subject to the YMCA’s Code of Conduct, attached as Exhibit C.

9.2.1 The YMCA will share any changes to its Code of Conduct with the City as soon as reasonably practical.

9.2.2 The YMCA will post the Code of Conduct in a manner that park visitors that use the front entry rest rooms can read them.

10. Kent YMCA Exterior, Facility Perimeter, and Park Integration. The parties will cooperatively develop a maintenance standard to keep the Kent YMCA, its exterior and adjacent landscaping, and adjoining park areas in good condition, and at a minimum, will meet the rights and responsibilities in this Section 10.
10.1 The YMCA will make every effort to maintain the Kent YMCA building exterior shell and perimeter areas assigned to the YMCA to a quality aesthetic that aligns with the surrounding park and park landscape.

10.1.1 The YMCA will maintain the Kent YMCA building exterior, including all paint, windows, doors, exterior signage, exterior lighting, roofing, gutters, etc. The YMCA will not allow, to a significant degree, mold accumulation, peeling paint, or similar types of neglect.

10.2 The YMCA will maintain all existing signage as approved and installed at the completion of construction.

10.2.1 The YMCA may not change the exterior signage without first obtaining the City’s Parks, Recreation, and Human Services Director’s prior written approval and without first obtaining any required City permits.

10.2.2 The YMCA may nevertheless place temporary signs to promote programs, enrollment, or other similar operational activities.

10.3 Certain landscape beds have been constructed or installed directly adjacent to or attached to the Kent YMCA building. Exhibit D, attached, is a drawing that generally depicts these areas.

10.3.1 Except for the City’s mowing and lawn irrigation obligations below, the YMCA will maintain all this landscaping, including without limitation, pruning, weeding plant replacement and any needed herbicide application, in good condition.

10.3.2 The YMCA will provide sufficient irrigation to this landscaping to allow the various plantings to survive and thrive. The YMCA will provide this irrigation at its sole cost and through the Kent YMCA building’s water meter or a separate water meter, if necessary.

10.4 The City will maintain all grass or turf areas within the park, including grass or turf that runs right of the Kent YMCA building landscaping, regardless of property lines.

10.4.1 The City’s maintenance will include mowing and trim out, and to the extent necessary, fertilization and herbicide application.

10.4.2 The City will provide sufficient irrigation to allow the grass and turf to survive and thrive. The City will provide irrigation to the grass and turf at its sole cost through the park’s water meter(s).

10.5 The Project includes certain hard surfaces (sidewalks, etc.) leading up to and connect with a large hard-surfaced plaza and entryway (the “Front Porch”). Exhibit E, attached, is a drawing that generally depicts these areas.

10.5.1 The City will blow leaves and other small debris off these surfaces in accordance with the City’s mowing schedule for the park, typically two times per week.
10.5.2 The City will salt or de-ice these surfaces as needed during cold weather.

10.5.3 The City will pressure wash these surfaces as needed and will clean and maintain lifestyle and aesthetic improvements installed on the Front Porch.

10.5.4 The City will provide and pay for any electric power needed for the Front Porch.

10.5.5 The City will install, maintain, and replace all amenities located within the Front Porch, such as outdoor foosball, table tennis, etc.

11. YMCA Responsibilities for Operation of Kent YMCA. Except as amended by this Agreement, the YMCA will be solely responsible, at its own expense, for the total cost of operating, maintaining, repairing, and improving all aspects of the Kent YMCA, including without limitation, custodial requirements, structural maintenance, and all routine, preventative, and capital maintenance or repair requirements. As part of that responsibility, the YMCA will separately meter and pay for all utilities needed for the Kent YMCA, including without limitation the following:

11.1 All the cost to provide cable TV, internet, wi-fi, telephone, and other related services.

11.2 All the cost to provide garbage or other solid waste service.

11.3 All the cost to provide electric power and natural gas service.

11.4 All the cost to provide electric power to the East Parking Lot.

11.4.1 If the parties decide to provide lighting to the multi-sport court, the City will be responsible for all the cost to provide and operate that lighting.

11.5 All the cost to provide potable or non-potable water, whether for human consumption or for irrigation.

11.6 All costs incurred for sewer service.

11.7 XX percent of all stormwater fees and charges incurred against the Morrill Meadows/East Hill Park, which the parties have determined accurately represents the YMCA’s fair and allocable share of these costs based on added impervious surface created and used by the YMCA as a result of the Project.

12. City Responsibilities for Operation of Morrill Meadows/East Hill Park. Except as amended by this Agreement, the City will be solely responsible, at its own expense, for the total cost of operating, maintaining, repairing, and improving all aspects of the Morrill Meadows/East Hill Park, including without limitation, custodial requirements, structural maintenance, and all routine, preventative, and capital maintenance or repair requirements.
12.1 The City will maintain all park elements in good condition and quality appearance, maintaining the park to its Level A maintenance standard. See Exhibit B.

12.1.1 Maintenance to these standards, however, is subject to City funding and may change during the term of this Agreement.

12.1.2 If the City intends to significantly change the level of park maintenance and operations in a manner that will affect the park’s overall aesthetic and use, the City will provide the YMCA at least six months’ prior written notice.

12.1.3 In the event of a significant change in the level of park maintenance or operations, the City will work collaboratively with the YMCA to develop solutions restore as close to previous levels as possible.

12.2 The City will separately meter and pay for all utilities needed for the park, including without limitation the following:

12.2.1 All the cost to provide potable or non-potable water, whether for human consumption or irrigation.

12.2.2 All the cost to provide electric power and natural gas service for parking lot landscaping, shelter use, and all other park landscaping and structures.

12.2.3 All the cost to provide garbage or other solid waste service needed for general park use.

13. City Use of Kent YMCA Conference Room. The Kent YMCA will have a large room intended for teaching, meetings, and conferences. The YMCA will schedule this room according to its needs, but when requested and subject to availability, the City will have use of this room at no cost.

14. Kent YMCA Aquatics Programming and Natatorium Access. As part of the overall transaction to construct the Project and operate the Kent YMCA, the YMCA has agreed to build certain aquatic amenities it would not otherwise include in a project of this size, including a zero depth access to one pool, a larger pool system than this building would normally call for, and a twenty-five yard, six-lane pool to support City and local school competitive swimming events. The YMCA will also provide the following:

14.1 The YMCA will provide time for exclusive use of the Aquatic Center for the City’s adaptive recreation program. The program provides people with disabilities the opportunity to participate in recreational activities.

14.1.1 The YMCA will provide at least three hours per week for adaptive recreation program use from September 1 through June 30 each year.

14.1.2 Because of the program’s unique limitations, the YMCA will use its best efforts to provide this time on Saturdays from 9 a.m. to noon, and if that time is not available, on Sundays from 9 a.m. to noon.
1.3 If shared use is requested, the parties will only accommodate shared use if mutually agreed in advance, in writing.

2. The YMCA will also provide access to the Aquatic Center for the City’s camp programs.

2.1 The City runs its summer camps for kindergarten age children up through sixth graders beginning in late June and ending in August. The YMCA will provide limited camper use of the Aquatic Center on Tuesdays and Thursdays during each week the City operates summer camps.

(a) City summer camp use will occur between 11:30 a.m. and 2:30 p.m.

(b) Campers age kindergarten through third grade will use the Aquatic Center on Tuesdays.

(c) Campers age fourth through sixth grade will use the Aquatic Center on Thursdays.

(d) Each camper group will generally not exceed fifty to sixty campers, plus supervisory staff.

2.2 The City provides three school break camps each year, based on the Kent School District break schedule, typically occurring in December, February, and April.

(a) The YMCA will provide the City use of the Aquatic Center on Thursday of each school break camp between 11:30 a.m. and 2:30 p.m.

(b) Each school break camp group will generally not exceed twenty to thirty campers, plus supervisory staff.

3 The YMCA will provide access to the Aquatic Center to the Kent School District’s (“KSD”) Girls and Boys swim teams from Kentwood High School and Kent-Meridian High School subject to agreed terms with the KSD.

3.1 The YMCA will use its best efforts, in good faith, to accommodate KSD’s swim team requests, but final scheduling of dates and times will only be as mutually agreed.

3.2 The KSD girls swim team season generally starts at the end of August and runs to the middle of November each school year.

3.3 The KSD boys swim team season generally starts in the middle of November and runs through the end of February each school year.

3.4 Each high school’s swim team session requires ninety minutes of scheduled Aquatic Center use each day of the respective season, Monday through Friday.
14.3.5 Because of the KSD’s complex school calendar planning and scheduling needs, the YMCA and the KSD will begin scheduling swim team time in the Aquatic Center approximately XXXXXXXXXX in advance of the beginning of any school year.

14.3.6 The YMCA will use its best efforts to allow the two schools to use the Aquatic Center at separate times.

14.3.7 The YMCA and the KSD will cooperate to establish practice or swim meet expectations, including without limitation, score boards, fees, and other requirements.

14.3.8 The KSD is responsible to pay all fees for Aquatic Center use, and the KSD and the YMCA will mutually agree to those fees. The City will not be responsible in any way for the negotiation, payment, or collection of those fees.

14.4 The YMCA estimates the additional cost to design and construct the expanded Aquatic Center to be _______ dollars, the additional operating expense to be _______ dollars, and the lost opportunity costs for loss of member time to be _______ dollars. The City, for its part, will continue to pay the same amount is previously paid, per contract, to the KSD for use, maintenance, and operation of the Kent-Meridian pool, ninety-five thousand dollars ($95,000.00) per year as part of the overall transaction.

14.4.1 The YMCA may increase this amount annually upon providing at least thirty days prior written notice, but any annual increase may not exceed the lower of the annual Consumer Price Index for the greater Puget Sound region or three percent.

14.4.2 The City payment is subject to reduction or revocation if the City’s legislative body determines, in good faith, sufficient funding is not available.

14.4.3 The City will provide at least six months’ prior written notice of any substantial reduction or of revocation of its payment.

14.5 The YMCA will use its best efforts, in good faith, to provide Kent residents and the Kent community, access to aquatic programming, open pool use, and youth and teen lessons. If the Aquatic Center has to close for any reason, the YMCA will notify the City and work diligently with the City to develop mutual solutions to maintain public accessibility.

15. Reduced Fees and Charges for Kent Residents. As part consideration for the parties entering into the Project Agreements, the City will receive the Community Benefits defined in Section 2(b) of the Development Agreement for the term of this Agreement, including any extensions.

16. YMCA Use of Morrill Meadows/East Hill Park. The YMCA may not use or schedule regular fee or non-fee based classes, events, or other operations without the City’s prior written approval.
16.1 General, unscheduled, individual use of the park by YMCA members is exempt from this Section 16. Only advertised, advance-scheduled fee and non-fee based classes, events, and operations apply.

16.2 The YMCA will obtain and adhere to all required permits, regulations, and guidelines, and will comply with all federal, state, and local laws, regulations, and rules if allowed to schedule programming within the park.

16.3 If an isolated, or one-time class, event, or other operation, the YMCA will pay a fee in accord with the City’s Parks and Recreation fee schedule and permit process.

16.4 The City may require additional permit requirements and higher fees for YMCA-requested events, if they are not low-impact events (tent set-ups, additional portable bathroom facilities, etc.

16.5 All classes, events, or operations in the Park requested by the YMCA are subject to availability, as determined solely by the City.

17. General Operating Conditions.

17.1 The Kent YMCA exists within a public park, and the YMCA understands that it has no control over the public’s use of that park.

17.1.1 No one is allowed to smoke, vape, or use tobacco products in or on any park property (including parking lots within the park). This prohibition includes non-combustible products, like e-cigarettes or other vaping devices that produce smoke or vapor, and dipping tobacco, chewing tobacco, snuff, snus, and other combustible products, such as paper cigarettes, cigarillos, or cigars, pipes, and hookahs. The YMCA will communicate this prohibition and its inherent behavioral expectations to its members.

17.2 The parties will collaboratively develop, implement, and maintain a shared security strategy before opening the Kent YMCA. This may include, without limitation, cameras, patrols, or other security measures.

17.2.1 The parties will collaboratively develop, implement, and maintain a safety protocol for both human-caused and natural emergencies.

17.3 The YMCA will close the Kent YMCA one week each year. The YMCA will notify the City at least six-months in advance of this closure, preferably at the annual October planning meeting described in Section 6.2.

17.4 The Kent YMCA’s plans to be open to its members, and to the general public as limited under this agreement, from 8:00 a.m. to 10:00 p.m., Monday through Friday, 5:00 a.m. to 6:00 p.m. Saturday, and 8:00 a.m. to 6:00 p.m. Sunday. The YMCA reserves its right to modify these hours and if the change in hours is temporary, will provide the City at least seventy-two hours advanced notice whenever possible. If the YMCA plans a permanent change in its hours of operation, it will provide the City at least ninety days advance written notice.
17.4.1 All City parks, including the Morrill Meadows/East Hill Park, are open from dawn to dusk only. The YMCA will use its best efforts to inform its members and members of the public who use the Kent YMCA of park opening and closing times and direct them to avoid park use when it is closed.

18. Indemnification. In any and all causes of action and/or claims or third party claims arising out of or in connection with the terms, activities, use and/or operations of this Agreement, the YMCA and the City will each be responsible to the other only to the extent of its own comparative fault in causing the alleged damages or injuries, to the extent permitted by law. As to any and all causes of action and/or claims or third-party claims arising from the sole fault of a party to this Agreement, the indemnifying party shall have the duty to defend, save and hold the other party harmless and upon failure to do so, the indemnifying party shall pay reasonable attorneys’ fees, costs, and expenses incurred by the other party to this Agreement in defense of said claims and/or actions.

Nothing contained within this Section 18 will affect and/or alter the application of any other provision contained within this Agreement.

19. Insurance. The YMCA will maintain throughout the term of this Agreement, as may be extended, insurance of the types and in the amounts attached in Exhibit E. At least once every ten years, the City may require the YMCA to adjust the insured limits in accordance with the rate of inflation during the previous ten years.

20. Representatives.

20.1 The YMCA’s representative with overall responsibility for Kent YMCA operations will be its Branch Executive, currently for the Kent YMCA project, Nathan Phillips.

20.2 The City’s representative with overall responsibility for Morrill Meadows/East Hill Park operations will be its Parks, Recreation, and Community Services director, currently Julie Parascondola.

20.3 Either representative may, from time to time, assign a designate to fulfill, all or in part, the representative’s duties.

20.4 In the event either party changes representatives, the other party will, to the extent within that party’s control, provide at least ten (10) days’ advance written notice of that change.

21. Damage and Destruction. After the happening of any significant casualty to the Kent YMCA, the YMCA will give City prompt written notice generally describing the nature and cause of the casualty and the extent of the damage or destruction to the Kent YMCA. All Kent YMCA insurance proceeds will be used to pay to repair and replace elements of the Kent YMCA damaged or destroyed by the casualty. The YMCA will proceed diligently to reconstruct and restore the Kent YMCA, and it will pay any repair or replacement costs that exceed the amount of insurance proceeds the YMCA receives.
22. Condemnation. In the event of a partial condemnation of the Project to the extent that the Project may still be constructed in accordance with the Construction Contracts, or may be constructed in accordance with the Construction Contracts as modified by changes acceptable to City and the YMCA, the YMCA shall proceed diligently to construct the Project in accordance with the Construction Contracts, as modified, if applicable. Any such partial condemnation proceeds shall be applied to pay Project Costs. In the event of a condemnation of all of the Project or so much thereof that the Project may no longer be constructed in accordance with the Construction Contracts, this Agreement shall terminate and the parties shall have no further obligations under this Agreement.

23. Payment of Taxes and Assessments.

23.1 The YMCA will pay all real property taxes and assessments levied against the Kent YMCA land. The YMCA will also pay all state and local taxes assessed against the Kent YMCA land, including, but not limited to, state and local retail sales taxes and business and occupation taxes.

24. Default.

24.1 The following events constitute a YMCA “Event of Default”:

24.1.1 If the YMCA fails to perform any material obligation under this Agreement;

24.1.2 If the YMCA persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials reasonably necessary to operate the Kent YMCA;

24.1.3 If the YMCA persistently disregards or fails to comply with laws, ordinances, rules, regulations or orders of a public authority having jurisdiction over the Kent YMCA.

24.1.4 If the YMCA assigns, pledges or encumbers its rights, duties or obligations under this Agreement without the City’s prior written consent;

24.1.5 If the YMCA files a petition for bankruptcy or if it makes a general assignment for the benefit of YMCA’s creditors, or if a receiver is appointed on account of YMCA’s insolvency and any such petition or appointment is not dismissed within sixty days.

24.1.6 Upon the occurrence of any YMCA Event of Default, the City will give the YMCA written notice, and after receipt of that notice the YMCA will have thirty days to cure the default, (and once the YMCA begins the cure, proceed to diligently complete its cure within a reasonable period of time, not to exceed sixty days), except with respect to Events of Default set forth in Section 24.4 or 24.5, where the cure period will be ten business days. In the event the YMCA fails to cure an Event of Default within these time periods, the City will be entitled to the following remedies:
(a) To terminate the Ground Lease (if in effect) and/or cause the Kent YMCA and the Kent YMCA Land to revert to the City, or its assigns, free and clear of any YMCA claims, and, in the City’s sole discretion, to require the YMCA to remove the Kent YMCA improvements at the YMCA’s cost; or

(b) In addition to and without prejudice to any other right or remedy available under this Agreement or at law or in equity, to commence an action for specific performance of this Agreement; or

(c) To bring an action for damages; or

(d) To terminate this Agreement upon ten days written notice.

24.2 The following events constitute a City “Event of Default”:

24.2.1 If the City fails to perform any material obligation under this Agreement;

24.2.2 If the City assigns, pledges or encumbers its rights, duties or obligations under this Agreement without the YMCA’s prior written consent;

24.2.3 Upon the occurrence of any City Event of Default under Section 24.2.1, the YMCA will give the City written notice, and after receipt of that notice the City will have thirty (30) days to cure the default, (and once the City begins the cure, proceed to diligently complete its cure within a reasonable period of time, not to exceed sixty days), but with respect to Events of Default set forth in Section 24.2.2, the cure period will be ten (10) business days. In the event the YMCA fails to cure an Event of Default within these time periods, the YMCA will be entitled to the following remedies:

(a) In addition to and without prejudice to any other right or remedy available under this Agreement or at law or in equity, to commence an action for specific performance of this Agreement; or

(b) To bring an action for damages.

24.3 No remedy conferred upon either party to this Agreement is intended to be exclusive of any other remedy or by any other remedy provided or permitted by law. Each remedy will be cumulative and in addition to every other remedy now or later existing in this Agreement or at law, in equity, or by statute.

25. Disputes. The parties will follow the independent resolution process in this Section 25 to resolve disputes arising under this Agreement. If a dispute arises, the parties will attempt to resolve the dispute as expeditiously as possible and will cooperate so that the Kent YMCA and/or the Morrill Meadows/East Hill Park is not delayed. If the parties are unable to resolve the dispute within three (3) business days, either party may, by delivering written notice to the other, refer the matter to a dispute resolution mediator, which will be non-binding but a condition precedent to having the dispute decided in court. If the dispute is not resolved pursuant to the
following procedures within ninety days, the parties may proceed with any remedy available at law or equity. The City and the YMCA will mutually designate a mediator to resolve any dispute. The mediator is to act impartially and independently in the consideration of facts and conditions surrounding the dispute but the mediator’s recommendations are advisory only. The mediator’s recommendations shall be based on the pertinent provisions of this Agreement and the facts and circumstances involved in the dispute. The parties will equally share the fees charged by the Mediator.

26. Modifications. This Agreement may only be modified by mutual, written agreement, signed by both parties.

27. Miscellaneous.

27.1 Waiver. Any waiver by either of the parties of any breach of any covenant under this Agreement will not be deemed or considered as a continuing waiver, and will not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

27.2 Neutral Authorship. In connection with the execution and delivery of this Agreement, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties. No presumption or other rules of construction that would interpret the provisions of this Agreement in favor of or against the party preparing this Agreement will apply in connection with the construction or interpretation of any provisions of this Agreement.

27.3 Severability. If any portion or portions of this Agreement is declared void or unenforceable, it shall not affect the other provisions of this Agreement.

27.4 Relationship of Parties. The YMCA and the City will not be construed as joint venturers or partners, and neither has the power to bind or obligate the other except as set forth in this Agreement. Nothing in this Agreement will be construed as reserving to either party the right to control the other party’s business. Nothing in this Agreement may be construed as granting or conveying to the City any interest in or possession of all or any portion of the Kent YMCA Land, and nothing in this Agreement may be construed as granting or conveying to the YMCA any interest in or possession of all or any portion of the Morrill Meadows/East Hill Park.

27.5 Reasonableness. If the approval or consent of either party is required by any provision of this Agreement, that approval or consent will not be unreasonably withheld, conditioned or delayed unless the provision specifies that the decision to grant the approval or consent is in the sole discretion of the party making the decision or otherwise states that a reasonableness standard does not apply.

27.6 No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by the parties and their
respective successors and assigns. None of the rights or obligations of the parties under this Agreement set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any contractor, subcontractor, worker, supplier, mechanic, insurer, surety, guest, member of the public, or other third parties having dealings with either of the parties.

27.7 Assignment; Encumbrance or Pledge. Neither this Agreement nor any rights or duties under this Agreement nor any benefits derived from this Agreement may be assigned, delegated, pledged or encumbered to any other person or entity by either party without the express written consent of the other, which consent may be withheld by either in the exercise of its absolute discretion.

27.8 Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via e-mail, or sent via facsimile transmission with received invoice followed by a “hard copy” mailed, regular mail, within one (1) business day to the fax number listed as follows:

City: City of Kent  
Attention: Parks, Recreation and Community Services Director  
220 Fourth Ave S.  
Kent, WA 98032

YMCA: YMCA of Greater Seattle  
Attention: SKC Regional Vice President  
900 4th Avenue  
Seattle, WA 98104

Either party may change its address for the purposes of this section by giving written notice of such change to the other party in the manner provided in this Section.

27.9 Entire Agreement. This Agreement (and the exhibits referred to in this Agreement) constitute the entire agreement between the parties with respect to the subject matter of this Agreement and may be amended only in writing signed by both parties.
27.10 Exhibits. The Exhibits to this Agreement are: [To be Revised]

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<th>Exhibit</th>
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27.11 Governing Law; Venue; Attorney Fees. This Agreement and all provisions of this Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, State of Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement. In the event of a dispute, claim, or litigation, each party will be responsible to pay all its own costs or attorney fees.

28. Effective Date. The Agreement will take effect on the last date entered below.

CITY: THE CITY OF KENT
     a Washington municipal corporation

By: ________________________________
Name:                          
Its:                          
Date: _________________________

YMCA: THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE
     a Washington nonprofit corporation

By: ________________________________
Name:                          
Its:                          
Date: _________________________
a weekly newspaper, which newspaper is a legal newspaper of general circulation and is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a weekly newspaper in King County, Washington. The Kent Reporter has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington for King County.

The notice in the exact form annexed was published in regular issues of the Kent Reporter (and not in supplement form) which was regularly distributed to its subscribers during the below stated period. The annexed notice, a:

Public Notice

was published on December 15, 2017.

The full amount of the fee charged for said foregoing publication is the sum of $331.17.

Linda Mills
Legal Advertising Representative, Kent Reporter
Subscribed and sworn to me this 15th day of December, 2017.