

ATTACHMENT 16

Lake Campus / YMCA Shared Resources Agreement

SHARED RESOURCES AGREEMENT

THIS SHARED RESOURCES AGREEMENT (the “Agreement”) is entered into by and among **WRIGHT STATE UNIVERSITY**, a public institution of higher learning with a principal address at 3640 Colonel Glenn Highway, Dayton, Ohio 45435 (the “University”) and **THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER DAYTON** (the “YMCA”) (as successor by merger with Auglaize/Mercer Counties Family Y, Inc.), and a corporation for non-profit with a principal address at 118 W. First Street, Suite 300, Dayton, Ohio 45402.

WHEREAS: The Parties are organized, respectively, have non-profit purposes related to enriching the lives of individuals in their communities; and

WHEREAS: The Parties have determined that they serve partially overlapping constituencies, and that the Parties can amplify their effectiveness through cooperation; and

WHEREAS: The Parties have successfully cooperated for many years under a series of shared resources agreements, and desire to renew their formal cooperative relationship for an additional term.

NOW THEREFORE, in consideration of the mutual covenants and promises reflected herein, the Parties agree as follows:

1. **Term and Termination.**

1.1. **Term.** The Term of this Agreement shall begin on the date it is fully executed by authorized representatives of the Parties, and end upon the earliest of the following:

1.1.1. At 11:59 p.m. on July 27, 2025; or

1.1.2. On the date and time specified in a valid notice of termination delivered by one Party to the other pursuant to Section 1.2 or 1.3; or

1.1.3. Immediately, if a court of competent jurisdiction determines that this Agreement is void, unenforceable, or illegal.

1.2. **Termination for Cause.** A default occurs when a Party violates, in a material way, a material provision of this Agreement. A default becomes a breach when a Party who has received written notice of default from the other Party thereafter fails to correct the default within any applicable cure period. In the event of a breach, the aggrieved Party shall have the right to terminate this Agreement, at a date and time specified by the Party in a written notice to the Party in breach.

1.2.1. The notice of default shall specify the conditions which the Party believes are contrary to contractual obligations of the other Party, and the cure period within which the Party requires the default to be rectified. The cure period shall be reasonable under the circumstances. Absent extraordinarily circumstances, thirty days’ notice shall be presumed reasonable. If it is impossible or infeasible to cure a default within a reasonable period of

time, or if the default creates a substantial and imminent threat to life, health, or safety, then a Party is not required to extend a cure period before declaring a breach and terminating the Agreement.

1.3. Termination for Non-Appropriation of Funds. If the University determines that the state has failed to appropriate adequate funds for the performance of the University's obligations, either in general or with specific reference to the University's obligations under this Agreement, then the University may terminate this Agreement without further liability to the YMCA. Notice of such termination for non-appropriation of funds must be given to the YMCA in writing within two (2) months after the University is notified by the State of Ohio the appropriations to the University under the State of Ohio Biennial Budget.

1.4. Renewal. The Parties shall convene in January, 2022 and in January of each year thereafter to discuss the Agreement and, during the final year of any term, the possible renewal of the Agreement. Each renewal, if approved by both parties, shall be for a five (5) year term commencing upon expiration of the prior term.

2. Compliance. This Agreement is subordinate to all applicable laws and regulations, and the Parties shall comply with all applicable laws and regulations in the performance of this Agreement.

3. Property.

3.1. Personal Property. During the course of this Agreement, the Parties may from time to time find it in their mutual interests to loan personal property to or borrow personal property from one another. This Agreement shall not be construed to impose upon a Party any duty to loan some or all of its personal property to the other. However, while a Party is in possession of the other's personal property, the Party shall exercise reasonable care to protect such property from loss, damage, or destruction. Furthermore, the property shall be promptly returned to the other Party upon the termination of this Agreement, or upon receipt of a demand by the other Party for the return of its property.

3.2. Real Property. Each Party shall notify the other promptly upon discovery of any hazardous or dangerous condition on the other's real property.

3.3. Access. The University hereby grants to the YMCA a limited, non-exclusive license to use the University's Lake Campus driveway, and the parking lot nearest to the YMCA's existing facility, as long as the YMCA facility is operated as a YMCA. The YMCA shall use or permit the use of the University's property hereunder only for driving and parking automobiles, and not for any other purposes unless the University consents in writing. The YMCA shall require its licensees and invitees to observe the University's parking policies, signs, and instructions, as the same may be amended from time to time. The YMCA shall promptly notify the University of any known or suspected dangerous or unsafe conditions on the drive or in the lot. The YMCA hereby indemnifies and holds harmless the University (together with the state of Ohio, and the University's insurers, employees, agents, and other representatives) from and against any claims, losses, or other liabilities of whatsoever designation, that arise from or pertain to the use of the

University's drive and lot by the YMCA or by the YMCA's licensees or invitees. If the YMCA facility ceases to be operated as a YMCA, the University may give YMCA written notice of termination of this license at any time.

3.4. Continuation of License. The obligations of the parties under this Section 3, Section 4, and Section 6.3, including specifically the agreement to provide a license for access and parking to the YMCA on the terms specified herein, shall survive termination or non-renewal of this Agreement and shall be binding upon the permitted successors and assigns of each party. After termination or non-renewal of this Agreement, the license provided for in Section 3.3 shall remain in effect for three (3) years, without charge to the YMCA. After this initial 3-year period, the license shall continue for not less than seven (7) years, during which time YMCA shall reimburse the University for (1) ten percent (10%) of the annual maintenance cost for the entry drive and the northern parking lot, and (2) in the event that the entire entry drive and/or northern parking lot need to be replaced, ten percent (10%) of the total cost. Upon expiration of the seven-year period, either Party may terminate the license upon not less than one-year's advance written notice to the other. The University shall invoice the YMCA for the YMCA's share of such maintenance and replacement costs and shall provide reasonable supporting documentation for such cost. Payments by the YMCA shall be due within thirty (30) days after receipt of the invoice from the University. The Parties intend maintenance (including resurfacing) of the lot and drive shall be in the University's sole discretion; nothing in this Agreement shall be deemed to create on the part of the YMCA any right to require the University to make or perform specific maintenance.

4. Insurance. Each Party shall, during the term of this Agreement, keep and maintain the following minimum coverage:

4.1. Workers' compensation coverage in an amount determined by state law;

4.2. Comprehensive general liability coverage with a minimum combined limit of one million dollars per occurrence and two million dollars in aggregate, for bodily injury liability and property damage. Coverage shall include, at a minimum and without limitation, premises and operations liability, contractual liability, personal injury liability, and broad form property damage liability. Employers' liability ("stopgap coverage") shall be maintained with a minimum limit of at least one million dollars per occurrence. Automobile liability insurance shall be maintained with a minimum limit of at least fifty thousand dollars per person and one hundred thousand dollars per occurrence, and such coverage shall extend to all persons and vehicles used by the Party (and its employees, representatives, and other agents) in conjunction with its performance of this Agreement.

4.3. Each Party shall provide to the other, within thirty days of the execution of this Agreement and at least once per year thereafter, a reasonably satisfactory certificate attesting that such coverage is in force. Such certificate shall reflect that the insurance coverage may not be cancelled or reduced in type or amount without at least thirty days' prior written notice to the other Party. A Party's failure to maintain in full force and effect the types and amounts of coverage specified in this Section 4 shall constitute a material breach of this Agreement, and any gap or

lapse in such coverage shall vest in the other Party a right to terminate this Agreement immediately upon notice, and without any obligation to permit an opportunity to cure.

5. **YMCA Responsibilities.** The YMCA shall:

5.1. Make its programs and facilities available for use by the University's students and employees, generally without charge, on substantially the same terms as those programs and facilities are available for use by the YMCA's members.

5.1.1. If the YMCA charges a separate fee to its members for participation in a particular program, then the YMCA shall have the right to assess the same fee to the Universities students and employees who participate in that program. Otherwise, however, the YMCA shall provide substantially the same general access to the University's students and employees as the YMCA provides to its members, and such general access shall be without charge to the University or its students or employees.

5.1.2. Student eligibility is limited to University students who are enrolled in a class at the University's Lake Campus, including those associated with the Business Enterprise Center and the Police Academy, and such eligibility shall begin on the first day of the then-current academic term, and continue until the first day of the next academic term, so long as this Agreement is in effect or the University has paid all fees due to the YMCA for that academic term.

5.2. Make its facilities reasonably available to the University for (a.) health education and physical education classes taught by the University; (b.) men's and women's basketball, and women's volleyball, practices and games; and intramural athletics practices and games. The University shall endeavor to notify the YMCA as far in advance as is feasible of the University's intention to use the YMCA's facilities for the program described in this Section, and the YMCA shall endeavor to ensure that the University has exclusive access to the facilities for those activities. The YMCA acknowledges that the University intends to rely on the YMCA's commitment of facilities in planning the University's official activities. If the YMCA commits to make particular facilities available for a particular purpose specified in this Section, the YMCA shall not thereafter withdraw the YMCA's commitment without the University's consent unless the YMCA provides proximate and substantially similar facilities without additional charge to the University.

5.3. Maintain the YMCA's facilities and equipment in a manner that is sanitary and reasonably safe for use by the University's students and employees.

5.4. Notify the University promptly of any incidents occurring at the YMCA's premises or during a YMCA-sponsored activity that involve or affect the University's students or employees. For purposes of this Agreement, a reportable incident is one that would ordinarily result in the creation of a report under the YMCA's then-current policies or procedures. Such reports shall be delivered to the Office of the Dean of the University's Lake Campus, by regular mail or email.

5.5. Notify the University promptly if the YMCA is or becomes aware of any potentially hazardous or unsafe condition on the University's premises, particularly including the parking facilities and shared roadways.

5.6. Exercise reasonable care in the selection and supervision of the YMCA's personnel who interact with the University's students and employees.

6. **University Responsibilities**. The University shall:

6.1. Provide a reasonable quantity of fee waivers to the YMCA, for distribution to the YMCA's employees who are interested in participating in activities at the University's Business Enterprise Center, provided that such employees shall meet any other participation prerequisites, and pay any incidental costs (other than general admission) of such workshops.

6.2. Grant the YMCA reasonable access to and use of the University's facilities (including outdoor facilities) during the University's business hours or otherwise if the University consents. This Section shall not obligate the University to grant access or use of its facilities when the same are being used for official purposes (including student activities), or when the YMCA's access or use would unduly interfere with the University's operations. Use of the University's facilities by the YMCA shall be for YMCA-sponsored activities, and the YMCA shall not assign or delegate its right of access or use to any third-parties. The YMCA shall be responsible for its licensees and invitees while they are on the University's premises, and take steps to ensure that they comply with all University policies and rules. The YMCA shall coordinate such use with the University as far in advance as is feasible.

6.3. During the continuation of the license for access provided for under Section 3.3 above, the University shall permit the YMCA and its licensees and invitees to use the University's Lake Campus parking facilities. Such use shall be without charge, but otherwise subject to all of the University's parking policies and rules. Overnight parking is prohibited unless approved by the University in advance. The University reserves the right to restrict certain spaces for use by University vehicles, University leadership, and so forth.

6.4. Maintain the surface of the University's Lake Campus shared parking facilities, turnaround, and shared drive. The University's maintenance obligations include snow removal and salting, but only on days when the University is open; if the University is closed, the University shall have no obligation for snow removal or salting.

6.5. The University shall provide basic groundskeeping for the YMCA's parcel that adjoins the University's parcel. Such services will include, by way of limitation, mowing the open portions of the YMCA's parcel that the University can access with large equipment. The YMCA shall be responsible for mowing all areas of its parcel that the University cannot reasonably access with large equipment, and for all other landscaping of its parcel.

6.6. Pay an annual fee, according to the provisions of Schedule A, which is incorporated and appended hereto.

7. **Assignment.**

7.1. **No Assignment.** Neither Party shall assign this Agreement, or any of its respective rights or obligations under this Agreement, without the prior written authorization of the other Party.

7.2. **Consent to Assignment.** The YMCA is the surviving corporation of a merger between the Young Men's Christian Association of Greater Dayton and The Auglaize/Mercer Counties Family Y, Inc. (the "Auglaize/Mercer YMCA"). Therefore, by operation of law, any rights and obligations of the Auglaize/Mercer YMCA under any existing or prior Shared Resources Agreement have been assigned to and assumed by the YMCA. The University hereby consents to such assignment. Neither Party shall further assign its respective rights or responsibilities hereunder without the prior written consent of the other Party, which consent shall be in the other Party's sole and absolute discretion.

8. **Miscellaneous.**

8.1. This Agreement shall be construed strictly in accordance with the substantive and procedural internal laws of the state of Ohio, without giving any effect to any choice-of-law provisions that would result in the application of law from any other state or jurisdiction.

8.2. This Agreement is the complete manifestation of the agreement of the Parties concerning their shared resources and supersedes all current or prior agreements pertaining to the subjects addressed herein, including any prior Shared Resources Agreement between the University and the Auglaize/Mercer YMCA.

8.3. Force Majeure. It shall not constitute a breach of this Agreement if a Party is prohibited by reason of *force majeure*, not resulting from the Party's own fault and which is beyond the Party's control, from performing an obligation hereunder, provided that the Party shall have an affirmative obligation to act with reasonable diligence and speed to recover from *force majeure*.

8.4. Invalidity. If any provision of this Agreement shall be deemed to be void or unenforceable, then the provision shall be struck and the remainder of this Agreement unaffected, unless the change would frustrate the parties' intention in creating this Agreement.

8.5. Relationship. The Parties are and shall remain with respect to one another independent contractors. This Agreement is not intended to, and shall not be construed to, create any partnership, association, or other joint venture. Neither Party shall have authority to act for or bind the other, and neither Party shall represent or hold itself out to any third-party as having such authority.

8.6. Intellectual Property. The Parties shall have the right to refer to this Agreement in their respective marketing and promotional materials, provided that neither Party shall use the logo or other intellectual property of the other without the prior written consent of the other, which may be withheld in the other's discretion.

8.7. Real Property Interests. This Agreement is not intended to, and shall not be construed to, vest in either Party any perpetual interest or easement in the real property of the other. Any right to enter onto or use the real property of the other shall be characterized and treated as a license, and the Parties respectively reserve the right to cancel or withdraw the license for abuse or misuse, after written notice and a reasonable opportunity to cease or correct any such misuse or abuse.

8.8. Notice to the University shall be directed as follows:

Wright State University
ATTN: Office of the Dean
7600 Lake Campus Drive
Celina, Ohio 45822

-with copy (which shall not constitute notice)-

Wright State University
Office of General Counsel
3640 Colonel Glenn Highway
Dayton, Ohio 45435

8.9. Notice to the YMCA shall be directed as follows:

Young Men's Christian Association of Greater Dayton
118 W. First Street, Suite 300
Dayton, Ohio 45402
ATTN: President

8.10. The YMCA shall provide to the University, upon the University's request, information concerning the identity of University students and employees who use the YMCA's facilities. Such information shall be in the level of detail reasonably requested by the University, and may include names, dates and frequency of usage, and so forth.

8.11. Whenever this Agreement imposes upon a Party the right or duty to take or perform certain actions, then unless otherwise noted that right shall exist only during the Term hereof.

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WHEREFORE, the Parties agree, as evidenced by the signature below of their respective authorized representatives.

Wright State University

**Young Men's Christian Association
of Greater Dayton**

By: _____
Its: _____
Date: _____

By: Dale Brunner
Its: President
Date: _____

Shared Resources Agreement: WSU / YMCA

Schedule A: Payment

Pursuant to Section 6 of the Shared Resources Agreement by and among Wright State University and the Young Men's Christian Association of Greater Dayton of approximately even date herewith, the following establishes the University's financial obligations to the YMCA:

1. The University shall pay to the YMCA a fee equal to Sixty Thousand Dollars (\$60,000.00) for the 2020-2021 academic year, and Sixty Thousand Dollars (\$60,000.00) for the 2021-2022 academic year. The payment shall be due in three approximately equal installments, each of which shall be coincident with the first day of the University's three academic terms, and upon receipt of an invoice by the YMCA, the University shall make a catch-up payment, due within thirty days of the execution of this Agreement, to bring the University current on any amounts accrued and unpaid from the current year. The YMCA shall invoice the University for each payment not less than thirty (30) days before the first day of each academic term, and the invoices shall be due not later than the first day of each academic term.
2. The fee paid by the University to the YMCA shall increase by 3% each year for any academic year after 2021-2022, so long as this Agreement remains in effect.
3. No other direct financial remuneration shall be due from either Party to the other in consideration of this Agreement.