

**USE AGREEMENT
MCINTIRE PARK NON-PROFIT COMMUNITY RECREATION CENTER**

THIS AGREEMENT is entered into this ___ day of 200_, among the **PIEDMONT FAMILY YMCA, INC.** (the “Lessee”), the **CITY OF CHARLOTTESVILLE** (the “City”), and the **COUNTY OF ALBEMARLE** (the “County”).

WHEREAS, the City and the Lessee have entered into a Ground Lease dated _____, 200_, for certain property within McIntire Park in the City of Charlottesville (the “Lease”); and,

WHEREAS, under the terms of the Lease the Lessee will construct and operate a community recreation center on the Leased Premises (the “Facility”); and,

WHEREAS, the County has agreed to provide \$2,030,000 as a capital contribution for construction of the Facility (the “County Capital Contribution”); and,

WHEREAS, the parties hereto desire to enter into an agreement that sets forth the terms, conditions and requirements for the operation of the Facility.

The Parties therefore agree that throughout the term of the Lease the Facility will be operated and managed in accordance with the following:

(1) Lessee Status: Lessee covenants that it, and any authorized or approved assignee or subtenant of Lessee, will operate the Facility as a charitable, non-profit organization.

(2) County Capital Contribution and Facility Components: The County agrees to make the County Capital Contribution and the Lessee agrees to diligently conduct a capital campaign to solicit contributions from private donors to pay for the cost of construction of the Facility. Subject to Paragraph 8 of the Lease, Lessee shall not begin construction until it has secured cash, pledges and a loan commitment sufficient to construct the following components (the “Core Components”):

- fitness center
- gymnasium (including indoor track)
- multi-purpose space (including meeting space)
- locker rooms
- child watch space
- family aquatics center

Lessee desires to raise sufficient contributions, and if successful, intends to add the following additional components (the “Additional Components”):

- licenced child care center

(3) Core Functions: Lessee agrees to provide the following programs, functions or activities at the Facility utilizing the Core Components:

(Check if to be provided)

- Youth, teen, adult and senior athletics
- Health, fitness and wellness facilities and programs
- Youth and teen life skill development
- Community and family special events
- Art, culture and enrichment programming
- Environmental education
- Outdoor adventure education
- Therapeutic recreation
- Child Watch
- Instructional / recreational / therapeutic aquatics
- Competitive / recreational / aquatics

Lessee intends to provide the following programs if sufficient funds are raised by it to construct the Additional Components:

- Licensed child care

(4) Public Access: The Facility will be open to all residents of the City of Charlottesville and Albemarle County, and any non-resident member of the YMCA. Lessee's service area, as designated by the YMCA of the USA, includes all or portions of the counties of Greene, Nelson, Madison, Fluvanna, Orange and Louisa, and residents within this service area will also have access to the Facility. Lessee shall not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

(5) Relation to McIntire Park: Lessee desires to coordinate with the City's Parks and Recreation Department in the preparation of its master plan for McIntire Park. Integration of the Facility as a component part of the larger McIntire Park will depend in large degree on the outcome of that planning process. Nevertheless, it is anticipated that the Facility can be used to enhance current annual events at McIntire Park such as the Dogwood Festival, Earth Day, and Fourth of July events by holding on such days programs such as family open house activities, helping to coordinate outdoor activities with the Parks and Recreation Department or serving as the focal point for event coordination. Lessee also intends to offer programs and services that will take advantage of McIntire Park's inherent assets. Such programs may include walking programs for fitness for all ages using the trails and in bad weather using the Facility, summer day camps, and nature and environmental programs such as the YMCA's Earth Corps program through which YMCA member volunteers can build and maintain additional walking trails within the Park. Users of the Facility, as part of their overall fitness

program, can use these trails, giving participants both an indoor and outdoor experience, and an appreciation of the Park’s inherent beauty. The Facility’s multi-purpose space could be used for class room space, as a meal site and provide rainy day options in connection with other Parks and Recreation Department programs at the Park. Lessee could also use the Facility in a number of different ways to bring in new events to the community such as a duathlon and other athletic events.

(6) Management of Lessee: Responsibility for the ongoing management and operation of the Facility will be vested in an Executive Director or Chief Executive Officer who will report to a Board of Directors, chaired by a volunteer President, which will function as the policy-making body of the Lessee. The City and the County will each have the right to appoint two members (four members altogether) to the Lessee’s Board of Directors. The Lessee agrees to amend its Bylaws to provide that the Directors of the City and the County Parks and Recreation Departments are both invited and expected to attend each and every meeting of the Board of Directors of the Lessee until termination of the Lease. Such Directors, like the Lessee’s Executive Director, shall attend such meetings in an advisory capacity and have no vote, nor any liability as directors. Lessee further agrees to actively seek and recruit residents of the City as Board members to more equally balance the residencies of the members of Lessee’s Board. All members of the Board, regardless of residency, will be required to be members of the YMCA.

(7) Fee Structure: The membership and fee structure of Lessee at the time of the opening of the Facility is anticipated to be as follows, and shall be subject to change by the Lessee’s Board of Directors:

	Anticipated Monthly Membership Rate upon opening	Anticipated Non-Member Daily Admission Fee upon opening
City/County Resident – Family	\$72.00	\$9.00
City/County Resident – Adult Individual (ages 24-61)	\$48.00	\$6.00
City/County Resident – Senior Individual (62+)	\$43.00	\$5.00
City/County Resident - Young Adult (19-23) Individual	\$30.00	\$4.00
City/County Resident – Teen/High School (ages 14-18)	\$20.00	\$3.00
City/County Resident – Youth (13 and under)	\$18.00	\$3.00

Reasonable membership categories, and membership, daily admission, class and program fees shall be set by the Lessee's Executive Director / Chief Operating Officer, subject to the approval of Lessee's Board of Directors. Lessee understands that there are a number of City residents who currently utilize a punch pass system to allow them to have access to Crow and Smith pools for recreational lap swimming. Lessee agrees to implement a similar system for individual recreational lap swimming in addition to its membership and program fee structure to help transition these individuals to the Facility, which system shall be phased out over a reasonably short period of time based on its actual usage.

(8) Financial Assistance: No resident of the City of Charlottesville or Albemarle County will be denied access or use of the Facility for financial reasons. The Lessee will provide financial aid based on need to any City or County resident wishing to participate as a member of Lessee, or in any class, program or activity conducted at the Facility. The process to determine eligibility for financial aid shall be simple, applicant-friendly, consistently applied and subject to approval by the Lessee's Board of Directors to ensure both (i) the accuracy of the determinations and (ii) convenience to the applicants. Initially, and consistent with the policy of many other YMCA's, Lessee will require applicants for financial assistance to provide it with copies of such person's tax return for the prior year and last two payroll stubs. In the event the applicant does not file a tax return, Lessee will require the applicant to provide it with a letter from a federal or state agency indicating that the applicant is eligible for federal or state assistance.

The Lessee's income criteria for the granting of financial aid for reduced or free admissions or memberships are as follows:

- (i) Any individual or family living at or below the established federal poverty level will be eligible for 100% financial assistance.
- (ii) Any individual living at or above the median household income for the City of Charlottesville would not ordinarily be eligible for any financial assistance, subject to extenuating circumstances.
- (iii) To determine eligibility for financial assistance for families, an additional \$4500 per additional family member is added to the income standards used to determine eligibility.
- (iv) The Lessee's Board of Directors will establish a graded scale to determine the level of financial assistance available for those individuals and families whose means lie between the two standards of 100% to 0% assistance eligibility.

These criteria are subject to reasonable modifications from time to time by Lessee's Board of Directors. The Lessee also understands that the federal poverty level is used by the City school system to determine eligibility for certain school benefits and agrees to work with the school administrators to establish a system whereby a common application for financial assistance eligibility can be used.

(9) Hours of Operation: The anticipated hours of operation of the Facility will be as follows, subject to reasonable adjustment by the Lessee's Board of Directors:

Monday – Friday: 6:00 a.m. to 9:00 p.m.
Saturday: 6:00 a.m. to 4:00 p.m.
Sunday: 1:00 p.m. to 5:00 p.m.

(10) Community Engagement: Lessee will publicize, and participate in the efforts of the City and the County to publicize, membership benefits, programs, transportation assistance and employment opportunities at the Facility, in order to encourage use of the Facility and participation in programs by the public.

(11) Transportation and Parking: The Lessee desires that the City extend its existing bus line on Rugby Avenue into McIntire Park to serve the Facility. The Lessee will provide additional transportation assistance for programs as is reasonably feasible based upon need, insurance and operating costs and equipment available to it. The City agrees to permit users of the Facility to use the existing parking spaces in McIntire Park. Lessee will construct such additional parking spaces as is reasonably feasible based upon the size and layout of the Leased Property and as may be required by applicable zoning.

(12) Additional Provisions Related to Funding, Access and Use by City and County Residents. In the event the Lease is not renewed or is otherwise terminated, the City agrees to allow access to the Facility to County residents on the same basis in all respects as it allows access to City residents. In the event the City commits on or before May 20, 2008 to provide a future capital contribution of \$1,250,000 towards construction of the family aquatics center, the Lessee agrees to include at least six (6) lanes and a one (1) meter board and diving well and give the Charlottesville High School swim team priority access to those six lanes for practices up to two hours immediately after school classes end during the high school winter swim season, and otherwise subject to the same terms and conditions established by the Lessee with respect to other teams and programs using the pool. The Lessee further agrees that the City may deduct the funds provided by it for this purpose from any amounts owed to Lessee under Paragraph 31.A of the Lease upon termination of the Lease. The City and the Lessee further understand that the County has tentatively set aside \$1,250,000 in its CIP budget for 2012 for a competitive pool at the Facility. The City, County and Lessee agree to negotiate in good faith prior to completion of the City's master plan for the active side of McIntire Park with respect to the building of additional swim lanes and/or a competition pool; provided, however, that in the event no agreement is reached prior to the earlier of completion of such plan or May 20, 2008, the Lessee shall have the right to move forward with construction of the Facility with the components identified in Paragraph (2) above, including in the aquatics center, if the City commits on or before May 20, 2008 to provide a future capital contribution of \$1,250,000, at least six lanes, a 1 meter board and diving well. Lessee agrees to work with the City and County to design and implement learn to swim programs for public school students.

(13) Additional Provisions Related to Rights of County With Respect to Lease. Lessee agrees to provide the County Executive with copies of all reports and records provided to the City Manager under Paragraph 28 of the Lease, and the County shall have the same rights to audits and inspections of books and records as are provided to the City under such Paragraph. The County shall have the same right of entry as provided to the City under Paragraph 34 of the Lease. The City and Lessee agree that the Lease may not be modified in any way which lessens or adversely impacts the rights of the County or its residents hereunder. **[Insert any additional provisions required by the County and agreed to by the City and the Lessee.]**

(14) Modification: This Agreement may only be modified by written amendment executed by authorized individuals on behalf of the Lessee, the City and the County.

WITNESS the following authorized signatures:

PIEDMONT FAMILY YMCA, INC.

By: _____
Kurt J. Krueger, President

CITY OF CHARLOTTESVILLE

By: _____
Gary B. O'Connell, City Manager

COUNTY OF ALBEMARLE

By: _____
Robert W. Tucker, County Executive

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