

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**

Agenda Date:	December 17, 2007
Action Required:	Yes (Second Reading of Lease Ordinance)
Presenter:	Mike Svetz, Director of Parks and Recreation
Staff Contacts:	Craig Brown, City Attorney Mike Svetz, Director of Parks and Recreation
Title:	Proposed Lease of a Portion of McIntire Park for a YMCA Community Fitness and Recreation Center

Background and Discussion:

The Piedmont Family YMCA previously approached the City of Charlottesville about a partnership between the City and the YMCA that would enable the construction of a community fitness and recreation center within McIntire Park. The YMCA's proposal was discussed at a City Council work session on July 9, 2007, and on August 15, 2007 the Parks and Recreation Advisory Board recommended that City Council move forward with a lease agreement with the YMCA.

In order to obtain financing for the construction of a new facility, the YMCA must have a long term lease on the property where the building will be constructed. Under state law, the City may enter into a lease of City property for a maximum term of forty years. In order for City Council to approve a lease term in excess of five years, however, the City must first advertise and receive bids from any person or organization wishing to lease the property for the specified purpose. The required legal advertisement describing the proposed lease was in the *Daily Progress* on October 4, 2007 and was published again on October 11, 2007. Any bids were required to be in writing and were announced by City Council in a public session on October 15, 2007. The Piedmont Family YMCA was the only proposal received in response to the legal advertisement. City Council has held two public hearings on the YMCA's proposal (October 15, 2007 and November 5, 2007). A first reading of the attached ordinance was also held on November 5, 2007.

A copy of the final proposed Lease is attached. It currently has three Exhibits. Exhibit A, which is referenced and incorporated into the Lease in paragraph one, will more precisely identify the boundaries of the leased premises. The exact location and acreage will be established by City Council after completion of a master planning process by the City Department of Parks and Recreation. It is anticipated that the area to be

leased will be approximately 3 – 5 acres on the west side of McIntire Park, on the location of one of the two existing softball fields. The area identified in Exhibit A will be used as the study area during the master planning for the determination of the final location of the YMCA Facility.

Exhibit B is a “Use Agreement”, designed to provide greater specificity on how the proposed facility will be operated, and to demonstrate how the facility will operate to the benefit of the residents of the City of Charlottesville.

Exhibit C, which is referenced and incorporated into the Lease in paragraph one will serve as the Default Location for the YMCA in the event a final location is not approved by City Council by May 20, 2008.

With regard to the proposed Lease itself, state law provides that approval shall be without “substantial variation” from that which was advertised. A copy of the Lease is attached. The following is a list of some of the substantive provisions within the Lease:

- (1) **Paragraph 1** (Leased Property): The exact location of the YMCA is to be determined as part of a community driven McIntire Park Master Plan to be completed and approved by City Council by May 20, 2008. In the event a location is not approved, a default location has been determined.
- (2) **Paragraph 4** (Term): The Lease is for a forty year term.
- (3) **Paragraph 5** (Rent): Nominal rent is at the rate of \$1.00 per year.
- (4) **Paragraph 6** (Use): Generally describes the uses required in the facility.
- (5) **Paragraph 7** (Purpose): Describes the general contents of the Use Agreement.
- (6) **Paragraph 8** (Construction): Requires construction to commence within 60 months of the execution of the Lease, and substantial completion within 24 months of the beginning of construction.
- (7) **Paragraph 10** (Approvals): Describes the City approval process for the facility, including design approval by the City Council following a recommendation from the Board of Architectural Review.
- (8) **Paragraph 14** (Liens): Provides that no liens or mortgages will be placed on the leased premises or the facility.
- (9) **Paragraphs 16** (Maintenance and Operation) **and 17** (Utilities): Requires the Lessee to be responsible for all maintenance, operational costs, utilities and other services.
- (10) **Paragraph 31** (Termination): In the event the Lease is not renewed after 40 years, the City is required to pay 90% of the then fair market value for the building.

With regard to the proposed Use Agreement submitted by the YMCA, further negotiations have taken place since the November 5, 2007 Public Hearing. The following is a list of some of the substantive negotiated provisions within the Use Agreement.

(1) County Capital Contribution: The County of Albemarle agrees to make the County Capital Contribution of \$2.03M and the YMCA agrees to diligently conduct a capital campaign to solicit contributions from private donors to pay for the cost of construction.

(1) **Facility Components:** The facility components will include: fitness center, gymnasium and indoor walking/jogging track, multi-purpose space (meetings/classrooms), locker rooms, child watch space and family aquatic center and if sufficient funds are raised a licensed child care center.

(2) **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. The YMCA'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.

(3) **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 YMCA. The City and the County will each have the right to appoint two members (four members altogether) to the YMCA's Board of Directors.

(4) **Financial Assistance:** The YMCA has committed to providing scholarship-based access with a sliding scale to families and children who cannot afford regular membership rates. All families at or below the Federal Poverty Guidelines will be admitted free-of-charge. These guidelines are the same ones used by the School system to determine eligibility for free or reduced lunches. The YMCA and the schools will work together to create a procedure whereby those applying for reduced or free lunch can also apply for scholarship assistance at the YMCA using perhaps the same form.

(5) **Additional Provisions Related to Funding:** In the event the City the City commits on or before May 20, 2008 to provide a future capital contribution of \$1,250,000 towards construction, the YMCA 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. 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.

Budgetary Impact: The City Assessor's Office assesses the land within McIntire Park to be valued at \$550,000 dollars per acre. If City Council wishes to make any contribution towards the construction costs of the facility, an appropriation will need to be approved at a future City Council meeting.

Recommendation: City staff recommends that City Council approve the Lease Ordinance for a Portion of McIntire Park for a YMCA Community Fitness and Recreation Center.

Attachments: Proposed Lease
Ordinance

**AN ORDINANCE
AUTHORIZING THE LEASING OF APPROXIMATELY 3 – 5 ACRES OF
PROPERTY WITHIN MCINTIRE PARK FOR THE CONSTRUCTION
OF A COMMUNITY FITNESS AND RECREATION CENTER**

WHEREAS, the City of Charlottesville seeks to lease property in McIntire Park located within the City of Charlottesville for the purpose of allowing construction and operation of a community fitness and recreation center; and

WHEREAS, Council for the City of Charlottesville finds that such lease is in the best interest of the City, as the construction and operation of a community fitness and recreation center by _____ shall provide the Charlottesville community and general public with new aquatics facilities; youth, adult and senior recreational opportunities; health and wellness activities; and therapeutic recreational programs, as well as enhanced cultural and enrichment opportunities; and

WHEREAS, in accordance with Virginia Code Sections 15.2-2100, *et seq.*, this ordinance was duly advertised for the purpose of receiving bids; and

WHEREAS, in accordance with Virginia Code Section 15.2-2102, a bid has been selected; and

WHEREAS, in accordance with Virginia Code Section 15.2-1800(B), a public hearing was held on October 15, 2007 to give the public the opportunity to comment on the proposed lease of the above City-owned land to a third party; now therefore;

NOW, THEREFORE, BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute a lease agreement, in substantially the same form as attached hereto, for the leasing of property within McIntire Park as described in the attached lease agreement. Said lease agreement shall be approved as to form by the City Attorney prior to execution by the City Manager.

THIS GROUND LEASE (hereafter the “Lease”) is entered into this 1st day of _____, 200__ by the **CITY OF CHARLOTTESVILLE** (hereafter the “City”) and the **PIEDMONT FAMILY YMCA, INC.**, a charitable non-profit organization authorized to do business in the Commonwealth of Virginia (hereafter “Lessee”).

1. Leased Property. The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by the Lessee, leases to the Lessee and the Lessee leases a portion of the property commonly known as McIntire Park in the City of Charlottesville, being more particularly described on Exhibit A, attached hereto and incorporated herein by reference, (hereafter the “Leased Property”).

[Note: the specific property subject to this Lease will be approximately 3 – 5 acres and located on the western side of McIntire Park in the area currently used as softball fields. The exact boundaries of the Leased Property will be determined by the City following the completion of a Master Plan for McIntire Park, which the City shall complete by May 20, 2008. The area to be studied for the exact boundaries is shown in Exhibit A. In the event the City has not completed the Master Plan, the boundaries of the Leased Property shall be the area identified on the plat attached hereto as Exhibit C, as per Paragraph 4 below. In no event shall the Leased Property include the existing picnic shelters, playground area, concession/restrooms building, parking areas or McIntire Little League baseball fields.]

2. Title to Leased Property. The City represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the City under this Lease.

3. Condition of Leased Property and Lessee’s Right of Entry. The Leased Property is currently used as active and passive public recreational areas under the supervision of the City Department of Parks and Recreation. The City makes no representation or warranty as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Lease. Lessee accepts the Leased Property “as is” on the effective date hereof.

Prior to the Commencement Date specified in Paragraph 4, the Lessee shall have the right to enter onto the Leased Property for the purpose of conducting, at Lessee’s own risk, cost and expense, surveys, soil borings, engineering studies and other similar examinations necessary to determine the suitability of the Leased Property for the Lessee’s intended use. Lessee shall provide reasonable notice to the City Department of Parks and Recreation prior to entering the property, and shall exercise this right of entry at all times so as not to unreasonably interfere with the normal operation of McIntire Park. If Lessee determines, as a result of its studies, that the Leased Property is not suitable for its intended use, Lessee may terminate this Lease prior to the Commencement Date, and neither party shall have any further rights or obligations hereunder. In the event of such termination Lessee shall, at its own expense, restore the Leased Property to the condition in which it existed prior to any changes made during the course of its studies. Lessee indemnifies and agrees to hold the City harmless and defend the City

from all claims for damages to the City or its agents caused by actions of the Lessee in the course of conducting the studies.

4. Term. The initial term of this Lease shall be for a period of forty (40) years, which shall begin on the date specified in the notice from Lessee to the City required below (the “Commencement Date”) and continuing thereafter throughout the ____ day of _____, 2048. Lessee shall give the City at least sixty (60) days prior written notice of the Commencement Date, which shall be the date it may commence occupancy of the Leased Property, not later than 120 days from the earlier of May 20, 2008 or the date the City completes its Master Plan for McIntire Park. The City agrees to complete such Plan and give notice to the Lessee of the site in McIntire Park on or before May 20, 2008. In the event the City fails to complete such Plan or give such notice, area identified on the plat attached hereto as Exhibit C shall be designated as the Leased Property without further action on the part of either the City or Lessee.

5. Rent. The Lessee shall pay to the City nominal rent at the rate of \$1.00 per year, the receipt of which is hereby acknowledged.

6. Use. Subject to the Lessee’s compliance with all applicable local, state and federal laws and regulations, the City hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing and operating a fitness and recreational center with such amenities as are provided for in the Use Agreement (defined in Paragraph 7 below) (hereinafter the “Facility”).

7. Purpose. Unless otherwise agreed by the parties, the use of the Facility shall be primarily for the benefit of residents of the City of Charlottesville and Albemarle County, and non-resident members of Lessee. The operation of the Facility, and the conducting of any programs, classes or activities on the Leased Property, shall be in accordance with a “Use Agreement” executed by the parties hereto and the County of Albemarle, which is attached hereto and incorporated herein as Exhibit B. The Use Agreement may be modified from time to time with the approval of all of the parties to the Use Agreement, provided that such modifications are in writing and signed by authorized representatives of all such parties.

8. Construction Commencement and Completion. If construction is not commenced within sixty (60) months of the execution of this Lease, this Lease shall terminate unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the Facility and obtain a Certificate of Occupancy within twenty-four (24) months of the beginning of construction, unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. All construction shall be conducted in such a way as to minimize disruption to other activities and uses of McIntire Park outside of the Leased Property. In the event construction materially disrupts operations of the City or other authorized users of McIntire Park outside of the Leased Property, the City may, by written order to the

Lessee, require the Lessee to temporarily stop all, or any part, of the construction. Upon completion of construction, Exhibit A shall be replaced with a map showing the exact coordinates for the location of the Facility, in addition to the boundaries of the Leased Property.

9. Quiet Enjoyment. The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease on its part to be kept, shall quietly have and enjoy the Leased Property and the Facility during the Lease term.

10. Approval of Improvements.

A. No improvements of any kind, including driveways and parking areas, shall be made to the Leased Property unless and until Lessee shall have obtained any and all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken and constructed in strict compliance with all applicable City, state and federal rules, regulations and laws.

B. The City and the Lessee acknowledge that the Lessee's intended use of the Leased Property may require a rezoning, special use permit or site plan approval for all or any portion of the Leased Property. By its execution of this Lease the City hereby evidences its written consent for Lessee to apply for and seek any and all land use and zoning approvals necessary for the future intended use of the property. The City's consent shall not be construed as a representation that it will grant or approve any particular application submitted by Lessee, which is otherwise within the City's discretion to approve or deny.

C. The Lessee shall, at its own expense, engage licensed architects, engineers and other professionals as necessary to conduct all necessary site evaluations and surveys, to include, but not necessary limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. The Lessee shall produce for approval design plans and construction documents, to include specifications, site, building, traffic, roadway and parking plans. The preliminary drawings and design plan for the entire Facility shall be approved by the City Council prior to commencement of any construction. Additionally, a site plan must be approved by the City Planning Commission prior to the commencement of any construction. Such approvals by the City Council and the City Planning Commission shall not be unreasonably withheld.

D. The design and exterior appearance of the proposed Facility shall be subject to the approval of the Charlottesville City Council. Prior to the commencement of construction Lessee shall submit to the City Board of Architectural Review ("BAR") a detailed and clear description of the exterior features of the proposed Facility, including but not limited to the general design, arrangement, texture, materials, plantings and colors to be used, and the type of windows, exterior doors, lights, landscaping, parking, signs and other exterior fixtures and appurtenances. The BAR shall, within forty-five (45) days from receipt of a complete submittal make a

recommendation to the Charlottesville City Council regarding the appropriateness of the design and appearance of the proposed Facility and if a recommendation is not made, within such time period the application shall be forwarded to City Council for action. Within thirty (30) days of the earlier of (i) receipt of the recommendation of the BAR or (ii) expiration of the review period, the City Council shall approve, approve with conditions or disapprove the proposed exterior design and appearance of the Facility. Such approval by the City Council shall not be unreasonably withheld. The Lessee and the BAR or the City Council, as applicable, may mutually agree to an extension of the time limits set forth in this Paragraph.

E. If Lessee fails to obtain any of the approvals necessary to construct and operate the Facility, following diligent pursuit thereof, the Lessee may terminate this Lease without further obligation, responsibility or duty by either party hereto.

F. The City agrees to grant to Lessee standard easements to and from the Leased Property for any utility lines required to serve the Facility. Lessee shall have a right of access to and from the Leased Property over existing McIntire Park ingresses and egresses.

G. The Lessee shall have the right to place signs on the exterior of the Facility and at such other location at McIntire Park as may be permitted pursuant to the City of Charlottesville zoning ordinance.

H. Upon termination of this Lease for any cause Lessee shall remove, at Lessee's sole expense, any and all improvements made by the Lessee to the Leased Property excepting those made with the consent or approval of the City. The City shall provide thirty (30) days notice of any request to remove such improvements or to elect to keep such improvements as the City's property. In the event of removal Lessee shall be responsible for the restoration of the Leased Property to its prior condition, and if Lessee fails to do so then the City may do so and collect from Lessee the cost thereof.

11. Existing Improvements within the Leased Property. Lessee shall, at its own expense, be responsible for the removal and disposal of any existing structures or improvements on the Leased Property at the time of the execution of this Lease. Lessee shall be under no obligation to replace any improvements removed pursuant to this provision. In lieu of disposal by the Lessee, the City may, in its discretion, retain ownership of any materials, equipment or structures removed by the Lessee. In the event the City elects to retain ownership, any extra cost for removal over and above demolition costs shall be borne by the City.

12. Reservation of Easements. The City reserves to itself, while this Lease is in effect, easements over and for all existing utilities within the Leased Property, including but not limited to water, sanitary sewer, storm water sewer, electrical power and gas. At the option of the City, Lessee shall execute standard deeds of easement granting the City adequate access to any existing utilities within the Leased Property. Any relocation of existing utilities required by construction of the Facility and related improvements shall

require the prior approval of the City of Charlottesville, which approval shall not be unreasonably withheld, and shall be accomplished at the sole expense of the Lessee.

13. Existing Recreation or Parking Facilities. All construction shall be performed in a manner so as not to materially reduce or interfere with the City's or the City Parks and Recreation Department's existing recreational or parking amenities located outside of the Leased Property at McIntire Park; provided, however, that the Lessee and the City, through its Department of Parks and Recreation, may agree on certain site or use restrictions during the construction period. The Lessee shall provide reasonable parking and roadway improvements to accommodate the construction and operation of the Facility.

14. Title, Liens. Title to the ground shall remain in the name of the City. Title to the Facility constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property and the Facility shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other lien), pledge other encumbrance during the term of the Lease. If any such lien or notice of lien rights shall be filed with respect to the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released, and shall permit no further work to be performed at the Leased Property until such release has been accomplished.

15. Financial Assurances. Prior to the commencement of any construction in or upon the Leased Property, the Lessee shall have entered into a written contract with a licensed and bonded Class A general contractor and shall have secured a performance bond for the entire amount of the contract, or shall have secured other contractual arrangements reasonably acceptable to the City that provide assurance that the construction will be completed. Additionally, prior to the commencement of construction, the Lessee shall present to the City Manager for his review and concurrence (a) a capital financial plan containing adequate assurance of the Lessee's ability to finance the construction of the Facility and (b) a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the Facility. The Lessee acknowledges that the City is under no obligation under this Lease to provide any funding to construct, equip or operate the Facility.

16. Maintenance / Operational Expenses.

A. Upon the date of commencement of construction of the Facility, and continuing throughout the term of the Lease or its termination, whichever first occurs, the Lessee shall, at its own cost and expense, maintain and keep the Leased Property, whether improved or unimproved, in a reasonably clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee shall be responsible for all costs associated with the ongoing maintenance, operation and repair of the Facility, including but not limited to the roof, doors, windows, mechanical, utility and electrical systems, sidewalks, parking areas

installed by Lessee, and landscaping. Maintenance, repair and snow removal from joint City – Lessee parking areas shall be as set forth in the joint use agreement for such areas. Lessee further agrees to abide by any duly adopted City policies, present or future, governing the use of pesticides, cleaners, fertilizers or other products at McIntire Park.

B. As part of its maintenance responsibilities Lessee agrees to comply fully with any applicable governmental laws, regulations and ordinances, limiting and regulating the use, occupancy or enjoyment of the Leased Property, and to comply with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

17. Utilities and Services. The Lessee shall be responsible for and pay all costs and charges for utilities and services in connection with the Lessee’s occupancy of the Leased Property including, but not limited to, permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. All of the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the City shall have no responsibility whatsoever for the furnishing or cost of the same.

18. Taxes and Assessments. Real property taxes shall not be imposed against the leasehold interest of Lessee if Lessee is exempt from the payment of real property taxes pursuant to Chapter 36 of Title 58.1 of the Code of Virginia (Virginia Code sections 58.1-3600 *et seq.*); provided, however, that real estate taxes on the Lessee’s leasehold interest shall become due and payable at any time that Lessee is no longer entitled to a tax exemption under the laws of the Commonwealth of Virginia.

19. [Intentionally Omitted.]

20. Damage or Destruction of the Leased Property. The City shall have no responsibility for any damage caused to the Facility or the Leased Property, except that caused by the negligence or willful misconduct of the City or its employees and agents, to the extent provided by law. The Lessee agrees that all property of every kind and description kept, stored or placed in the Facility shall be at the Lessee’s sole risk and hazard and that the City shall not be responsible for any loss or damage to any of such property resulting from fire, explosion, water, steam, gas, electricity, the elements or otherwise, whether or not originating in the Facility and whether or not caused by or from leaks or defects in or breakdown of plumbing, piping, wiring, heating or any other facility, equipment or fixtures or any other similar cause or act.

21. Indemnification. The Lessee shall indemnify, defend and hold the City and its officials, officers and employees harmless from and against any and all liability, loss, claim, suit, damage, charge or expense suffered, sustained, incurred or in any way be subjected to, on account of death of or injury to any person and for damage to, loss of and destruction of any property whatsoever, which arises out of, results from, or is in any way connected with actions taken in the performance of the Lessee’s obligations under this

Lease, or which occurs as a consequence of any negligence, omission or misconduct of the Lessee and any of its contractors, subcontractors, agents or employees in the performance of the Lessee's obligations under this Lease. The City, to the extent provided by law, shall be responsible for the negligent acts, omissions or misconduct of its agents or employees.

22. Assignment. The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a proposed assignment to a successor non-profit charitable organization. In the event of assignment, the Lessee shall remain fully liable and responsible for all of the obligations imposed by this Lease unless it is otherwise agreed in writing by the City.

23. Sublease. The Lessee may sublet portions of the Facility subject to approval by the City. The operations of any tenant under such a sublease arrangement must be compatible with the operations of the Lessee and the intent of this Lease. Any sublease will ensure the completion of the proposed construction and continuation of any necessary utilities, maintenance and repairs. Any sublease must incorporate the terms of all contracts and agreements then in existence between the parties in connection with the Facility including the terms of this Lease.

24. Nondiscrimination. During the term of this Lease, the Lessee agrees that it will 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.

25. Drug-Free Workplace. During term of this Lease, the Lessee is to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this Paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

26. Insurance. Prior to commencing any construction of the Facility, the Lessee, at its sole cost and expense, shall secure and maintain throughout the term of this Lease, the following insurance coverage:

(a) **Workers' Compensation Insurance.** The Lessee shall maintain and require all contractors or subcontractors to maintain such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended.

(b) **Commercial General Liability Insurance.** The Lessee shall maintain and require all contractors or subcontractors to maintain, per occurrence,

the following coverages: \$1,000,000 general aggregate limit (other than products/completed operations); \$1,000,000 aggregate limit products/completed operations; \$1,000,000 personal injury and advertising injury limit liability; \$1,000,000 each occurrence limit; \$100,000 fire damage limit (any one fire); and \$10,000 medical expenses limit (any one person).

(c) Fire and Extended Coverages. The Lessee shall maintain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time.

Each insurance policy required by this Paragraph shall be written or endorsed so as to preclude the exercise of the right of subrogation against the City and, with the exception of Workers' Compensation Insurance, shall name the City as an additional insured. Each insurance policy required by this Paragraph also shall be endorsed to include the following clause: Should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will endeavor to mail written notice of such cancellation to the City at least 10 days in advance. Upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, the Lessee shall immediately (within five business days) notify the City. In the event Lessee fails to comply with the requirements of this section, the City shall have the right to require the Lessee to suspend use of the Facility until such time as the requirements of this Paragraph are met.

27. Proof of Insurance. The Lessee shall provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease. The Workers' Compensation Insurance and Commercial General Liability Insurance certificates shall be provided to the City by the Lessee upon the Commencement Date of this Lease, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each anniversary of the Commencement Date of this Lease. The Fire and Extended Coverages certificate shall be provided to the City by the Lessee prior to the commencement of construction of the Facility, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each subsequent anniversary of the Commencement Date of this Lease. Upon demand by the City, Lessee shall furnish copies of the Lessee's insurance policies, together with the required endorsements as provided herein.

28. Annual Report; Financial Records. The Lessee shall prepare an annual report for presentation to the City Manager upon the anniversary of the Commencement Date of this Lease or at such time as otherwise agreed, including an operational plan and budget with at least a five-year projection. In accordance with generally accepted accounting procedures, the Lessee shall maintain books and records pertaining to the Leased Property and Facility and amounts expended by it in connection with this Lease. Upon request, the City shall be entitled, at its own expense, to obtain an audit of such books and records. Upon receipt of notice that the City desires an audit, the Lessee shall

make its books and records available to the City and its auditor(s), and the Lessee shall cooperate with the audit.

29. Default. Each of the following occurrences relative to the Lessee shall constitute default:

- (a) Failure or refusal by the Lessee to make the timely payment of rent or other charges due under this Lease when the same shall become due and payable, provided the City has given the Lessee fifteen (15) days written notice of the same;
- (b) The filing or execution or occurrence of an insolvency proceeding by or against the Lessee; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee;
- (c) Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, including provisions of the Use Agreement, which failure continues uncured for a period of sixty (60) days after written notice from the City to the Lessee specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period, such sixty (60) day period shall be extended for so long as the Lessee is making diligent efforts to cure such default;
- (d) Any change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501(c)(3) tax-exempt status) incompatible with the purpose of this Lease, or a change, incompatible with the purpose of this Lease, in the nature of the services provided at the inception of the Lease as set forth more fully in Exhibit B); or
- (e) Voluntary termination by the Lessee.

In the event of default as defined in this Paragraph, title to the Facility shall, upon payment to the Lessee of the amount required in Paragraph 31 below, revert automatically to the City, and the Lessee shall surrender the Facility as provided in Paragraph 32 and execute all documents deemed necessary by the City to convey title to the Facility.

30. Eminent Domain. In the event of termination due to any taking by eminent domain, partial or total, the City shall be entitled to receive that part of the total condemnation award or compensation for the taking which is equal or attributable to the value of the land taken, and the Lessee shall be entitled to receive the part of the award or compensation which is equal or attributable to the value of the Facility thereupon. If the

taking is such that sufficient area remains for the Lessee to continue its normal operations, then the Lease shall terminate as to the part of the premises and Facility so taken, but shall remain in effect with respect to the part of the premises not taken.

31. Termination of Lease.

A. In the event the City chooses not to enter into a renewal of this Lease and not to enter into a new lease allowing continued operation of the Facility by the Lessee on substantially the same conditions, then (i) the City shall provide the Lessee with five years' notice of its intent not to enter into such a renewal or new lease (or shall renew this Lease for a sufficient duration to provide such five years' notice); (ii) the Lessee shall surrender the Facility as provided in Paragraph 32, and transfer title to the City at Lease termination and execute all documents deemed necessary by the City to convey title to the Facility. In the event of such termination or any agreed upon earlier termination of this Lease; the City shall compensate the Lessee in the amount of ninety percent (90%) of fair market value of the Facility as of the time of Lease termination. Nothing in this Paragraph shall be construed as granting the Lessee a lease for a period longer than forty years.

B. To calculate fair market value, the parties shall mutually determine a fair market value for the Facility, which value shall be determined as of the date of the termination of this Lease. If for any reason the parties are unable to agree upon a price, the following procedure shall apply: The City and the Lessee shall each select one qualified individual as an appraiser at each party's own expense. Said two appraisers shall determine the market value of the Facility (without adjustment for the status of the underlying real estate), including any furniture, fixtures and equipment, as of the date of the termination of the Lease, taking into consideration such factors as are generally considered in valuing similar facilities. If said appraisers are unable to mutually agree upon a fair market price for the facility, furniture, fixtures and equipment within thirty (30) days after their appointment, they shall select a third qualified appraiser and the two of the three appraisals closest in value shall be averaged, and that average shall be binding on the parties.

32. Surrender. Upon termination of the Lease, unless the Lease is renewed or a new Lease is granted to the Lessee pursuant to the requirements of state law, and upon payment by the City to Lessee of the amount required under Paragraph 31 above, the Lessee shall quit and surrender to the City the Leased Property and the Facility in good order and condition, except for ordinary wear and tear, free and clear of any liens or encumbrances, provided that the Lessee shall remove from the premises any personal property belonging to the Lessee (other than furniture, fixtures and equipment) or third parties, which can be so removed without material damage to the Leased Property and the Facility, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the City, which may thereafter remove the property and dispose of it. Upon such termination and payment, the City may without further notice enter on, reenter, possess and repossess the Leased Property and the Facility by any necessary means, and may remove the Lessee and all

other persons, and may have, hold and enjoy the Leased Property and the Facility and the right to receive all rental and other income of and from the same. The surrender of this Lease shall not work a merger and shall, at the option of the City, terminate all or any existing subleases or may, at the option of the City, operate as an assignment to it of any or all such subleases.

33. Failure to Construct Facility or Abandonment of Use. If the Lessee fails to substantially complete the Facility within the timeframe set forth in Paragraph 8 above, discontinues use of the Facility for the purposes as set forth in this Lease and as more particularly described in Exhibit B for a period of at least six (6) months, or willfully abandons the use of the Facility for a period of at least six (6) months prior to the expiration of the term of the Lease, the Facility shall revert automatically to the City. In such event, the Lessee shall surrender the Facility as provided in Paragraph 32 and transfer title to the City at Lease termination, and execute all documents deemed necessary by the City to convey title to the Facility. Any period of time in which use of the Facility is discontinued or abandoned for the sole purpose of Facility maintenance, casualty repairs or improvements shall not be included in the six month period described in this Paragraph.

34. Right of Entry. At any time during the term of the Lease, the City shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property and the Facility at all reasonable times for the purposes of inspecting the Leased Property and the Facility to ensure compliance with the terms of this Lease. Notwithstanding the City's right to inspect the Leased Property, the City shall have no obligation to inspect the same. The City's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

35. Waiver. No failure on the part of the City to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the City of any rights hereunder.

36. Identity of Interest. The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the City any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

37. Notice. The City's designated representative to receive all communications, claims and correspondence regarding this Lease is the City Manager, at the following address: P.O. Box 911, Charlottesville, Virginia, 22902. The Lessee's designated representative to receive all communications, claims and correspondence regarding this

Lease is its Executive Director/CEO, at the following address: 442 Westfield Road, Charlottesville, VA 22901. Either party may change the designated representative or address for receipt of notices by giving notice to the other party as provided in this Paragraph.

38. Modification or Amendment. Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Lease, which is subject to Virginia Code section 15.2-2105) shall be binding only if approved by the Lessee and the City, and evidenced in a writing signed by each.

39. Time of Essence. Unless specifically provided herein to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

40. Cooperation. The City and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease.

41. Persons Bound. The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

42. Entire Agreement. This Lease, together with the schedules, riders and exhibits, if any, attached, contains the entire agreement between the City and the Lessee. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

43. Recording. Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form, but excluding detailed provisions of this Lease.

44. Headings. The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

45. Interpretation. In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

46. Severability. In the event that any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or

circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

47. Governing Law. This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Charlottesville, Virginia. The party prevailing or substantially prevailing in any such litigation shall be entitled to an award of its attorney's fees from the non-prevailing party.

We agree to be bound by this Lease and its terms and conditions.

LESSOR:
CITY OF CHARLOTTESVILLE

By _____
Gary O'Connell
City Manager

Date _____

LESSEE:
PIEDMONT FAMILY YMCA, INC.

By _____
Kurt J. Krueger
President

Date _____