12h

ATTACHMENT #7

LEASE AGREEMENT
YORK COUNTY COMMUNITY CENTER

THIS LEASE AGREEMENT is made this _____ day of December, 1999, (the "Effective Date"), by and between the **COUNTY OF YORK, VIRGINIA**, (the "County") and the **PENINSULA METROPOLITAN YMCA** ("Lessee").

W I T N E S S E T H :

WHEREAS, Lessee desires to construct and operate a YMCA recreational facility ("the Community Center") on land owned by the County; and

WHEREAS, the County is willing to enter into a Lease Agreement with Lessee for the operation of a Community Center based on Lessee's mutual promises and covenants set out herein;

NOW, THEREFORE, for and in consideration of the rents, all improvements, and the covenants and agreements hereinafter set forth, the parties agree as follows:

1. Leased Property; Easement; Examination of Premises; Right of Termination

The County hereby leases to Lessee a parcel of real property consisting of approximately 6.4 acres, identified as York County Tax Map Parcel 37-50-B ("the Leased Property" or "the Premises"). A description or map depicting the approximate boundaries of the Leased Property is attached hereto as Exhibit A.

2. Use of Leased Property

Except as otherwise may be provided herein, the Premises shall be used solely in connection with the construction, development, and operation of a YMCA recreational facility generally as shown in the proposal dated August 25, 1999, supplemented by an addendum dated November 12, 1999, and submitted to the County, together with related sidewalks, parking facilities and landscaping (the "Community Center" or the "Improvements"), and in accordance with the following provisions, each of which shall be deemed a condition of this Lease Agreement, the nonperformance of which shall constitute a default by Lessee:

and conditions set out herein and shall not allow the Community Center to be used for any other use without prior written consent of the County.

b. The Community Center shall be open to the public seven (7) days per week, for at least ten (10) hours on any day, except that Lessee may elect to close the Community Center on Christmas Day, Thanksgiving, Easter Sunday, or New Year's Day, and on any other days with County consent.

c. Lessee shall not use the Community Center or permit others to lease or rent the Community Center for any use that is in conflict with the law, statue, ordinance or governmental rule or regulation now in force or which may hereafter be enacted.

d. The Lessee shall operate the Community Center as a "nondenominational YMCA" as such term is used in Virginia Code Section 15.2-953, and shall avoid engaging in such sectarian proselytizing activities as shall be inconsistent with Lessee's qualification as a tax exempt civic league organization under Section 501 (c) (4) of the U. S. Internal Revenue Code. Lessee acknowledges that the County is a governmental entity and a political subdivision of the Commonwealth of Virginia, and as such is prohibited by virtue of the First Amendment to the United States Constitution, and Article I, Section 16 of the Virginia Constitution, from engaging in any activity which constitutes an establishment of religion. Consequently, Lessee agrees not to perform any acts, including the expenditure of funds received from the County, by which the County shall be deemed by virtue of this lease agreement to have violated the applicable terms of those constitutional provisions referenced in this subparagraph. In the event Lessee is ever determined by a court of competent jurisdiction to have performed such an act, Lessee shall immediately cease such actions. Lessee shall guarantee and hold harmless the County from costs of litigation and from liability, as a result of any legal action brought against the County arising out of any action, or any alleged action of Lessee, which is alleged to constitute a violation of the County of the referenced constitutional provisions. The violation by Lessee of the provisions of this subparagraph shall be deemed a material breach of this Lease Agreement amounting to a default, entitling the County to terminate this Lease Agreement. Nothing herein shall prevent the use of the Community Center by religious groups on the same basis as such use may be afforded to civic and community groups generally.

3. Term

The initial Lease Term shall be for thirty (30) years beginning as of the Effective Date. Lessee shall have the right to renew this lease for additional successive five (5)-year terms upon such terms as the parties may mutually agree, provided that during the preceding term Lessee has consistently operated and maintained the Community Center as a YMCA recreational facility in compliance with the terms and conditions of the Lease. If Lessee shall desire to renew this Lease as of the conclusion of any term, Lessee shall give written notice to the County at least eighteen (18) months prior to the termination of the term.

4. Contingency Period

Notwithstanding the foregoing, the respective rights and obligations of the parties hereto are subject to a contingency period which, if not sooner waived by the parties as set out herein, shall expire on December 31, 2002. During the contingency period, the parties may terminate this Lease Agreement according to the following terms and conditions:

a. Lessee may terminate this Lease Agreement at any time prior to the expiration of the contingency period by providing written notice of such termination to the County. Upon request, Lessee shall execute a release, in a form suitable for recordation among the land records of York County, evidencing such termination and releasing the County from any further obligations under this Lease Agreement.

b. The County may terminate this Lease Agreement if Lessee shall not have attained at least seventy percent (70%) of its fundraising goal of $6.2 million for the cost of construction of the Community Center, together with a financing plan acceptable to the County for the balance (if any) of expected construction costs, as of the expiration of the contingency period. The parties acknowledge that it is the intent of Lessee to conduct a capital fundraising campaign during the contingency period with the goal of raising the sum of $6.2 million toward the cost of the design and construction of the Community Center and that a failure of Lessee to raise at least seventy percent (70%) of that amount and to arrange financing for the balance, if any, shall seriously and negatively impact the ability of Lessee to complete construction of the Community Center within the time frames specified in this Lease Agreement.

c. Either party may terminate this Lease Agreement if the parties have not reached agreement on a final master site plan, final design and construction plans, and specifications for materials for the Community Center (hereinafter

"the Design") by July 1, 2002. During such period, Lessee shall use due diligence and act in good faith to agree with the County on the design and the construction schedule. The Design and the construction schedule shall be consistent with the provisions of paragraph 9 of this Lease Agreement.

Lessee shall not begin construction of any portion of the community Center until such time as the contingency period shall have expired, or until such sooner time as both parties may agree that all contingencies have been satisfied or may be waived, in which event the parties shall execute a written addendum to this Lease Agreement noting the mutual waiver of all such contingencies, and the contingency period shall be deemed to have expired as of the date of the addendum.

5. Rent

a. Lessee covenants and agrees to pay the County, promptly when due as rent for the Premises ("Rent") during the initial Lease Term and any renewal term, the sum of Ten Dollars ($10.00) per year, due and payable on the effective date of this Lease Agreement and on each successive anniversary thereof. Lessee shall be solely responsible for payment of utilities.

b. All amounts payable by Lessee to the County under the terms of this Lease, shall be paid to the Treasurer, York County at P.O. Box 532, Yorktown, VA 23690, or at such other places as the County shall from time to time designate by notice to Lessee.

c. All other sums of money required to be paid by Lessee under the terms of this Lease shall be considered "Additional Rent" hereunder.

6. County Contribution

The County shall contribute the sum of Two Million Dollars ($2,000,000) to Lessee for the purpose of constructing the Community Center. Such sum shall be paid to Lessee over a period of ten (10) years and ten (10) equal installments of Two Hundred Thousand Dollars ($200,000) each as set out herein. The first such payment shall be made within three (3) months after Lessee shall begin construction of the Community Center. Successive payments shall be made on each anniversary date of the first payment, provided that Lessee shall be in compliance with the construction schedule for the Community Center and all other terms and conditions of this Lease Agreement. The County may, at its option, withhold any such payment during such time as Lessee shall be in default of any of the terms and

conditions of this Lease Agreement. Interest shall not accrue on any annual payment whether or not such payment shall be delayed in accordance with the terms of this paragraph.

The County's obligation to make payments as set out herein shall be subject to the right of the County Board of Supervisors to appropriate, or not to appropriate, public funds sufficient to make such payments in any fiscal year. The decision by the County Board of Supervisors in any fiscal year not to appropriate the necessary funds to make an annual payment shall not be deemed a default by the County.

7. Community Center Membership and Use Fees

a. The fees to be charged by Lessee for use of the Community Center and for annual memberships during the first year of this Lease Agreement shall be as set out in Exhibit B attached to this Agreement. The schedule of fees shall provide a day use rate for nonmembers. At the conclusion of the first year, Lessee may increase the membership or user fees, but at no time shall such fees exceed the fees in effect at any other YMCA facility owned or operated by Lessee.

b. Notwithstanding the foregoing, Lessee agrees that during the first twelve (12) months of the operation of the Community Center, it will waive the "Joiner's Fee" normally charged to any new member of a YMCA facility for residents of York County. In subsequent years, York County residents shall be charged fifty percent (50%) of joiner's fee charged to non-residents of the County. Lessee may demand suitable evidence of a York County residence, such as a valid driver's license or identification card issued by the Virginia Department of Motor Vehicles. Lessee's obligation to waive or reduce the joiner fee to York County residents shall not apply in the event the County ceases payment to Lessee of those amounts set out in paragraph 6, "County Contribution."

c. Lessee agrees that membership in the Community Center shall entitle a member to utilize YMCA facilities throughout the United States with no additional charge. Moreover, in accordance with Lessee's policies in effect as of the Effective Date of this Lease Agreement, programs, services, and facilities at the Community Center shall be available to members of the public regardless of an individual's or family's ability to pay standard membership and program fees.

d. Lessee shall provide priority to York County residents for enrollment in programs and services offered by Lessee. Such priority shall be granted by

giving York County residents a period of time, no less than two (2) days, in which to enroll in such programs and services prior to the time that non-residents are allowed to enroll.

e. At regular intervals, not less frequently than monthly, Lessee shall allow non-members to use the facilities without charge for a period of not less than two (2) hours on each occasion.

f. Membership and use of the Community Center shall not be limited or denied on the basis of race, color, sex, religion, or national origin.

8. Use of Community Center by County and by School Board

a. Lessee shall grant to the County and to the School Board priority on the scheduling of the use of the Community Center by the County's Division of Parks and Recreation and by the athletic departments of the various schools within the York County School Division, based upon a facilities reservation procedures to be negotiated between the County and Lessee. The County and the School Board shall not be charged more for the use of such facilities than shall be charged to any other group or individual for the use of the same facilities.

b. With respect to the swimming pool to be constructed as part of the Community Center, Lessee shall reserve as many as four (4) lanes for the benefit of the York County School Division and York County Division of Parks and Recreation for the purpose of practices for organized swim teams, provided that a request for such use shall be made at least thirty (30) days in advance. Lessee may charge the County or the School Division, as appropriate, a user fee of Ten Dollars ($10.00) per hour for the use of the pool for practices. Lessee shall also allow the School Division or the County's Division of Parks and Recreation to schedule the use of the entire pool for as many as six (6) competitive swim meets in any calendar year at no charge, upon at least thirty (30) days notice.

c. Lessee shall cooperate with the County's Division of Parks and Recreation to co-sponsor events with the Division. Such co-sponsorship may entail, for example, allowing the Division to utilize the Community Center for programs for which the Division shall provide staffing, with Lessee and the Division jointly accepting applications for participation and sharing the application fees and costs on an equitable basis.

9. Construction, Operation, Ownership, and Maintenance of Leased Property

On the Premises and at its sole expense, Lessee shall construct, operate, and maintain the Community Center in accordance with the following conditions:

a. The Community Center building shall contain a minimum of 49,000 square feet, shall conform generally to Lessee's proposal dated August 25, 1999, as supplemented by the addendum dated November 12, 1999, shall be architecturally compatible with the Tabb Library located adjacent to the Community Center and shall contain and provide for at least the following amenities:

(1) A swimming pool twenty-five (25) yards in length, with at least eight (8) lanes for lap and competitive swimming;

(2) A gymnasium suitable for basketball and volleyball games;

(3) An indoor running/jogging track;

(4) A teen center to be operated by Lessee on weekends. Lessee shall facilitate the formation of a teen board to assist in the formulation of a program of services and activities to be conducted through the teen center;

(5) An aerobics studio;

(6) A climbing wall;

(7) Handball and racquetball courts;

(8) One or more saunas;

(9) One or more whirlpools;

(10) One or more steam rooms;

(11) Supervised "drop-off" babysitting for patrons of the facilities, but not, however, day care or similar services for persons who are not patrons of the facilities. Such services shall be provided only during the time

that the patron is present in the Community Center and is utilizing the facilities.

(12) Space to be utilized by the County's Division of Parks and Recreation as an information center for services and programs offered by the Division. Lessee shall allow Division staff to post information about such services at the information center or provide enrollment forms for the benefit of the public, and from time to time may station staff at the information center to accept applications from persons desiring to enroll in such services and programs.

b. Except as set out in paragraph 6 with respect to the County's contribution, the County has no responsibility to fund the construction of the Community Center.

c. Construction of the Community Center shall be performed by a contractor selected by Lessee. Lessee shall not discriminate against any prospective contractor based upon race, sex, religion or national origin. To guarantee construction of the Community Center, prior to the commencement of any work which could result in a lien on the Premises if the full payment were not made with respect thereto, Lessee or the contractor for the construction shall provide a standard contractor's performance and payment bond, letter of credit, or other surety in amount equal to the estimated construction cost of the Community Center, naming the County as Obligee, in a form and from a reputable financial institution, all as acceptable to the County in the County's reasonable discretion.

d. Lessee shall not proceed with any material alterations or additions to the Community Center without first obtaining the written consent of the County, which consent shall not be unreasonably withheld, and otherwise complying with the terms of this Lease. Lessee shall bear the cost of all alterations made pursuant hereto and shall bear full responsibility for the maintenance and repair thereof. If Lessee wishes to undertake alterations, Lessee will give the County a written preliminary description of any such proposed alteration. The County agrees to not unreasonably withhold its approval and to use reasonable efforts to make a determination within twenty (20) business days after receipt thereof. For any alteration or addition, the County may require a letter of credit, standard contractor's performance bond or other surety in form and amount and from a financial institution all as reasonably acceptable to the County.

e. During the construction of the Community Center, Lessee shall cooperate and consult with the County's designated representatives, and shall allow them to inspect the site as they deem appropriate.

f. Lessee shall be obligated to commence construction of the Community Center no later than July 1, 2002 or within six (6) months of the termination of the Contingency Period, if sooner, ("Construction Commencement Expiration Date") and to complete construction and begin operation of the Community Center no later than December 31, 2004; or within two (2)years of the termination of the Contingency Period, if sooner, provided that Lessee shall not be responsible for delays due to extreme weather, natural disaster, or other circumstances reasonably beyond its control. Failure of Lessee to begin construction, or to complete construction and begin operation of the Community Center within the times set out in this subparagraph shall be deemed a material default of Lessee hereunder, and the County shall be entitled to terminate this Lease Agreement.

g. Lessee shall construct the Community Center in a good workmanlike manner that is consistent with and in accordance with the Design approved by the County, and in accordance with the approved construction schedule.

h. If Lessee fails to comply with one or more of the foregoing requirements with respect to the Community Center and such default goes uncured beyond the applicable grace period for curing such default, the County shall have the right to terminate this Lease.

i. Once constructed, the Community Center building shall belong to Lessee, subject to the provisions of paragraph 21 of this Lease Agreement with respect to reversion of title. Lessee shall maintain and operate the Community Center at its sole expense in good order, in a sanitary, safe, and high-quality condition. All maintenance shall be performed in a professional manner. Lessee shall provide all landscape maintenance at its own cost and in connection therewith shall keep grass mowed to a height of no greater than six (6) inches, shall re-seed or re-sod denuded areas of lawn and shall promptly remove and replace dead or diseased vegetation.

j. Except as otherwise provided herein, throughout the Term, Lessee shall, without any cost or expense to the County: i) take good care of and keep in good order and repair, the Community Center, including (without limitation)

all alterations, renovations, replacements, substitutions, changes and additions therein or thereto and the roofs and foundations thereof, all fixtures and appurtenances therein and thereto, all machinery and equipment therein, including without limitation, all machinery, pipes, plumbing, wiring, gas, steam and electrical fittings, sidewalks, water, sewer and gas connections, heating equipment, air conditioning equipment and machinery, and all other fixtures, machinery and equipment installed in or connected with the Premises or the Community Center or used in their operations; ii) make all repairs inside and outside, ordinary and extraordinary, structural or otherwise, necessary to preserve the Premises and the Community Center in good order and condition; iii) promptly pay or cause the payment of the expense of such repairs; iv) not cause or permit any waste to the Premises; v) on the leased Premises, keep the sidewalks, curbs and parking areas in good repair and reasonably free from snow, ice, dirt and rubbish; vi) give prompt written notice to the County of any fire or casualty that may occur; vii) permit the County to enter the Community Center, the Premises, or any part thereof, after appropriate written notice as provided in Section 6(o) to Lessee under the circumstances (which may be contemporaneous with the County's entry in case of an emergency) to make repairs to the Community Center, to restore the same after damage or destruction by fire or other casualty or by partial condemnation, to complete repairs commenced but not completed by Lessee, to repair, at or before the end of the Term, all injury done by the installation or removal of Lessee's furniture, trade fixtures and property, and/or to comply with all orders and requirements of any governmental authority applicable to the Community Center and to any occupation thereof, where, in the County's reasonable judgment, such entry is necessary to prevent waste, physical deterioration, safety hazards and/or other circumstances that threaten the value of the property, or where Lessee is in default of its covenants and obligations herein with respect to any of the foregoing matters.

k. When used in this Lease, the term "Repairs" shall include routine maintenance, replacements, restoration and/or renewals when necessary, as well as painting and decorating.

If the County determines in its reasonable judgment that the Community Center is not being maintained in accordance with the terms as set forth herein, the County shall give written notice thereof to Lessee. The County's designee shall during the period ("Discussion Period") of thirty (30) days following the date of such notice, or such shorter time as the County shall reasonably deem

necessary in the case of exigent circumstances, meet with Lessee to discuss in good faith maintenance needs for the Community Center.

All maintenance reasonably required by the County for Lessee to perform in accordance with the terms of this Lease shall be commenced no later than fourteen (14) days after the expiration of the Discussion Period and completed within thirty (30) days thereafter, unless the County approves in writing a request from Lessee for an enlarged time period for completion. The County shall not unreasonably withhold extensions for the specified time requested if Lessee is proceeding with reasonable diligence in its efforts to correct the maintenance deficiency. If Lessee shall fail to perform its maintenance obligations required hereunder after notice thereof and a reasonable opportunity to cure as described herein above, the County, in addition to all other available remedies, may, but shall not be obligated, to enter upon the Premises and Community Center and perform such failed maintenance obligations of Lessee after notice thereof to Lessee, using any equipment or materials on the Premises suitable for such purpose. Lessee shall, on demand, reimburse the County for its actual costs so incurred, which shall be included among Additional Rent hereunder.

l. Lessee shall permit the County and its agents to enter the Premises and the Community Center during normal business hours upon at least three (3) days prior notice (except in the case of an emergency, in which event the County may enter at any time the County reasonably deems necessary) at all reasonable times for the purpose of (i) inspection; (ii) making repairs that Lessee has neglected or refused to make in accordance with the agreements, terms, covenants and conditions of this Lease; and (iii) at any time within six (6) months prior to the expiration of the Term, show the Premises and the Community Center to persons or entities interested in renting or buying the Premises, the Community Center, or any part thereof.

m. Nothing in this Lease shall imply any duty or obligation upon the part of the County to do any work or to make any alterations, repairs (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, which may be payable in respect thereof), additions or improvements of any kind whatsoever to the Premises or to the Community Center. The performance thereof by the County shall not constitute a waiver of Lessee's default in failing to perform the same.

10. Signage; Approval

Lessee shall erect a stone or masonry entrance sign visible from State Route 134, Hampton Highway, which conforms to all applicable provisions of the York County Zoning Ordinance. The design of the sign shall be acceptable to the County, and shall be visually identical with the entrance sign constructed with respect to the adjacent public library. Lessee may also place one sign on the Community Center, as specified in the approved construction documents.

11. Taxes and Other Charges

a. Lessee agrees that it will pay and discharge, or cause to be paid and discharged, all federal, state and local taxes and charges ("Taxes") when such become due and payable as required by applicable law, including, without limitation, all real estate taxes, personal property taxes, water charges, sewer charges and assessments associated with the Premises or Lessee's ownership interest therein.

b. If by law any Taxes are payable, or may at the option of the Lessee be paid, in installments, Lessee may pay the same, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest or cost may be added thereto for non-payment of any installment.

c. Lessee covenants to furnish to the County if requested by the County, within ten (10) days after the last date when any tax must be paid by Lessee as provided herein, official receipts, if such receipts are then available to Lessee, of the appropriate taxing authority, or other proof satisfactory to the County, evidencing the payment thereof.

d. If Lessee shall fail to pay any Taxes as herein are required to be paid, after the same shall become due and payable (and Lessee is not contesting the same in the manner approved hereunder), and at least ten (10) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing such Taxes, the County shall have the right, at its option upon at least three (3) days notice to Lessee, to pay the same with all interest and penalties thereon. The amount so paid shall constitute Additional Rent, but shall bear interest from the date of such payment at the rate of 100 basis points above the Prime Rate as published in the *Wall Street Journal* (the "Default Rate"). Such Additional Rent shall be due and payable by Lessee on the fifteenth day of the month following the month in which payment by the County was made. Lessee shall have the right to contest any Taxes which Lessee, in its exercise of good faith, determines inappropriate. In the event of such contest, Lessee may request that the County permit Lessee to withhold some or all of such contested Taxes. The County agrees not to withhold unreasonably its consent to the withholding of such contested Taxes provided the County determines in its reasonable discretion that the County's interests in the Premises or the Community Center will not be materially adversely affected in any manner.

12. Liability Insurance

a. At all times during the Term once construction of the Community Center has begun, at its own cost and expense, Lessee shall keep or cause to be kept on the Community Center, and on all equipment, fixtures, motors and machinery owned or leased by Lessee and installed in or used in connection with the Premises or with the Community Center, including all alterations, renovations, replacements, substitutions, changes, and additions thereto, insurance against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage (if sprinklered) and such other hazards, casualties, risks and contingencies now covered by or that may hereafter be considered, as included within the standard form extended coverage endorsement, in an amount equal to the actual replacement cost (the "Full Insurable Value"). Such Full Insurable Value shall be determined from time to time at the request of the County (no more often than once every two (2) years) but at the expense of Lessee by the fire insurance company carrying the highest amount of fire insurance on the Community Center or its agent, or by an appraiser selected by Lessee that is experienced in insurance appraisals who is approved in writing by the County which approval shall not be unreasonably withheld. The failure of the County to request such appraisal shall not release Lessee from its obligations hereunder.

b. At all times during the Term, at its own cost and expense, Lessee shall provide and keep in force comprehensive general liability insurance in standard form, protecting Lessee and the County, as an additional insured, on a primary basis with no participation required by the County's liability policy, against personal injury, including without limitation, bodily injury, death or property damage and contractual liability on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Two Million Dollars ($2,000,000) per occurrence and with an annual aggregate limit of not less than Three Million Dollars ($3,000,000). The County reserves the right to amend these limits from time to time during the course of the lease. All such policies shall cover the entire Premises and the Community Center, including parking, common areas, means of access and roadways therein, and streets and sidewalks adjacent thereto.

c. At all times during the Term when Lessee is engaged in the construction or reconstruction of the Community Center, or repairs thereof, at its own cost and expense, Lessee shall provide and keep in force for the benefit of the County

and Lessee, "all risk" builders risk insurance on the Community Center and other improvements on the Premises under construction.

d. At all times during the Term, at its own cost and expense, Lessee shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of Lessee in strict compliance with the laws of the Commonwealth of Virginia.

e. All of the policies of insurance required by this Lease shall be i) in form and substance as reasonably approved by the County, ii) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of A or better (or the equivalent thereof) and a financial rating of VII or better (or the equivalent thereof), iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; iv) contain standard waiver of subrogation clauses; and v) provide that they may not be canceled by the insurer for non-payment of premiums or otherwise until at least thirty (30) days after a receipt of the proposed cancellation, and in any event, shall not be invalidated, as to the interests of Lessee therein, by any act, omission or neglect of Lessee (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises or the Improvements for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises or the Improvements. If requested by the County, copies of all insurance policies required by this Lease shall be delivered by Lessee to the County. All insurance policies shall be renewed by Lessee and proof of such renewals, accompanied by evidence of the payments of the premiums thereon to the insurance companies or their agents, shall be delivered to the County, at least twenty (20) days prior to their respective expiration dates.

f. If Lessee fails to obtain and maintain insurance as in this Lease provided, the County may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. All premiums so paid by the County shall constitute Additional Rent and shall bear interest at the Default Rate from the date of such payment by the County. Such Additional Rent shall be payable by Lessee to the County by the fifteenth day of the month

following the month in which payment therefore is made by the County. In addition thereto, the County may recover from Lessee, and Lessee covenants and agrees to pay as Additional Rent to the County, any and all damages which the County may have sustained by reason of the failure of Lessee to obtain and maintain such insurance, it being expressly declared that any damages of the County shall not be limited to the amount of premiums thereon. Lessee shall make payment to the County by the fifteenth day of the month following the month in which any payments were made by the County or in which the amount of such damage was determined. The payment by the County of premiums for any such insurance policy shall not be, or be deemed to be, a waiver or release of the default of Lessee with respect thereto or the right of the County to pursue any other remedy permitted hereunder or by law as in the case of any other default hereunder or of default in the payment of Rent.

g. The County shall add Lessee as an additional insured on its liability insurance; provided, however, the additional insured provision shall extend only to suits or claims arising out of or associated with the operation of the Community Center or the use of the Premises.

13. Applicable Laws and Regulations

Throughout the Term hereof Lessee shall at its own cost and expense, observe and comply with all laws, rules, orders, ordinances and regulations of the County, State, and Federal governments and of each and every department, entity, bureau and duly authorized official thereof and of any successor or future governmental authority, department, entity, bureau and duly authorized official thereof having jurisdiction and/or any other corporation body or organization possessing similar authority and exercising similar functions, which laws, requirements, rules, orders, ordinances and regulations are now operative, or which at any time during the Term of this Lease may be operative and in force and effect and applicable to the Premises including the Community Center.

14. Alterations and Additions

Lessee agrees that it will not (i) demolish any portion of the Community Center for the purpose of reconstruction, renovation or otherwise, or (ii) make any alterations, renovations, additions, changes or substitutions which would weaken or impair the structural integrity of the Community Center, lessen the market value thereof, or change the exterior thereof without, in the case of each of the foregoing, the prior written consent of the County which consent shall not be unreasonably withheld provided that the County determines in its

reasonable discretion that such work shall not materially adversely affect the nature of the Premises or the Community Center thereon.

Subject to the limitations contained in the foregoing paragraph, Lessee may, at any time during the Term of this Lease, at Lessee's own cost and expense, make or permit to be made any demolition, alteration, change or addition, of, in or to the Premises, the Community Center, or any part thereof.

15. Indemnification

a. Nothing in this Lease shall be deemed to be construed in any way as constituting the consent or request of the County for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Premises or the Community Center, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to any lien against the County's interest in the Premises or the Community Center. Notwithstanding the foregoing provisions, if such lien against the Premises, the Community Center, or any part thereof is filed, Lessee shall either pay the same and have it discharged of record within five (5) days after the date of filing the same, or take such action as may be required to legally object to such lien, and in all events to have such liens discharged prior to the foreclosure thereof and the imposition of any penalty upon the County.

b. Lessee is and shall be in exclusive control and possession of the Premises and Community Center, and the County shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises or the Community Center or the appurtenances thereto, or for any injury or damage to the Premises or the Community Center, or to any property, whether belonging to Lessee or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or of the Community Center or from steam, gas, electricity, water, rain or snow that may leak into, issue or flow from any part of the Premises or the Community Center from the drains, pipes or plumbing work of the same, or from the street, subsurface or any place or quarter, or due to the use, misuse or abuse of any or all of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises or in the Community Center, including defects in construction, latent or otherwise; provided, however, that Lessee shall not be responsible for clean up of any "hazardous substances" or

"hazardous waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (as amended), or "toxic substances" as defined in the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq. (as amended), to the extent that such waste or substances were introduced to the Premises i) by the County; or ii) prior to the Effective Date and not the result of actions by Lessee or its agents, employees or independent contractors. The provisions of this Lease permitting the County, after notice, to enter and inspect the Premises and the Community Center are made for the purpose of enabling the County to become informed as to whether Lessee is complying with the agreements, terms, covenants and conditions thereof, but the County is under no obligation to perform such acts as Lessee shall fail to perform.

c. Lessee shall indemnify and hold the County harmless from and against any and all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including attorneys' fees, or injury to person or property arising out of, by reason of, or in account of:

(1) Any breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of Lessee to be fulfilled, kept, observed and performed, and

(2) Claims of every kind or nature, arising out of the use and occupancy of the Premises and/or the Community Center (and/or the construction, alteration, etc. thereof) by Lessee, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by Lessee, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises or the Improvements; provided this indemnification shall not apply should the claim arise as a result of its negligent act or acts of the County or its employees.

16. Damage and Destruction

If during the Term the Community Center shall be destroyed or damaged in whole or in part by fire or any other cause, except condemnation, and whether or not such destruction or damage is covered by insurance, Lessee shall give to the County immediate notice thereof, and Lessee shall promptly repair, replace and rebuild the same or cause the same to be repaired, replaced or rebuilt, at least to the conditions thereof immediately prior to such occurrence ("Restoration"). If Lessee shall fail to comply with the provisions of this

paragraph, County may declare Lessee in material default of this Lease Agreement. Without waiving any other remedy it may have at law or at equity, County may at its option direct the payment to it of any proceeds payable under any insurance policy held by Lessee.

17. Condemnation

If, at any time during the Term of this Lease, the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, or by any agreement between the County, Lessee and those authorized to exercise such right, this Lease shall terminate on the date of such taking and the Rent, Additional Rent and other sums of money and other charges herein provided to be paid by Lessee shall be apportioned and paid to the date of such taking.

18. County's Right to Inspect

Upon reasonable notice and during normal weekday working hours, the County shall have the right to inspect the Community Center for the purpose of determining compliance with the Lease terms and conditions.

19. Tenant Default

An "Event of Default" shall be deemed to have occurred if any one or more of the following events shall occur:

(1) Lessee shall desert or abandon the Premises or the Community Center or utilize the Community Center for any purpose other than a YMCA recreational facility for a period of sixty (60) days; or

(2) Lessee shall default in making timely payment to the County of any Rent or of any money advanced by the County or otherwise collectible as Additional Rent, and the same shall not be paid within thirty (30) days after Lessee receives notice of the delinquency; or

(3) Lessee shall fail to pay any tax, assessment, water charge, sewer charge, or other governmental imposition, or any other charges or lien against the Premises or the Community Center with Lessee is required to pay under this Lease and the same shall not be paid within thirty (30) day after Lessee receives notice of the delinquency; or

(4) Lessee shall fail to begin construction of the Community Center or to complete such construction by the dates set out in paragraph 9 (f), above; or

(5) Lessee shall default in complying with any other agreement, term, covenant or condition of this Lease and such default in compliance shall continue for a period of thirty (30) days after notice by the County or such longer period as the County may reasonably agree if the default cannot reasonably be cured within thirty (30) days provided Lessee has commenced curing within such thirty (30) days and continues with diligence thereafter to complete the cure; or

(6) This Lease or the estate of Lessee hereunder shall be transferred, assigned, or subleased (in a single transaction or a series of related transactions) without the prior written consent of the County, except in an approved financing.

In an Event of Default, the County may thereafter serve a written thirty (30) day notice of cancellation and termination of this Lease, any other notice to quit required hereunder or by law being expressly waived by Lessee, and upon the expiration of such thirty (30) days, this Lease shall end and expire as fully and completely as if the date of expiration of such thirty (30) day period were the day herein definitely fixed for the end and expiration of this Lease, and Lessee shall then quit and surrender to the County the Premises, the Community Center and any other improvements on, under or above the Premises, and the County may enter into or repossess the same, either by force, summary proceedings or otherwise.

If an Event of Default shall have occurred, in addition to other rights of the County hereunder, the County shall have the right of injunction to restrain the same and the right to invoke any remedy allowed hereunder by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided.

The rights and remedies given to the County in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by the County, shall be deemed to be in exclusion of any of the others herein, or by law or in equity provided, except as otherwise provided herein.

20. Landlord Default

In the event of any default by the County under this Lease ("Landlord Default"), Lessee may give the County written notice specifying such Landlord Default and, if Lessee shall do so, then the County shall have 60 days in which to cure any such Landlord Default; provided, however, that if the nature of the Landlord Default is such that more than 60 days are required for its cure, then the County shall not be in default if the County commences to

cure within said 60 days and thereafter diligently prosecutes the same to completion. In the event that the County shall remain in default following its said right to cure, then, in addition to all other rights and remedies available to Lessee at law and in equity, Lessee may cure such Landlord Default on behalf of the County by doing the necessary work and/or making the necessary payments, and billing the County for the reasonable costs thereof, which the County agrees to pay to Lessee within 60 days of receipt of Lessee's demand therefore and reasonable evidence of the cost of the same. If the County shall fail to pay within said 60 day period, Lessee may deduct the entire cost from any rent and other charges due hereunder.

21. End of Term Reversion of Leased Property

Upon expiration or earlier termination of this Lease, whether by default or otherwise, Lessee's leasehold interest in the Premises shall terminate and title to the Community Center and all fixtures, equipment, and related improvements shall automatically pass to, vest, belong to, and become the property of the County. Lessee shall, if the County shall deem it appropriate, execute any further documents to confirm this transfer of title to the County with cost of charge to the County. Lessee shall be responsible for the removal of its personal property upon expiration or earlier termination of this Lease, provided that Lessee shall be responsible for the cost of repair of any damage caused during such removal.

22. Assignment and Subletting

Except as expressly otherwise provided in this Lease pertaining to the Approved Financing, Lessee shall not sell, assign or in any manner transfer this Lease or any interest therein or the estate of Lessee hereunder, or rent, sublet, sublease or underlet the Premises or the Community Center as an entirety in a single transaction or a series of related transactions, without the prior written consent of the County first had and obtained in each case, which consent may be granted or withheld in the sole and absolute discretion of the County.

23. Lease as Security for Approved Lender

a. Lessee shall have the right to mortgage the Community Center or Lessee's leasehold estate in this Lease ("Approved Financing") to a lender ("Approved Lender") reasonably approved by the County, but only in an amount not to exceed an amount equal to the value of the Community Center and Lessee's leasehold estate in the premises less the sum of Two Million Dollars ($2,000,000) and provided that: (a) in no event shall the County be required to encumber or subordinate its fee title to the Premises or any part thereof or any interest therein; (b) the encumbrance shall be only of the Community

Center or of Lessee's interest in the Premises in strict accordance with the terms of the Lease; (c) until such time as construction of the Community Center contemplated by this Lease is complete, all proceeds from any loan secured by Lessee's interest in this Lease shall be used only in connection with the development and construction of such Community Center; and (d) no persons or entities shall be entitled to succeed to Lessee's rights under the Lease to operate the Community Center unless the County shall have determined in its reasonable discretion that such entities or persons are reputable and capable of operating the Community Center in a professional and first-class manner in accordance with all terms of the Lease.

b. If Lessee enters into Approved Financing with an Approved Lender, then the County agrees that provided the County has been furnished with the current address of such Approved Lender, no default of Lessee under this Lease shall give the County a right to terminate the Approved Lender's rights under this Lease with respect to the Approved Financing unless the County shall have given notice to the Approved Lender of such a default by Lessee. Any such notice of default shall be sent simultaneously to Lessee and the Approved Lender.

c. The County, upon providing Lessee any notice of default under this Lease, or a termination of this Lease, shall at the same time provide a copy of such notice to Approved Lender. No such notice by the County to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so provided to Approved Lender. Upon expiration of the period of time given Lessee to cure such defaults, if such defaults have not been cured, the County shall notify Approved Lender of such fact and Approved Lender shall have an additional cure period with respect to that default of thirty (30) days, if such default is capable of being cured by the payment of money, and sixty (60) days if such default is not capable of being cured by the payment of money. The agreement between Lessee and the Approved Lender shall require Approved Lender, during such applicable cure period, to:

(1) Notify the County of Approved Lender's desire to nullify any termination of this Lease by the County;

(2) Pay or cause to be paid all rent and other payments then due and in arrears as specified in the notice to Approved Lender and which may become due during the Approved Lender's applicable cure period or periods; and

(3) Comply, or in good faith and with reasonable diligence commence to comply and thereafter continue to comply, with all non-monetary requirements of this Lease then in default. Provided that Approved Lender shall so comply, then this Lease shall not terminate provided that thereafter Approved Lender pays or causes to be paid the rent and other monetary obligations of Lessee under this Lease as the same become due and continues its good faith efforts to perform all of Lessee's other obligations under this Lease, and provided further that Approved Lender, if not enjoined or stayed, shall within six (6) months after expiration of Approved Lender's cure periods, take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the mortgage or deed of trust, trustee's sale or other appropriate means and prosecute the same to completion with due diligence, provided, however, that if the Community Center is not operated for any period of time during which it would otherwise be required to be operated if Lessee were not in default, the Approved Lender shall be required to pay Rent in accordance with the provisions of this Lease. If Approved Lender complies with this Paragraph and Lessee's estate herein is acquired by Approved Lender or its designee or any other purchaser at a foreclosure sale, trustee's sale or otherwise, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease. The County shall accept any performance of Lessee's obligations under this Lease by or at the instigation of Approved Lender as if the same had been done by Lessee. The Approved Lender's right hereunder to acquire or sell Lessee's interest in this Lease by foreclosure of the mortgage or deed of trust, trustee's sale or other appropriate means is not intended and shall in no manner restrict or limit the rights of the County under this Lease providing that no persons or entities shall be entitled to succeed to Lessee's rights under the Lease to operate the Community Center after foreclosure unless the County shall have determined in its reasonable discretion that such entities or persons are reputable and capable of operating the Community Center in a professional and first-class manner in accordance with all terms of the Lease and provided that operation of the Community Center by such entities or persons is permissible under all applicable laws then in effect.

(4) In the event of the termination of this Lease as a result of Lessee's default, the County shall, in addition to providing the notices of default

as required above, give each Approved Lender written notice that this Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, then known to the County.

24. Landlord's Title

The County warrants and covenants that the County has good and clear record and marketable title to the Premises, in fee simple absolute, and free of all title matters except for matters of record. The County warrants and covenants that, as of the date hereof, there are no restrictive covenants or other agreements, and no legal restrictions and no other legal impediment, any of which would prevent Lessee from constructing, renovating or using the Community Center as herein provided, or from occupying the Premises for the purposes herein provided. The County warrants and covenants that the County shall not enter into any restrictive covenants or other agreements, which would prevent Lessee from occupying the Premises for the purposes herein provided.

The County warrants and represents to Lessee that, on the date of delivery of possession of the Premises to Lessee, to the best of the County's knowledge, the Premises shall be free of all violations, orders, or notices of violations of laws.

25. Quiet Enjoyment

The County warrants and agrees that Lessee, on paying the rent and other charges due hereunder and performing all of Lessee's other obligations pursuant to this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the full Term, free from molestation, eviction, or disturbance by the County.

26. Estoppel Certificate

The County and Lessee agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which any rent due hereunder has been paid in advance, if any, together with such other information as the County or Lessee may reasonably require with respect to the status of the Lease and Lessee's use and occupancy of the Premises.

27. Notices

Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, and/or whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to the Premises or Community Center, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served in writing by first class mail (postage prepaid) directed to:

County:
County Administrator
224 Ballard Street
P. O. Box 532
Yorktown, Virginia 23690

with a copy to:
County Attorney
224 Ballard Street
P. O. Box 532
Yorktown, Virginia 23690

Lessee:

Every such notice, demand, request or other communication hereunder shall be deemed to have been given or served for all purposes hereunder on the date on which it is received or by the party to whom it was sent.

28. Governing Law

This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any action brought to enforce its provisions shall be brought in the Circuit Court for the County of York.

29. Severance

If any provision of this Lease is deemed unenforceable by a court of competent jurisdiction, the remainder of the Lease terms shall not be affected thereby.

30. County Approvals

In each case when this lease calls for an approval by the "County," unless otherwise specified herein, such approval may be granted by the County Administrator or his designee and shall not require action by the Board of Supervisors.

31. Recordation

Either party may, at its own cost, record a copy of this agreement among the land records of York County.

32. Duplicate Originals

This agreement may be executed in duplicate originals, each of which shall be deemed an original, any one of which may be produced in court as evidence of the terms and conditions hereof.

WITNESS the following signatures and seals:

COUNTY OF YORK, VIRGINIA

By_____(SEAL)
County Administrator

Approved as to form:

_____
County Attorney

PENINSULA METROPOLITAN YMCA

By_____(SEAL)

Title_____

COMMONWEALTH OF VIRGINIA

COUNTY OF YORK, to wit:

The foregoing Lease Agreement was acknowledged before me this _____ day of December, 1999 by Daniel M. Stuck, County Administrator.

_____
Notary Public

My commission expires:_____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing Lease Agreement was acknowledged before me this _____ day of December, 1999, by _____, _____, of the Peninsula Metropolitan YMCA.

_____
Notary Public

My commission expires: _____