

No. 30
BCC 8-8-00
9:35 A.M PENHALE/Buckley

#30 LEASE AGREEMENT WITH SUNCOAST FAMILY YMCAs INC. FOR OMNI CENTER
- APPROVED FOR EXECUTION

County Administrator Fred E. Marquis recommended approval of a Lease Agreement with Suncoast Family YMCAs Inc. for the Omni Center.

Commissioner Harris moved, seconded by Commissioner Todd and carried, that the recommendation of the County Administrator be approved.

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Issue_
#2000214

Suncoast Family YMCA's Inc.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 9 day of August, 2000, by and between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and the "County", which terms shall include COUNTY'S designated agent(s) and/or successors in interest, and SUNCOAST FAMILY YMCAs INC., a Florida Not for Profit Corporation, hereinafter referred to as the "TENANT."

WHEREAS, Pinellas County Community Development Department solicited applications for a Comprehensive Recreation Program for the Omni Center; and

WHEREAS, the TENANT was selected by a committee consisting of the Greater Ridgcrest area residents and County personnel and approved by the Board of County Commissioners on September 28, 1999; and

WHEREAS, Pinellas County General Services Department is the project manager for renovation to the existing Omni Building; and

WHEREAS, the TENANT will design and construct a swimming pool and ball fields simultaneously with renovations of existing Omni Building; and

WHEREAS, COUNTY will separate Phase I and Phase II by the placement of a fence for liability reasons; and

WHEREAS, the COUNTY, upon completion of renovation of Omni Building, will lease entire property to the TENANT, who will administer comprehensive recreational and social programs as set forth in the terms of a Specific Performance agreement.

WITNESSETH:

1. PREMISES: In consideration of the rent hereinafter agreed to be paid by the TENANT to the COUNTY, and in consideration of the covenants of the respective parties hereto, each to the other to be performed by them at the time and in the manner hereinafter provided, the COUNTY does

hereby lease and let unto the TENANT, and the TENANT does hereby hire from the COUNTY those certain Premises situated in Pinellas County, Florida, at 1801 119TH Street N, Largo, Florida known as the "Omni Center." These are legally described as Exhibit "A" attached hereto and made a part hereof.

Phase I will be the area that contains the ball fields and the swimming pool as shown on Exhibit "A-1" and will commence on the date that the Board of County Commissioners approves this document;

Phase II will be the remainder of the property and building and will be all of Exhibit "A" and will commence when the Certificate of Occupancy is received by the General Services Department.

2. TERM AND RENTAL: This Lease shall be for a term of twenty (20) years commencing upon the 9 day of August, 2000, and ending on the 8 day of August, 2020. The rental for the terms shall be ONE (\$1.00) DOLLAR per year receipt of which is hereby acknowledged. This Lease is automatically renewable, at TENANT'S option for two (2) consecutive ten (10) year terms at the same annual rental rate unless TENANT notifies in writing the COUNTY of its intent not to renew. Notice must be given within one hundred twenty (120) days prior to termination of term.

3. USE: It is understood and agreed between the parties hereto and TENANT covenants that said Premises during the continuance of the Lease shall be used and occupied for a full service branch YMCA under the direction of the Suncoast Family YMCA board of directors and with guidance from the local community advisory board. TENANT shall offer a structured, comprehensive recreation and social activity program for area residents of all ages and for such "private" and "special events" as are customary to support the facility and for no other purpose or purposes, without the written consent of the COUNTY. The TENANT agrees to cause the leased Premises to be operated for such use during the entire term of this Lease, unless prevented from doing so by causes beyond TENANT's control, and to conduct its business at all times in a reputable manner.

"Private events" as used above may include events such as weddings and other private rentals and "special events" may include dances, dinners and other fund raising or community events.

For "private events" and "special events" the TENANT shall be permitted to serve alcoholic beverages on the Premises.

This Lease is made on the express condition that the Premises shall be used only in conformance with the applicable laws and ordinances. TENANT shall not make or permit any offensive or unlawful use of said Premises. All rights of TENANT hereunder may be terminated by the COUNTY in the event that any other use be made thereof.

4. TAXES: In the event that any ad valorem, rental, sales or similar taxes are levied upon the leased Premises due to the existence of this Lease, then TENANT shall pay all such taxes so imposed.

5. UTILITIES: TENANT agrees to promptly pay all charges for gas and electricity supplied the demised Premises, whether determined by meter or otherwise. COUNTY shall not be liable in any manner for damages to TENANT'S business and/or inventory, or for any other claim by TENANT, resulting from any interruption in utility services. The TENANT will also pay for all water consumption, sewer charges, trash collection, and telephone service and janitorial service.

6. MAINTENANCE AND SERVICES: The TENANT is responsible for all repairs and maintenance of the premises and all structures thereon except however that COUNTY Parks Department shall continue to mow the fields until the start of construction. Thereafter the COUNTY shall have no responsibility for the repairs and maintenance of the premises and all structures thereon.

*add para
Per
Amend. 1*

In the event COUNTY pays any monies required to be paid by TENANT hereunder, excluding any payments made in accordance with a separate funding agreement, COUNTY shall demand repayment of same from TENANT within ten (10) days of payment and TENANT shall make such payment within ten (10) days of receipt of said demand. TENANT's failure to timely reimburse shall be deemed a breach of this Lease.

7. INSURANCE: TENANT shall procure, pay for and maintain during the term of the Lease insurance as required herein:

A. Comprehensive General Liability including, but not limited to, independent contractor, contractual, Premises/Operations, Sexual Molestation, host liquor liability insurance, and

Personal Injury covering liability assumed under indemnification provisions of this Lease, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$500,000, each occurrence; and property damage of not less than \$500,000, each occurrence. (Combined single limits of not less than \$300,000, each occurrence, will be acceptable.) Coverage shall be on an "occurrence" basis. Fire Legal Liability shall be included to limits of \$50,000. This insurance may be provided through one (1) primary policy, or through use of a primary and an excess umbrella in follow form to reach the total required limits.

B. Workers' Compensation in at least the limits required by Florida law, and Employers' Liability, where applicable, of not less than \$100,000.

C. A Certificate of Insurance shall be filed within five (5) days from the commencement date to the Real Estate Management Division, 201 Rogers St., Clearwater, Florida 33756 and thereafter. TENANT shall notify the COUNTY within twenty-four (24) hours after receipt of any notice of expiration, cancellation, non-renewal or material change in coverage. Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of TENANT. Pinellas County Board of County Commissioners shall be endorsed to the required policy or policies as an additional insured, except for Workers' Compensation. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self-Insured Retentions of whatever nature.

8. BONDS:

A. The TENANT shall require its contractor to provide both a payment bond and a Performance Bond for the benefit of both TENANT and COUNTY, in the form prescribed by the COUNTY in the amount of 100% of the contract amount or cost of construction, the costs of which to be paid by TENANT's Contractor. "The contract amount" is defined as the cost for construction of a building/or buildings. The Payment and Performance Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to the COUNTY ; provided, however, the surety shall be rated as "A" or better as to general policy holders rating and Class V or higher rating as to financial size category and the amount required shall not exceed 5% of the reported policy holders surplus, all as reported in the most current Best Key Rating Guide,

published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038. A copy of the bond will be sent to the Real Estate Management Division at the address in paragraph 24. All contractor and subcontractors shall be notified that they will be required to look to the Payment Bond. TENANT shall follow the requirements of Section 713.23, Florida Statutes.

B. If the surety for any contractor bond is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the contract documents, TENANT's contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to COUNTY's approval in substantially the same form as Exhibit "B" attached hereto and made a part hereof. TENANT shall be responsible for enforcing all of TENANT's contractor's obligations hereunder.

9. LIABILITY OF COUNTY: All property of any kind including TENANT's improvements that may be on the Premises during the continuance of the Lease shall be at the sole risk of TENANT, and COUNTY shall not be liable to TENANT or any other person for any injury, loss, or damage to property or to any person on said Premises.

10. ASSIGNMENT AND SUBLETTING: Except as previously stated in Paragraph 2. USE, the TENANT further agrees not to assign or in any manner transfer this Lease or any estate or interest therein without the previous written consent of the COUNTY, and not to sublet said Premises or any part or parts thereof or allow anyone to come in with, through or under it without like consent. Such consent is at the sole discretion of COUNTY. Consent by the COUNTY to one or more assignments of this Lease or to one or more sublettings of said Premises shall not operate as a waiver of COUNTY's rights under this section.

11. ALTERATIONS, MECHANIC'S LIENS: TENANT shall promptly pay for all charges for labor, services and materials used in connection with any improvements or repairs to the leased Premises undertaken by TENANT. Any mechanics liens against the Premises, TENANT's leasehold, or the land and building arising out of work performed by or for TENANT are hereby expressly prohibited and in the event of the filing of any Claim of Lien, TENANT shall promptly satisfy same or transfer it to a bond; and TENANT shall in any event protect COUNTY's interest in underlying real estate and shall hold COUNTY harmless against any such claims. All such additions,

improvements and fixtures, except movable office furniture and equipment purchased by the TENANT, shall become the property of COUNTY and remain upon the Premises and be surrendered at the end of the Lease.

12. COVENANT AGAINST LIENS: TENANT shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion or other estate of COUNTY in the Premises herein demised or on the building or other improvements thereon, and all material men, contractors, artisans, mechanics and laborers and other persons contracting with TENANT with respect to the demised Premises or any part thereof, are hereby charged with notice that they must look to TENANT to secure payment of any bill for work done or material furnished or for any other purpose during the term of this Lease.

13. POSSESSION: TENANT shall be granted possession of the Premises immediately upon the commencement date of this Lease (as defined in Paragraph 1 of this Agreement) and shall be entitled to full use of said Premises. All terms and conditions set forth herein shall immediately commence upon the signing of this Lease by all parties.

14. INDEMNIFICATION: TENANT covenants and agrees that it will indemnify and hold harmless COUNTY and all of COUNTY'S officers, employees, contractors and subcontractors from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by TENANT, its officers, employees, agents, contractors, or subcontractors during the performance of this Lease, and any extensions thereof, whether direct or indirect, and whether to any person or property to which COUNTY or said parties may be subject including COUNTY's costs and attorneys fees incurred in defending such claims, except that neither TENANT nor any of its officers, agents, employees, contractors or subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by or resulting from the sole negligence of COUNTY or any of its officers or employees.

15. CONDEMNATION: If the whole or any part of the Premises hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken from the day the possession of that part shall be required for any public purpose, and the rent shall be paid up to that day, and if such portion of the demised Premises is so taken as to destroy the usefulness of the Premises for the purpose for which the Premises were

leased, then, from that day the TENANT shall have the right either to terminate this Lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided. If the TENANT shall fail to terminate this Lease as aforesaid within thirty (30) days after notice of said taking, said failure shall be regarded as a waiver of its right to cancel, whereupon this Lease shall continue for the then balance of the term. If TENANT fails to exercise its right to cancel, TENANT shall, at its own cost and expense, make the repairs made necessary to said partial taking.

The parties agree that TENANT shall receive notice of the commencement of condemnation proceedings within ten (10) days of COUNTY's notice of their initiation if commenced by a third party, or within ten (10) days of their initiation if commenced by COUNTY.

16. DESTRUCTION OF PREMISES: If the demised Premises shall, without fault of TENANT, be destroyed by fire, storm, or other casualty or be so damaged thereby as to become wholly or partially untenable, TENANT may, by written notice delivered to COUNTY within thirty (30) days after such destruction or damage, elect to rebuild or repair. In such event, this Lease shall remain in force, and TENANT shall rebuild or repair the Premises within a reasonable time after such election, putting the Premises in as good condition as they were at the time immediately prior to the destruction or damage. If TENANT elects not to restore or rebuild, this Lease shall terminate effective the date of said destruction.

17. DEFAULT: If the TENANT should fail to keep and perform any of the terms, covenants, conditions or provisions in this Lease or the Specific Performance Agreement, if any, contained to be kept and performed by the TENANT, then within fifteen (15) days of the COUNTY becoming aware of the occurrence of the default, COUNTY shall notify TENANT of the default and its demand to cure the default. Upon receipt of notice, TENANT shall have fifteen (15) days from the date of receipt, to cure said default, or to commence or take such steps as are necessary to cure such default, which once commenced the TENANT agrees and shall pursue continuously until the default is finally cured. Upon TENANT'S failure to either cure said default or to take steps that are necessary to cure said default, it may be lawful for the COUNTY to declare said demised term ended and to re-enter upon the demised Premises and to retake possession of the said leased Premises by process of law, or the COUNTY may have such other remedy as the law and this instrument afford.

The TENANT covenants and agrees that upon termination of the said demised term, at such election of the COUNTY, or in any other way, it, the TENANT, will surrender and deliver up said Premises and property peaceably to the COUNTY, their agents and attorneys, immediately upon the termination of the said demised term.

In the event TENANT defaults as set out above or elsewhere in this Lease, all payments of rent, additional rent, or of any other monies due from TENANT during the term of this Lease or any extension thereof, shall, at the option of the COUNTY, become immediately due and payable in full. COUNTY may re-enter the Premises using such force for that purpose as may be necessary without being liable to any prosecution therefore, and COUNTY may repair or alter the Premises in such manner as to COUNTY may seem necessary or advisable to re-let the Premises. Should COUNTY need to pursue any of its remedies, COUNTY shall be entitled to recover damages, including costs and attorneys fees. Failure to elect any of the available remedies upon the occurrence of any default shall not operate as a waiver of any future election of remedies.

18. SIGNS: TENANT agrees that any permanent signs or advertising, including awnings, to be used in connection with the leased Premises must have COUNTY'S written approval before installation. COUNTY'S approval may not be unreasonably withheld.

19. WAIVER: One or more waivers of any covenant or condition by the COUNTY shall not be construed as a waiver of a subsequent breach of the same covenant or conditions, and the consent or approval by the COUNTY to or of any act by the TENANT requiring the COUNTY's consent or approval shall not be construed a consent or approval to or of any subsequent similar act by the TENANT.

20. OBSERVANCE OF LAWS: TENANT agrees to observe, comply with and execute promptly at its expense during the term hereof, all laws, rules, requirements, orders, directives, codes, ordinances and regulations of any and all governmental authorities or agencies, of all municipal departments, bureaus, boards and officials, of all County, State, and Federal boards and agencies, and of insurance carriers, due to this use or occupancy of the demised Premises. All additions, alterations, installations, partitions, or changes shall be in full compliance with the aforementioned authorities.

21. ACCESS TO PREMISES: The COUNTY shall have the right to enter upon

the leased Premises at all reasonable hours for the purpose of inspecting or conducting tests upon the same, or for making repairs to the demised Premises or to any property owned or controlled by the COUNTY therein. Such repairs shall not unduly interfere with TENANT'S business, except as is naturally necessitated by the nature of the repairs being effected.

22. RELATIONSHIP OF PARTIES; CONSTRUCTION OF LEASE: Except as described in the introductory section of this Lease, nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of COUNTY and TENANT. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, as appropriate.

This contract shall be governed by the laws of the State of Florida. Any changes in the applicable laws which govern this Lease will necessitate a change in Lease terms and conditions which may be effected thereby, at the time such changes may arise.

23. SURRENDER AT END OF TERM: Upon the expiration of the term hereof or sooner termination of this Lease, TENANT agrees to surrender and yield possession of the demised Premises to the COUNTY, peacefully and without notice, and in good order and condition, broom clean condition, but subject to ordinary wear and reasonable use thereof, and subject to such damage or destruction or condition as TENANT is not required to restore or remedy under other terms and conditions of this Lease.

24. NOTICES: All notices to the County including Certificates of Insurance hereunder shall be forwarded to the COUNTY at the following address:

Ellyn Kadel, Manager
Real Estate Management Division
General Services Department
201 Rogers Street
Clearwater, FL 33756

until TENANT is notified otherwise in writing; and all notices given to the COUNTY hereunder shall be forwarded to the COUNTY at the foregoing address, by registered or certified mail, return receipt requested, until TENANT is notified otherwise in writing. All notices given to the TENANT hereunder shall be forwarded to TENANT at the following address:

Suncoast YMCAs
1212 S. Highland Avenue
Clearwater, Florida 33756
Attention: Director

by registered or certified mail, return receipt requested, until COUNTY is notified otherwise in writing.

25. QUIET ENJOYMENT: The COUNTY covenants and agrees that upon TENANT paying said rent and performing all of the covenants and conditions aforesaid on TENANT's part to be observed and performed, the TENANT shall and may peaceably and quietly have, hold and enjoy the Premises hereby demised for the term aforesaid.

26. SUCCESSORS AND ASSIGNS: The covenants, provisions and agreements herein contained shall in every case be binding upon and inure to the benefit of the parties hereto respectively and their respective heirs, executors, administrators, successors and assigns, as applicable, except that the right of the TENANT to assign TENANT'S interest under this Lease is and shall be subject to the written consent of the COUNTY as hereinabove provided, which provision it is not intended to waive, qualify or alter in any manner whatsoever by this clause or any other clause herein referring to assigns.

27. PUBLIC ENTITY CRIME ACT:

The TENANT is directed to the Florida Public Entity Crime Act, section 287.133, Florida Statutes, as amended from time to time, and the County's requirement that the TENANT comply with it in all respects prior to and during the term of this Lease.

28. RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your

County Public Health Unit.

29. LEAD-BASED PAINT: Every TENANT of any interest in a structure on which a dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. While the improvement on these Premises were built in 1980, the COUNTY notes that additional information on lead-based paint and testing for lead-based paint may be obtained from your county public health unit, at TENANT's option.

TENANT acknowledges that COUNTY has given TENANT the opportunity, prior to execution of this Lease Agreement to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. Abatement of lead-based paint and/or lead-based paint hazards is the sole responsibility and expense of the TENANT.

30. FISCAL FUNDING: In the event funds are not appropriated by the COUNTY in any succeeding fiscal year for purposes described herein, then this Lease shall be deemed to terminate at the expiration of the last fiscal year for which funds were appropriated and expended, or TENANT may elect to assume all of COUNTY's financial obligations under this Lease until such time as funds may be budgeted and appropriated in later years during the lease term.

31. HAZARDOUS SUBSTANCES:

A. TENANT hereby agrees that (i) no activity will be conducted on the Premises that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of TENANT'S business (the "Permitted Activities") provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by COUNTY; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of TENANT'S business (the "Permitted Materials") provided such Permitted Materials are properly stored and disposed of in a manner and location meeting all Environmental Laws and approved in advance in writing by COUNTY; (iii) no portion of the Premises will be used as landfill or a dump; (iv) TENANT will not install any underground tanks of any type; (v) TENANT will not allow any surface or subsurface conditions to come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; (vi) TENANT will not permit any Hazardous Substances to be brought onto

the Premises and if so brought thereon, TENANT shall immediately remove same with proper disposal and all required clean-up procedures shall be diligently undertaken pursuant to all Environmental Laws; (vii) COUNTY shall be permitted to conduct at COUNTY'S expense any Environmental Testing reasonably necessary by COUNTY or COUNTY'S agent, to determine the presents of any Hazardous Substance. If at any time during or after the term of the Lease the Premises is found to be so contaminated or subject to said conditions demonstrated to have been caused exclusively by TENANT during the lease term, TENANT agrees to clean up the Premises according to Environmental Laws. If any contamination is found to have been caused in part by TENANT, TENANT agrees to be responsible for clean-up expenses only to the extent that it is contributorily negligent. The foregoing obligation shall survive the termination or expiration of this Lease. In the event TENANT fails to act in the removal, proper disposal, or all required clean-up procedures to the satisfaction of appropriate Federal, State or local agencies, COUNTY shall have the right to remedy TENANT'S environmental problem at TENANT'S costs, and seek recovery from TENANT through proper legal channels. The term "Hazardous Substances" as used in this Lease shall mean pollutants, contaminants, toxic or hazardous wastes, including, but not limited to, Asbestos, Polychlorinated Byphynels, and petroleum products, or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any Federal, State or local law or ordinance relating to pollution or protection of the environment.

B. TENANT agrees to promptly notify COUNTY of any environmentally hazardous event or procedure, including hazardous waste spills of any kind, regardless of responsibility, and to advise COUNTY of any environmental concern expressed by any private party or government agency.

As used in this Paragraph , "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph , "Environmental Law" means Federal laws and laws of the jurisdiction where the Premises is located that relate to health, safety or environmental protection.

32. ENTIRE AGREEMENT: The Lease Agreement as hereinabove set forth,

including all exhibits and riders, if any, incorporates all covenants, promises, agreements, conditions and understandings between the parties, and no covenant, promise, agreement, condition or understanding, either written or oral, not specifically set forth herein shall be effective to alter the performance or the rights of the parties as hereinbefore stated.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Lease Agreement the day and year first above written.

ATTEST

TENANT: SUNCOAST FAMILY YMCAs INC.

By: Stephanie B Zaragoza
Print Name: Stephanie Zaragoza
Title: Community & Youth Programs Dir

By: James A. Raines
Print Name: James A. Raines
Title: Interim CEO

(Corporate Seal)

ATTEST: KARLEEN F. DE BLAKER
Clerk of Circuit Court

COUNTY:
PINELLAS COUNTY, FLORIDA
By and through its Board
of County Commissioners

By: Peter Makriannes
Deputy Clerk
Print Name: PETER MAKRIANNES

By: Robert B. Stewart
Chairman
Print Name: ROBERT B. STEWART

(SEAL)

6/20/00
2000214 ymca

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By: Samuel Richardson
Attorney