

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT is made this 24 day of JUNE, 2020, by and between **PINELLAS COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "LANDLORD," "COUNTY" and "County," which terms shall include County's designated agent(s) and/or successors in interest, and **YMCA OF THE SUNCOAST, INC.**, a Florida non-profit corporation, hereinafter referred to as "TENANT," collectively referred to as the "Parties."

WHEREAS, the Parties entered into that certain lease agreement authorizing the TENANT's use of a COUNTY-owned facility in August 2000; and

WHEREAS, a First Amendment changing the TENANT's name, adding language regarding approval of facility alterations and the serving of alcoholic beverages at the facility, and requiring tenant's adherence to a specific maintenance standard was entered into in November 2001; and

WHEREAS, the Parties wish to amend the lease agreement to exercise the first ten (10) year renewal extending the lease to August 8, 2030, to define responsibility for capital improvements, and to update pertinent lease language.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, and the promises and covenants contained herein, the Parties agree as follows:

1. Paragraph 2, "TERM AND RENTAL", TENANT hereby exercises the first of two (2) consecutive ten (10) year terms at the same rental rate extending the lease agreement from August 9, 2020 to August 8, 2030.
2. Delete paragraph 6, "MAINTENANCE AND SERVICES" in its entirety and replace with the following:

MAINTENANCE AND SERVICES: The TENANT is responsible for all repairs and maintenance of the Premises and all structures thereon. The TENANT shall maintain the Premises in good repair in a clean, neat, orderly, and sanitary condition. TENANT will maintain a log sheet of all maintenance performed and upon request will

provide a copy of the log sheet to the Facilities and Real Property Division of Administrative Services.

TENANT is responsible for all maintenance including structural and non-structural repairs. In the event repairs become necessary that are not due to any acts or omissions of the TENANT and TENANT elects not to make said repairs or replacements, TENANT has the right to terminate this Lease with thirty (30) days prior written notice.

COUNTY shall be responsible for capital improvement replacements to the premises, as defined in the lease agreement, and more specifically as the original Omni Center building and associated parking lot in Phase II, including roof, building envelope, HVAC systems, elevators, fire alarm systems, exterior doors, windows, parking lot and driveway, and field lights that existed at the time the initial lease commenced, but only if said replacements are not determined to be the result of action of the LESSEE, its agents, employees, contractors, invitees, licensees, customers, or its clients. Replacement schedule shall be at COUNTY's sole discretion and shall be based on inspection and condition assessment by the COUNTY, conducted annually. LESSEE shall be responsible to maintain assets in conformance with manufacturer's specifications, use only OEM parts for repairs, and provide COUNTY maintenance and repair records for review at annual inspection.

In the event COUNTY pays any monies required to be paid by TENANT hereunder, COUNTY shall demand repayment of same from TENANT and TENANT shall make such payment within thirty (30) days of receipt of said demand. TENANT's failure to timely reimburse shall be deemed a breach of the Lease.

3. Delete paragraph 4, "TAXES" in its entirety and replace with the following:

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

4. Add the following language to paragraph 3. USE:

a. In the event that Tenant permits or hosts private events or special events at which alcohol will be served, but not sold, or charged a "cover charge that includes alcohol" and at which there is no licensed professional caterer, Tenant shall at all times during the term of event carry host liquor liability with limit of \$1,000,000.

b. In the event that TENANT permits or hosts private events or special events at which alcohol will be served, but not sold, and at which there is a licensed professional caterer, then TENANT shall require the caterer to obtain such license as is necessary and shall require the caterer to carry general comprehensive liability insurance with limits of liability for personal injury and/or bodily injury, including death of not less than \$500,000 per occurrence, and property damage of not less than \$100,000 per occurrence. Alternatively, if private events or special events are hosted by licensees of TENANT, then that licensee shall carry general comprehensive liability insurance with limits of liability for personal injury and/or bodily injury, including death, of not less than \$500,000 per occurrence, and property damage of not less than \$100,000 per occurrence. If such policy excludes coverage for dispensing of alcoholic beverages, then the policy shall contain a "Dram Shop" endorsement, or similar endorsement, which provides coverage to the extent of the liquor license held by the caterer or host of the private event or special event. The Pinellas County Board of County Commissioners shall be named as an additional insured on any required insurance policy. The TENANT, its licensees, and licensed caterer shall comply with all Federal, State and local laws, rules and regulations concerning the service and consumption of alcoholic beverages.

c. In the event that TENANT permits or hosts private events or special events at which alcohol is sold, or if licensees of TENANT are hosting private events or special events at which alcohol is sold, then TENANT or TENANT'S licensee, as applicable, shall contract with a licensed professional caterer who is licensed to serve alcohol. The caterer shall carry the insurance described in subparagraph b. above and comply with all provisions described in subparagraph b. above.

d. Additionally, for any and all use of alcoholic beverages on the Leased Premises, TENANT covenants and agrees that it will, and by contract it will require its licensees' licensed caterers, as well as its licensees, to indemnify and hold harmless the COUNTY and all of the 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 the TENANT, its officers, employees, agents, contractors, or subcontractors during the term of this Lease, and any extensions thereof, whether direct or indirect, and whether to any person or property to which COUNTY or the parties may be subject, , except that neither TENANT nor any of its officers, employees, agents, contractors, or subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused by the sole negligence of COUNTY or any of its officers or employees.

e. The provisions of Pinellas County Ordinance No. 00-42, as codified, are hereby waived for the term of the Lease and the consumption of alcoholic beverages shall be permitted within the Premises during the date and time of TENANT's private or special events.

f. Except as expressly provided herein the TENANT shall not allow the Premises to be used for activities which are prohibited in all COUNTY-owned or COUNTY-occupied buildings under the provisions of Federal, State, or local laws, rule, regulations, or ordinances. By way of illustration and not limitation, State law prohibits the use of COUNTY-occupied buildings for political fund raisers see § 106.15(40), Fla. Statutes, and Federal and State law prohibit use of county-occupied buildings for any implied promotion of a religion."

5. Delete language of paragraph 7, "INSURANCE" of original lease and replace with the insurance requirements set forth in Exhibit "A" attached hereto and incorporated herein by reference.
6. Amend paragraph 14, "INDEMNIFICATION" by deleting reference to "attorney's fees," and adding the following sentence: "Nothing herein shall be construed as a waiver of COUNTY's sovereign immunity, subject to §768.28, Florida Statutes."
7. Amend paragraph 17, "DEFAULT" by deleting all reference to "attorney's fees," and deleting the following sentence: "County may reenter the Premises using such force for that purpose as may be necessary without being liable to an prosecution therefore, and County may repair or alter the Premises in such a manner as the County may deem necessary or advisable to re-let the Premises."
8. Revise paragraph 24, "NOTICES" with the following:

"All notices to the COUNTY, including Certificates of Insurance hereunder shall be forwarded to the COUNTY at the following address:

Facilities and Real Property Division
Attention Real Property Manager
Administrative Services Department
509 East Avenue South
Clearwater, FL 33756"

9. This amendment shall take effect when executed by both parties.

10. Except to the extent specifically modified herein, all other terms and provisions of the Lease Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Lease Agreement on the day and year first written above.

LESSEE: YMCA OF THE SUNCOAST, INC.

WITNESSES:



Print Name: TIMOTHY ACKERMAN

Title: VP - PROPERTIES



Print Name: G. Scott Goyne

Title: President/CEO Chairman



Print Name: DW Moore

Title: VP - IT

LESSOR: PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Chairman

Print Name: _____

Title: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM

By: Cherise Mandy
Office of the County Attorney

Exhibit "A" INSURANCE REQUIREMENTS

Notice: YMCA must provide a certificate of insurance and endorsement in accordance with the insurance requirements and procedures listed below.

- a) The YMCA current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If YMCA does not currently meet insurance requirements verification from their broker or agent that any required insurance not provided at that time of execution will be in place prior to commencement of work.
- b) Prior to commencement of work, YMCA shall email their certificate of Insurance to InsuranceCerts@Pinellascounty.org. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.**
- c) No work shall commence unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the Term of the Agreement.
- d) If any insurance provided pursuant to the Agreement expires prior to the completion of the Work, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished by the YMCA to the County at least thirty (30) days prior to the expiration date.
 - (1) YMCA shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said YMCA from its insurer. Notice shall be given by certified mail to: **Pinellas County Risk Management 400 South Fort Harrison Ave Clearwater FL 33756**; Nothing contained herein shall absolve YMCA of this requirement to provide notice.
 - (2) Should the YMCA, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement the County, at its sole discretion, may purchase such coverages necessary for the protection of the County and charge the YMCA for such purchase or offset the cost against amounts due to YMCA for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- e) The County reserves the right, but not the duty, to review and request a copy of the YMCA most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.
- f) If subcontracting is allowed under the terms of the Agreement, the YMCA shall obtain

Exhibit "A" INSURANCE REQUIREMENTS

and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any sub-YMCA to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the sub-YMCA; *but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*

- (1) All subcontracts between YMCA and its sub-YMCA shall be in writing and may be subject to the County's prior written approval. Further, all subcontracts shall:
 - (a.) Require each sub-YMCA to be bound to YMCA to the same extent YMCA is bound to the County by the terms of the Agreement, as those terms may apply to the portion of the Work to be performed by the sub-YMCA;
 - (b.) Provide for the assignment of the subcontracts from YMCA to the County at the election of Owner upon termination of the Agreement;
 - (c.) Provide that any Party listed in (h)(3) below will be an additional indemnified party of the subcontract;
 - (d.) Provide that any Party listed in (h)(3) below will be an additional insured on all insurance policies required to be provided by the sub-YMCA except workers compensation and professional liability;
 - (e.) Provide waiver of subrogation in favor of any Party listed in (h)(3) below and other insurance terms and/or conditions as outlined below;
 - (f.) Assign all warranties directly to the County; and
 - (g.) Identify the County as an intended third-party beneficiary of the subcontract.

- (2) YMCA shall make available to each proposed sub-YMCA, prior to the execution of the subcontract, copies of this Agreement to which the sub-YMCA will be bound by same requirements and identify to the sub-YMCA any terms and conditions of the proposed subcontract which may be at variance with the Agreement.

- g) The YMCA shall obtain and maintain at all times during its performance of the agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, YMCA shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from companies Licensed to do business in the State of Florida and have an AM Best rating of A- VIII or better.

- h) Each insurance policy and/or certificate shall include the following terms and/or conditions:
 - (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County. If responding YMCA is a Joint Venture as outlined in the solicitation the certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the same requirements with regard to limits, terms and conditions, including completed operations coverage.

 - (2) Any company issuing the insurance policy, or policies, shall have no recourse against

Exhibit "A" INSURANCE REQUIREMENTS

County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of awarded YMCA.

- (3) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the YMCA and any sub-YMCAs to meet the requirements of the Agreement shall be endorsed to include Pinellas County, a Political Subdivision of the State of Florida as an Additional Insured. Indicating coverage on certificate boxes is not adequate. A copy of the actual endorsement or policy declaration page indicating such coverage must be submitted along with Certificate.
 - (4) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.
 - (5) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
 - (6) All policies shall be written on a primary, non-contributory basis.
 - (7) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the YMCA is only using employees named on such list to perform work for the County. Should employees not named be utilized by YMCA, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the YMCA to be in default and take such other protective measures as necessary.
 - (8) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the YMCA and sub-YMCA(s). Indicating such coverage on certificate is not adequate. A copy of the actual endorsement or policy declaration page indicating such coverage must be submitted along with Certificate.
 - (9) For acceptance of any coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of required limits per occurrence by line of coverage
- i) The minimum insurance requirements and limits for this agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:
- (1) Workers' Compensation Insurance

Exhibit "A" INSURANCE REQUIREMENTS

Limit Florida Statutory

Employers' Liability Limits

Per Employee	\$500,000
Per Employee Disease	\$500,000
Policy Limit Disease	\$500,000

- (2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limits

Combined Single Limit Per Occurrence	\$1,000,000
Products/Completed Aggregate	\$2,000,000
Personal and Advertising Injury General	\$1,000,000
Aggregate	\$2,000,000

- (3) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired, and non-owned vehicles including loading and unloading coverage. If the YMCA does not own any vehicles, then evidence of Hired and Non-owned coverage under Commercial General Liability is sufficient. Coverage shall be on an "occurrence" basis. Insurance is to include coverage for loading and unloading hazards, unless YMCA can show that this coverage exists under the Commercial General Liability policy.

Limit

Combined Limit Per Accident	\$1,000,000
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- (4) Property Insurance YMCA will be responsible for all damage to its own property, equipment and/or materials.