

“C” attached hereto, which shall serve a public purpose and provide a substantial public benefit. Further, said uses must provide a benefit to the public and not have a commercial, pecuniary, profitable or private use as its primary use. Any use other than the Permitted Use, shall require the written consent of the LESSOR, in its sole discretion, but such uses must be consistent with the spirit and intent of Section 8.13 of the City Charter as determined by the City Commission.

**4.1.1 Resident Discount.** LESSEE shall provide a ten percent (10%) discount to City residents on membership fees imposed by LESSEE for the use of the YMCA Facility.

**4.2 Compliance with Regulations of Public Bodies.** LESSEE covenants and agrees that it shall, at its own cost and expense, make such improvements on the Leased Premises, perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Leased Premises, in order to comply with the applicable requirements relating to sanitation, fire hazard, zoning, historic designation regulations, environmental requirements (subject to Article 5 below) and other similar requirements designed to protect the public, worker and residential use environments. LESSEE shall not use the Leased Premises, nor shall the Leased Premises suffer any such use during the Term, which is in violation of any of the statutes, laws, ordinances, rules or regulations of the federal, state, county, municipal government or any other governmental authority having jurisdiction over the Leased Premises.

**4.3 Site Plan; Plans and Specifications.** In the event LESSEE undertakes construction of the YMCA Facility located on the Leased Premises, as a condition precedent to such construction LESSEE shall submit to the City Engineer of the City of Fort Lauderdale (the “**City Engineer**”) a site plan containing the specifications of the YMCA Facility (the “**Site Plan**”) for approval by the City Engineer and the City Engineer shall make a recommendation to the City Commission which City Commission approval shall not be unreasonably withheld, delayed or conditioned. Such approval of the Site Plan by the City Commission under this Lease shall not constitute an approval under its governmental or regulatory authority. The approved Site Plan shall be retained on file in the Office of the City Engineer and the City Engineer shall provide notice to LESSEE of such approved Site Plan.

**4.4 Improvements.** LESSEE shall not construct any permanent improvements upon the Leased Premises that are not reflected on the approved Site Plan without LESSOR’s express written consent as set forth in this Article and this Lease. LESSEE shall not construct any improvements, nor perform any material alteration, modification or demolition of improvements upon the Leased Premises without first (a) providing the City Engineer with a complete set of plans and specifications therefor; and (b) securing from City Engineer written approval indicating that the proposed construction, alteration, modification or demolition is acceptable; and (c) securing the approval of the City Commission which approval shall not unreasonably withheld, delayed or conditioned. As a condition of acceptance, the City Engineer may impose reasonable conditions. City Engineer shall not unreasonably withhold written approval of the plans and specifications for construction, alteration, modification or demolition of improvements. Upon expiration or termination of this Lease, any improvements constructed on the Leased Premises shall become the property of the LESSOR. Nothing herein shall be construed as a waiver of the LESSOR’s police or regulatory policy in issuing development approvals. Approvals by the City Commission pursuant to this Lease shall be considered approvals in its proprietary capacity and not under its police or regulatory power.

**4.5 Alterations, Additions, Modifications or Demolitions.** LESSEE shall not make any material alterations, additions, modifications or demolitions to the Leased Premises that are not in accordance with the process outlined in Section 4.3 or 4.4 above.

Lease Date. City Manager, at its sole discretion, may extend this ninety (90) day period by an additional ninety (90) days.

**5.6.2** The parties shall have ninety (90) days after receipt of the Limited Phase I to determine the consequence and, if recommended by the Limited Phase I, the LESSEE shall order a Phase II Environmental Site Assessment (the “**Phase II**”) within said ninety (90) days, at its sole cost and expense.

**5.6.3** The LESSOR and LESSEE shall have ninety (90) days from the receipt of the Phase II to determine the consequence and effect thereof. The LESSOR and the LESSEE each independently reserve the right to terminate this Lease after consultation with the other party, at each of its sole determination, based upon said results, within said ninety (90) days, and both parties shall be released thereby without further obligations to the other party under this Lease. Nothing in this Section shall be construed as an obligation imposed on LESSOR or LESSEE to clear or remediate the Leased Premises of any ~~hazardous contamination~~ Hazardous Substances.

**5.6.4** If the Lease is not terminated by LESSOR or LESSEE under section 5.6.3 above, the ninetieth (90<sup>th</sup>) day set forth in Section 5.6.3 shall be the “**Effective Date**” of this Lease.

## **5.7 Environmental Liabilities.**

**5.7.1** Any Hazardous Substances discovered on, under or within the Leased Premises after the Effective Date, and which do not appear in the Environmental Baseline, at levels that are in violation of the Hazardous Substances Laws shall be the absolute responsibility of the LESSEE unless LESSEE demonstrates by a clear and convincing evidence that the presence of such Hazardous Substances on, under or within the Leased Premises after the Effective Date were either part of the Environmental Baseline or caused by the acts or omissions of LESSOR, its agents, servants, employees, contractors or licensees engaged to perform services on the Leased Premises.

**5.7.2** Anything herein to the contrary notwithstanding, LESSEE shall not be responsible for concentrations of Hazardous Substances above clean-up target levels as defined by Florida Administrative Code Sec. 62-777, as same may be amended from time to time, for Petroleum Products as a result of any potential discharges from a gasoline service station that operated on the Leased Premises between 1961 – 1995 and identified in the Limited Phase I and/or the Phase II. However, LESSEE shall be responsible for any discharges of Petroleum Products that are a result of LESSEE’s operations.

**5.7.3** Anything herein to the contrary notwithstanding, LESSEE shall not be responsible for Hazardous Substances appearing in the Environmental Baseline.

## **5.8 Hazardous Substances Indemnification.**

**5.8.1** Effective on the Effective Date, LESSEE agrees to and shall indemnify, defend and hold LESSOR harmless of and from any and all claims, demands, fines, penalties, causes of action, administrative proceedings liabilities, damages, losses, costs and expenses, which are asserted against the LESSOR for bodily injury, disease, sickness, death, property damage (including the loss of use therefrom), damage or injury to the environment or natural resources, or some or all of the foregoing, and which relate, refer, or pertain to:

(a) the existence of Hazardous Substances on, under, or over the Leased Premises, or