

LEASE AGREEMENT

Relating to the \$3,833,000 Installment Financing Contract
between Bank of America, N.A.
and the Town of Nags Head, North Carolina

AMONG

TOWN OF NAGS HEAD, NORTH CAROLINA,
a North Carolina Political Subdivision,
as Lessor

and

YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH HAMPTON ROADS,
a Commonwealth of Virginia Nonprofit Corporation,
as Lessee

and

BANK OF AMERICA, N.A.,
a National Banking Association

Dated as of January 1, 2002

LEASE AGREEMENT

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EXHIBIT A DESCRIPTION OF THE SITE

LEASE AGREEMENT

THIS LEASE AGREEMENT is dated as of January 1, 2002 (together with any amendments hereto made in accordance herewith, this "*Lease Agreement*"), among the **TOWN OF NAGS HEAD, NORTH CAROLINA** (the "*Town*"), as the lessor hereunder, a municipal corporation duly created and validly existing under the laws of the State of North Carolina (the "*State*"), and **YOUNG MEN'S CHRISTIAN ASSOCIATION OF SOUTH HAMPTON ROADS** (the "*YMCA*"), as lessee hereunder, a nonprofit corporation validly existing under the laws of the Commonwealth of Virginia, and **BANK OF AMERICA, N.A.**, a national banking association organized and existing under the laws of the United States of America with its principal offices located in Charlotte, North Carolina (the "*Bank*").

PREAMBLES

WHEREAS, the Board of Commissioners of the Town (the "*Board*") has determined it to be in the best interests of the residents of the Town to provide recreational facilities for use by Town residents;

WHEREAS, Section 160A-353 of the General Statutes of North Carolina, as amended, provides that the Town may provide for the general welfare of its citizens by setting apart lands and buildings for recreational centers and other recreational programs and facilities and may acquire real property either within or without the boundaries of the Town for parks and recreation programs and facilities by purchase, lease or any other lawful method; and the Town is further authorized under Section 160A-279 of the General Statutes of North Carolina, as amended, to lease its recreational facilities to nonprofit corporations in order to carry out its public purposes;

WHEREAS, the Town has determined that the provision of recreational facilities to the residents of the Town is a public purpose under the Constitution and laws of the State and has determined that the direct disbursement of public funds to nonprofit entities is a constitutionally permissible means of accomplishing such a public purpose and that the provision of recreational facilities is a public purpose under the laws of the State;

WHEREAS, the YMCA has requested the Town's assistance in the financing the acquisition, construction and equipping of a recreation facility within the Town;

WHEREAS, the Board has determined it to be in the best interest of the Town for the promotion of the quality of opportunity for all citizens, the promotion of understanding, respect and goodwill among its citizens, encouraging the employment of qualified people without regard to race, and for the encouragement and development of youth to become better citizens of the Town; the Board has determined that the programs to be offered by the YMCA provide vital services to the communities within the Town;

WHEREAS, the Town has determined that the acquisition of the Project involves a reasonable connection with the convenience and necessity of the Town and that the lease of the Project to the YMCA will benefit the public generally, and that the YMCA as lessee will operate and maintain the Project so as to be available to the Town's residents;

WHEREAS, the Board has determined that the viability of the YMCA and the delivery of its recreational programs and activities to the residents of the Town is a functionally related and integral part of the recreational activities provided by the Town to its residents;

WHEREAS, the Board has determined it to be in the best interests of the residents of the Town to assist the YMCA in financing of a recreation facility by (a) entering into the \$3,833,000 Installment Financing Contract dated as of January 1, 2002 between the Bank and the Town (the “*Contract*”), in order to acquire real property as more particularly described in Exhibit A (the “*Site*”) and the recreational facility thereon as more particularly described in Exhibit B (the “*Facility*”, together with the Site, the “*Mortgaged Property*”, collectively, the “*Project*”) and (b) leasing the Project to the YMCA under this lease whereby the YMCA will operate and maintain the Project for the benefit of the residents of the Town and will make rental payments directly to the Bank, on behalf of the Town, sufficient to pay the installment payments due under the Contract and all other expenses related to the Project;

WHEREAS, all costs and expenses in connection with the undertaking of the Project, the lease of the Project to the YMCA and the fees and expenses associated with entering the Contract, including fees and expenses of Special Counsel, the Town, the Bank, the YMCA, and their counsel, will be paid from the proceeds of the installment financing or other legally available funds of the YMCA, and the Town will have no responsibility for any of such costs and expenses;

WHEREAS, the principal of, premium, if any, and interest due on the Installment Payments shall not be payable from the general funds of the Town nor shall the Installment Payments constitute a legal or equitable pledge, charge, lien or encumbrance upon any of the Town’s property or upon any of its income, receipts or revenues except the rental payments made by the YMCA under this Lease Agreement and neither the credit nor the taxing power of the State or the Town is pledged for the payment of the principal of, premium, if any, or interest on the Installment Payments and the Bank has no right to compel the exercise of the taxing power by the Town or the forfeiture of any of its property, beyond the powers granted in the Deed of Trust and Security Agreement dated as of January 1, 2002, in connection with any default thereon;

WHEREAS, the execution, performance and delivery of this Lease Agreement has been authorized, approved and directed by the Board pursuant to Section 160A-279 of the General Statutes of North Carolina, as amended, and by a resolution adopted by the Board on December 5, 2001;

WHEREAS, the YMCA has agreed under this Lease Agreement to make, or cause to be made, rental payments sufficient to pay when due (whether at stated maturity, upon prepayment, by acceleration, upon purchase or otherwise) the Installment Payments as provided in the Contract;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. **Definitions.** All words and phrases defined in Article I of the Contract shall have the same meaning in this Lease Agreement. In addition, the following terms will have the meanings specified below unless the context clearly requires otherwise:

“**Additional Rentals**” means the expenses, fees and charges or costs which the YMCA assumes or agrees to pay under Section 7.2 (other than Section 7.2(a) and 7.2(b)) with respect to the Leased Property (together with interest that may accrue thereon in the event that the YMCA fails to pay the same, as set forth herein).

“Bank” means Bank of America, N.A., a national banking association, and its successors and assigns.

“Bank Representative” means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under the Contract by a written certificate furnished to the Town containing the specimen signatures of such person or persons and signed on behalf of the Bank by its vice president.

“Base Rentals” means the payments payable by the YMCA pursuant to Section 7.2(a) and 7.2(b) as it may be amended or modified hereunder, during the Lease Term, which constitute the payments payable by the YMCA for and in consideration of the right to use and the option to purchase the Leased Property during the Lease Term.

“Basic Documents” means the Contract, Deed of Trust, and this Lease Agreement.

“Board” means the duly elected governing Board of Commissioners of the Town, or any successor to its functions.

“Business Day” means a day on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated under the Code or the statutory predecessor of the Code and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code means that Section of the Code, including such applicable regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section of the Code.

“Contract” means the \$3,833,000 Installment Financing Contract dated as of January 1, 2002 between the Bank and the Town.

“Event of Default” means one or more events of default as defined in Section 13.1.

“Facilities” means, collectively, the buildings, structures and fixtures now owned or hereafter located on the Site.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the YMCA.

“Generally Accepted Accounting Principles” or **“GAAP”** means those principles of accounting set forth in statements of the Financial Accounting Standards Board or which have other substantial authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

“Lease Agreement” means this Lease Agreement and any amendments, modifications, alterations or supplements hereto, including the Exhibits attached hereto.

“Leased Property” means the Site and the Facilities leased by the YMCA from the Town pursuant to this Lease Agreement and any items of real property, equipment or machinery acquired in replacement or substitution therefor less real property, machinery or equipment released from this Lease Agreement.

“Lease Term” means the term as determined pursuant to Article V.

“LGC” means the Local Government Commission of North Carolina, a division of the Department of State Treasurer, and any successor or successors thereto.

“Person” means (1) any individual, (2) any corporation, partnership, joint venture, association, joint-stock company, business trust or unincorporated organization, or grouping of any such entities, in each case formed or organized under the laws of the United States of America, any state thereof or the District of Columbia, or (3) the United States of America or any state thereof, or any political subdivision of either thereof, or any agency, authority or other instrumentality of any of the foregoing.

“Rental Payments” means the sum of the Base Rentals and the Additional Rentals set forth in Section 7.2.

“Site” means the real property associated with the Project within the Town and described in Exhibit A attached hereto and incorporated herein by reference, as the same may be amended from time to time so as to add real property thereto or release real property therefrom.

“Special Counsel” means Parker, Poe, Adams & Bernstein L.L.P., or such other firm of nationally recognized attorneys at law appointed by the Town, and approved by the Bank and the YMCA, and experienced in issuing opinions with respect to tax-exempt bonds under the exemptions provided in the Code.

“State” means the State of North Carolina.

“Town” means the Town of Nags Head, North Carolina, a municipal corporation of the State, and any successor to its functions.

“Town Representative” means a person designated at the time to act on behalf of the Town by a written instrument furnished to the Bank containing the specimen signature of such person and signed on behalf of the Town by the Mayor or the Town Manager of the Town.

“Unassigned Rights” means the rights of the Town under Sections 4.5, 12.1, 12.2, 14.1, 14.3, 14.8 and Article XIII of this Lease Agreement and the payments made under Sections 7.2(d), 7.11 and 7.12 of this Lease Agreement.

“YMCA” means Young Men’s Christian Association of South Hampton Roads, a nonprofit corporation incorporated and existing under the laws of the Commonwealth of Virginia and duly qualified as a 501(c)(3) corporation under the Code, or any successor or successors to the YMCA’s obligations under this Lease Agreement.

“YMCA Representative” means a person at the time designated to act on behalf of the YMCA by a written instrument furnished to the Bank containing the specimen signature of such person and signed on behalf of the YMCA by its President, any Vice President or the Chairman of the YMCA’s Board of Directors, or, in the case of a Person other than a corporation, the person or persons having comparable positions or roles. The certificate may designate an alternate or alternates.

Section 1.2. ***Rules of Construction.*** Except where the context otherwise requires, (1) singular words connote the plural number as well as the singular and vice versa and (2) pronouns inferring the masculine gender include the feminine and neuter genders and vice versa. All references to particular articles or sections are references to articles or sections of this Lease Agreement unless otherwise indicated. The headings and Table of Contents in this Lease Agreement are solely for convenience of reference and do not constitute a part of this Lease Agreement or affect its meaning, construction or effect.

[End of Article I]

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. *Representations, Covenants and Warranties of the YMCA.* The YMCA represents, covenants and warrants for the benefit of the Bank and the Town as follows:

(a) The YMCA is a nonprofit, nonstock corporation duly incorporated and in good standing under the laws of the Commonwealth of Virginia, qualified to do business in the State, has the power to enter into this Lease Agreement, and by proper corporate action has duly authorized and taken the necessary acts required prior to (including all required approvals) the execution and delivery of this Lease Agreement and the performance of its obligations hereunder. The YMCA warrants this Lease Agreement to be a valid, legal and binding contractual obligation of the YMCA.

(b) As of the date hereof, the YMCA is an organization described in Section 501(c)(3) of the Code; has received a determination letter from the Internal Revenue Service to the effect that the YMCA is exempt from taxation as an organization described in Section 501(c)(3) of the Code; the YMCA is in compliance with all terms, conditions, and limitations, if any, contained in such determination letter; and the YMCA has not received any notice from the Internal Revenue Service or other governmental agency to the effect that there exists any changes in the facts and circumstances which formed the basis of such determination letter as represented to the Internal Revenue Service or that adversely affects its qualifications under Section 501(c)(3) or Section 509 of the Code. The YMCA agrees that it shall not perform any acts or enter into any agreements which shall adversely affect such federal income tax status nor shall it carry on or permit to be carried on at the Leased Property or permit the Leased Property to be used in or for any trade or business the conduct of which is not substantially related to the exercise or performance by the YMCA of the purposes or functions constituting the basis for its exemption under Section 501 of the Code if such change in federal income tax status or activity would adversely affect the exemption of the portion of the Installment Payments designated and paid as interest from federal income taxation.

(c) The YMCA is an organization organized and operated (1) exclusively for educational or charitable purposes, (2) not for pecuniary profit, and (3) so that no part of its net earnings inures to the benefit of any person, private stockholder or individual, all within the meaning of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and Section 501(c)(3) of the Code. The YMCA is not a private foundation as that term is used in Section 509 of the Code.

(d) The YMCA agrees that during the Lease Term:

(1) it will not merge or consolidate with, or sell or convey all or substantially all of its assets to any person other than its successor corporation unless:

(i) If the successor corporation is not the YMCA, such successor corporation shall execute and deliver to the Bank an appropriate instrument, satisfactory to the Bank, containing the agreement of such successor corporation to assume and be bound by the obligations under this Lease Agreement;

(ii) The successor corporation immediately after such merger or consolidation, or such sale or conveyance, would not be in default in the performance or observance of any covenant or condition of this Lease Agreement;

(iii) If the successor corporation is not a Virginia corporation or a political subdivision of the Commonwealth of Virginia, it either qualified to do business in Virginia or files with the Bank a consent to service of process acceptable to the Bank;

(iv) If all amounts due or to become due hereunder have not been fully paid, there shall have been delivered to the Bank an opinion of counsel, in form and substance satisfactory to the Bank, to the effect that under then existing law the consummation of such merger, consolidation, sale or conveyance, whether or not contemplated on date of the delivery of this Lease Agreement, would not adversely affect the exemption from federal income taxation of interest payable under the Contract; and

(v) the successor corporation is qualified to do business in the State.

(2) in case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for its predecessor, with the same effect as if it had been named herein as a party hereto.

(3) it will not form or acquire any entity if after such formation or acquisition of the YMCA would be in default in the performance or observance of any covenant or condition of this Lease Agreement.

(e) Neither the execution and delivery of this Lease Agreement or the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the YMCA is now a party or by which the YMCA is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of law governing the YMCA.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting the YMCA nor to the best of the knowledge of the YMCA is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially and adversely affect the transactions contemplated by this Lease Agreement or which would adversely affect, in any way, the validity or enforceability of this Lease Agreement or any material agreement or instrument to which the YMCA is a party, used or contemplated for use in the consummation of the transactions contemplated hereby.

(g) The estimated cost of acquiring the long-term leasehold estate in the Site is not less than \$3,833,000.

(i) The YMCA will fully and faithfully perform all the duties and obligations which

the Town has covenanted and agreed in the Contract to cause the YMCA to perform and any duties and obligations which the YMCA or the Town is required in the Contract to perform. The foregoing shall not apply to any duty or undertaking of the Town which by its nature cannot be delegated or assigned.

(j) The YMCA represents that there has been no material adverse change in the financial condition of the YMCA from that set forth in the most recent audited financial statements of the YMCA, other than as disclosed in writing to the Bank and the Town prior to the date of execution hereof.

(k) The YMCA will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the portion of the Installment Payments designated and paid as interest under the Contract and, if it should take or permit, or omit to take or cause to be taken, any such action, the YMCA shall take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly on having knowledge thereof. The YMCA specifically covenants:

(1) At least one of the following two conditions will be satisfied: (A) less than 5% of the proceeds of the Contract will be used directly or indirectly in the business of a person other than a state or local governmental unit or a 501(c)(3) corporation or (B) less than 5% of the Installment Payments under the Contract is directly or indirectly (a) secured by an interest in property used or to be used in a private business (other than a 501(c)(3) corporation) or any interest in payments made with respect to such property or (b) to be derived from payments made with respect to property, or borrowed money, used or to be used in a private business (other than a 501(c)(3) corporation);

(2) Less than 5% of the proceeds of the Contract will be used by nongovernmental persons (other than a 501(c)(3) corporation) for a use unrelated to the Project;

(3) It will not loan, directly or indirectly, any of the proceeds of the Contract to nongovernmental persons (other than a 501(c)(3) corporation);

(4) It will not enter into any management contract with respect to the Project unless it obtains an opinion of Bond Counsel that such management contract will not impair the exclusion from gross income for federal income tax purposes of the portion of the Installment Payments designated and paid as interest under the Contract;

(5) The YMCA and the Town acknowledge that the continued exclusion of the portion of the Installment Payments designated and paid as interest under the Contract from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code. The YMCA covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it shall not permit at any time any of the proceeds of the Contract or other funds of the YMCA to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the obligation of the YMCA under this Lease Agreement to be an "arbitrage bond" for purposes of Section 148 of the Code;

(6) The YMCA shall pay any arbitrage rebate amounts as required under

Section 148 of the Code and shall provide to the Town any rebate calculations performed in connection with determining such arbitrage rebate amounts; and

(7) The Installment Payments under the Contract are not, nor shall be, “*federally guaranteed*” as defined in Section 149(b) of the Code.

(l) The lease of the Leased Property from the Town to the YMCA pursuant to this Lease Agreement will provide necessary recreational facilities needed for the delivery of essential operations and services of the Town, and, therefore, will serve a function which is necessary and essential to the proper, efficient and economic operation of the Town’s recreational facilities.

(m) The YMCA represents and warrants that the Leased Property never has been, and never will be so long as this Lease Agreement remains in effect, used for the generation, collection, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (“*CERCLA*”), Superfund Amendments and Reauthorization Act (“*SARA*”), applicable state laws, or regulations adopted pursuant to either of the foregoing, except for hazardous substances such as cleaning solvents, pesticides and other similar materials used, produced, manufactured, processed, generated, stored, disposed or managed in the ordinary course of activities in compliance with all applicable Environmental Requirements, as hereinafter defined. The YMCA agrees to comply with any federal, state, or local law, statute, ordinance or regulation, court or administrative order or decree or private agreement regarding materials which require special handling in collection, storage, treatment or disposal because of their impact on the environment (“*Environmental Requirements*”). The YMCA, to the extent permitted by law, agrees to indemnify and hold the Town and the Bank harmless against any and all claims and losses and expenses and costs resulting from a breach of this paragraph and the YMCA will pay or reimburse the Town and the Bank for any reasonable costs and expenses incurred in the remediation of any default or breach by the YMCA of the provisions of this paragraph. This obligation to indemnify shall survive the payment of all other amounts due under this Lease Agreement.

(o) The YMCA agrees not to discriminate against any member of the public who desires to use the Facilities or take part in the YMCA’s recreational programs offered in the Facilities because of age, sex, race, color, national origin, disability, or political or religious opinions or affiliations.

(p) All reports from the YMCA comply with generally accepted principles of accounting or are otherwise in form satisfactory to the Bank and shall be applied consistently throughout the duration of this Lease Agreement.

(q) The YMCA with furnish to the Bank the following:

(i) as soon as possible and in any event within 15 days after the occurrence of each Event of Default or each event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default continuing on the date of such statement, a statement of an executive officer of the YMCA setting forth details of such Event of Default or event and the action which the YMCA proposes to take with respect thereto;

(ii) within 45 days after the end of each quarter of each fiscal year of the

YMCA, except for the last quarter of the YMCA's fiscal year, internally prepared financial statements of the YMCA, including a balance sheet and income statements;

(iii) as soon as available and in any event within 150 days after the end of each fiscal year of the YMCA, a copy of the audited balance sheet and income statement of the YMCA as at the end of such period, including a balance sheet, income statements, statement of cash flows, changes in capital position and reconciliation of net worth, together with related notes, if any, thereto, all in reasonable detail and satisfactory in scope to the Bank, prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis and containing an unqualified opinion of an independent certified public accounting firm satisfactory to the Bank;

(iv) promptly upon becoming aware thereof, written notice of any material adverse change in the business or operations of the YMCA;

(v) promptly upon becoming aware thereof, written notice of any actual or potential contingent liabilities;

(vi) such other information respecting the business, properties, condition or operations, financial or otherwise, of the YMCA or of the Project as the Bank may from time to time reasonably request; and

(vii) together with each delivery of financial statements required by clause (iii) above, a certificate of the Vice President of Finance or other officer of the YMCA containing computations demonstrating compliance with Sections 2.1(r) and (s) and certifying that to the best of his or her knowledge the YMCA has complied in all material respects with all of the terms, covenants and conditions contained in this Lease Agreement or, if the YMCA has not so complied, specifying the nature and extent of such failure.

(r)____The YMCA shall maintain a minimum Debt Service Coverage Ratio of 1.40:1 for each fiscal year during the duration of this Lease Agreement. "*Debt Service Coverage Ratio*" means the sum of the excess/deficit of public support and revenues over/under expenditures plus depreciation/amortization plus interest expense plus/minus other non-cash expenses/income divided by the sum of the prior year's current maturities of long-term debt and capital leases plus interest expense.

(s) The YMCA shall maintain a maximum ratio of total liabilities to Tangible Net Worth of 1.35:1.0 to be measured as of each fiscal year end. "*Tangible Net Worth*" means total assets less intangible assets less total liabilities.

(t) The YMCA will provide prior written notice to the Bank of its intention to enter into any indebtedness.

(u) Without the prior written consent of the Bank, the YMCA will not advance money to any third party except in the normal course of business.

Section 2.2. ***Representations, Covenants and Warranties of Town.*** The Town represents,

covenants and warrants for the benefit of the YMCA and the Bank as follows:

(a) The Town is a municipal corporation duly created and validly existing under the laws of the State, has all necessary power to acquire the Site, to enter into this Lease Agreement, is possessed of full power to own and hold real and personal property and to lease the Project, and has duly authorized the execution and delivery of this Lease Agreement.

(b) Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Town is now a party or by which the Town is bound, or constitutes a default under any of the foregoing.

(c) To the knowledge of the Town after exercising reasonable diligence to make such determination, there is no litigation or proceeding pending or threatened against the Town or any other person affecting the right of the Town to execute or deliver this Lease Agreement or the Contract or to comply with its obligations under this Lease Agreement or the Contract. Neither the execution and delivery of this Lease Agreement and the Contract by the Town, nor compliance by the Town with its obligations under this Lease Agreement and the Contract, require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.

(d) The lease of the Project from the Town to the YMCA pursuant to this Lease Agreement, will provide necessary recreational facilities needed for the delivery of essential operations and services of the Town, and, therefore, will serve a function which is necessary and essential to the proper, efficient and economic operation of the Town's recreational facilities.

[End of Article II]

ARTICLE III

DEMISING CLAUSE

The Town hereby leases the Project to the YMCA, in accordance with the provisions of this Lease Agreement, to have and to hold for the Lease Term.

[End of Article III]

ARTICLE IV

ACQUISITION OF LEASEHOLD ESTATE IN THE SITE; CONSTRUCTION OF THE PROJECT AND ADDITIONAL IMPROVEMENTS

Section 4.1. **Acquisition of the Site.** The Bank shall pay the Purchase Price to the YMCA in consideration of the transfer of fee simple title to the Project from the YMCA to the Town pursuant to Section 2.1 of the Contract. The Town will grant the Bank a security interest in the Project pursuant to the Deed of Trust, and subsequently grant a leasehold estate to the YMCA pursuant to Article III of this Lease Agreement.

Section 4.2. **Right of Entry and Inspection.** The Bank, the Town and their representatives and agents have the right to enter on and inspect the Leased Property from time to time, during normal business hours. No right of inspection or approval contained herein imposes on the Bank any duty or obligation whatsoever to undertake any inspection or to give any approval.

Section 4.3. **Disclaimer of Warranty.** The Project is being leased by the Town pursuant to this Lease Agreement at the YMCA's request. THE TOWN MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR FITNESS OF ANY PORTION OF THE SITE FOR THE YMCA'S PURPOSES OR TO THE EXTENT THE PURCHASE PRICE WILL BE SUFFICIENT TO PAY THE COSTS INCURRED IN CONNECTION WITH THE ACQUISITION OF THE SITE.

Section 4.4. **Construction of the Project.** The YMCA has caused the Project to be constructed in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over same. The Project does not encroach upon nor overhang any easement or right of way and is wholly within the Site upon which the Project is located and building restriction lines, however established, and does not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The YMCA has caused all utility lines, septic systems and streets serving the Project to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction. The YMCA will promptly correct any structural defect in the improvements or any departure from the Plans and Specifications.

Section 4.5. **Construction of Additional Improvements.** The YMCA may install upon the Leased Property any additions, improvements, personal property, equipment or fixtures which in the YMCA's judgment are necessary or desirable for the conduct of activities carried on by the YMCA at the Leased Property. Any such additions, improvements, personal property, equipment or fixtures which are installed with funds other than the proceeds of the Contract and which do not constitute a part of the Leased Property under the terms of this Lease Agreement shall be and remain the property of the YMCA and may be removed by the YMCA at any time while an Event of Default does not exist hereunder; provided, that any damage to the Leased Property occasioned by such removal shall be repaired by the YMCA at its own expense. If any additions, improvements, personal property or fixtures described in this Section 4.5 are leased by the YMCA or the YMCA shall have granted a security interest in such property in connection with the acquisition thereof by the YMCA, then the lessor of such property or the party holding a security interest therein, as the case may be, may remove such property from the Leased Property even though an Event of Default shall then exist or this Lease Agreement shall have been terminated following an Event of Default hereunder; provided, that the foregoing permission to remove such property shall be subject to the agreement by such lessor or secured party to repair at its own expense any damage to the Leased Property occasioned by such removal.

Section 4.6. ***Rights of Bank under the Basic Documents.*** The Town and the YMCA acknowledge that the Basic Documents create certain rights in favor of the Bank with respect to the Leased Property, including without limitation rights relating to the maintenance, alteration, disposition and insurance of the Leased Property. Nothing in this Lease Agreement shall be construed to diminish, limit, condition or impair any such rights of the Bank.

[End of Article IV]

ARTICLE V

LEASE TERM; PURCHASE OPTION

Section 5.1. **Commencement of Lease Term.** The Lease Term shall commence as of the date of the execution hereof.

Section 5.2. **Termination of Lease Term.** The Lease Term shall terminate on the earliest of any of the following events:

(a) The early termination of this Lease Agreement by the YMCA as provided in Article XI of this Lease Agreement and the prepayment of all Installment Payments under the Contract, as provided in Article III of the Contract;

(b) An Event of Default and termination of this Lease Agreement by the Bank under Article XI;

(c) Payment in full of all Base Rentals and Additional Rentals payable hereunder from available moneys of the YMCA or Net Proceeds of insurance policies or otherwise applied to the prepayment thereof in full in accordance with Article IX; or

(d) December 31, 2016, if all Base Rentals and Additional Rentals required hereunder have been paid in full, provided, however, if all payments of Base Rentals and Additional Rentals required under this Lease Agreement have not been made by such date, the Lease Term shall terminate when all such Rental Payments have been made.

Section 5.3. **Purchase Option.** After all of the Town's obligations to pay Installment Payments and Additional Payments under the Contract are discharged, the YMCA may purchase the Project from the Town at a price of \$1.00. The YMCA agrees to pay all of the costs associated with exercising such purchase option.

[End of Article V]

ARTICLE VI

ENJOYMENT OF THE LEASED PROPERTY; RESPONSIBILITIES OF THE YMCA AS TO THE PROJECT

Section 6.1. **Enjoyment of Leased Property.** So long as no Event of Default exists hereunder, the Town and the Bank hereby covenants that the YMCA shall during the Lease Term peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble or hindrance from the Town and the Bank, except as expressly required or permitted by this Lease Agreement or the Contract. The Town and the Bank shall not interfere with the quiet use and enjoyment of the Leased Property by the YMCA during the Lease Term. The Town and the Bank shall, at the request of the YMCA and at the cost of the YMCA, join and cooperate fully in any legal action in which the YMCA asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the YMCA may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property, and shall be joined (to the extent legally possible, and at the expense of the YMCA) in any action affecting its liabilities hereunder.

The provisions of this Article VI are subject to the Bank's and the Town's right to inspect the Leased Property. The YMCA also hereby consents to the inspection of records by the Bank and the Town related to the Leased Property within the YMCA's customary business hours.

Section 6.2. **Care and Use.** The YMCA shall use, and shall cause the use of, the Project in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Project so as to keep the Project in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Project as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. Any and all additions to or replacements of the Project and all parts thereof shall constitute accessions to the Project and shall be subject to all the terms and conditions of this Lease Agreement and included in the term "*Project*" as used in this Lease Agreement.

Section 6.3. **Utilities.** The YMCA shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility services furnished to or used on or in connection with the Project. There shall be no abatement of the Rental Payments on account of interruption of any such services.

Section 6.4. **Taxes.** The YMCA agrees to pay when due any and all taxes relating to the Project and the Town's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Project by any governmental body or agency, together with any interest and penalties.

Section 6.5. **Insurance.** The YMCA shall obtain and maintain appropriate levels of insurance, which may include actuarially sound, properly trusteeed and adequately funded self-insurance plans or programs, with respect to the Leased Property and the YMCA's operations thereon reasonably satisfactory to the Bank. The YMCA shall furnish to the Bank, upon request, satisfactory evidence that the policies of insurance or self-insurance program required by this Section are in full force and effect.

Each policy of insurance obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) name the Bank, the Town and the YMCA as insureds, as their respective

interests may appear, (3) as applicable, contain standard mortgagee and loss payee clauses naming the Bank as mortgagee; and (4) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured without at least 30 days' prior written notice to each insured named therein. The YMCA shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI.

Section 6.6. ***Risk of Loss.*** The YMCA shall bear all risk of loss or damage to and condemnation of the Leased Property. In the event of loss or damage to or condemnation of the Leased Property resulting in Net Proceeds, the YMCA shall at its option either (1) continue to make the Base Rental payments and repair or replace the Project, as mutually agreed on by the Bank and the YMCA, or (2) prepay all of the then outstanding Base Rentals with Net Proceeds and, if Net Proceeds are insufficient, other moneys as contemplated in Section 3.5(b) of the Contract.

Section 6.7. ***Performance by the Bank of the YMCA's Responsibilities.*** Any performance required of the YMCA or any payments required to be made by the YMCA may, if not timely performed or paid, be performed or paid by the Bank, and, in that event, the Bank shall be immediately reimbursed by the YMCA for such payments or other performance by the Bank, with interest thereon at a rate equal to the then applicable Interest Rate.

[End of Article VI]

ARTICLE VII

PAYMENTS BY THE YMCA

Section 7.1. ***Payments to Constitute Continuing Contractual Obligation of the YMCA; Obligations Absolute and Unconditional.*** The YMCA acknowledges and agrees that the Base Rentals and Additional Rentals hereunder shall constitute a continuing contractual obligation of the YMCA. Subject to the provisions of Section 13.3, the obligations of the YMCA to make or to cause to be made the payments required in Section 7.2 and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be subject to diminution by set-off, recoupment, counterclaim, abatement or otherwise by reason of any action or inaction of the Bank, the Town or any third party. Until such time as the principal of, and the interest on, the Purchase Price shall have been paid in full, the YMCA (a) will not suspend or discontinue any payments provided for in Section 7.2 except to the extent the same have been prepaid, (b) will perform and observe all its other agreements contained herein, and (c) except as provided in the Contract, will not terminate this Lease Agreement for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, sale, loss, eviction or constructive eviction, destruction of or damage to the Leased Property, condemnation, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, or any failure of the Town to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection herewith or with the Contract.

Nothing contained herein shall be construed as a waiver of any rights which the YMCA may have against the Town under this Lease Agreement, or against any person under this Lease Agreement or otherwise, or under any provision of law; provided, however, that the YMCA shall pursue any rights or remedies against the Town, the Bank, or any third party in connection herewith, or in connection with the Base Rentals or Additional Rentals and security therefor only in a separate action, and not by way of any set-off, counterclaim, cross-claim or third party action in any suit brought to enforce the rights of the Bank, the YMCA, or the Town in connection herewith; and provided further, that in order to preserve the right of the YMCA to raise such issues in any separate suit, any claim of the YMCA which, but for this Section 7.1, would be a compulsory counterclaim, shall be identified as such in the first responsive pleading filed by the YMCA to any action brought by the Town, Bank, or any person.

Section 7.2. ***Base Rentals and Additional Rentals.***

(a) The YMCA shall pay to the Bank, as the assignee and pledgee of the Town, the following Base Rentals for the Leased Property in lawful money of the United States of America on the dates and in the amounts as follows:

(1) Commencing on December 31, 2001, and on each March 31, June 30, September 30 and December 31 thereafter, the amount which will equal the interest component of the Installment Payments due under the Contract; and

(2) Commencing on March 31, 2002, and on each June 30, September 30, December 31 and March 31 thereafter, the amount which will equal the principal component of the Installment Payments due under the Contract.

(b) The Base Rentals shall be in the amount (whether at maturity or on prepayment or acceleration or otherwise) equal to the Installment Payment due under the Contract and shall be made on the date and in the manner necessary to discharge the Town's obligation to make such Installment Payment

under the Contract;

(c) On each receipt of each Base Rental payment by the YMCA, the obligation of the Town to pay Installment Payments is satisfied and discharged to the extent of any corresponding payment made to the Bank under this Lease Agreement;

(d) The YMCA shall immediately pay as Additional Rentals amounts to the appropriate party equal to, (1) any Additional Payments required to be made by the Town under the Contract, (2) the fees and charges of the Bank incurred in connection with the rendering of its ordinary and extraordinary services under this Lease Agreement, as and when the same become due, including the reasonable fees and expenses of its counsel (3) the out-of-pocket expenses and fees of the Town, including the reasonable fees and expenses of counsel to the Town and any expenses of the Town in defending an action or proceeding in connection with this Lease Agreement and any taxes or other expenses, including, but not limited to, licenses, permits, state and local sales and use or ownership taxes or property taxes which the Town is expressly required to pay as a result of this Lease Agreement (together with interest that may accrue thereon in the event that the YMCA shall fail to pay the same) and (4) any other cost or expense of the Town arising out of its participation as a party to the Contract or this Lease. If the YMCA should fail to make any of the payments required in this Section, the item or installment which the YMCA has failed to make shall continue as an obligation of the YMCA until the same shall have been fully paid, with interest thereon at the then applicable Interest Rate until paid in full. The provisions of this Section shall survive the termination of this Lease Agreement and the payment in full of all Base Rentals due hereunder and of all amounts owed on the Purchase Price.

Section 7.3. ***Manner of Payment.*** The Base Rentals shall be paid in immediately available funds to the Bank at the Bank's address set forth in Section 14.1, unless otherwise directed by the Bank. The YMCA shall pay Additional Rentals directly to the person to whom they are owed. The obligation of the YMCA to pay the Base Rentals and Additional Rentals required under this Article VII and other sections hereof during the Lease Term are absolute and unconditional, and payment of the Base Rentals and Additional Rentals shall not be abated through accident or unforeseen circumstances, except that the payment of Additional Rentals may be abated through Force Majeure. Notwithstanding any dispute between the YMCA and the Town, the Bank, or any other person, the YMCA shall, during the Lease Term, make all payments of Base Rentals and Additional Rentals when due and shall not withhold any Base Rentals or Additional Rentals pending final resolution of such dispute, nor shall the YMCA assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Town or the Bank shall affect the YMCA's obligation to pay all Base Rentals and Additional Rentals (except to the extent of a permitted assignment under the Lease Agreement) during the Lease Term.

Section 7.4. ***Disposition of Base Rentals.*** On receipt by the Bank of each payment of Base Rentals, the Bank shall apply the amount of such Base Rentals in the following manner and order:

FIRST, the amount of such payment of Base Rentals in an amount equal to the Installment Payment then due under the Contract, plus the amount of any past due interest on the Installment Payments.

SECOND, the remaining portion of such payment of Base Rentals shall provide a credit towards future Installment Payments and shall reduce the amount of such future Installment Payments accordingly.

Section 7.5. ***Prepayment of Base Rentals.*** So long as all payments then due pursuant to Section

7.2 have been paid, the YMCA may elect by written notice to the Town and the Bank to make a prepayment of Base Rentals in an amount equal to all or a portion of the principal component of the Installment Payments then outstanding, plus accrued interest thereon to the date of prepayment, on any Business Day, without premium as specified in such written notice. The Town directs the Bank to apply any amounts so prepaid to prepay the principal component of the Installment Payments as provided under Section 3.5 of the Contract.

Section 7.6. *Nature of Obligations of the YMCA.*

(a) Except as otherwise provided in this Section, the obligation of the YMCA to pay Base Rentals and Additional Rentals and all other amounts provided for in this Lease Agreement and to perform its obligations under this Lease Agreement will be absolute and unconditional, and such Rental Payments and other amounts will be payable without any rights of set-off, recoupment or counterclaim that the YMCA might have against the Town, the Bank, or any other person and whether or not the Leased Property is used or occupied by the YMCA or available for use or occupancy by the YMCA.

(b) In order to provide for the payment of Base Rentals required in Section 7.2 and Additional Rentals required in 7.2, the YMCA shall deliver to the Bank the amounts payable pursuant to Section 7.2.

(c) If the YMCA should fail to make any of the payments required in Section 7.2 on or before the date which it is due, the item or installment which the YMCA has failed to make shall continue as an obligation of the YMCA until the same shall have been fully paid, and the YMCA agrees to pay the same with interest thereon and/or a late payment charge in accordance with Section 3.3 of the Contract.

Section 7.7. *YMCA Consent to Assignment of Lease Agreement and Execution of the Contract.*

The YMCA understands that the Town will, pursuant to the Contract and as security for the payment of the principal of, premium, if any, and the interest on the Purchase Price, assign and pledge to the Bank, and create a security interest in favor of the Bank in the Project under the Deed of Trust and in certain of its rights, title and interest in and to this Lease Agreement, reserving, however, the Unassigned Rights; and the YMCA hereby agrees and consents to such assignment and pledge. The YMCA acknowledges that it has received a copy of the Contract and the Deed of Trust and consents to the execution of the same by the Town; provided, however, such consent does not constitute a representation as to the accuracy of any representations or warranties made thereunder.

Section 7.8. *YMCA's Performance Under Contract.* The YMCA agrees, for the benefit of the Town, to do and perform all acts and things contemplated in the Contract to be done or performed by Town, as may be accomplished by the YMCA.

Section 7.9. *Assignment of Payments by Town.* The YMCA acknowledges that all payments it is to make to the Bank under this Lease Agreement (except payments included in the Town's Unassigned Rights) are to be assigned by the Town to the Bank pursuant to the Contract. The YMCA agrees to pay to the Bank at its address set forth in Section 14.1 all payments payable by the YMCA to the Bank under this Lease Agreement (except payments included in the Town's Unassigned Rights).

Section 7.10. *Subordination; Acknowledgment by the YMCA.* The YMCA agrees that its rights as lessee hereunder are and will be subordinate to the rights of the Bank (for the benefit of the Town) under the Contract and the Deed of Trust. In addition, the YMCA will promptly furnish, at the Town's

request, such agreements, consents to assignment of the Town's interest in this Lease Agreement or of the Rental Payments due hereunder and any attornment agreements as the Town may reasonably require to comply with requirements of the Bank. The YMCA acknowledges that the Town has assigned its interest in this Lease Agreement (except the Town's Unassigned Rights) pursuant to the Contract.

Section 7.11. ***Expenses, Release and Indemnification Provisions.*** The YMCA agrees, whether or not the transactions contemplated by the Contract shall be consummated, to indemnify and hold harmless (1) the LGC and its members, officers, employees and agents and (2) the Town and its officers, members, commissioners, directors, officials, employees and agents, the Bank, and counsel to the Town (any and all of the foregoing being hereinafter referred to as the "*Indemnified Persons*"), from and against any and all claims, actions, suits, proceedings, expenses, judgments, damages, penalties, fines, assessments, liabilities, charges or other costs (including, without limitation, all attorneys' fees and expenses incurred in connection with enforcing this Lease Agreement or collecting any sums due hereunder and any claim or proceeding or any investigation in connection therewith) relating to, resulting from or in connection with (a) any cause whatsoever in connection with the Leased Property, including, without limitation, the acquisition, design, construction, installation, equipping, operation, maintenance, operation of recreational programs and activities thereon or other use thereof or the financing thereof including any expenses arising from the failure to make payment of principal of and interest on the Purchase Price; (b) any act or omission of the YMCA or any of its agents, contractors, servants, employees or licensees, in connection with the Leased Property; and (c) a misrepresentation or breach of warranty by the YMCA hereunder or under any of the Basic Documents, or any violation by the YMCA of any of its covenants hereunder or under any of the other Basic Documents. This indemnity is effective only with respect to any loss incurred by the Indemnified Persons not due to willful misconduct, gross negligence, or bad faith on the part of such Indemnified Persons.

In case any action or proceeding shall be brought against one or more of the Indemnified Persons and in respect of which indemnity may be sought as provided herein, such Indemnified Person or Indemnified Persons shall promptly notify the YMCA in writing and the YMCA shall promptly assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person or Indemnified Persons, payment of all expenses and the right to negotiate and consent to settlement; but the failure to notify the YMCA as provided herein shall not relieve the YMCA from any liability that it may have (1) under this Section, so long as the YMCA is given the reasonable opportunity to defend such claim, and (2) otherwise than under this Section. Any one or more of the Indemnified Persons shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Persons or Indemnified Persons unless (1) the employment of such counsel has been specifically authorized in writing by the YMCA, or (2) the named parties to any such action (including any impleaded parties) include both the YMCA and such Indemnified Person or Indemnified Persons and representation of both the YMCA and such Indemnified Person or Indemnified Persons by the same counsel would be inappropriate due to actual or potential differing interests between them, or (3) the Indemnified Person or Indemnified Persons have been advised that one or more legal defenses may be available to any or all of them which may not be available to the YMCA in which case the YMCA shall not be entitled to assume the defense of such suit notwithstanding its obligation to bear the fees and expenses of such counsel.

The YMCA shall not be liable for any settlement of any such action effected without its consent, but if settled with such consent or if there is a final judgment in any such action with or without consent, the YMCA agrees to indemnify and hold harmless the Indemnified Person or Indemnified Persons from and against any loss by reason of such settlement or judgment. The provisions of this Section shall survive the termination of this Lease Agreement.

Section 7.12. ***Tax Indemnity Payments.*** The YMCA acknowledges that the Interest Rate under the Contract is based on the premise that the interest on the Purchase Price is exempt from federal and State income taxation based upon federal and State laws in effect as of the date hereof. Within 180 days of a determination by the Internal Revenue Service, or other applicable government agency, that interest on the Purchase Price is not exempt from income taxation and subject to the provisions of the Contract, the YMCA shall pay the revised Interest Rate pursuant to the Contract. The YMCA agrees to indemnify and hold harmless the Town and the Bank from any cost and expense incurred as a result of the loss of the tax-exempt status of interest on the Purchase Price. The indemnification of the Town and Bank provided in this Section 7.12 shall survive the termination of this Lease Agreement and the termination of the Contract.

[End of Article VII]

ARTICLE VIII

EXECUTION OF CONTRACT AND DELIVERY OF THE PURCHASE PRICE

Section 8.1. *Agreement to Execute the Contract and Deliver the Purchase Price.* In order to provide funds for the payment of the cost of the Town's acquisition of the Site, the Town, concurrently with the execution of this Lease Agreement, will cause the Contract to be executed, and the Purchase Price to be delivered directly from the Bank to the YMCA. The YMCA will use such proceeds to pay for its acquisition of the Site, the construction and equipping of the Facility and the costs associated with the execution of the Contract.

[End of Article VIII]

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.1. ***Damage, Destruction or Condemnation.*** If, during the Lease Term, the Leased Property or any portion thereof is destroyed, or is damaged by fire or other casualty, or is sold or taken through condemnation or eminent domain proceedings, the YMCA shall continue to be obligated, subject to the provisions of Section 9.2, to continue to pay the Rental Payments specified in Section 7.2.

Section 9.2. ***Insufficiency of Net Proceeds.*** If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be, in the opinion of the YMCA, insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Leased Property as a result of destruction, damage or eminent domain proceeding, the YMCA, subject to the prior written consent of the Bank if the Contract is then in effect, may elect to proceed under any of the following options:

(a) The YMCA may continue in possession of the Leased Property under this Lease Agreement and pay any cost in excess of the amount of the Net Proceeds, and the YMCA agrees that, if by reason of any such insufficiency of the Net Proceeds, the YMCA shall make any payments pursuant to the provisions of this Section 9.3(a), the YMCA shall not be entitled to any reimbursement therefor from the Town or the Bank, nor shall the YMCA be entitled to any diminution of the Base Rentals and Additional Rentals payable under Section 7.2; or

(b) The YMCA may apply the Net Proceeds to the prepayment of all outstanding Base Rentals; and in the event the Net Proceeds shall exceed the aggregate amount of Base Rentals outstanding, such excess shall be paid to or retained by the YMCA.

Within 90 days of the occurrence of an event specified in Section 9.1, the YMCA shall commence the repair, restoration, modification, improvement or replacement of the Leased Property pursuant to paragraph (a) above, or shall elect, by written notice to the Town and the Bank, to proceed under the provisions of paragraph (b) above. For purposes of this section, “*commence*”, shall include the retention of an Engineer in anticipation of repair, restoration, modification, improvement or replacement of the Leased Property. In the event that the YMCA shall, after commencing the repair, restoration, modification, improvement or replacement of the Leased Property, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the YMCA may elect to proceed under paragraph (b) above.

Section 9.3. ***Cooperation of Town; Settlement of Claims.*** The Town shall cooperate fully with the YMCA and the Bank in filing any proof of loss with respect to any insurance policy covering the events described in Section 9.1, and hereby assigns to the Bank any interest it may have in such policies or rights of action for such purposes. In no event will the YMCA voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim in excess of \$100,000 without the written consent of the Bank. In no event will the Town voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim without the written consent of the YMCA and the Bank.

[End of Article IX]

ARTICLE X

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 10.1. ***Disclaimer of Warranties.*** Neither the Town or the Bank make any warranty or representation, either express or implied, as to the value, design, condition, ownership, status of title, merchantability or fitness for a particular purpose or fitness for use of the Leased Property or any other representation or warranty with respect to the Leased Property. The YMCA hereby acknowledges and declares that the YMCA is solely responsible for the operation and maintenance of the Leased Property during the Lease Term, and that neither the Town or the Bank have any responsibility therefor. In no event shall the Town or the Bank be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease Agreement or the existence, furnishing, functioning or use by the YMCA of any item, product or service provided for herein.

Section 10.2. ***Further Assurances and Corrective Instruments.*** The Town and the YMCA agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, subject to the prior written consent of the Bank if the Contract is then in effect, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 10.3. ***Town, YMCA and Bank Representatives.*** Whenever the approval of the Town, the YMCA or the Bank is required to take some action at the request of the other, unless otherwise provided, such approval or such request shall be given for the Town by the Town Representative, for the YMCA by the YMCA Representative, and for the Bank by the Bank Representative, and the Town, the YMCA and the Bank shall be authorized to act on any such approval or request.

Section 10.4. ***Compliance With Requirements.*** During the Lease Term, the YMCA, the Town and the Bank shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof, and with current and future reasonable requirements of all insurance companies writing policies covering the Leased Property or any portion thereof.

Section 10.5. ***YMCA Acknowledgment of the Contract.*** The YMCA acknowledges and consents to the assignment by the Town to the Bank, pursuant to the Contract, of all rights, title and interest of the Town in, to and under this Lease Agreement (except the Town's Unassigned Rights); and to the delegation by the Town to the Bank, pursuant to the Contract, of all duties of the Town under this Lease Agreement, except for those rights and duties of the Town expressly reserved to the Town.

Section 10.6. ***Maintenance of Status.*** So long as the Lease Term is in effect, the YMCA or any permitted successor will at all times maintain its existence as a nonprofit corporation and will neither take any action nor suffer any action to be taken by others which will alter, change or destroy its status as a nonprofit corporation or its status as an organization described in Section 501(c)(3) of the Code which is not a "private foundation" as defined in Section 509(a) of the Code and which is exempt from federal income taxation under Section 501(a) of the Code (or any successor sections of a subsequent federal income tax statute or code). The YMCA further covenants that none of its revenues, income or profits, whether realized or unrealized, will be distributed to any of its members, directors or officers or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of the YMCA; provided, however, that the YMCA may pay to any person, association or corporation the value of any service or product performed for or supplied to the YMCA by such person, association or

corporation.

Section 10.7. ***Tax Covenants.*** The Town covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the interest component of the payment obligations created by this Lease Agreement and the Contract under Section 103 of the Code. The YMCA will not directly or indirectly use or permit the use of any proceeds of any fund created under this Lease Agreement or any funds of the YMCA, or take or omit to take any action that would cause the obligation created by this Lease Agreement to be an “*arbitrage bond*” within the meaning of Section 148(a) of the Code. The YMCA will maintain books on which will be recorded (1) the Bank or (2) the Town, and (3) any assignee of the Base Rentals or Additional Rentals due under this Lease Agreement as the registered owner of such payments. To that end, the Town has executed the Arbitrage and Tax Regulatory Certificate, dated January __, 2002 (the “*Tax Regulatory Certificate*”), and will comply with all requirements of Section 148 of the Code to the extent applicable. The Town further covenants that the Contract is not a “*private activity bond*” as defined in Section 141 of the Code. Without limiting the generality of the foregoing, the Town agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created by this Contract from time to time. This covenant shall survive the termination of this Lease Agreement and the Contract. Either of the Bank or the Town shall have the right to enforce compliance by the YMCA with this Section. Such rights of the Town will not be subject to the assignment of the Town’s rights contained in this Lease Agreement.

Section 10.8. ***Continuing Obligation to Provide Services and Programs; Availability of Recreational Facilities.*** The YMCA covenants and agrees to provide its services and programs for use by the general public at all times during the Lease Term at the standard fees and charges as adopted and announced by the YMCA from time to time. The YMCA shall provide financial assistance to individuals desiring to participate in any of the its services and programs at all times during the Lease Term upon such individual’s demonstration of financial need as determined by the YMCA in accordance with its policies and procedures adopted from time to time. The YMCA will make its recreational facilities, including without limitation the Facilities, available for use by the general public at all times during the Lease Term at standard fees and charges as adopted and announced by the YMCA from time to time. The YMCA may provide various other programs and services to the general public as determined in the sole discretion of the YMCA from time to time which programs and services will constitute a public purpose within the meaning of the laws of the State as determined by the YMCA. The YMCA and the Town will cooperate and assist each other in ensuring at all times during the Lease Term that some programs and services consistent with the stated objectives of the YMCA, and which constitute a public purpose within the meaning of the laws of the State, are being made available to the general public. If the Facilities are not being used as recreational facilities and such programs and services which constitute a public purpose within the meaning of the laws of the State are no longer being made available to the general public, the YMCA shall prepay all Base Rentals sufficient to terminate this Lease Agreement and the Contract.

Section 10.9. ***Recording and Filing.*** The YMCA will, at its expense, record a counterpart of this Lease Agreement or a memorandum of this Lease Agreement in the Office of the Register of Deeds of the County of Dare, North Carolina, on or before the date of delivery of the Purchase Price.

[End of Article X]

ARTICLE XI

TITLE TO THE LEASED PROPERTY; TERMINATION OF LEASE AGREEMENT

Section 11.1. *Termination of Lease Agreement.* The Town shall terminate this Lease Agreement and assign, transfer and convey all of its right, title and interest in the Leased Property in the manner provided for in Section 11.2; provided, however, that prior to such termination (a) the YMCA has paid or prepaid in full all Base Rentals and Additional Rentals required hereunder for the Lease Term prior to December 31, 2016 and (b) the Contract has been terminated in accordance with its terms.

Section 11.2. *Manner of Conveyance.* Upon the termination of this Lease pursuant to Section 11.1, the payment of all amounts payable under Section 7.2, and the YMCA's exercise of its purchase option under Section 5.3, the Town and the Bank shall execute and deliver to the YMCA, or an assignee of the YMCA, all necessary documents assigning, transferring and conveying all of the Town's right, title and interest in and to the Leased Property as the Leased Property then exists, subject to the following: (1) any Financing Statements, indicating the YMCA or the Town as the debtor and the Town or the Bank as secured party, filed to perfect any security interests granted under this Lease Agreement or the Contract; (2) all liens, encumbrances and restrictions created or suffered to exist by the Town or the Bank as required or permitted by this Lease Agreement or the Contract or arising as a result of any action taken or omitted to be taken by the Town or the Bank as required or permitted by this Lease Agreement or the Contract; and (3) any lien or encumbrance created by action of the YMCA.

[End of Article XI]

ARTICLE XII

ASSIGNMENT, SUBLEASING, INDEMNIFICATION AND SELLING LEASED PROPERTY

Section 12.1. *Assignment and Subleasing by the YMCA.*

(a) This Lease Agreement may not be assigned by the YMCA without the prior written consent of the Town and the Bank.

(b) The YMCA may not sell, lease, transfer or otherwise dispose of any of its assets located at the Leased Property, except for the sale of inventory in the ordinary course of business and disposition of obsolete equipment, or transfer control or ownership of the Leased Property without the prior written consent of the Bank.

(c) No sublease for all or substantially all of the Leased Property will be entered into by the YMCA without the prior written consent of the Bank and the Town and delivery of an opinion of Special Counsel to the effect that such sublease of all or substantially all of the Leased Property will not cause interest on Purchase Price then outstanding to be included as gross income for purposes of federal income taxation. Each sublessee subleasing all or substantially all of the Leased Property pursuant to this Section will, to the extent of the interest subleased to it, in writing (1) assume and agree to perform the obligations of the YMCA under this Lease Agreement and (2) agree to attorn to the Town and any other successor in interest to the Town (whether pursuant to this Lease Agreement, the Contract or otherwise).

(d) The YMCA will promptly furnish or cause to be furnished a copy of any sublease agreement or assignment to the Town and the Bank.

Section 12.2. *Release and Indemnification Covenants.* To the extent permitted by law, the YMCA shall and hereby agrees to indemnify and save the Town, the Bank, and the LGC harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the operation or management of the Leased Property during the Lease Term, from: (1) any condition of the Leased Property; (2) any negligent or intentional act or omission of the YMCA or of any of its agents, contractors or employees or any violation of law by the YMCA or breach of any covenant or warranty by the YMCA hereunder; and (3) the incurrence of any cost or expense in connection with the acquisition, construction, installation and equipping of additional improvements as provided under Section 8.3. To the extent permitted by law, the YMCA shall indemnify and save the Town and the Bank harmless from any such claim arising as aforesaid from (1), (2) or (3) above, or in connection with any action or proceeding brought thereon and, on notice from the Town, or the Bank, shall defend the Town or the Bank, as the case may be, in any such action or proceeding.

Despite any operating agreement that the YMCA may enter into with respect to the Leased Property, insofar as the Town or the Bank are concerned, the YMCA is and remains fully liable for all damages, losses, personal injury or property damages which may result from or arise out of the YMCA's operation of the Leased Property and is responsible for compliance with all regulatory requirements imposed by the State and the United States with respect to licensing or permits, insurance bonding for closure and post-closure costs, monitoring and clean-up costs and all other financial and health and safety requirements imposed by all applicable laws and rules.

No recourse shall be had for any claim based upon any obligation, covenant or agreement contained in this Lease Agreement, against any past, present or future officer, commissioner, director, member or trustee of the YMCA, the Bank or the Town under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officer, commissioner, director, member or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of this Lease Agreement.

Section 12.3. **Restrictions on Sale of the Leased Property.** The YMCA and the Town agree that, except for: (1) the Deed of Trust; (2) the Town's assignment of this Lease Agreement to the Bank pursuant to this Lease Agreement; (3) any exercise by the Bank or the Town of the remedies afforded by Section 13.2, and (4) any conveyance to the YMCA pursuant to Article XI; neither the Town nor the YMCA will sell, assign, encumber, transfer or convey the Leased Property or any portion thereof during the Lease Term without the consent of the Bank and, with respect to the Town, the YMCA.

Section 12.4. **No Merger.** So long as any Base Rentals remain unpaid and unless the Bank otherwise consents in writing, the fee simple and the leasehold estates in and to the Leased Property shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates by purchase or otherwise in the Town, the Bank, the YMCA, any lessee or any third party.

[End of Article XII]

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.1. **Events of Default Defined.** The following shall be “*Events of Default*” under this Lease Agreement and the term “*Default*” shall mean, whenever it is used in this Lease Agreement, any one or more of the following events:

(a) Failure by the YMCA to pay any Base Rentals at the time specified herein.

(b) Failure by the YMCA to pay any Additional Rentals or to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.1(a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the YMCA by the Bank unless the Bank agrees in writing to an extension of such time before its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Bank will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the YMCA within the applicable period and diligently pursued until such failure is corrected.

(c) The dissolution or liquidation of the YMCA or the voluntary initiation by the YMCA of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the YMCA of any such proceeding which shall remain undismissed for 60 days, or the entry by the YMCA into an agreement of composition with creditors or the failure generally by the YMCA to pay its debts as they become due.

(d) Abandonment of the Leased Property for a period exceeding 60 days.

(e) The occurrence and continuation of an Event of Default under the Contract.

Upon the occurrence of an Event of Default hereunder, the Bank shall promptly notify in writing the Town and the LGC of such occurrence.

The provisions of subsections (b) and (d) of this Section are subject to the following limitation: if by reason of Force Majeure the YMCA is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Article VII), the YMCA shall not be deemed in default during the continuance of such inability. The YMCA agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the YMCA from carrying out its agreement, provided that the settlement of strikes and other employee-related disturbances shall be entirely within the discretion of the YMCA and the YMCA shall not be required to make settlement of strikes, lockouts and other employee-related disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the YMCA unfavorable to the YMCA.

The Town will not unreasonably withhold its consent to an extension of the time for taking corrective action under Section 13.1(b) if corrective action is instituted by the YMCA within the thirty (30) day period and is diligently pursued until the failure is remedied.

Section 13.2. **Remedies on Default.** Whenever any Event of Default referred to in Section 13.1 occurs, the Bank may take one or any combination of the following remedial steps:

(a) Declare an amount equal to the then outstanding principal amount of the Rental Payments and accrued interest thereon, whether by acceleration of maturity (in the same manner that the Installment Payments may be accelerated) or otherwise, to be immediately due and payable as liquidated damages under this Lease Agreement and not as a penalty, whereon the same shall become immediately due and payable.

(b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts of the YMCA with respect to the Leased Property during regular business hours of the YMCA.

(c) Re-enter and take possession of all or any part of the Leased Property with or without terminating this Lease Agreement, exclude the YMCA from possession of all or any part of the Leased Property, and, for the account of the YMCA, keep in force and effect all subleases entered into pursuant to Section 12.1 which then are outstanding and sublease all or any part of the Leased Property which then is not already so subleased to one or more parties, in each case holding the YMCA liable for the difference in the rent and other amounts paid by the sublessee in such subleasing and the Rental Payments and other amounts payable by the YMCA under this Lease Agreement. Upon taking this remedial action, the Town's interest in the Leased Property will remain separate and distinct.

(d) Terminate this Lease Agreement and any subleases as to all or any part of the Facilities, exclude the YMCA and any subtenants from possession of all or any part of the Facilities, and lease all or any part of the Facilities for the account of the YMCA to one or more parties, holding the YMCA liable for all Rental Payments and other amounts due under this Lease Agreement and not paid by the other party.

(e) Exercise any of the rights and remedies under this Lease Agreement or the other Basic Documents with respect to the Leased Property.

(f) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the YMCA under this Lease Agreement.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bank and applied in accordance with the provisions of the Contract. The Town or the Bank, as appropriate, will give notice to the YMCA of the exercise of any of its rights or remedies under this Section in the manner provided in Section 14.1 and by telephone or telegram; provided, however, that failure to give notice by telephone or telegram will not affect the validity of the exercise of any right or remedy under this Section. Any balance of the money collected pursuant to action taken under this Section remaining after payment of all costs and expenses of collection and amounts due as Additional Rentals will be paid into the Bank for application to the payment of the Purchase Price then outstanding in accordance with the provisions of the Contract.

Notwithstanding the foregoing, upon an Event of Default under Section 13.1, the Town shall have the right to purchase the Site and the Facilities from the YMCA at 25% below the market value of the Sites and the Facilities, as determined by an independent certified appraisal acceptable to the YMCA and the Town. The Town will give notice to the Bank and the YMCA as soon as practicable after an Event of Default has occurred of its intention to exercise such right. After the Bank receives such notice, the Bank will be precluded from the enforcing/exercising remedies provided in this Section 13.2 so long as the Town continues to make Installment Payments under the Contract. Should the Town subsequently

discontinue its payments under the Contract, however, or should any Event of Default occur under Section 11.1 of the Contract, the Bank shall have the right to enforce/exercise those remedies as provided in Section 11.2 of the Contract. No such remedies provided in this Lease Agreement will be available to the Bank under such circumstances.

Section 13.3. ***Waiver of Events of Default and Rescission of Acceleration.*** If the Bank or the Town, as applicable, shall waive any event of default under the Contract as therein defined and its consequences or rescind any declaration of acceleration of payments of the principal of, premium, if any, and interest on the Purchase Price, such waiver shall also waive any event of default hereunder and its consequences and such rescission of a declaration of acceleration of the principal of, premium, if any, and interest on the Purchase Price shall also rescind any declaration of any acceleration of all payments required to be made under Section 7.2. In case of any such waiver or rescission, or in case any proceeding taken by the Bank or the Town on account of any such event of default shall have been discontinued or abandoned or determined adversely, then and in every such case the Town, the YMCA, and the Bank shall be restored to their former positions and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other event of default or impair any right consequent thereon.

Section 13.4. ***Reinstatement.*** Notwithstanding the exercise of any remedy granted by Section 13.2, except the last paragraph without the consent of the Town, if all arrears of the Rental Payments which have become due and payable otherwise than by acceleration, and all other sums payable under the Contract, except the Rental Payments which by acceleration has become due and payable, have been paid, all other things have been performed in respect of which there was a default and there has been paid the reasonable fees and expenses, including administrative expenses, of the Bank and the Town (including reasonable attorneys' fees paid or incurred) and any acceleration under the Contract is rescinded, then, the Event of Default under this Lease Agreement will be waived without further action by the Bank or the Town. Upon such payment and waiver, this Lease Agreement will be fully reinstated, as if it had never been terminated, and the YMCA will be restored to the use, occupancy and possession of the Leased Property.

Section 13.5. ***No Remedy Exclusive.*** No remedy herein conferred on or reserved to the Bank, or the Town, is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing on any default shall impair any such right or power, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank, on behalf of the Town, to exercise any remedy reserved in this Article XIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIII.

Section 13.6. ***Waivers.*** If any agreement contained herein is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. In view of the assignment of the Town's rights under this Lease Agreement to the Bank pursuant to this Lease Agreement, the Town shall have no right to waive any Event of Default hereunder without the consent of the Bank; and the waiver of any Event of Default hereunder by the Bank shall constitute a waiver of such Event of Default by the Town, without the necessity of any action of or consent by the Town. A waiver of an Event of Default under the Contract shall constitute a waiver of the corresponding Event of Default under this Lease Agreement; provided that no such waiver shall extend to or affect any subsequent or other Event of Default under this Lease Agreement or impair any right consequent thereon.

Section 13.7. *Agreement to Pay Attorneys' Fees and Expenses.* If either party hereto defaults under any of the provisions hereof and the non-defaulting party employs attorneys or incurs other expenses for the collection of Base Rentals and Additional Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall pay on demand therefor to the non-defaulting party the fees of such attorneys and such other expenses so incurred by the non-defaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

Section 13.8. *Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws.* The Town and the YMCA agree, to the extent permitted by law, that in the case of a termination of the Lease Term by reason of an Event of Default, neither the Town nor the YMCA nor any one claiming through or under either of them shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of the Contact; and the Town and the YMCA, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws.

[End of Article XIII]

ARTICLE XIV

MISCELLANEOUS

Section 14.1. **Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and addressed as follows or (unless specifically prohibited) when telexed or telecopied to the telex or telecopy numbers as follows:

- (a) If to the Town: Town of Nags Head, North Carolina
5401 S. Croatan Hwy.
P.O. Box 99
Nags Head, North Carolina 27959
Attention: Finance Officer
Fax: :
- (b) If to the YMCA: Young Men's Christian Association of South Hampton Roads
312 West Bute Street
Norfolk, Virginia 23510
Attention: Vice President of Finance
Fax:
- (c) If to the Bank: Bank of America, N. A.
VA6-100-03-01
One Commercial Place, 3rd Floor
Norfolk, VA 23510-2103
Attention: Ms. Buffy J. Barefoot
Fax:
- (f) If to the LGC: North Carolina Local Government Commission
Albemarle Building
325 North Salisbury Street
Raleigh, North Carolina 27603-1385
Attention: Secretary
Fax: 919-807-2377

A duplicate copy of each notice, approval, consent, request or other communication given hereunder by the Town, the YMCA, and the Bank to any one of the others shall also be given to all of the others. The Town, the YMCA, and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed.

Section 14.2. **Binding Effect.** This Lease Agreement shall inure to the benefit of and shall be binding on the Town and the YMCA and their respective successors and assigns, subject, however, to the limitations contained in Article XII.

Section 14.3. **Consent of Town to Amendment, Changes and Modifications.** Notwithstanding the assignment of the Town's right under this Lease Agreement, this Lease Agreement may not be amended, modified or altered without the prior written consent of the Town in order to insure that the

Town is adequately protected with respect to its interests in the Leased Property pursuant to this Lease Agreement and to insure the use of the Leased Property as recreational facilities or other public purpose of the Town.

Section 14.4. ***Consent of Bank and LGC to Amendments, Changes and Modifications.*** Except as otherwise provided in this Lease Agreement or the Contract, subsequent to the delivery of the Purchase Price and before the termination of the Contract, this Lease Agreement may not be effectively amended, changed, modified or altered without the written consent of the Bank. In addition to the foregoing, any provisions contained in this Lease Agreement or any supplement hereto relating to any notice to, approval of, indemnification of or action by the LGC may not be amended or supplemented without the prior written consent of the LGC.

Section 14.5. ***Amounts Remaining in Funds.*** It is agreed by the parties hereto that any amounts remaining in any fund or account created under the Contract on termination of the Lease Term, and after payment in full of the Installment Payments and Additional Payments under the Contract (or provision for payment thereof having been made in accordance with the provisions of this Lease Agreement) and fees and expenses of the Bank in accordance with this Lease Agreement, termination of the Contract and payment in full of all indebtedness, liabilities and obligations of the YMCA to the Bank under the Basic Documents, shall be paid to the YMCA by the Bank as an overpayment.

Section 14.6. ***Net Lease.*** This Lease Agreement shall be deemed and construed to be a triple net lease whereby the YMCA shall pay absolutely net during the Lease Term, the Base Rentals, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Base Rentals expressly provided for in this Lease Agreement).

Section 14.7. ***Town's Obligations Limited.*** Except as otherwise expressly herein provided, no recourse under or upon any obligation or agreement contained in this Lease Agreement or under any judgment obtained against the Town, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of the Contract, shall be had against the Town.

Anything in this Lease Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Town may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Town by the Bank or the YMCA as to the existence of any fact or state of affairs required hereunder to be noticed to the Town; (b) the Town shall not be under any obligation hereunder to perform any record-keeping or to provide any legal services, it being understood that such services shall be performed either by the Bank or the YMCA; and (c) none of the provisions of this Lease Agreement shall require the Town to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses and liability which may be incurred thereby.

Notwithstanding anything herein contained to the contrary, any obligation which the Town may incur under this Lease Agreement or under any instrument executed in connection herewith which shall entail the expenditure of money shall not be a general obligation of the Town but shall be a limited obligation payable solely from the Rental Payments.

Section 14.8. ***Immunity of Directors, Officers and Employees of Town and the Local Government Commission.*** No recourse shall be had for the enforcement of any obligation, promise or

agreement of the Town contained in the Contract or this Lease Agreement for any claim based thereon or otherwise in respect thereof, against any commissioner, officer, employee or agent, as such, in his individual capacity, past, present or future, of the Town or the LGC, either directly or through the Town or the LGC, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that the payment of Installment Payments, the Contract and this Lease Agreement are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any commissioner, officer, employee or agent, as such, past, present or future, of the Town or the LGC, either directly or through the Town or the LGC, under or by reason of any of the obligations, promises or agreements entered into between the Town and the YMCA whether contained in this Lease Agreement or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such commissioner, officer, employee or agent is, by the execution of this Lease Agreement and the Contract, and as a condition of, and as part of the consideration for, the execution of this Lease Agreement and the Contract, expressly waived and released.

Section 14.9. ***Survival of Indemnification Covenants.*** The indemnification provisions contained in this Lease Agreement, specifically without limitation Sections 12.2 and 14.8, and the payments due under Sections 7.2, 7.11 and 7.12 shall survive the termination of this Lease Agreement and continue to be obligations of the YMCA.

Section 14.10. ***Payments Due on Non-Business Day.*** If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease Agreement, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the date provided in this Lease Agreement.

Section 14.11. ***Severability.*** If any provision of this Lease Agreement, other than the requirement of the YMCA to pay Base Rentals and the requirement of the Town to provide quiet enjoyment of the Leased Property and to convey the Leased Property to the YMCA under the conditions set forth in Article X, is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.12. ***Execution in Counterparts.*** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.13. ***Applicable Law.*** This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.14. ***Captions.*** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease Agreement.

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town has executed this Lease Agreement in its name with its official seal hereunto affixed and attested by its duly authorized officers; and the YMCA has caused this Lease Agreement to be executed in its corporate name and the corporate seal of the YMCA affixed and attested by duly authorized officers thereof, all of the above effective as of the date first above written.

TOWN OF NAGS HEAD, NORTH CAROLINA
AS LESSOR

By: _____
Robert W. Muller
Mayor

[SEAL]

Attest:

By: _____
Carolyn Morris
Town Clerk

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO LEASE AGREEMENT]

**YOUNG MEN'S CHRISTIAN ASSOCIATION OF
SOUTH HAMPTON ROADS**
AS LESSEE

By: _____
[Name]
[Title]

[SEAL]

Attest:

By: _____
[Name]
[Title]

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO LEASE AGREEMENT]

BANK OF AMERICA, N.A.,
as Bank

By: _____
Buffy J. Barefoot
Vice President

EXHIBIT A

DESCRIPTION OF THE SITE