

City of Guyton, Georgia  
CITY COUNCIL SPECIAL CALLED MEETING  
October 3, 2023 at 6:00 P.M.



**C.D. Dean, Jr. Public Safety Complex  
GUYTON GYMNASIUM  
505 Magnolia Street  
Guyton, GA 31312**

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## **AGENDA**

- 1. Call to Order**
- 2. Public Comments (will be limited to Agenda Items only)**
- 3. New Business**
  - a. Consideration to approve a lease agreement with the YMCA of Coastal Georgia, INC. for 3.5 acres and two buildings on 718 Central Blvd.
- 4. Dates to Remember**
  - b. Tuesday, October 10, 2023 at 7:00pm – Guyton City Council Meeting, Guyton Gymnasium, 505 Magnolia Street, Guyton, GA 31312
  - c. Saturday, October 14, 2023 at 8:00am – Soul to Sole Breast Cancer Awareness Walk and 5k, Guyton Gymnasium, 505 Magnolia Street, Guyton, GA 31312
  - d. Saturday, October 21, 2023 from 8:00am to 2:00pm – Fall Sale Along The Trail, Guyton Gymnasium, 505 Magnolia Street, Guyton, GA 31312
  - e. Saturday, October 28, 2023 at 8:00am – CASA Ogeechee Annual Superhero Run, Guyton Gymnasium, 505 Magnolia Street, Guyton, GA 31312
  - f. Saturday, October 28, 2023 from 5:00pm to 7:00pm – Guyton TRICK OR TRAIL!, Guyton Walking Trail, 310 Central Blvd., Guyton, GA 31312
- 5. Consideration to adjourn this meeting**

## Rules of Decorum for All Meetings

The purpose of the Rules of Decorum is to foster an atmosphere of civil and courteous discourse, even and especially when discussing contentious topics, at all meetings held by the City of Guyton.

### (a) General rules applicable to all (Mayor and Council, Staff, Members of the Public)

1. Each speaker will direct his or her comments to the Mayor and or presiding officer and not to any other individual present.
2. Each speaker will refrain from personal attacks, foul or abusive language, and will maintain a civil and courteous manner and tone.
3. Each speaker will speak only about agenda items. Members of the public will be limited to 3:00 minutes speaking time.
4. Members of the audience will respect the rights of others and will not create noise or other disturbances that will disrupt or disturb persons who are addressing the Mayor and Council or Committee or Board or Commission, or members of those bodies who are speaking, or otherwise impede the orderly conduct of the meeting.

### (b) Additional Rules for Members of Mayor and Council, Committees, Boards or Commissions

1. Members of Mayor and Council, Committees, Boards or Commissions will conduct themselves in a professional and respectful manner at all meetings.
2. Members of Mayor and Council, Committees, Boards or Commissions will not speak until recognized by the Mayor or presiding officer.
3. Remarks by members of Mayor and Council, Committees, Boards or Commissions will be directed to the Mayor or presiding officer and not to individuals, other Council, Committee, Board or Commission members, staff or Members of the public in attendance. Questions for staff or individuals or other Council, Committee, Board or Commission members will be directed to the Mayor or presiding officer, who will then direct the appropriate person to answer.
4. Members of Mayor and Council, Committees, Boards or Commissions are always free to criticize or question policies, positions, data or information presented. However, members of Mayor and Council, Committees, Boards or Commissions will not attack or impugn the person presenting.

### (c) Enforcement

The Mayor or presiding officer has the authority to enforce each of the Rules of Decorum regarding members of the public. If any Rule is violated, the Mayor or presiding officer will give the speaker a warning, citing the Rule being violated, and telling the speaker that a second violation will result in a forfeiture of the right to speak further. The Mayor or presiding officer also may have the offending speaker removed from the meeting if the misconduct persists. The Mayor or presiding officer shall not have any power under this provision regarding a Council, Committee, Board or Commission member.

STATE OF GEORGIA )  
 )  
COUNTY OF CHATHAM )

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2023, by and between **The City of Guyton, Georgia**, a municipal corporation in the County of Effingham, State of Georgia ("Landlord"), and **YMCA of Coastal Georgia, Inc.**, a Georgia nonprofit corporation ("Tenant").

WITNESSETH:

1. Premises. For and in consideration of the agreements, terms, covenants, conditions, requirements, provisions and restrictions to be kept, observed, performed, satisfied and complied with by Tenant, and for the Base Rent and other charges herein provided, and upon the terms and conditions herein stated, Landlord has leased and rented, and by these presents does hereby lease and rent unto Tenant, and Tenant hereby leases, takes and rents from Landlord 3.5 acres, more or less, located at 718 Central Boulevard, Guyton, Effingham County, Georgia, 31312, together with the 5,250 square feet of improvements currently located thereon, any future improvements to be constructed thereon, and all fixtures (current and future), landscaping and appurtenances thereon, as such premises is more specifically depicted and designated on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Premises"). The Premises is a portion of a larger tract commonly known as 718 Central Boulevard, Guyton, Effingham County, Georgia, PIN G0050001, as such larger tract is more particularly described as follows (hereinafter referred to as the "Premises"):

ALL THAT CERTAIN LOT, TRACT OR PARCEL OF LAND SITUATED, LYING AND BEING IN THE TOWN OF GUYTON 10<sup>TH</sup> GM DISTRICT OF EFFINGHAM COUNTY, GEORGIA, CONTAINING 13.97 ACRES, MORE OR LESS, AND BEING MORE PARTICULARLY DESCRIBED BY THE PLAT OF SURVEY MADE BY WARREN E. POYTHRESS, R.L.S. #1953, FEBRUARY 13, 1997, RECORDED IN THE OFFICE OF THE CLERK OF SUPERIOR COURT OF EFFINGHAM COUNTY, GEORGIA PLAT CABINET A, SLIDE 377-E, WHICH IS INCORPORATED INTO THIS DESCRIPTION BY SPECIFIC REFERENCE THERETO.

If Tenant performs all of its covenants and agreements herein, it shall, subject to the terms of this Lease, at all times during the continuance thereof, have peaceful and quiet possession of the Premises.

2. Term: Option to Renew.

(a) The initial term of this Lease shall be for Ten (10) years (hereinafter called the "Initial Term") commencing on the Rent Commencement Date and ending on the last day of the one hundred twentieth (120<sup>th</sup>) full calendar month following the Rent

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Commencement Date (the "Expiration Date"), unless sooner terminated or renewed as hereinafter specifically provided in this Lease. The Twelve (12) month period beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) full month of the Initial Term and every Twelve (12) month period during the Lease Term commencing on each anniversary of the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) full month of the Initial Term shall be referred to herein as a "Lease Year."

(b) If Tenant is not in default beyond any applicable cure period, Tenant shall have the right to renew this Lease for two (2) additional Five (5) year terms by providing Landlord written notice of Tenant's intent to renew no later than one hundred twenty (120) days prior to the Expiration Date of the then current term (the "Renewal Terms"). During any Renewal Term, all terms and provisions of this Lease shall remain in full force and effect, except that the Expiration Date for a Renewal Term shall be the last day of the Sixtieth (60<sup>th</sup>) full calendar month following the Expiration Date of the expiring term (whether the Initial Term or a Renewal Term). The Initial Term and the Renewal Terms are sometimes collectively referred to herein as the "Lease Term".

### 3. Acceptance of the Premises.

(a) By occupying the Premises, Tenant shall be deemed to have accepted them and to have acknowledged that they comply fully with Landlord's covenants and obligations hereunder. Tenant acknowledges that neither Landlord nor any agent or representative of Landlord has made any representation as to the condition of the foregoing or the suitability of the foregoing for Tenant's intended use. Tenant represents and warrants that Tenant has made its own inspection of the Premises.

(b) Tenant shall, at Landlord's written request, and within ten (10) days therefrom, execute and deliver a short form lease in recordable form containing the basic provisions of this Lease, acknowledging that Tenant has accepted possession and reciting the exact Rent Commencement Date and termination date of this Lease.

### 4. Rent.

(a) *Base Rent.* All rent shall accrue hereunder on the earlier of: (i) March 1, 2024; and (ii) the date Tenant opens for business to the public on the Premises (the "Rent Commencement Date").

(i) *Rent for Existing Improvements.* Tenant shall pay Landlord at the address hereinafter set forth base rent for the existing improvements on the Premises in accordance with Exhibit "B", attached hereto and made a part hereof (the "Existing Improvement Rent").

(ii) *Rent for Land.* In addition to the Existing Improvement Rent, Tenant shall pay Landlord at the address hereinafter set forth base rent for the land of

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the Premises at a rate of One Thousand and No/100 (\$1,000.00) Dollars per month (the "Land Rent"). The Land Rent shall increase to One Thousand Eight Hundred and No/100 (\$1,800.00) Dollars per month beginning on the earlier of: (i) the third anniversary of the Rent Commencement Date; and (ii) the date that a Certificate of Occupancy is issued for any New Improvement (defined below). Thereafter, the Land Rent shall increase annually at a rate of two (2%) percent beginning on the one-year anniversary of the date that the Land Rent increases in accordance with the preceding sentence. The Land Rent with the Existing Improvement Rent may be collectively referred to herein as the "Base Rent".

(b) *Additional Rent.* All charges and other sums of money to be paid by Tenant hereunder, including, without limitation, payments for real and personal property taxes, insurance, repairs, utilities, late fees and interest, shall be considered additional rent for the purposes of this Lease.

(c) *Payment of Rent.* The Base Rent payments shall be paid in advance on the first day of each and every calendar month during the Lease Term. Unless otherwise prescribed herein, all other charges that become due hereunder (i.e., additional rent) shall be paid with the next Base Rent payment following the date on which such charges become due. If the Lease Term (or an increase in rent, e.g., the Land Rent increase) shall commence on a day other than the first day of a month, then Base Rent shall be prorated for the balance of the said month on a per diem basis. Tenant shall pay all Base Rent and other sums of money as shall become due and payable by Tenant to Landlord under this Lease at the times and in the manner provided in this Lease, without notice, demand, set-off or counterclaim. Landlord reserves the right to require all sums of money to be paid under this Lease as of the due date of the same by automatic transfer of funds (ACH), and Tenant agrees to pay such sums by automatic transfer of funds if requested to do so by Landlord. Any Base Rent and other charges payable hereunder which are not received by the tenth (10th) day after such amount is due shall be subject to a late charge equal to ten (10%) percent of the Base Rent (the "Late Charge") plus default interest at the rate of one and one-half percent (1-½%) per month calculated on the amount owed from the date upon which such amount became due and payable to Landlord until paid in full, in addition to the default provisions herein. In regards to the Late Charge, the parties hereby agree as follows: (1) that the Late Charge is not intended as a penalty but rather to compensate Landlord for additional administrative charges and other damages incurred by Landlord on account of such late payment; (2) that the actual damages suffered by Landlord in such event shall be difficult, if not impossible to ascertain; and (3) that such Late Charge is a reasonable estimate of such charges and damages.

## 5. Use and Care of Premises.

(a) *Use.* Tenant acknowledges and agrees that Landlord is entering this Lease and offering the leased Premises at a reduced rate for the first five (5) Lease Years in

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order to provide benefits to the community through Tenant's use of the Premises (even though Tenant may charge for some such benefits). Pursuant to the foregoing, during the Lease Term, Tenant shall use the Premises in such a manner that provides such community benefits (e.g., childcare, after-school activities, educational and wellness programs, fitness center, etc.). If Tenant does not use the Premises to provide such community benefits, then Tenant shall be deemed in breach of this Lease under Section 18(b), below. The Premises may also be used for any other legal and lawful purpose with the prior consent of Landlord.

(b) *Rubbish.* Tenant shall take good care of the Premises and keep the Premises free from waste at all times. Tenant shall keep the Premises and sidewalks, service ways and loading areas on or serving the Premises neat, clean and free from dirt or rubbish at all times and shall store all trash and garbage in enclosed containers or otherwise in an enclosed area on the Premises designed for that purpose, arranging for the regular pick up of such trash and garbage at Tenant's expense.

(c) *Applicable Laws.* Tenant shall, at its expense, comply with all applicable laws, ordinances, and regulations in the use and occupancy of the Premises and shall make any and all repairs necessary therefor. Tenant shall procure, at its expense, all permits and licenses required for the same.

(d) *Landscaped Areas.* Tenant shall keep, at its expense, the landscaped areas on the Premises in a neat, clean, properly watered and maintained manner and in an aesthetic and attractive condition at all times.

(e) *Paved Areas.* Tenant shall keep the paved areas on the Premises in a neat, clean and properly maintained condition. Tenant shall also keep up, repair and maintain, at its expense, the paving, lighting, and the signage within or on the Premises.

(f) *Personal Property on Premises.* Tenant shall be solely responsible for all trade fixtures, furnishings, equipment, business assets, inventory and personal property stored, located or used on the Premises, including, without limitation, such items that may be owned by Tenant customers or others, and Tenant shall be responsible for providing such insurance as Tenant deems necessary or advisable in connection with the same. All such property kept, stored or maintained within the Premises shall be at Tenant's sole risk. Landlord shall not be liable to the Tenant or any other owner of such property for any damage to such property, nor shall Tenant assert a claim for any indirect, incidental, punitive or consequential damages to the same, including without limitation damages arising from claims related to loss of profits or revenue.

## 6. Maintenance and Repair of Premises.

(a) *Landlord Obligations.* Landlord shall keep the foundation, the structural components of the exterior walls and roof of the Premises in good repair.

However, Landlord shall not be responsible to make any repairs to plate glass windows, doors, door closure devices, exterior openings, floors, sprinkler systems, window and door frames, molding, locks and hardware, special office or building front, gutters and down spouts, lighting, heating, air-conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures, signs, placards, decorations or advertising media of any type or painting or other treatment of interior walls; all of the above shall be the sole responsibility of the Tenant, as further set forth in Section 6(b), below. Landlord shall not be required to make any repairs caused by the act or negligence of Tenant or of its agents, employees, subtenants, licensees, concessionaires, invitees or any other person entering the Premises under Tenant's express or implied invitation; subject, however, to the provisions of Sections 14 and 15 of this Lease. Tenant shall give Landlord immediate written notice of all repairs that Landlord is required to make on or in the Premises, but Landlord shall have a reasonable time after receipt of the notice to make the necessary repairs. If the Landlord does not commence the required repair within ten (10) days after it receives the Tenant's written notice and prosecute the same to a diligent completion, Tenant may make the repair at the Landlord's expense. Landlord gives to Tenant exclusive control of the Premises and shall be under no obligation to inspect said Premises. Tenant shall promptly report in writing to Landlord any defective condition known to it, which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of the failure of Tenant to so report such defects, to the extent that Tenant's failure to report such defects results in, or contributes to, greater or additional damage to the Premises which otherwise would not have occurred had the defects been timely reported by Tenant to Landlord.

(b) *Tenant Obligations.* Tenant shall make all repairs and replacements in and to the Premises and the improvements thereon or to be constructed thereon, except for those required of Landlord under Section 6(a) and Sections 14 and 15. Without limiting the foregoing, Tenant shall repair and replace all lighting, heating, air-conditioning, plumbing, and other electrical, mechanical, and electromotive installation, equipment, and fixtures, all doors, door closure devices, exterior openings, floors, sprinkler system, windows and door frames, molding, locks and hardware, interior painting and other treatment of interior walls, gutters and down spouts, replace any cracked or broken glass, make all utility repairs in ducts, conduits, pipes, and wiring, and clear up any sewer stoppage located in, under, and above the Premises. Tenant will maintain maintenance contracts satisfactory to Landlord covering the heating and cooling systems and equipment, and any sprinkler system installed in the Premises. During this Lease, Tenant shall on an annual basis inspect and properly maintain the pavement joint sealant in the control joints of the exterior concrete paving in parking areas to ensure moisture is not and cannot penetrate the joints and compromise the integrity of subgrade. Tenant shall also keep the Premises in a good and clean condition, at its expense, free from insects, rodents, vermin, and other pests. If Tenant does not make a required repair within ten (10) days after it receives Landlord's written notice, Landlord may make the repair. In that case, Tenant shall pay to Landlord upon demand, as additional rent under this Lease, the actual cost of repairs plus interest thereon at a rate of one and one-half

percent (1-½%) per month and a reasonable administrative charge by Landlord. Such interest shall accrue continuously from the date Landlord incurs said expense until repayment by Tenant. Upon expiration of the Lease, Tenant shall surrender the Premises in good condition and broom clean, excepting reasonable wear and tear and losses required to be restored by Landlord under Section 6(a) and Sections 14 and 15.

7. Alterations.

(a) *Tenant Installations.* Tenant shall not make any alterations, additions or improvements, to the Premises without Landlord's prior written consent which shall not be unreasonably withheld, except for the installation of unattached, movable trade fixtures, which may be reasonably installed without drilling, cutting or otherwise defacing the Premises. Unless removal is required by Landlord, at Landlord's option, all alterations, additions, improvements and fixtures, (other than Tenant's unattached, readily movable furniture and equipment) made or installed by Tenant upon the Premises shall remain upon and be surrendered with the Premises and become Landlord's property upon the termination of this Lease. At the end of the Lease Term, Landlord reserves the right to require Tenant to remove all of Tenant's alterations, additions, improvements or fixtures, no matter how fixed, and the cost of removal and repair of the Premises shall be the responsibility of Tenant.

(b) *Construction Work.* All construction work done by Tenant within the Premises shall be performed in a good and workmanlike manner and in compliance with all governmental requirements. Tenant covenants and agrees that all contractors, subcontractors and other persons or entities performing work for Tenant at the Premises will carry (i) liability insurance in amounts acceptable to Landlord, in Landlord's reasonable opinion, (ii) worker's compensation insurance in the amounts required by law, and (iii) builder's risk insurance, if applicable. Tenant hereby indemnifies Landlord against, and shall keep all portions of the Premises free from, liens for any work performed, material furnished or obligations incurred by Tenant. Should any liens or claims be filed against all or any portion of the Premises by reason of Tenant's acts, omissions or work performed by any person or entity, Tenant shall cause same to be discharged by bond or otherwise within ten (10) days following notice thereof. If Tenant fails to cause any such lien or claim to be discharged within the required time, Landlord may cause same to be discharged and may make any payment that Landlord, in its reasonable judgment, considers necessary, desirable or proper in order to do so. All amounts paid by Landlord shall bear interest at a rate of one and one-half percent (1-½%) per month from the date of payment by Landlord until repayment by Tenant and shall be payable by Tenant to Landlord upon written demand, plus a reasonable administrative charge.

8. Landlord's Right of Access.

(a) *Access.* Landlord may enter upon the Premises upon reasonable notice during the Lease Term for the purposes of inspection, repairs, alterations, or additions,

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or to show the Premises to prospective purchasers, or lenders, or to otherwise protect the Premises and its interest therein. Landlord may also enter upon the Premises upon reasonable notice during the last six (6) months of the Lease Term to show the Premises to prospective purchasers or tenants.

(b) *Landlord's Signs.* Landlord may place and maintain "For Sale" or "For Lease" signs on the Premises during the last six (6) months of the Lease Term.

9. Signs. Tenant shall be entitled to install, at the Tenant's expense, its standard business sign, provided any such signage complies with all applicable sign ordinances and regulations. All signs shall be kept by Tenant in good condition, repair and in proper operating order at all times. At the termination of this Lease, Tenant shall, at its expense, remove any such sign or signs if requested to do so by Landlord and repair any and all damages to the Premises caused by the removal of same. During the Lease Term, Landlord grants Tenant a license to install and maintain its standard business sign at the entrance next to Central Boulevard in a specific area mutually agreed upon by Landlord and Tenant.

10. Utilities.

(a) *Utility Conduits.* Tenant acknowledges that the improvements on the Premises are currently on a well/septic system. If for any reason during the Lease Term Tenant desires (or is required by law) to tap into municipal water and sewer, then Tenant shall be responsible for any expenses associated therewith. Landlord is delivering the Premises and the improvements thereon "as is", and Tenant shall be responsible for supplying/upgrading any utility mains, infrastructure and other utility facilities to the Premises and for the maintenance and upkeep of the same. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility or other services, and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold sums due hereunder.

(b) *Tenant Expense.* Tenant shall be solely responsible for payment directly to the applicable utility company or other third parties for the cost of all water, sewer, gas, electricity, fuel, light, heat, power, sprinkler system repair or service charges (if any) and other utilities or services serving the Premises or used by Tenant in connection therewith. Tenant shall have the sprinkler systems inspected as may be required under the terms of any property insurance policy insuring the Premises or under any applicable governmental law, ordinance or regulation. If Tenant does not pay the above expenses, Landlord may pay the same and such payment, together with interest thereon at the rate of one and one-half percent (1-½%) per month from the date of payment by Landlord until repayment by Tenant, plus a reasonable administrative charge by Landlord, shall be paid by Tenant to Landlord upon written demand.

11. Insurance. Tenant shall procure and maintain throughout the Lease Term a

policy or policies of insurance, at its expense, insuring against all claims, demands, or actions arising out of or in connection with Tenant's use or occupancy of the Premises or the condition of the Premises, in the amounts specified below or such other amounts as Landlord may from time to time reasonably request, with insurance companies and on forms satisfactory to Landlord, as follows:

(a) *Property and Casualty.* Property insurance on the Premises and all improvements against loss or damage by fire, lightning and against loss or damage by other risks providing protection against events protected under "All Risk Coverage," as well as against sprinkler damage, vandalism, and malicious mischief in an amount not less than 100% of the replacement cost without deduction for depreciation.

(b) *Commercial General Liability.* Commercial general liability insurance on the Premises in the total aggregate sum of at least \$2,000,000 per Occurrence/\$3,000,000 General Aggregate. Limits may be provided by the combination of a primary general liability policy and an umbrella/excess liability policy. Commercial general liability insurance insures against liability for bodily injury or death and property damage (including loss of use of property) at the Premises. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease.

(c) *Worker's Comp.* Worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the State of Georgia.

(d) *Business Interruption Insurance.* Business Interruption Insurance with limits not less than an amount equal to eighteen (18) months of rent hereunder.

(e) *Other.* Such other insurance as Landlord shall reasonably require.

General Insurance Provisions:

(i) Such insurance policies will name Landlord, Tenant, and Landlord's lender, if required, as their interests may appear, as loss payees on all such policies (except for worker's compensation insurance).

(ii) Any insurance policy required to be maintained under this Lease shall be selected by Tenant so long as the policy meets the requirements contained herein.

(iii) Tenant shall be responsible for insuring Tenant's personal property, inventory and other business assets of Tenant stored or located on the Premises.

(iv) Any insurance which is required to be maintained under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage.

(v) Prior to the earlier of: (i) the commencement of the Lease Term; and (ii) Tenant or Tenant's employees, representatives or contractors entering on the Premises (e.g., for buildout, making alterations, etc.), Tenant shall deliver to Landlord a Certificate(s) of Insurance evidencing that Tenant maintains the insurance required herein, and, not less than thirty (30) days prior to the expiration or termination of any such insurance, Tenant shall deliver to Landlord renewal certificates therefor. Tenant shall provide Landlord with copies of the policies promptly upon request from time to time.

(vi) All insurance required by this Lease shall be with an insurance company or companies properly licensed by the Georgia State Insurance Commissioner to do business within the State of Georgia.

(vii) Without limiting the provisions of Section 12, above, Landlord and Tenant, on behalf of themselves and their insurers, each hereby waive any and all rights of recovery against the other, the agents, advisors, officials, employees, members, officers, directors, partners, trustees, beneficiaries and shareholders of the other and the agents, advisors, employees, members, officers, directors, partners, trustees, beneficiaries and shareholders of each of the foregoing (collectively, "Representatives"), for loss or damage to its property or the property of others under its control, to the extent that such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage, or required to be carried under this Lease. All property insurance carried by either party will contain a waiver of subrogation against the other party to the extent such right was waived by the insured party prior to the occurrence of loss or injury.

(viii) If the Tenant shall fail to provide the insurance coverage required herein, Landlord may acquire for Tenant, and at the Tenant's expense, said insurance coverage. In that case, Tenant shall pay to Landlord on demand, as additional rent under this Lease, the premium cost of the insurance plus interest thereon at the rate of one and one-half percent (1-½%) per month from the date of payment by Landlord until repayment by Tenant and a reasonable administrative charge by Landlord.

12. Release and Indemnity. During the Lease Term, unless caused by Landlord's affirmative negligence or willful misconduct, Tenant shall pay, and shall protect, indemnify and hold harmless Landlord and Landlord's officials, employees, representatives and agents from, against and in respect of, all liabilities, damages, losses, costs, expenses (including all reasonable attorneys' fees

and expenses of Landlord), interest, penalties, late charges, reinstatement fees, causes of action, suits, claims, demands and judgments of any nature whatsoever if: caused by the negligence or misconduct of Tenant, its employees, subtenants, licensees, or concessionaires, or any other person entering the Premises under Tenant's express or implied invitation; arising out of Tenant's use of the Premises and the conduct of its business therein; or arising out of a breach or default by Tenant in performing its obligations under this Lease.

13. Nonliability for Certain Damages.

(a) *Nonliability of Landlord.* Neither Landlord nor its agents or employees shall be liable to Tenant for any injury to person or damage to property caused by the Premises becoming out of repair, by defect or failure of any structural element of the Premises or any other repair required to be repaired by Landlord under Section 6(a) of this Lease, except when due to Landlord's willful failure to make required repairs within a reasonable time after it receives written notice that repairs are needed. The parties acknowledge that reasonable time shall mean that repairs will be commenced within ten (10) days of written notice and prosecuted to a diligent completion.

(b) *Tenant's Risk of Loss.* Tenant assumes all risk of loss or damage to any and all personal property stored in or on the Premises. Tenant assumes all risk of loss or damage that may result in loss of income, profits or good will to the business of Tenant or other persons which may result from the loss or damage of the personal property stored in or on the Premises or from the loss or damage to the Premises. Tenant agrees to release, indemnify and hold Landlord harmless from any liability for these losses or damages arising from any cause including the negligence of the Landlord, but excluding the willful misconduct of Landlord.

14. Damages by Casualty.

(a) *Notice.* Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by fire or other casualty.

(b) *Repair or Termination.* If the Premises are damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this Lease (as provided below), Landlord shall proceed with reasonable diligence to repair or rebuild the Premises. Landlord may either terminate this Lease or proceed to repair or rebuild the Premises if: (a) the improvements on the Premises are destroyed or substantially damaged by a casualty not covered by insurance; (b) the improvements on the Premises are destroyed or made untenable to the extent of over fifty percent (50%) of the floor area of the improvements on the Premises (which percentage damage shall be determined by the insurance company providing coverage) by a casualty covered by insurance; or (c) the holder of a mortgage, security deed, deed of trust, or other lien on the Premises at the time of the casualty elects, under such particular lien, that all or

part of insurance proceeds be used in satisfaction of all or part of the indebtedness secured by the lien. Landlord shall give written notice to Tenant of the election within sixty (60) days after the casualty occurs. Insurance proceeds from all insurance policies required to be provided by Tenant under the terms of this Lease shall be made available to Landlord and paid directly to Landlord. Tenant shall be responsible for maintaining insurance on the Premises to the full insurable replacement value thereof. Should Tenant fail to provide such insurance or fail to provide such insurance in the amount required, then the Tenant shall be responsible for and shall pay to Landlord an amount equal to all cost and expense necessary to repair and rebuild the Premises. Tenant shall pay to Landlord such costs and expense within thirty (30) days of Landlord's written demand to Tenant to pay the same, and if not paid within said thirty (30) day period, said sum shall accrue interest thereon at the rate of one and one-half percent (1-½%) per month from the date of demand by Landlord until repayment by Tenant, plus a reasonable administrative charge by Landlord.

(c) *Restoration Work.* If Landlord elects to rebuild and repair the Premises, then promptly after the Landlord completes such restoration work, Tenant shall proceed with reasonable diligence and at its expense to restore, repair, and replace all alterations, additions, improvements, fixtures, signs, and equipment installed by or belonging to Tenant.

(d) *Business Operation; Rent Abatement.* During any period of reconstruction or repair, Tenant shall continue to operate its business within the Premises to the extent practicable. During the period from occurrence of the casualty until Tenant reopens for business, the Base Rent shall be reduced by an amount that is fair and reasonable under the circumstances. However, there shall be no abatement of the other charges or obligations of the Tenant provided for in this Lease.

#### 15. Eminent Domain.

(a) *Substantial Taking.* This Lease shall terminate if more than thirty (30%) percent of the floor area of the improvements on the Premises are taken for any public or quasi-public use under a governmental law, ordinance, or regulation, or by right of eminent domain or by private purchase in lieu thereof. In any such case, the amounts due hereunder shall be abated during the unexpired portion of the Lease, effective on the date the condemning authority takes physical possession.

(b) *Partial Taking.* This Lease shall not terminate if less than thirty (30%) percent of the floor area of the improvements on the Premises are taken as provided in Section 15(a). However, the Base Rent payable during the unexpired portion of this Lease shall be reduced in proportion to the floor area taken of the improvements, effective on the date the condemning authority takes physical possession. Following the partial taking, Landlord shall make all necessary repairs or alterations to the remaining Premises or within the scope of its work, as the case may be, to make the remaining portions of the Premises an

architectural whole.

(c) *Condemnation Proceeds.* All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Premises shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord. However, Landlord shall have no interest in any separate award made to Tenant for its moving and relocation expenses, for its loss of business income or for the loss of its fixtures and other tangible personal property.

16. **Assignment and Subletting.**

(a) *Consent Required; Non-Waiver.* Tenant shall not assign or in any other manner transfer this Lease or any estate or interest therein, sublet all or part of the Premises, or grant a license, concession, or other right of occupancy of any portion of the Premises except to an affiliate company under common ownership with the Tenant without Landlord's prior written consent, which consent may be withheld in the sole discretion of Landlord based on the permitted use and financial condition of the proposed subtenant. Landlord's consent to one or more assignments or sublettings shall not operate as a waiver of its rights as to any subsequent assignment or subletting. Notwithstanding any of the foregoing to the contrary, Tenant shall have the right to assign or sublet any or all of its interest in this Lease to its parent, subsidiary, affiliate company or with a merger or transfer of substantially all of Tenant's assets.

(b) *No Release.* Notwithstanding any assignment or subletting, Tenant and any guarantor of its obligations under this Lease shall remain fully responsible and liable for the payment of the Base Rent and other charges due hereunder and compliance with all of its obligations hereunder (even if future assignments and sublettings occur after the assignment or subletting by Tenant, and regardless of whether Landlord's approval has been obtained for them).

(c) *Assignment.* If Tenant makes any assignment or sublease, with Landlord's consent, for rent in excess of the Base Rent payable under this Lease, Tenant shall pay to Landlord fifty (50%) percent of any such excess rent upon receipt.

(d) *Landlord Assignment.* If Landlord assigns and transfers its interest in this Lease and in the Premises to a person or entity expressly assuming its obligations under the Lease, Landlord shall thereby be released from all further obligations hereunder except for Landlord's obligation to complete the Landlord's work and Tenant shall look solely to Landlord's successor in interest for performance of the obligations of Landlord under the Lease.

17. **Taxes.**

Lease Agreement  
The City of Guyton (Landlord)  
YMCA of Coastal Georgia, Inc. (Tenant)  
718 Central Boulevard  
Guyton, Effingham County, Georgia 31312

(a) *Personal Property Taxes.* Tenant shall be liable for all taxes levied against the trade fixtures, furnishings, equipment, business assets or inventory, and all other personal property Tenant contained in or used in the Premises. If the taxes are levied against Landlord or its property and it elects to pay them, or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on the increase, Tenant shall pay to Landlord upon demand that part of the taxes for which Tenant is primarily liable under this Lease.

(b) *Real Estate and General Taxes.* Tenant, in addition to the Base Rent and other charges described in this Lease, shall pay or cause to be paid, all general real estate taxes, general and special assessments, parking surcharges, and other governmental charges, if any (collectively "the General Taxes"), levied against the Premises for each real estate tax year. Tenant shall make payments to Landlord on demand at monthly or longer intervals. Landlord may require Tenant to pay in advance monthly or other periodic charges based upon an estimated annual cost of the General Taxes; however, such charges shall be subject to the adjustment after the end of the year on the basis of the actual cost for that year. The Tenant's obligation to pay General Taxes for the real estate tax year in which the Lease begins or terminates shall be pro rata based on the number of days of Tenant's leasehold interest in the Premises during such tax year. For the purposes of this paragraph, General Taxes shall include the costs of attempting to reduce the General Taxes by use of property tax consultants, attorneys, appraisers or any other means. If the Premises is a part of a larger tract for tax purposes, then Tenant shall pay to Landlord its proportionate share of the General Taxes attributable to the Premises. Tenant's proportionate share of the cost of the General Taxes shall be computed pro rata based on the total acreage of the Premises compared to the total acreage of the larger tract.

(c) *Other Taxes and Assessments.* If at any time during the Lease Term, a tax or excise on rents or other tax however described (except any franchise, estate, inheritance, capital stock, income or excess profits tax imposed upon Landlord) is levied or assessed against Landlord by any lawful taxing authority on account of Landlord's interest in this Lease or the rents or other charges reserved hereunder, as a substitute in whole or in part, or in addition to the General Taxes described in Section 17(b), Tenant shall pay to Landlord upon demand and in addition to the Base Rent and other charges prescribed in this Lease, the amount of the tax or excise. If the tax or excise is levied or assessed directly against Tenant, it shall be responsible for and pay the tax or excise whenever and in the manner required by the taxing authority. Additionally, Tenant shall pay to Landlord on demand and in addition to the Base Rent and other charges prescribed in this Lease the amount of any subdivision, property, owners association and similar assessments which may be levied or assessed against the Premises, including, but not limited to any additional rental and assessments which may be charged under any industrial, development or other authority lease, any taxes or assessments that may be levied or assessed against the Premises by any municipality or governmental authority or any association which includes the Premises.

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(d) *Landlord's Right of Contest.* Landlord shall have the sole, absolute and unrestricted right, but not obligation, to contest the validity or amount of the General Taxes by appropriate proceedings brought by Landlord or its tax consultant and the costs thereof shall be included in the General Taxes, and Landlord shall have the sole, absolute and unrestricted right to settle any contest, proceeding or action upon whatever terms Landlord may, in its sole discretion, determine. Landlord shall also have the same right to contest any tax or excise on rents or other tax however described.

(e) *Interest and Penalty.* In the event Tenant shall fail for any reason to pay any of the above taxes or assessments, Landlord may, but is not required, pay the same. In the event Landlord should pay any such taxes or assessments, Tenant shall pay to Landlord on demand, as additional rent under this Lease, any amount paid by Landlord to pay such taxes or assessments including any penalties thereon, plus interest thereon at the rate of one and one-half percent (1-½%) per month from the date of payment by Landlord until repayment by Tenant and a reasonable administrative charge by Landlord.

18. Default. The following events shall constitute events of default by Tenant under this Lease (hereinafter individually called an "Event of Default", and collectively called "Events of Default"):

(a) if Tenant shall fail to pay when due any Base Rent or other payment to be made by Tenant hereunder and shall not cure such failure within ten (10) days after Landlord gives Tenant written notice thereof;

(b) if Tenant shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, restriction or provision of this Lease (other than a breach or failure described in subsection (a) above), and shall not cure such failure within thirty (30) days after Landlord gives Tenant written notice thereof, or, if such failure shall be incapable of cure within thirty (30) days, if Tenant shall not commence to cure such failure within such thirty (30) day period and continuously prosecute the performance of the same to completion with due diligence;

(c) if Tenant makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors;

(d) if Tenant files a petition under any section or chapter of the national bankruptcy act, as amended, or under any similar federal or state law or statute, or Tenant is adjudged bankrupt or insolvent in proceedings filed against Tenant;

(e) if a receiver or trustee is appointed for the Premises or for all or substantially all of the assets of Tenant;

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718 Central Boulevard  
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(f) if Tenant deserts or vacates, or commences to desert or vacate, all or a substantial portion of the Premises without Landlord's prior written consent; or

(g) if any other instrument delivered to Landlord as part of this lease transaction shall be breached, and such breach shall not be cured within thirty (30) days after Landlord gives Tenant written notice thereof, or, if such breach shall be incapable of cure within thirty (30) days, if Tenant shall not commence to cure such failure within such thirty (30) day period and continuously prosecute the performance of the same to completion with due diligence.

19. Remedies. Upon the occurrence of an Event of Default, Landlord may pursue any of the following alternative remedies:

(a) Without any notice or demand, Landlord may take any action or actions permissible at law to ensure performance by Tenant of its covenants and obligations under this Lease. If Tenant deserts or vacates the Premises, Landlord may enter upon and take possession in order to protect them from deterioration and continue to demand from Tenant the monthly Base Rent and other charges provided in this Lease, without any obligation to relet. Moreover, if Landlord elects to relet the Premises, that action shall not be deemed an acceptance of Tenant's surrender of them unless Landlord expressly notifies Tenant otherwise in writing pursuant to subsection (b) below. Landlord shall otherwise be reletting as Tenant's agent. Tenant shall pay Landlord on demand any deficiency between the Base Rent and other charges provided in this Lease and those that are actually collected by Landlord. If there is any default described in Section 18(b), Landlord may enter upon the Premises without being liable for prosecution or any claim for damages and do whatever Tenant is obligated to do under this Lease. Tenant shall reimburse Landlord on demand for all reasonable expenses incurred by Landlord in affecting compliance with Tenant's obligations hereunder, and Landlord shall not be liable for resulting damages to Tenant. In addition, Tenant shall pay to Landlord interest on said expenses at the rate of one and one-half percent (1-½%) per month from the date Landlord expends any such expenditure until Tenant repays the same, plus a reasonable administrative charge by Landlord.

(b) Landlord may terminate this Lease by giving written notice to Tenant. In such event, Tenant shall immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy it may have for possession or arrearages in rent (including any accrued interest under Section 4(a)), and without the requirement of resorting to the dispossessory procedures, including but not limited to those set forth in O.C.G.A. §§ 44-7-50 et seq., enter upon and take possession of the Premises and expel or remove, by force if necessary, Tenant and any other person who is occupying all or a portion of the Premises without being liable for prosecution or any claim for damages. Tenant hereby waives any statutory requirement of prior written notice for filing eviction or damage suits for nonpayment of rent. In addition, Tenant shall pay to Landlord on demand all loss and damage suffered by Landlord by reason of any termination effected under this subsection. The loss or damage shall be determined by either of the following alternative measures of damages:

(i) Until Landlord is able, through reasonable efforts the nature of which shall be at Landlord's sole discretion, to relet the Premises, Tenant shall pay to Landlord, on or before the first day of each calendar month, the Base Rent and other charges specified in this Lease. After Landlord relets the Premises, Tenant shall pay to Landlord, on the 20th day of each calendar month, the difference between the Base Rent and other charges for the preceding calendar month and the amount actually collected by Landlord for that month. If Landlord is required to bring suit in order to collect a deficiency, Landlord may allow the deficiency to accumulate and bring an action on several or all of the accrued deficiencies at one time. Such suit shall not prejudice in any way Landlord's right to bring a similar or other action for subsequent deficiencies. If the amount collected by Landlord from subsequent tenants for a calendar month exceeds the monthly Base Rent and other charges, the excess shall be credited to Tenant in reduction of Tenant's liability for any calendar month for which the amount collected is less than the Base Rent and other charges. However, Tenant's right to the excess is limited to the above-described credit.

(ii) Landlord may demand a final settlement at any time. Upon such demand Landlord shall recover from Tenant, and Tenant shall pay to the Landlord, all damages Landlord may suffer by reason of Tenant's default and the termination of the Lease, including, without limitation, all arrearages in monthly Base Rent, costs, charges, and reimbursements, the cost (including court costs and reasonable attorneys' fees) of recovering possession of the Premises, the actual or estimated (as reasonably estimated by Landlord) cost of any alteration of or repair to the Premises which is necessary or proper to prepare the same for reletting, and future rental damages as herein provided. With respect to future rental damages, Landlord shall have and recover from Tenant the amount equal to the excess, if any, of the present value [discounted at the rate per annum applicable to United States Treasury notes maturing on or about the expiration of the Lease Term and issued in the year that the Event of Default occurs (or if no such note exists, the notes issued closest to such year) plus fifty (50) basis points (the "Discount Rate")] of the total amount of all Base Rent to be paid by Tenant for the remainder of the Lease Term, over the present value (discounted at the Discount Rate) of the fair market rental value of the Premises for the remainder of the Lease Term. In determining the fair market rental value of the Premises, all factors deemed relevant by Landlord should be considered as of the time Landlord seeks to enforce such remedy, including, without limitation, the length of time remaining in the Lease Term, the likelihood of reletting the Premises for a period of time equal to the remainder of the Lease Term, the anticipated duration of the period of time the Premises will be unoccupied prior to reletting, the anticipated cost of reletting, the modifications that Landlord may need to make to the improvements on the Premises to lease them or to lease them on a multi-tenant basis, the then existing space and any new construction that may compete with the Premises for tenants, and any other market factors deemed applicable by Landlord. Landlord and Tenant agree that it is difficult or impossible to determine the actual damages for lost future rentals which Landlord will suffer from Tenant's default hereunder and that the parties intend to provide for liquidated

damages, not a penalty, and that the agreed upon liquidated damages are fair and just and a reasonable pre-estimate of such damages, all in accordance with O.C.G.A. § 13-6-7. The provision in this subparagraph for future rental damages shall be the sole remedy of Landlord with respect to such damages (but not with respect to other damages) in the event Landlord terminates the Lease hereunder.

Notwithstanding any other provision hereof, Tenant expressly acknowledges and agrees that the liabilities and remedies specified in this subparagraph (b) shall survive the termination of this Lease.

(c) Landlord may, without terminating this Lease, declare immediately due and payable all Base Rent and other charges and sums then due and thereafter coming due under this Lease for the entire remaining Lease Term, discounted at the rate of four percent per annum to present worth; provided, however, such payment shall not be deemed a penalty or liquidated damages but shall merely constitute payment in advance of said Base Rent and other charges and sums for the remainder of the Lease Term. Upon making such payment, Tenant shall be entitled to remain in possession of the Premises.

(d) Landlord's election to exercise any remedy prescribed above in this Section 19 shall in no way prejudice its right at any later time to cancel the election in favor of any other remedy provided in this Section, if at the time of cancellation Tenant is still in default. Further the pursuit of any of the above remedies shall not preclude pursuit of any other remedy provided elsewhere in this Lease or by law. Additionally, Landlord's forbearance to enforce any remedy provided herein upon an Event of Default shall not be deemed to constitute a waiver of the default.

## 20. Other Remedies of Landlord.

(a) *Landlord Expenses.* In addition to the payments required by Section 19, Tenant shall compensate Landlord for the following: all reasonable expenses incurred by Landlord in repossession (including any increase in insurance premiums caused by the vacancy of the Premises), and in reletting (including repairs, remodeling, replacements, advertisements, and reasonable brokerage fees); all concessions granted to a new tenant upon reletting (including renewal options); and all reasonable expenses incurred by Landlord as a direct or indirect result of Tenant's default; and a reasonable allowance for Landlord's administrative efforts, salaries, and overhead attributable directly or indirectly to Tenant's default and Landlord's pursuing the rights and remedies provided under this Lease and applicable law.

(b) *Injunction; Cumulative Remedies.* Landlord may restrain or enjoin any breach or threatened breach of Tenant's covenants, duties, and obligations under this Lease without having to prove the inadequacy of any legal remedy or irreparable harm. Landlord's remedies under this Lease shall be deemed cumulative and not exclusive. Notwithstanding any other provision of the Lease to the contrary, Landlord shall have and may exercise any and all other rights and remedies allowed or available to a Landlord under Georgia law.

(c) *Attorney's Fees.* If Landlord is required, on account of a breach or default or a threatened breach or default by Tenant in any obligation under this Lease, to hire an attorney to present, enforce, or defend Landlord's rights or remedies under the Lease, Tenant shall pay all reasonable attorney's fees incurred by Landlord in that connection.

21. Holding Over. If Tenant remains in possession of the Premises after this Lease expires and without executing a new lease, it shall be deemed to be occupying them as a tenant from month to month at a monthly Base Rent equal to one hundred fifteen (115%) percent of the monthly Base Rent then in effect. Tenant shall also be subject to all the conditions, provisions, and obligations of this Lease to the extent they are applicable to a month-to-month tenancy.

22. Subordination. Tenant accepts this Lease subject and subordinate to any existing or subsequent mortgage, security deed, deed of trust, or other lien, or its renewal or extension, upon the Premises. Landlord shall have the full and irrevocable power of attorney and authority to subordinate this Lease to any existing or future mortgage, security deed, deed of trust, or other lien placed upon the Premises, and Tenant shall upon demand execute all further instruments requested by Landlord subordinating and/or evidencing the subordination of this Lease. Additionally, Landlord shall have the full and irrevocable power of attorney to execute and record on behalf of the Tenant any and all instruments deemed necessary by the Landlord or its Lender to subordinate this Lease and the rights of the Tenant hereunder to any existing or subsequent mortgage, security deed, deed of trust or other lien or its renewal or extension. However, Landlord shall, upon Tenant's written request and notice to it, use good faith efforts to obtain the Lender's written agreement that Tenant's rights shall remain in full force and effect during the Lease Term so long as Tenant continues to recognize and perform all of its covenants and conditions under this Lease.

23. Government Regulations. Landlord and Tenant acknowledge that there are in effect federal, state, county, and municipal laws, orders, rules, directives, and regulations (collectively the "Regulations") and that additional Regulations may hereafter be enacted or go into effect, relating to or affecting the Premises, and concerning the impact on the environment of construction, land use, maintenance and operation of structures, and conduct of business. Subject to the express rights granted to Tenant under the terms of this Lease, neither Landlord nor Tenant will cause, or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would adversely affect the environment, or do and/or permit anything to be done, that would violate any of the Regulations. Moreover, Tenant shall have no claim against Landlord by reason of any changes Landlord may reasonably make to the Premises or any charges imposed upon the Tenant under the Regulations unless due to Landlord's negligent acts and/or omission to act.

24. Construction on Premises.

(a) *Construction.* It is Tenant's intent to construct a new building on the Premises to be used in accordance with Section 5(a) (the "New Improvements"). The plans and specifications of the New Improvements shall be approved by Landlord and Tenant. Tenant shall, upon completion of the New Improvements, furnish Landlord with satisfactory evidence of such completion in the form of a Certificate of Occupancy issued by the

appropriate governmental authority.

(b) *Commencement of Construction.* Tenant shall commence construction on the New Improvements prior to the three-year anniversary of the Rent Commencement Date (the "Construction Deadline") and shall continuously thereafter prosecute such construction of the New Improvement to completion with due diligence.

(c) *Clawback of Raw Land.* If Tenant: (i) does not commence construction on the New Improvements prior to the Construction Deadline, or (ii) after commencing such construction, fails to diligently prosecute the construction (e.g., abandons such construction), then Landlord may, in Landlord's sole and absolute discretion, reduce the size of the Premises subject to this Lease to include only the area where the improvements as of the Rent Commencement Date are located plus a reasonable area around such improvements for parking and required recreation for Tenant's use (e.g., a playground for childcare) (the "Reduced Premises"). If Landlord exercises its right under this Section 24(c) to reduce the size of the Premises, then Base Rent shall only include the Existing Improvement Rent, and any other charges based on area (e.g., real estate taxes, if any) shall be reduced proportionally.

(d) *New Construction as of Expiration or Termination of Lease.* The New Improvements and any other permanent improvements constructed on the Premises during the Lease Term shall become property of Landlord upon the expiration or termination of the Lease.

## 25. Environmental Requirements and Indemnities.

(a) *Environmental Requirements.* Tenant represents and warrants to the Landlord that during the Lease Term, it will not cause or permit to be used, stored, generated or disposed, any Hazardous Substance (as herein after defined) in, on or about the Premises. "Hazardous Substance" includes, without limitation, any and all material or substance which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance", pursuant to state, federal or local governmental laws. "Hazardous Substance" includes, but is not limited to, asbestos, polychlorobiphenyls ("PCB's"), and petroleum.

(b) *Indemnification.* Tenant covenants and agrees, at its sole cost and expense, to indemnify, protect and save Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements of expenses (including, without limitation, attorneys', consultants', and experts' reasonable fees and disbursements) of any kind or nature whatsoever (collectively, the "Indemnified Matters") which may at any time be imposed upon, incurred by, asserted, or awarded against Landlord and arising from and out of Hazardous Substance on, in, under or affecting all or any portion of the Premises as a direct result of Tenant's occupancy or use of the Premises. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the Premises or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision.

(c) *Survival.* The provisions of this Section 25 shall survive the expiration or the termination of this Lease.

26. Notices. All notices, statements, demands, requests, consents, approvals, authorization, offers, agreements, appointments, or designations (collectively "Notices") under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party: (i) by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (ii) by recognized overnight, third party prepaid courier service (such as Federal Express), requiring signed receipt; (iii) by delivering the same in person to such party; or (iv) by email with delivery receipt and delivery of an original copy of any such emailed Notice delivered pursuant to (i) or (iii) above. Notices personally delivered or sent by courier service or email shall be effective upon receipt. Any Notices mailed in the foregoing manner shall be effective five (5) business days after its deposit in the United States mail. Either party may change its address for Notices by giving notice to the other as provided above. The Notices shall be addressed to the parties as follows:

Landlord:

Attn: City Manager  
City of Guyton  
310 Central Boulevard  
Guyton, Georgia 31312

Tenant:

Attn:  
YMCA of Coastal Georgia  
6400 Habersham Street  
Suite A  
Savannah, Georgia 31405

27. Miscellaneous.

(a) *Relationship of Parties.* Nothing contained in this Lease shall be deemed or construed by the parties, or by a third party, to create the relationship of principal and agent, of partnership, or of joint venture between Landlord and Tenant. No provision contained herein, including the method of computation of rent, and no acts of the parties shall be deemed to create any relationship between them other than the relationship of landlord and tenant. No estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except by Landlord's consent.

(b) *Separate Rent Obligation.* Tenant shall not for any reason withhold or reduce its required payments of Base Rent and other charges. Landlord's obligations under this Lease are independent of Tenant's obligations, except as expressly provided otherwise. In this regard, if Landlord commences proceedings against Tenant for nonpayment of Base Rent or any other sum due and payable under this Lease, Tenant shall not interpose any counterclaim or other claim against Landlord. If Tenant does so, Landlord may, in addition to its other lawful remedies, move to have the counterclaim or other claim severed out of the proceedings. The proceedings may then proceed to final judgment separately and apart from, and without consolidation with or reference to, the status of the counterclaim or other claim.

(c) *No Recourse.* Landlord's liability to Tenant for any default under this Lease shall be limited to the fair market value of the Premises. Landlord shall not be

personally liable for any deficiency. This clause shall not be deemed to limit or deny any remedy, which does not involve Landlord's personal liability, that Tenant may have in case of Landlord's default.

(d) *Non-Waiver.* A waiver by either party of one or more covenants, terms, or conditions of this Lease shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. A party's consent to or approval of any act by the other party shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

(e) *Delays Beyond Control.* Except for the payment of monetary sums, whenever a provision of this Lease prescribes a time period for Landlord or Tenant to take action, it shall not be liable or responsible for, and there shall be excluded from the computation of that period, all delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, restrictions, or other causes that are beyond Landlord's or Tenant's reasonable control. Notwithstanding the foregoing provision, the Tenant's obligation to pay the Base Rent or any other monetary sum shall not be considered or included in any action to be taken under this Section 27(e) and the provisions of this Section 27(e) shall not apply to the Tenant's obligation to pay Base Rent or any other monetary sum under this Lease.

(f) *Estoppel Certificate.* Tenant shall, upon ten (10) days written notice from Landlord, execute and deliver to Landlord a statement in recordable form (substantially similar to the form attached as Exhibit "C" and incorporated herein by reference) certifying that the Lease is unmodified and in full force and effect (or if there have been modifications that they are in full force and effect).

(g) *Governing Law; Venue.* This Lease has been executed in the State of Georgia and shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia, without regard to or application of any conflicts of laws principles. The parties agree and hereby submit to the exclusive personal jurisdiction and venue of the state courts sitting in Effingham County, Georgia or the federal court serving such County with respect to any action arising out of this Lease.

(h) *Waiver of Jury Trial.* Landlord and Tenant waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Lease against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any other claims (including without limitation claims for personal injury or property damage), and any emergency statutory or any other statutory remedy.

(i) *Severability.* If any clause or provision of this Lease is illegal, invalid or unenforceable under applicable present or future laws effective during the Lease Term, such unenforceable, invalid or illegal provision shall be severed from this Lease, and the remainder of this Lease shall not be affected. In lieu of each clause or provision of this Lease which is illegal, invalid or unenforceable, there shall be added as a part of this Lease a

clause or provision as nearly identical as may be possible and as may be legal, valid and enforceable.

(j) *Easements and Restrictive Covenants.* This Lease and Tenant's right to use the Premises under the terms and conditions of this Lease, are subject and subordinate to any existing or subsequent easements (cross, reciprocal or otherwise), and any restrictions or use agreements upon the Premises. Also, this Lease and the Tenant's right to use the Premises under the terms and conditions of this Lease are subject and subordinate to the easements and/or restrictions as depicted or reserved on any map or plat of survey of or affecting the Premises.

(k) *Attorneys' Fees.* Should either party bring a legal proceeding to enforce the terms and conditions of this Lease, then the party prevailing in such proceeding shall be entitled to recover, in addition to all other damages, any and all reasonable attorneys' fees and court costs incurred in said proceeding. The court before which said proceeding is pending shall have the authority to make the determination as to the amount of attorneys' fees and court costs the prevailing party should recover as part of its damages.

(l) *Headings.* The headings in this Lease are for convenience and reference only and shall not be used to limit, amplify, or otherwise construe its provisions.

(m) *Binding Effect.* The terms, provisions, and covenants of this Lease shall be binding upon and inure to the benefit of both parties and their respective heirs, successors in interest, and legal representatives, except as otherwise expressly provided herein.

(n) *Entire Agreement; Modification.* This Lease contains the entire agreement between the parties regarding the subject matter contained herein, and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties or the employees or agents of the parties not embodied in this Lease shall be of any force or effect. No other agreements shall be effective to change, modify or terminate this Lease, in whole or in part, unless in writing and duly signed by both parties.

(o) *Interpretation.* Tenant and Landlord agree that this Lease has been negotiated by legal counsel representing each respective party or each party has had the opportunity to consult with legal counsel of its choice, and that to the extent chosen they have been fully advised of the effect of the provisions of the Lease. Tenant and Landlord waive any right or argument that the Lease, or certain provisions of the Lease, should be construed most strongly against the drafter.

(p) *Examination of Lease.* Submission of this instrument by Landlord to Tenant for examination or signature does not constitute an offer by Landlord to lease the Premises. This Lease shall become effective, if at all, only upon the execution by, and delivery to, both Landlord and Tenant. Execution and delivery of this Lease by one party to the other constitutes an offer to lease the Premises on the terms contained herein.



(q) *Indemnification for Leasing Commissions.* The parties hereby represent and warrant to each other that no real estate broker is involved in the negotiation and execution of this Lease and no real estate broker or any other party is entitled to a commission or fee resulting from the execution of the same. Each party shall indemnify the other from any and all liability for the breach of this representation and warranty on its part and shall pay any compensation to any broker or other person who may be entitled thereto.

(r) *Financial Statements.* At Landlord's request during the Lease Term, Tenant shall provide to Landlord, within ninety (90) days following the end of Tenant's fiscal year, a copy of Tenant's most recent financial statements prepared as of the end of Tenant's fiscal year. Such financial statements shall be signed by Tenant or an officer of Tenant, if applicable, who shall attest to the truth and accuracy of the information set forth in such statements. All financial statements provided by Tenant to Landlord hereunder shall be prepared in conformity with generally accepted accounting principles, consistently applied.

(s) *Time.* Time is of the essence of each term and provision of this Lease.

(t) *Counterparts.* This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The transmission by facsimile or email of a signed counterpart of this Lease shall have the same binding effect as the hand delivery of an originally signed counterpart hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed and sealed by their duly authorized representatives, all effective as of the day and year first written above.


**LANDLORD:**

**The City of Guyton, Georgia  
a Georgia municipal corporation**

By: \_\_\_\_\_  
Russ Deen, Mayor  
[Entity seal]

**TENANT:**

**YMCA of Coastal Georgia, Inc.  
a Georgia nonprofit corporation**

By:  \_\_\_\_\_  
Joel Smoker, CEO  
[Corporate seal]

# **EXHIBIT A**

**Designation of the Premises**



0.32 ac

EDGE PATRICIA  
205 ANDERSON ST

ANDERSON AVE

0.1 ac  
JAINE  
ANDERSON ST

HUNTER ROGER AND VERNETTA S  
205 ANDERSON ST

KENT ANNIE ORHELIA  
304 ANDERSON ST

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON GEORGIA CITY OF  
711 CENTRAL BLVD

3.5 ac

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

EDONIA  
CENTRAL BLVD

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

GUYTON GEORGIA CITY OF  
718 CENTRAL BLVD

CENTRAL BLVD

MILLER CHERYL LYNN  
708 CENTRAL BLVD

MILLER CHERYL LYNN  
708 CENTRAL BLVD

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# **EXHIBIT B**

**Existing Improvement Rent Schedule**

**Exhibit "B"**  
**(Existing Improvement Rent Schedule)**

<u>Lease Year</u>	<u>Rent/sf</u>	<u>Monthly Base Rent</u>	<u>Annualized Base Rent</u>
1 (plus first partial month)		\$500.00	\$6,000.00
2		\$750.00	\$9,000.00
3		\$1,000.00	\$12,000.00
4		\$1,250.00	\$15,000.00
5		\$1,500.00	\$18,000.00
6 (and any subsequent Lease Year during the Lease Term)	Up to fair market rental		

# **EXHIBIT C**

**Form of Estoppel Certificate**

**Exhibit "C"**  
**(Form of Estoppel Certificate)**

**TENANT ESTOPPEL CERTIFICATE**

This Tenant Estoppel Certificate (this "**Certificate**"), dated as of the [DAY] day of [MONTH], [YEAR], is entered into by [TENANT'S NAME] ("**Tenant**"), the tenant under the Lease (as hereinafter defined), with [LANDLORD'S NAME] ("**Landlord**"), as landlord, for certain premises (hereinafter, the "**Premises**"), which are a part of Landlord's real property located at [ADDRESS] (the "**Property**") and which Premises are more particularly described in the Lease.

Tenant hereby certifies, that as of the date hereof:

1. Tenant currently leases the Premises commonly known as [SUITE NUMBER/OTHER DESIGNATION], containing approximately [NUMBER] square feet pursuant to the lease document attached as Exhibit A attached hereto and made a part hereof, between Landlord and Tenant (collectively, the "**Lease**"). The Lease is valid and binding and in full force and effect and there has been no amendment, modification, or supplement of any kind or nature varying the stated terms and conditions of the Lease.

2. Landlord has delivered, and Tenant has accepted, possession of the Premises and is currently in occupancy of the entire Premises. Tenant has not subleased any portion of the Premises or assigned or otherwise transferred any of its rights under the Lease.

3. The term of the Lease commenced on [DATE] and full rental is now accruing thereunder. The term of the Lease expires on [DATE]. There [is/are] [NUMBER] [consecutive] extension [term/terms] of [NUMBER] [year/years] [each]. Tenant has no right to terminate the Lease.

4. Any and all improvements or repairs required to be made by Landlord in, on, or about the Premises have been completed in accordance with the terms of the Lease and to the satisfaction of Tenant. Notwithstanding the foregoing, Tenant makes no representation or assertion that Landlord's improvements or repairs were performed in compliance with all Laws (as defined herein). All allowances, reimbursements, or other obligations of Landlord for the payment of monies to or for the benefit of Tenant have been fully paid, all in accordance with the terms of the Lease.

5. The current monthly base rent payable under the Lease is \$[NUMBER]. No base rent under the Lease has been paid more than [[NUMBER] days/one month] in advance. Rent and all other charges due and payable under the Lease have been paid up to [DATE]. There are no unexpired rent abatements, free rent periods, rent credits, or rent concessions of any kind existing under the Lease, except in the event of casualty or condemnation as provided in the Lease.



6. Tenant is not in default under the Lease, and Tenant has not received any notices of default under the Lease which have not been cured and there are no events which have occurred that with the giving of notice or the passage of time, or both, would result in a default by Tenant under the Lease.

7. Tenant has not sent Landlord any notices of default under the Lease which have not been cured, and there are no defaults by Landlord under the lease as of the date hereof and there are no events that have occurred that, with the giving of notice or the passage of time, or both, would result in a default by Landlord thereunder. Tenant has no defenses, counterclaims, liens, or claims of offset or credit under the Lease or against rents, or any other claims against Landlord. Tenant has no disputes with Landlord that arise out of the Lease or in any way relate to the Lease or arise out of any other transaction between Tenant and Landlord.

8. Landlord is not holding a security deposit.

9. Tenant has no right of first refusal, right of first offer, or option to purchase or lease the Property, or any part thereof.

10. Tenant is not using, and has not used, the Premises in violation of any applicable laws, rules, ordinances, or regulations, including but not limited to, any applicable environmental laws, rules, or regulations (collectively, "Laws"), and there are no actions or other claims pending or threatened against Tenant in connection with any such Laws, nor has Tenant received any notices alleging Tenant's violation of any such Laws.

11. There are no bankruptcy, reorganization, or insolvency actions, whether voluntary or otherwise, pending or threatened against Tenant. Tenant is not bankrupt or insolvent and has not admitted in writing that it is unable to pay its debts as they mature, consented to or applied for the appointment of a receiver or trustee for itself or for all or part of its property, or made an assignment for the benefit of creditors.

12. The Lease represents the entire agreement between the parties thereto regarding the Premises.

13. Tenant has read this Certificate and acknowledges and understands the certifications and representations made herein. Tenant hereby executes this Certificate, intending reliance hereon. Tenant has full authority to execute this Certificate, which has been duly authorized by all necessary action. Notwithstanding the foregoing, in the event of any inconsistencies between this Certificate and the Lease, the terms of the Lease will control.

[SIGNATURE PAGE FOLLOWS]

