

## YMCA HAPPEHATCHEE LEASE AND MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the VILLAGE OF ESTERO, a municipal corporation of the State of Florida, 9401 Corkscrew Palms Circle, Estero, Florida 33928 (hereinafter "Village"), and THE SKY FAMILY YOUNG MEN'S CHRISTIAN ASSOCIATION, INC., a non-profit corporation organized under the laws of Florida, having its principal office at 701 Center Road, Venice, Florida 34285 (hereinafter "YMCA").

### WITNESSETH:

WHEREAS, Village owns certain real property commonly referred to as the Happehatchee Center (hereinafter referred to as "the Park"), located at 8791 Corkscrew Rd, Estero, Florida 33928, more specifically described in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Village and YMCA are desirous of setting forth herein formal terms of a lease, operations, and management agreement for the Park which has a variety of recreational facilities to be used for educational, recreational and other programs; and

WHEREAS, Village has determined that the most suitable use for the Park would be as a multi-use park facility which could include open space, a variety of recreational facilities, social facilities, and entertainment facilities, and other buildings, equipment, and programs for the care, protection, recreation and education of both the young and old; and

WHEREAS, Village previously entered into a Memorandum of Agreement with Happehatchee Center, Inc. governing the use of the Park, attached hereto and incorporated herein as Exhibit "B".

NOW, THEREFORE, based on the premises and the mutual covenants, conditions and considerations hereinafter expressed, the parties agree as follows:

1. The forgoing recitals are true and incorporated herein as if fully set forth below.

2. Purpose. The purpose of this Agreement is to provide for Village assistance in promotion and programing of the recreational and educational facilities as well as general management and operation of the Park consistent with and at all times subordinate to the requirements of Exhibit B. The specific programming obligations and additional requirements of the parties not directly addressed herein are described in the Scope of Services attached hereto and incorporated herein as Exhibit "C". Environmental education shall be provided by the YMCA at the Park for the duration of this Agreement.

3. Facilities. The real property and facilities contained in this lease is defined consistent with Section 192.001(12), Florida Statutes, as: "land, buildings, fixtures, and all other improvements to land." Said definition states that "land," "real estate," "realty," and "real property," may be used interchangeably.

4. Public Use. YMCA shall provide the use of the facilities to the general public in accordance with the provisions hereof. When not utilized for active YMCA programming, the Park grounds shall be available for use by the general public without charge. The hours for the general public's use of the facilities will be mutually determined by the parties. For YMCA programming such as classes, camps, or other offerings residents of the Village will be given a two-week window to register for classes, camps and any offerings before such is opened to the general public to ensure the Estero community has first priority to programs and services. Residents of the Village will also be given a 25% discount on all individual programs and classes. No YMCA specific uses or reservation of the facilities shall be available to the general public on a first come, first serve basis with no preference given to either YMCA members, YMCA employees, or the general public.

5. Rent. YMCA shall pay Village, a nominal rent of ten dollars (\$10.00) for the property during the leased term.

6. Use. YMCA will use the leased property only for the purposes contemplated in this Agreement. YMCA agrees that said use will not conflict with uses permitted and allowed as set forth in the land development regulations of the Village of Estero in effect on the date of this Agreement. Similarly, YMCA will make no unlawful, improper or offensive use of the leased property, and YMCA shall not use the leased premises in such fashion as to increase the existing rate of insurance upon the building, nor cause a cancellation of an insurance policy thereon.

7. Access by Village. The Authorized Representative of the Village and other Village agents may enter, inspect and make such repairs to the facilities as the Village may desire upon reasonable notice.

8. Signs. YMCA shall not place, or cause to be placed, any sign or signs on the premises, unless otherwise agreed to in writing by Village.

9. Utilities. YMCA will be responsible for the payment of all utilities, taxes and levies charged against the property.

10. Promotion. To ensure the success and sustainability of this partnership, the Village will support the promotion of the programs and services offered by the YMCA by including information on their newsletters, bulletin boards, social media, events, website and other outlets.

11. Remuneration. The Village will pay a management fee to YMCA of \$6,000/monthly from July to December 2020 then the monthly fee will drop to \$5,000/monthly thereafter. Payments will be due the 1st of each month to begin June 17,

2020 payable to the YMCA's Authorized Representative. The management fee will incur a 3% annual increase.

12. Condition of Premises. YMCA agrees that the facilities are in a tenantable and good condition. To the extent lawful, all implied warranties of fitness for a particular purpose, merchantability and habitability, and all warranties imposed by statute are specifically disclaimed.

13. Operation and Maintenance of Facilities. YMCA shall operate and maintain the facilities in good working order, in accordance with standards of maintenance and operation acceptable in the industry in compliance with building, environmental protection, and other laws and rules of federal, state and local governments, throughout the term of this Agreement in order to maximize the use and enjoyment of the facilities by the general public. All maintenance and repair of any kind to the interior and exterior of the Park buildings, fixtures, and all other improvements to land, as well as maintenance of the landscaping including trees, shrubs, flowers, water elements, lighting, brick, stone, gravel, wood or other materials, sidewalks and other aesthetic and functional treatments around the buildings, are entirely the responsibility of YMCA. This includes all interior and exterior pest control. No changes to the interior or exterior of the Park shall be made, such as paint color, without prior written consent by the Village.

Notwithstanding the forgoing, any repairs or improvements in which the preliminary estimates exceed \$2,500 will be the responsibility of the Village whereby the Village will have the option, but not the obligation, to proceed with the expenditure according to the Village's own timetable and choice of contractors. Should, however, any such repair or improvement affect the YMCA's programming then the coordination, management, and timing of the repairs or improvements must be mutually agreed upon between the parties.

14. Authorized Representatives and Notices. The parties appoint the following as their Authorized Representatives, who shall have the powers to make the day-to-day administrative decisions in connection with the operation of this Agreement, to receive any notices sent by the other party, and any other powers specifically delineated in this Agreement. The Authorized Representative for Village shall not have the power to increase the funding provided in accordance with this Agreement, or to exercise any power not specifically granted to such Authorized Representative by the Village Council. Each of the parties' Authorized Representatives may designate or appoint a different Authorized Representative, provided that notice is provided to the other party of the identity and address of the new Authorized Representative as provided in this paragraph. In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or required to provide such notice shall provide it to the Authorized Representative for the other party in writing, send it by certified mail, return receipt request, postage prepaid, at the address listed below:

Authorized Representative for Village:

Village Manager (permanent or acting)  
9401 Corkscrew Palms Circle  
Estero, Florida 33928

Authorized Representative for YMCA:

Executive Director  
Bonita Springs YMCA  
27200 Kent Rd.  
Bonita Springs, Florida 34135

With a copy of any  
notices to:

President, Board of Directors  
701 Center Road  
Venice, Florida 34285

15. Term/Termination. The term of this Agreement shall commence on July 1, 2020 and shall continue for a term of three (3) years. Either party may terminate this Agreement for any reason upon sixty (60) days' notice to the other.

16. Default. Should either party fail in any respect to comply with the terms of this Agreement and should the other party notify them in writing of the matters regarding which default is asserted, and should the defaulting party fail to either cure the default within thirty (30) days after the giving of notice or to commence within thirty (30) days to rectify the default and continue thereafter to use due diligence to rectify the default until it is fully rectified or cured, then the other party may terminate this Agreement at any time thereafter during the continuance of the default by giving written notice to the defaulting party of the election to terminate.

17. Records/Audits. YMCA shall maintain records of the performance of all of its duties under this Agreement in accordance with generally accepted accounting principles. Village shall have the right to inspect and audit such records at reasonable times, and for a period of five years after the termination of this Agreement, unless such records are previously provided to Village by YMCA.

18. Insurance. YMCA agrees to provide the following insurance, to remain in effect until the termination of this Agreement:

(a) Worker's Compensation Insurance as required by Florida Law.

(b) Public Liability Insurance - bodily injury and property damage with combined single limits of \$1,000,000.00. Village shall be an additional named insured on any such public liability insurance policy.

(c) Automobile Liability Insurance - personal injury limits of \$100,000 per person, \$300,000 per occurrence and property damage limits of \$25,000. Village shall be an additional named insured on any such automobile liability policy.

YMCA shall furnish valid proof of insurance for the above-required insurance and certificates acknowledging Village as additional named insured on the public liability and automobile policies to Village's Authorized Representative upon the approval of this Agreement.

19. Indemnification. In consideration of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, YMCA shall indemnify, save and hold harmless the Village and all of its officers, agents or employees from all suits, actions, claims, demands and liability of any nature whatsoever arising out of, because of, or due to the breach of this Agreement by YMCA or its subcontractors, agents, clients, volunteers or employees or due to any negligent act, or occurrence of omission or commission of YMCA, its subcontractors, agents, clients, volunteers or employees. Neither YMCA nor any of its subcontractors, agents, clients, volunteers or employees will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the Village or any of its officers, agents or employees. YMCA will similarly hold Village harmless for and on account of any damage to the facilities beyond normal wear and tear, arising from the use of this premises by YMCA, or arising from the failure of YMCA to keep the premises in good condition as herein provided; YMCA agrees to pay for all damage thereof caused by YMCA's misuse or neglect of said facilities, its apparatus, fixtures or appurtenances.

20. Entire Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings between the parties, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document.

21. Modification of Agreement. No modifications, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

22. Assignment. Neither party may assign their powers or duties under this Agreement, in whole or in part, without the prior written approval of the other party. Additionally, no sub-leasing of any part of the leased property, by YMCA or any assignee, shall be valid without the written consent of the Village.

23. Severability. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach by the other party.

24. Florida Law. This Agreement shall be governed and construed in accordance with Florida law. The parties agree that in the event of any litigation arising out of any alleged breach or non-performance of this Agreement, the venue for such litigation shall be in Lee County, Florida.

25. Public Records. YMCA shall maintain all records it makes or receives in connection with the performance of its duties under this Agreement in accordance with the provisions of Chapter 119, Florida Statutes. YMCA shall maintain all such records throughout the term of this Agreement, at which time YMCA shall forward such records to the Authorized Representative of Village.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

\_\_\_\_\_  
[1st Witness Signature]

BY: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Type or Print Name]

\_\_\_\_\_  
Steve Sarkozy, Village Manager

\_\_\_\_\_  
[1st Witness Signature]

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Type or Print Name]

COUNTY OF LEE  
STATE OF FLORIDA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Steve Sarkozy, the Village Manager of Village of Estero. He is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed or printed Name]

Stamp or Seal

\_\_\_\_\_  
[1st Witness Signature]

BY: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Type or Print Name]

\_\_\_\_\_  
Gene Jones, President and CEO of Sky Family YMCA

Dated: \_\_\_\_\_

\_\_\_\_\_  
[1st Witness Signature]

\_\_\_\_\_  
[Type or Print Name]

COUNTY OF  
STATE OF FLORIDA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2020, by Gene Jones, the President and CEO of Sky Family YMCA. She is personally known to me  
or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
[Signature of Notary]

\_\_\_\_\_  
[Typed or printed Name]

Stamp or Seal