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MANAGEMENT AGREEMENT

THIS AGREEMENT, by and between **Hopkinsville/Christian County Family Young Men's Christian Association, Inc.** (the "Company") and **The City of Hopkinsville** (the "Owner"), is to provide for the operation and management by the Company of the Owner's facility known as "Tie Breaker Family Aquatic Center" located in Christian County, Kentucky (the "Facility"), in accordance with the specifications, conditions, and terms set forth herein.

SECTION 1: GENERAL SPECIFICATIONS

- 1.1. **AGREEMENT EFFECTIVE DATE:** This Agreement shall be effective as of March 1, 2020.
- 1.2. **EXPIRATION DATE:** This contract shall terminate on October 15, 2024.
- 1.3. **INSURANCE/LIABILITY:** The Company shall maintain the following coverages:
 - 1) Worker's Compensation insurance covering all persons engaged on behalf of the Company in the performance of the terms of this agreement.
 - 2) General liability insurance in the amount of **\$4,000,000.00**

Upon written request by Owner, Company agrees to supply copies of certificates of insurance to the Owner verifying the above-mentioned insurance coverage. Company agrees to list Owner as additionally insured on the general liability policy upon written request by Owner. It is the responsibility of the Owner to provide all other insurance coverage.

Company agrees to indemnify and hold harmless Owner, its members, officers, agents, employees and assigns, against any and all loss or damage from any suit, cause of action, demand or claim brought against them by any person that arises out of or relates to the negligent, willful or intentional acts or omissions of Company, Company's agents, employees, members or officers, including any breach of the terms of this Agreement.

Owner agrees to indemnify and hold harmless the Company, Company's officers, agents, employees and assigns against any and all loss of damage from any suit, cause of action, demand or claim brought against them by any persons that arises out of or relates to the negligent, willful or intentional acts or omissions of Owner, Owner's agents, employees, members or officers, including any breach of the terms of this Agreement.

The parties acknowledge that neither party shall be liable for claims asserted by third parties, which are not the result of the negligence or fault of said party, its agent and/or employees.

The Owner agrees to maintain and keep in full force and affect the following coverages:

1. Premises liability insurance.
2. Comprehensive general liability insurance of \$4,000,000.00 each accident/person.

Owner agrees to provide Company with proof of insurance in the form of Certificates of insurance verifying the above-mentioned insurance coverage.

1.4. **TERMINATION:** The Owner shall have the right to terminate this Agreement based on Company's breach of its obligations hereunder as follows. Owner shall provide written notice to the Company by certified mail which sets forth the breach. Upon receipt of certified written notice, Company will have ten (10) business days to cure said breach.

In the event Company fails to cure the breach during the ten (10) day period, Owner may, at its option, terminate this Agreement. Owner agrees to provide written notice of termination by certified mail within ten (10) days of end of ten (10) day cure period.

In the event that the Owner terminates the Agreement, the Owner shall be entitled to a partial refund for monies paid in advance, which refund shall be calculated as follows and paid within fifteen (15) business days:

Divide the contract price by the total number of days of operation (the first day of the contracted swim season to the last day of the contracted swim season as determined in section 1 of this Agreement). This daily operation cost shall be multiplied by the number of days pool was operated under this Agreement. That amount shall be subtracted from the amount of the contract price paid to the Company by Owner as of the termination date. Company shall refund fifty percent (50%) of the remaining amount paid to the Company by Owner as of the termination date.

1.5. **OWNER/CONTACT INFORMATION:** Company agrees to direct all Company communications to the following Owner/ Representative:

Owner: City of Hopkinsville
Street: 715 South Virginia Street
City: Hopkinsville
State: Kentucky
Zip: 42241
Work Telephone: 270-890-0200
Fax Telephone: 270-890-0603

Representative: Superintendent of Parks and Recreation
Street: 2600 Thomas Street
City: Hopkinsville
State: Kentucky
Zip: 42241
Work Telephone: 270-887-4290
Fax Telephone: 270-632-2065
Mobile Telephone: 270-348-2664

1.6. **GOVERNING LAWS:** This Agreement shall be governed by the laws of the Commonwealth of Kentucky. Any and all litigation between the parties shall be initiated and maintained in the Commonwealth of Kentucky for jurisdictional purposes, and in Christian Circuit Court, as the Court of proper venue.

1.7. **ENTIRE AGREEMENT, MODIFICATION, BINDING EFFECT:** This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may not be modified or amended except in writing, signed by both parties hereto. This Agreement shall be binding upon the Owner and Company and their respective successors and assigns.

1.8. **SEVERABILITY:** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

1.9. **NONWAIVER:** Owner and Company agree that no failure to exercise and no delay in exercising any right, power or privilege under this Agreement on the part of either party shall operate as a waiver of any right, power, or privilege under this Agreement.

1.10. **ATTORNEYS FEES:** In the event of either party's (Company or Owner) breach of Agreement or legal action to enforce the rights of either party under the terms of this Agreement, each party agrees that the prevailing party shall be entitled to receive as additional damages, any and all litigation expenses, including attorney's fees.

SECTION 2: OPERATIONS AND MANAGEMENT

2.1. **ACCESS AND UTILITIES:** The Owner agrees to permit and maintain free access to the Facility. Owner agrees to provide six (6) sets of keys to Company to all locks required to operate the Facility 60 days prior to first day of swim season. Owner agrees to provide Company with six (6) sets of keys within six (6) days of any change to the accessibility of the Facility. Company agrees to provide keys to authorized personnel only. Company agrees to return all keys to Owner within five (5) business days of the termination of this Agreement.

Owner shall furnish to the Facility without cost to Company:

1. Water
2. Electricity
3. 110 volt electrical outlet in pump room
4. Trash receptacles and dumpster
5. Garbage pick-up service
6. Copy of any Health Department Inspection/Notice upon Owner's receipt.
7. Complete written copy of pool rules.
8. Wristbands
9. Kentucky Dept. of Agriculture annual "amusement ride" permit (covers tall slides).
10. Security cameras.

2.2. **TELEPHONE:** The Owner shall be responsible for providing an operational touch tone telephone thirty (30) days prior to the Facility opening each year and accessible to Company's lifeguards at the Facility. Consistent with health department regulations and for safety reasons, the Facility shall only be open when the telephone is operational. The telephone must be able to receiving incoming calls and be a land line Cellular telephones are not an acceptable alternative because they will not provide an exact location for 911 calls.

2.3. **FIRST AID KIT:** Company shall supply and maintain a completely stocked first aid kit in compliance with local health department regulations.

2.4. **MINIMUM STANDARDS/PERMITS:** Owner agrees to turn over to Company a facility which complies with the established local health department regulations and minimum safety standards. Company agrees and acknowledges that it is Company's responsibility and duty to maintain the Facility within the established local health department regulations and minimum safety standards.

The Company shall assist the Owner in obtaining a swimming pool operating permit from the local health department. The Owner shall pay all fees associated with the permit.

Company will provide Owner with an Opening Inspection Report on or before opening of each year hereof, which details all items needed to meet all Minimum Safety Standards and Local Health Department Codes. It is the responsibility of the Owner to bring the Facility into compliance with all codes and requirements. Company agrees to assist Owner regarding all items that are necessary to satisfy local health department requirements.

Owner shall maintain the Facility in compliance with minimum safety standards in the following areas:

1. Safety warning signs on pool deck
2. Tile Depth markers on water line and pool deck
3. Safety equipment required to operate the pool (ring buoys, rescue tubes, shepherd hooks, first aid kit, safety rope with buoys where required).

Owner agrees to pay for any work performed to meet these safety standards listed above.

Company shall obtain all necessary licenses, prior to the beginning of each swim season; and agrees to submit all related documents, reports, and fees required in a timely manner.

2.5. **OPENING:** Company shall make the Facility "ready to swim" by completing the following services, where applicable:

1. Clean pool (Pool must be algae free). If pool contains algae, pool must be acid washed. Owner agrees to pay all additional fees for cleaning of pool, including, but not limited to, chemicals and labor.
2. Owner agrees to provide storage space on property for cover storage.
3. Clean off pool deck with pressure washer provided by Owner.
4. Inspect Test Kit.
5. Inspect all filtration equipment, chemical feed pumps, gauges, flow meters, and psi gauges
6. Inspect all skimmers, vacuum, returns, and deck hardware
7. Mount ropes, guard chairs, and ladders
8. Clean bathhouse
9. Inject all necessary chemicals to establish proper levels for:
 - A. Free chlorine
 - B. Total Alkalinity
 - C. PH
 - D. Cyanuric acid
 - E. Calcium hardness
10. Set out and clean deck furniture.

11. Start-up filtration system.
12. Perform Opening Inspection of the Facility. Owner agrees to meet with Company prior to the Facility opening each year to review the Opening inspection. Opening Inspection will provide Owner with a list of all items that need repair/replacement. List will cover all items pertaining to Section 2.5. Company shall have the option of performing all necessary repair work needed per local health code requirements. Owner agrees to pay for all work performed by Company required by local health codes.
13. Clean and organize guard room, pump room, and storage facilities on site.

2.6. **POOL OPERATION/STAFFING:** Company agrees to provide staffing and operations from Memorial Day through Labor Day during the term hereof. Owner requires supervision of certified personnel for any use of the Facility. Company shall schedule certified lifeguards to operate the Facility on the following schedule:

HOURS OF OPERATION:

| | |
|-----------|------------------------|
| Saturday | 10:00 a.m. – 7:00 p.m. |
| Sunday | 12:00 p.m. – 7:00 p.m. |
| Monday | 11:00 a.m. – 7:00 p.m. |
| Tuesday | 11:00 a.m. – 7:00 p.m. |
| Wednesday | 11:00 a.m. – 7:00 p.m. |
| Thursday | 11:00 a.m. – 7:00 p.m. |
| Friday | 11:00 a.m. – 7:00 p.m. |

During pool hours listed above, Company shall provide all necessary staffing to operate the Facility.

In addition to hiring all necessary staff to operate the Facility, Company shall provide an Aquatics Director who will be responsible for overseeing the Facility operations. The Aquatics Director will oversee all programs provided as well. Company shall maintain, at a minimum, the following: Park Manager, Pool Deck Manager, Custodian/Maintenance, Security, and eleven (11) lifeguards on duty at all times during hours listed above. Company will maintain two (2) staff members/cashiers at the entrance for admissions at all times.

2.7. **PERSONNEL REQUIREMENTS:** The Facility shall be staffed solely by the Company and be employees of the Company. The Company agrees to pay the following for all Company employees:

- | | |
|---------------------------------|-------------------------------------|
| a. wages | d. state unemployment insurance |
| b. income tax withholdings | e. workman’s compensation insurance |
| c. social security withholdings | |

Additionally, Company staff will have the following:

1. The Company shall train its staff.
2. Company staff shall have proper credentials and training and shall be certified through the American Red Cross LGT program.
3. Company staff shall be required to complete a State approved background check and a drug test prior to working at the Facility.
4. Staff will be required to wear an approved uniform for men and women, one (1) set of which will be provided free of charge, by the Company.
5. Staff shall be required to go through the Company’s Orientation training, Pre-season

training, and Review. Training will include all Company policies and the complete operation of the Facility. No Company staff shall be scheduled to work at the Facility prior to obtaining required certifications.

6. Lifeguards shall have the authority to caution everyone inside the Facility while on duty. Company staff will make all decisions consistent with the published and posted rules of the Owner.
7. Company's full time management staff shall supervise personnel.

2.8. **COMPANY RESPONSIBILITIES:** Company staff shall be responsible for the following duties:

1. Lifeguard entire aquatic area – all features.
2. Checking water chemistry and record readings.
3. Maintain chlorine and pH balance of pool water as needed.
4. Cleaning tiles around pool edge as needed.
5. Back washing filtration system as needed.
6. Cleaning pump system hair and lint strainer basket(s) as needed.
7. Pick up trash throughout facility, within the fence.
8. Vacuuming pool as needed.
9. Emptying trash receptacles as needed.
10. Straightening deck furniture.
11. Clean bathhouse, office, first aid, and lifeguard room facilities daily.
12. Replenishing janitorial supplies in bathhouse.
13. Enforce Owner and Company rules for the safety and convenience of Owner's members.
14. Report all incidents to Owner (if known).
15. Lock and secure facility upon closing (if applicable).
16. Company will provide necessary paper work for facility in the Operations Manual.
17. Staff will man entrance and handle all admissions to facility.
18. Will include inflation and deflation & storage on site of the water slide/Lazy River tubes in services provided.
19. Provide security services as needed to maintain the security of the Facility and the safety of the employees and patrons.

2.9. **WATER QUALITY:** Company shall be responsible for maintaining the condition of the swimming pool water within the requirements of the local health department while the Facility is open. Company will monitor, record and maintain the following chemical levels:

1. Free chlorine
2. PH
3. Total Alkalinity
4. Calcium Hardness

Owner acknowledges that water quality will change hourly with the elements. Company will make every effort to ensure proper water quality at closing. If, in the discretion of the Company, it is determined that the water quality is insufficient to properly operate the Facility at opening or any other time, the Company shall have the right to close the pool for such period of time as shall be necessary to correct the water quality. This shall not require any change or adjustment in any provisions of this agreement.

2.10. **CHEMICALS:** Company agrees to supply all necessary chemicals to maintain proper water chemistry at its expense. If additional chemicals or labor are required to maintain or correct pool water chemistry due to failure or breakdown of Owner's equipment or loss of water due to a defect in Owner's pool or recirculation system, Company shall notify Owner of such breakdown or defect, and if Owner elects not to remedy the problem, Owner agrees to pay as an additional charge, the reasonable expense of all said chemicals and or labor. The following chemicals are provided at no additional charge to the Owner:

Potassium monopersulfate
Calcium Hypochlorite
Sodium bicarbonate
Carbon Dioxide
Sodium Bisulfate
Muriatic acid

*Note: Algaecides are not provided as part of this Agreement. Any algaecides needed will be the responsibility of the Owner.

2.11. **CLEANING SUPPLIES/EQUIPMENT:** Owner shall supply all necessary supplies for cleaning and disinfecting services at the Facility, which shall include but are not limited to the following:

| | |
|--------------|------------------|
| soap | deodorizers |
| disinfectant | toilet tissue |
| paper towels | trash can liners |
| scrubbies | sponges |

Owner agrees to be responsible for providing, at no cost to Company, the following items/equipment:

| | | |
|-------------------------------|----------------------------|----------|
| water hoses and nozzle | Ring Buoys and Throw Ropes | mops |
| trash receptacles | Rescue Tubes | brooms |
| gas and blower | Test Kit | buckets |
| Chemical Feed Pump | light bulbs | dust pan |
| Lifeguard Stand with Umbrella | toilet bowl brush | |

2.12. **REPAIRS:** Owner shall perform any repair work to the Facility during the term of this Agreement. Any repair work or equipment replacement performed by Company shall be billed as follows:

1. Any work or replacement of equipment in excess of \$100.00 shall be undertaken only upon authorization by the designated representative of Owner. All work or equipment in excess of \$2,000.00 will require a 50% deposit upon authorization of work.
2. Any work or replacement of equipment wherein the cost does not exceed \$100.00 will be performed without authorization of Owner. Company agrees to make a good faith effort to obtain authorization of any work or replacement equipment.
3. In the event any said repair work or replacement is a result of Company's negligence or misuse, Company shall be solely responsible for the cost of said repairs and damages.

2.13. **ADDITIONAL OPERATIONS:** The Company agrees to provide additional operations and schedule lifeguards for extra hours of operation at the written request of the Owner and subject to the following:

1. Extension of Operation dates: At the option of the Owner, the Company shall schedule and maintain the Facility to allow use before or after the effective dates of this Agreement. The Owner agrees to notify Company in writing thirty (30) days prior to the start of said additional operation. The cost for "extension of operation" not covered by this agreement shall be \$50.00 for each day (including days the pool is closed) or \$325.00 per week. Amount shall be payable to the Company with the thirty (30) day written notice. This cost is in addition to the fees as provided hereinafter.
2. Extra hours of Operation. The Owner agrees to be responsible for giving the Company no less than seven (7) days of prior written notice for any other additional hours of operation. The Company shall not schedule any lifeguards beyond the hour of 11:00 p.m. Lifeguards scheduled by the Company, other than those specified in this contract, shall be at the rate of \$18.50 per lifeguard hour. Amount shall be payable to the Company with the seven (7) day prior written notice. This cost is in addition to the fees as provided hereinafter.

2.14. **MISCELLANEOUS:**

1. Owner agrees to allow Company to display its sign on the Facility.
2. Vandalism: Upon notification from the Company, Owner agrees to be responsible for clean up as a result of vandalism.
3. Rain Days: On rain days, in consultation with the Superintendent, Division of Parks and Recreation, the Company shall have the option to close facility with no refund provided to Owner. In the event of severe weather, Company shall have the right to close pool with no refund provided to Owner.
4. Emergency Closing of Facility: The Owner and/or the Company may close the pool in an emergency situation, whether the emergency is caused by a breakdown of equipment, any act of God, repairs, or by any other causes outside the control of Company. This shall not require any change or adjustment in any provisions of this agreement. Should a time lapse of more than five (5) days be necessary to perform repairs and/or restore the Facility to normal operation, Company shall refund fifty percent (50%) of the daily operational cost to Owner until such time as the Facility is reopened for normal operation.
5. Owner agrees to communicate any comments, suggestions, or complaints concerning the Facility, staff, or management service directly to Company's management.
6. The Company shall not be liable for Facility damages caused by hydrostatic lifting or faulty construction.
7. To comply with national, state and local codes and recommendations, the Company shall close and treat the Facility in the event that fecal matter, vomit, or blood should contaminate the pool.

2.15. **CLOSING:** The Facility shall be considered closed to swimmers after Labor Day of each year and shall be closed one week after Labor Day of each year, to allow other Owner functions, such as "Doggy Dip". The Company shall close and make ready the pool for the off-season as soon after that date as Company deems possible. The Company shall complete the following services to close the Facility:

1. Pump pool water to correct level.
2. Drain pumps and hair/lint strainer. Upon written request, Company shall also drain all fresh water lines and fixtures in the bath house and fill line. Owner agrees to pay additional charges for additional services.
3. Backwash and drain filter tanks.
4. Open all valves to appropriate settings.
5. Store Owner's deck furniture at Owner's site.
6. Remove and store skimmer parts.
7. Cover all skimmers with plastic to prevent winter rain from refilling drained skimmers.
8. Remove and store all moveable ladders, lifeguard chairs.
9. Clean and store chemical feeders.
10. Drain and store water hoses.
11. Lubricate filter system valves.
12. Grease motor bearings. (If applicable)
13. Perform Closing Inspection report. Owner agrees to meet with Company representative to review all items listed on Closing Inspection.

SECTION 3: FEES

3.1. **PAYMENTS:** Owner shall pay to Company the annual sum of: (a) \$223,818.00 for 2020; (b) \$228,295.00 for 2021; (c) \$232,861.00 for 2022; (d), \$237,519.00 for 2023; and, (e) \$242,270.00 for 2024. Said payments by shall be made in accordance with the following schedule:

1. Five percent (5%) on or before April 1 of each year
2. Ten percent (10%) on or before May 1 of each year
3. Twenty-five percent (25%) on or before June 1 of each year
4. Twenty-five percent (25%) on or before July 1 of each year
5. Twenty-five percent (25%) on or before August 1 of each year
6. Ten percent (10%) upon completion of closing duties as provided in Section 2.15

Any payment not made within five (5) days of the dates listed above shall be subject to a delinquent payment of one and a half percent (1.5%) of the amount due or any portion thereof. In the event a contract payment is not received within ten (10) days of the dates listed above, the Company shall have the right, at its option, and within its sole discretion, to interrupt or terminate its services under this Agreement and to withdraw and remove all personnel and supplies from Owner's pool facilities without any further or additional notice to Owner.

Any and all other Payments, including, but not limited to, payments for repairs, parts, equipment, or labor, not made on or before ten (10) days from the due date shall be subject to a delinquent payment of one and a half percent (1.5%) of the amount due or any portion thereof. In the event payments are not received fifteen (15) days from the due date, the Company shall have the right, at its option, and within its sole discretion, to interrupt or terminate its services under this Agreement and to withdraw and remove all personnel and any unpaid for parts, equipment, and/or supplies from the Facility without any further or additional notice to Owner.

3.2. **FEES/REVENUES:** Company shall collect all daily Facility usage fees and place these into a designated bank night depository. Owner will receive ONE hundred percent of all daily admissions to the Facility. Company shall also prepare and remit a daily cash sheet to match money that is deposited.

3.3. **AFTER HOURS EVENTS/SPECIAL EVENTS:** Company will be responsible for scheduling all after hours, special events at the Facility. Company shall assist concession contractor in coordinating and scheduling said special events. All birthday parties scheduled at the Facility shall be coordinated by Company, and shall be catered by the concession contractor, if applicable.

Company shall be entitled to all revenue from after-hours/special events, excluding birthday parties during regular hours, which will be scheduled by the Company, in cooperation with the concession contractor.

3.4. **MARKETING/PROMOTIONS:** Shall be the responsibility of the Owner. The Company shall assist the Owner and the marketing concern in promotion and implementation of advertising and marketing campaigns. Any additional advertising and marketing the Company wishes to provide must be approved by the Owner and the marketing concern, prior to the launch.

IN WITNESS WHEREOF, the parties have executed this Management Agreement as of the effective date stated herein.

Hopkinsville/Christian County Family Young Men's Christian Association, Inc.

By: _____
Sheryl Ellis, CEO

City of Hopkinsville, Kentucky

By: _____
Wendell Lynch, Mayor