

POOL USE AGREEMENT
BETWEEN
YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE SUNCOAST, INC.
AND
HERNANDO COUNTY SCHOOL BOARD

This POOL USE AGREEMENT (the "Agreement") is made and entered into as of the 1 day of July, 2022 between the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE SUNCOAST, INC.**, a Florida Not For Profit Corporation ("YMCA"), whose address is 2469 Enterprise Road, Clearwater, FL 33763 and **THE HERNANDO COUNTY SCHOOL BOARD, BROOKSVILLE, FLORIDA**, a political corporate body organized and existing under the laws of the State of Florida, whose address is 919 N. Broad Street, Brooksville, FL 34601 ("**BOARD**"); collectively referred to as the "**PARTIES**". In consideration of the mutual representations, terms, and covenants hereinafter set forth, the parties hereby agree as follows:

1. **DEFINITIONS.** As used herein, the following terms shall have the following definitions:
 - 1.1. "**Pool**" shall mean the swimming pool located at the Hernando County Branch of the YMCA ("**Hernando Branch**"), 1300 Mariner Boulevard, Spring Hill, Florida 34609.
 - 1.2. "**District**" shall mean the Hernando County School District.
 - 1.3. "**District Use**" shall mean the use of the YMCA Pool and Facilities by the BOARD and District for District approved events.
 - 1.4. "**Joint Scheduling Conference or JSC**" shall mean the yearly conference attended by the YMCA and BOARD, or their designees, to coordinate and plan the District Use of the Pool and Facilities.
 - 1.5. "**Facilities**" shall mean the pool, locker rooms, bathrooms, and parking area and other areas of the YMCA approved by the YMCA for use by the District.

1.6. **"YMCA Designee"** shall mean the person designated by the YMCA to attend the Joint Scheduling Conference and all other meetings with the Board or District.

1.7. **"District Designee"** shall mean the person designated by the Superintendent of Schools to attend the Joint Scheduling Conference and all other meetings with the YMCA.

1.8. **"Annual Schedule"** shall mean the schedule of swim practices and swim meets agreed upon for District Use of the Pool and Facilities.

1.9. **"Term"** shall mean means a term of approximately thirty-six (36) months, commencing on the Commencement Date, and ending on July 1, 2025.

1.10. **"Commencement Date"** shall mean July 1, 2022.

2. DUTIES OF YMCA.

2.1. Subject to the terms and conditions of this Agreement, during the Term, the YMCA agrees to make available the Facilities and Pool for District Use in accordance with the Annual Schedule. The YMCA requires all swim team members and coaches complete the YMCA waiver agreement prior to any swim practices or swim meets. The YMCA will facilitate the administration and processing of the waiver agreements.

2.2. The YMCA shall maintain the Pool with appropriate filtration, sanitizing and chlorinating systems and in accordance with required state and federal regulations.

2.3. The YMCA shall provide certified lifeguards during the District Use of the Pool.

3. BOARD USE OF THE FACILITIES.

3.1. The BOARD shall pay the YMCA a initial fee of \$4,100.00, by invoice, paid on a yearly basis, to defray the costs incurred by the YMCA for the District's use of the Facilities and Pool. If this Agreement is terminated before the end of a given quarter, the fee shall be prorated. The annual fee shall be increased three percent (3%) each year commencing on the first anniversary of the date of this Agreement.

3.2. The District agrees to use the Facilities and Pool in accordance with the terms and conditions of this Agreement and any reasonable rules, policies and

procedures, as may from time to time be made by the YMCA for the general safety, comfort, and convenience of the YMCA and its members, and shall cause the BOARD'S and/or the District's employees, agents, invitees, and licensees to abide by such rules and regulations.

3.3. The BOARD shall provide and maintain any necessary equipment required for swim practices and meets.

3.4. The BOARD shall be solely responsible for all coaching and deck management of participants in swim practices and meets, all in accordance with any rules, policies and procedures established by the YMCA. In addition, the BOARD shall be solely responsible for performing all background screenings required by law for all coaches and volunteers working with the student participants.

4. JOINT SCHEDULING CONFERENCE FOR FACILITIES USE.

4.1. The YMCA and the BOARD will set a date for the Joint Scheduling Conference to be held in the spring for the upcoming school year, after the schedule is released by FHSAA, at a mutually agreeable time and place to agree upon an Annual Schedule for District Use.

4.2. The JSC shall be attended by the District Designee and the YMCA Designee, and the Parties' Designees shall be the contact persons for all matters related to the District Use of the Pool and Facilities, until further notice of a change in the District Designee or the YMCA Designee.

4.3. At least thirty (30) days prior to the JSC, the District Designee shall provide the YMCA Designee a proposed schedule for the District Use of the Pool and Facilities.

4.4. The parties stipulate and agree that District Use during swim season and playoffs shall consist of two practice sessions between 3:30 – 5:30 p.m. and 7:30 – 9:30 p.m. each Monday through Friday, utilizing up to four lanes per session, which lanes shall be designated by the YMCA. In addition thereto, the schedule shall consist of swim meets on Saturdays during September and October from 6:00 – 8:30 p.m., where the entire Pool shall be closed to YMCA members.

4.5. The Superintendent of the BOARD and the President/CEO of YMCA shall each execute the Annual Schedule which shall be binding upon the Parties.

4.6. If the District Use of the Pool and Facilities is changed, canceled or suspended due to inclement weather conditions, the YMCA shall reasonably cooperate with the District to try and re-schedule such use, so long as it does not interfere with the scheduled activities of the YMCA.

5. **SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be construed in any way to waive the sovereign immunity of Board under §768.28, Fla. Stats. The BOARD shall be and act as an independent contractor, and under no circumstances shall this Agreement be construed as one of agency, partnership, or joint venture of employment between the YMCA and the BOARD and/or agency thereof. None of the personnel under contract to, employed by or volunteering for the BOARD shall be deemed in any way to have any contractual relationship with the YMCA. The BOARD shall be solely responsible for the conduct of its employees and agents in connection with their performance of obligations hereunder. The YMCA shall be and act as an independent contractor, and under no circumstances shall this Agreement be construed as one of agency, partnership, or joint venture of employment between the Board and the YMCA. None of the personnel under contract to, employed by or volunteering for the YMCA shall be deemed in any way to have any contractual relationship with the Board and/or agency thereof. The YMCA shall be solely responsible for the conduct of its employees and agents in connection with their performance of obligations hereunder.

6. **Force Majeure.** Neither party hereto shall not be liable or responsible for damages, or in any manner whatsoever to the other party, for failure or delay in performing or fulfilling any provision of this Agreement when such failure or delay is due to fire, strikes, war, civil commotion, labor or employment difficulties, acts of God, acts of public authorities or delays defaults caused by public carriers or for any other actions or causes whatsoever, similar or dissimilar, which cannot reasonably be forecast or provided against and which cannot be overcome by due diligence. In such event, the time for performance shall be extended for the period of continuance of such force

majeure condition, provided, however, that the party raising such cause shall (i) promptly, a after having knowledge of the commencement thereof, notify the other party in writing of the nature of such cause and the expected delay, (ii) continue to keep the other party informed as to the conditions, (iii) take all reasonable steps to eliminate such causes of the delay and (iv) shall continue performance hereunder with the utmost dispatch whenever such reason or cause is removed. In the event any such cause(s) shall continue for a period of six (6) months, the parties hereto shall mutually discuss the matter and the course of action to be taken.

7. INDEMNIFICATION AND INSURANCE REQUIREMENTS.

7.1. The YMCA for itself and its officers or employees, shall fully indemnify and hold the BOARD and its officers and employees harmless for any from any claim, loss, damage or liability, which may be made, incurred or asserted against the BOARD by third parties arising or resulting in damage to property or injury to person to the extent caused by the negligence, misfeasance or malfeasance by the YMCA, its employees, appointees or agents, in the performance of or relating to the performance of the duties imposed upon the YMCA by this Agreement and any covenant or provision hereof, including but not limited to defending the BOARD and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon BOARD, or payment of any and all cost(s), damage(s), judgment(s), or loss(es) incurred by or imposed upon the BOARD. The YMCA shall immediately give the BOARD written notice of any and all claims asserted against the YMCA, which relate to the District's use of the Pool and/or Facilities as contemplated under this Agreement, and the BOARD shall have the right but not the obligation to participate in any defense. The YMCA shall maintain, throughout the term of this Agreement and any renewals, general liability insurance in an amount of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate covering its activities pursuant to this Agreement. The policy shall be obtained from a liability insurance carrier rated "A" or higher, under a policy approved for use in the State of Florida. The policy shall contain an evidence/endorsement providing physical and sexual abuse and molestation

coverage. The YMCA shall provide the BOARD with a Certificate of Insurance naming "The School Board of Hernando County, Florida, its officers, employees, and agents" as included in an additional insured endorsement to the general liability policy it as an additional insured under the YMCA'S policy and unconditionally entitling the BOARD to thirty days notice of cancellation of such policy. The BOARD shall not take any action that would result in cancellation of coverage for the YMCA under such policy. The YMCA shall at all times maintain and provide the SCHOOL BOARD with confirmation that the YMCA maintains workman's compensation insurance and automobile liability insurance.

7.2 The BOARD for itself and its officers, employees, agents, representatives, contractors, or sub-contractors, shall fully indemnify and hold the YMCA and its officers and employees harmless for any from any claim, loss, damage or liability which may be made, incurred or asserted against the YMCA by third parties arising or resulting in damage to property or injury to person to the extent caused by the caused by negligence, misfeasance or malfeasance by the BOARD, its employees, appointees or agents, in the performance of or relating to the performance of the duties imposed upon the BOARD by this Agreement and any covenant or provision hereof, including but not limited to defending the YMCA and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon YMCA, or payment of any and all cost(s), damage(s), judgment(s), or loss(es) incurred by or imposed upon the YMCA. The BOARD shall immediately give the YMCA written notice of any and all claims asserted against the BOARD, which relate to the District's use of the Pool and/or Facilities as contemplated under this Agreement, and the YMCA shall have the right but not the obligation to participate in any defense. The BOARD shall maintain, throughout the term of this Agreement and any renewals, general liability insurance in an amount of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate covering its activities pursuant to this Agreement. The policy shall be obtained from a liability insurance carrier rated "A" or higher, under a policy approved for use in the State of Florida. The policy shall contain an evidence/endorsement providing physical and sexual abuse and molestation coverage. The BOARD shall

provide the YMCA with a Certificate of Insurance naming "The Young Men's Christian Association of the Suncoast, Inc., its officers, employees, and agents" as included in an additional insured endorsement to the general liability policy it as an additional insured under the BOARD'S policy and unconditionally entitling the YMCA to thirty days notice of cancellation of such policy or any of the coverages provided by such policy. The YMCA shall not take any action that would result in cancellation of coverage for the BOARD under such policy. Notwithstanding the foregoing, the School Board intends to avail itself of the benefits of Section 768.28 and of other statutes and common law governing sovereign immunity to the fullest extent possible. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. The BOARD shall at all times maintain and provide the YMCA with confirmation that the BOARD maintains workman's compensation insurance and automobile liability insurance.

8. **ATTORNEYS' FEES AND EXPENSES IN ACTION FOR BREACH.** The substantially prevailing party in any litigation under this Agreement, shall be entitled to recover reasonable attorneys' fees, paralegal fees, law clerk fees, and other costs and expenses from the non-prevailing party, whether incurred at or before the trial level, during litigation of the amount of fees to be recovered ("fees for fees"), or in any appellate, bankruptcy and/or collection proceeding. For the purposes of this paragraph, the costs to be recovered, regardless of whether incurred pre-suit, during litigation, or after the trial level, including any appellate, bankruptcy and/or collection proceedings, shall include both taxable costs and non-taxable costs, including all costs under the Uniform Guidelines for Taxation of Costs, such as the cost of electronic research; telephone calls, including long-distance, toll and conference charges; costs incurred in connection with matters not reasonably calculated to lead to the discovery of admissible evidence; travel time, fees and expenses of attorneys, paralegals, law clerks, all other legal support staff, experts, consultants, witnesses, parties, court reporters, videographers, and all other technicians, regardless of whether testifying or non-testifying, if applicable; all

mediation fees and expenses, including the mediator's fees and costs; all costs associated with depositions, including transcript originals and copies in both hard and electronic form; service of process fees and costs, both for the sheriff and private servers; court filing fees and costs; costs associated with the production and/or use of documents and exhibits, regardless of whether in paper or electronic form, including the cost of hosting and managing e-discovery, and regardless of whether during discovery or at trial; subpoena costs; and all fees, charges and expenses related to the use of magistrates, guardians ad litem, attorneys ad litem, and other specialized members of the judiciary and legal personnel.

9. **TERMINATION OF AGREEMENT.** The Agreement will remain in effect for the Term of the Agreement unless terminated by either party as follows:

9.1. Upon breach of the Agreement by a party, the other party shall give written notice of termination of the Agreement specifying the claimed breach and the action required to cure the breach. If the breaching party fails to cure the breach within thirty (30) days from receipt of said notice, then the Agreement shall terminate sixty (60) days from receipt of the written notice.

9.2. Either party may terminate the Agreement without cause by giving written notice to the other party that the agreement will terminate one hundred and twenty (120) days from the receipt of said notice by the other party.

9.3. Upon the mutual agreement of the Parties.

9.4. Upon the termination of that certain 2019 Master Agreement the Hernando County School Board and YMCA of the Suncoast dated June 25, 2019.

10. **ENTIRE AGREEMENT.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein 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. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations

or agreements whether oral or written.

11. **PREPARATION OF AGREEMENT.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12. **WAIVER.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the information of this Agreement and, therefore, is a material term thereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

13. **COMPLIANCE WITH LAW.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations in this Agreement.

14. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the validity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

15. **CAPTIONS.** The captions, sections numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

16. **AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

17. **NOTICES.** All notices, consents, demands, or other communications required or permitted to be given pursuant to this Agreement shall be in writing by e-mail and hard copy, and shall be deemed sufficiently given and received on: (i) the day on which delivered personally or via facsimile transfer during a business day to the appropriate location(s) listed below; (ii) one (1) business day after delivered to a nationally recognized overnight delivery service such as Federal Express or Airborne Express for overnight delivery to the appropriate location(s) listed below; or (iii) three (3) business days after the posting thereof by United States registered or certified first class mail, return receipt requested with postage and fees prepaid and addressed as follows:

If to BOARD:

John Stratton
Superintendent
Hernando County School District
919 N. Broad Street
Brooksville, FL 34601

If to YMCA:

G. Scott Goyer
President/CEO
2469 Enterprise Road
Clearwater, FL 33763

Any party may change his, her or its address and/or the address of the entity copied on his, her or its behalf upon written notice to all other Parties.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

Approved as to Form
Hernando County School Board:

Nancy McClain Alfonso

General Counsel, HCSB

By: Gus Guadagnino

Board Chairperson

YMCA:


G. Scott Geyer
Title: President/CEO

Date: 5-25-2022