

LOWER PAXTON TOWNSHIP
BOARD OF SUPERVISORS
TUESDAY, OCTOBER 13, 2020 - 7:00 PM,
425 PRINCE STREET, LOWER PAXTON, PA

CALL TO ORDER - CHAIRMAN HENRY

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

ACTION ON A SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT
WITH TURNKEY TAXES, INC. - Mr. Gotshall

FIRST PRESENTATION OF A LEASE AGREEMENT WITH THE HARRISBURG AREA
YMCA FOR THE RENTAL OF CERTAIN PORTIONS OF THE FRIENDSHIP CENTER -
Mr. Gotshall and Mr. Stine

SUBDIVISION AND LAND DEVELOPMENT

ANNOUNCEMENTS

ADJOURN

NEXT BOARD MEETING (Business Meeting), TUESDAY, OCTOBER 20, 2020; 7:00 P.M.



Cost Proposal

Lower Paxton Township
September 11, 2020

Return On Investment

Description	Investment
Lower Paxton Twp. Total EIT	\$8 million
Projected TKT identified revenue	10% (very conservative) = \$800k

Cost Schedule

Description	Investment
**Monthly License (\$1,000) & Services (\$1,000)	\$2,000.00
Identified/Deposited Revenue	20%

**** The combined License & Service fees will be deferred for up to 6 months or until revenue exceeds invoices withheld, whichever comes first.**



Software License and Professional Services Agreement

This Software License and Professional Services Agreement (the “**Agreement**”), is entered into this ____ day of _____, 2020 (the “**Effective Date**”), by and between **turnKey Taxes, Inc.**, a Pennsylvania corporation, with a business address of 1936 Fifth Avenue, Pittsburgh, Pennsylvania 15219 (hereinafter “**turnKey**”) and **Lower Paxton Township**, a Pennsylvania municipality, with a business address of 425 Prince Street, Harrisburg, PA 17109 (“**Client**”). Client and turnKey may be referred to individually as a “party” and collectively as the “parties.”

RECITALS

- A. turnKey has developed and owns a certain software application known as turnKey Taxes which it provides as a remotely accessible service (the “**Software**”).
- B. turnKey has developed a unique expertise and experience in developing methods and approaches to analysis and collection of delinquent municipal taxes and other revenues, together with obtaining, cleaning, analyzing and organizing historical and current records relating to tax and other revenues, and converting such data into electronic forms (collectively, the “**Services**”).
- C. Client is a tax collecting governmental entity having unpaid taxes due and owing from taxpayers (the “**Delinquent Taxes**”). Client also possesses certain tax and other records in various forms and formats relating to the Delinquent Taxes, including, without limitation, tax registers, complete property, business and individual tax filing and payment history and utility payment data (the “**Tax Records**”).
- D. Client desires to license the Software from turnKey and to also engage turnKey to provide the Services and turnKey desires to license the Software and to provide such Services to Client based upon the terms and conditions of this Agreement.

TERMS AND CONSIDERATION

NOW THEREFORE, in consideration of the mutual promises and of the mutual agreements herein contained (including without limitation the Recitals above which are incorporated by reference) and intending to be legally bound hereby, Client and turnKey agree as follows:

1. **Servicing Arrangement.** Client agrees to retain turnKey and turnKey accepts such retention, as an independent contractor to perform the Services for the Term, as set forth herein or as mutually agreeable in writing by the parties.
2. **Relationship of Parties.** turnKey shall perform the Services under this Agreement as an independent contractor and not as an agent, servant or employee of the Client.
3. **Software License.**
 - A. **Grant of License.** Under the terms of this Agreement, and for the payment of the fees set forth herein, turnKey grants to Client a nonexclusive, non-transferrable, non-sublicensable license to access the Software for the Term (“**License**”).

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- B. Customization of Software. turnKey shall customize the Software as it reasonably determines is needed in order to allow Client to access electronic Tax Records as held by turnKey.
- C. Maintenance of Software; Training. turnKey shall maintain the Software and shall exercise commercially reasonable efforts to promptly correct any failure of the Software to perform in a manner to allow Client to access its Tax Records in a manner that is satisfactory to Client.

4. **Obligations of turnKey.**

- A. turnKey will examine, scrub, validate, convert and maintain the Client's electronic tax records held by turnKey.
- B. turnKey will identify taxes and fees that have not been previously identified or collected by the current tax collector, delinquent tax collector or department of or for Client.
- C. turnKey will coordinate efforts with all relevant parties to collect Delinquent Taxes. turnKey will be directly involved in the collection efforts, sending the delinquent notices and receiving and depositing the payments. All payment records will be uploaded to the Software for access by Client.

5. **Obligations of Client.** Client will provide to turnKey all relevant or potentially relevant information necessary to assess and complete turnKey's obligations including, without limitation, Tax Records and to permit turnKey to:

- A. convert Tax Record and other data into a useable / normalized format for validation;
- B. import taxpayer demographic data;
- C. import relevant transactional data; and
- D. perform an analysis and generate comparison records that can be used to identify Delinquent Taxes.

All data and information provided by Client to turnKey will be considered Tax Records.

6. **Term and Termination.**

- A. Term. This Agreement shall have a term extending from the Effective Date for a period of (3) years (the "**Initial Term**"). The Agreement shall automatically renew at the end of the Initial Term for successive one (1) year periods (each and collectively with the Initial Term, the "**Term**") absent written notice of cancellation by either party no less than ninety (90) days prior to the end of any Term.
- B. Termination for Cause. Termination may be made for cause if either party materially breaches any term of this Agreement and said breaching party fails to cure such

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material breach within thirty (30) days of receiving written notice thereof from the non-breaching party. Notwithstanding the foregoing, if the cure requires more than thirty (30) days and the breaching party commences such cure reasonably promptly within the thirty (30) days and completes the cure within a reasonable time thereafter, the breaching party shall not be in default of this Agreement.

- C. Effect of Termination. Within thirty (30) days following the expiration or termination of the Agreement, all electronic Tax Records held by turnKey will be delivered by turnKey to Client in an electronic format. For the purpose of clarity, termination or expiration of this Agreement does not and will not affect any fees, costs or reimbursements due and owing to turnKey which have accrued prior to termination or expiration.
7. Meetings. The Client and turnKey shall meet at least once every three (3) months to evaluate the progress, substance, and quality of the Services. Such meetings may be requested more frequently by turnKey on a commercially reasonable basis.
8. Compensation. During the Term:
- A. License Fee. Client shall pay one thousand (\$1,000) dollars per month for the License to the Software.
- B. Services Fee. For the provision of the Services by turnKey, Client shall pay:
- i. a fixed fee of one (\$1,000) dollars per month; and
 - ii. a sum in the amount of twenty (20%) percent of Delinquent Taxes that are identified by turnKey as taxes or fees that have not been previously collected by the current or any former tax collector or other official or agent of Client and actually collected by turnKey.
- C. Deferment.
- i. Payment of the License and Service Fees of two thousand (\$2,000) per month will be deferred for up to six months or until deposited revenues exceed the outstanding balance.
 - ii. Commissions earned by turnKey will not be paid by Client until the amounts identified have been collected by the delinquent collector and deposited in the Client's bank account.
- D. Conversion Fees. If the Tax Records require conversion from paper or other manual records of Client, turnKey will charge a conversion fee based upon its then-current hourly rate.
- E. Expenses. Mailing and other out of pocket costs of turnKey will be deducted from all Delinquent Taxes collected by turnKey.

For the avoidance of doubt, all fees paid to turnKey are in addition to any fees/costs that the Client may be obligated to pay any third-party tax collector (current or delinquent).

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9. Intellectual Property.

- A. Tax Records. The Client shall be the owner of all right, title and interest in and to the Tax Records produced by Client or as developed by turnKey under this Agreement.
- B. Software. turnKey shall be the owner of all right, title and interest in and to the Software, including without limitations any modifications, customizations or configurations made pursuant to this Agreement.

10. Nondisclosure of Proprietary Information. The parties acknowledge that during the engagement each will have access to and become acquainted with various trade secrets, processes, information, records, and specifications owned or licensed thereby in connection with the operation of the Services and the License including, without limitation, business and product processes, methods, accounts, and procedures (“**Confidential Information**”). Each party agrees not to disclose any Confidential Information, directly or indirectly, or use any Confidential Information in any manner, either during the term of this Agreement or at any time thereafter, except as required by this Agreement. Each party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Neither party shall not retain any copies of Confidential Information without the disclosing party’s prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the disclosing party, the receiving party shall immediately deliver or destroy all requested files, records, documents, information and other items in its possession or under its control. The parties’ obligations of confidentiality and non-use shall not apply to any information that: (a) is publicly known at the time of disclosure; (b) becomes public knowledge without breach of this Agreement; (c) is known to the recipient at the time of the disclosure and not subject to any restriction; (d) is lawfully obtained without restriction from a third party not affiliated with any party; or (e) is independently developed by the recipient without access to the Confidential Information.

11. Use of Client Name. turnKey shall not at any time during the Term or otherwise represent itself as having any relationship with the Client as officer, employee, or agent; neither shall turnKey represent itself as being the Client.

12. Representations and Warranties.

- A. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:
 - i. it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;
 - ii. the execution of this Agreement by its representative whose signature is set forth on this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and



iii. when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

B. Additional turnKey Representations and Warranties. turnKey further represents, warrants and covenants to Client that:

- i. it is the legal and beneficial owner or licensee of the entire right, title and interest in and to the Software;
- ii. it has the right, power and authority to grant and perform the License hereunder; and
- iii. when used by Client in accordance with this Agreement, the Software as delivered by turnKey does or will not: infringe, misappropriate or otherwise violate any intellectual property right of any third party.

C. Performance Warranty and Limited Remedy. During the Term, turnKey warrants to client that the Software will perform substantially in accordance with its specifications. turnKey's sole obligation and Client's exclusive remedy in connection with the breach of a warranty provided under this section shall be for turnKey to repair non-conforming Software. turnKey will exert commercially reasonable efforts to maintain any Tax Records held by turnKey.

EXCEPT AS MAY BE CAUSED BY TURNKEY'S NEGLIGENCE OR WILFUL MISCONDUCT, TURNKEY HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF HOSTED TAX RECORDS.

13. Indemnifications.

A. General Indemnity by turnKey. turnKey will defend Client from any third party claim, including but not limited to claims by Client agents, employees and contractors, for (i) wrongful death of or bodily injury, to the extent caused by turnKey's negligence or intentional torts, or (ii) physical damage to tangible personal property, to the extent caused by turnKey's negligence or intentional torts, (iii) willful or reckless misrepresentations made by turnKey to third parties, (iv) breach of any of turnKey's representations, warranties, covenants or obligations under this Agreement; or (v) unauthorized use of Tax Records in breach of turnKey's confidentiality obligations herein, to the extent caused by turnKey's negligence or intentional torts, and will pay costs and damages awarded against Client in any such claim that are specifically attributable to turnKey's negligence or intentional torts or those costs and damages agreed to by turnKey in a monetary settlement of such claim.

B. General Indemnity by Client. To the extent authorized by applicable law, Client will defend turnKey from any third party claim for or based upon: (i) wrongful death of or bodily injury, to the extent caused by Client's negligence or intentional torts, (ii)



inaccurate or otherwise improper Tax Records or any other materials or information provided by or on behalf of Client; (iii) breach of any of Client's representations, warranties, covenants or obligations under this Agreement; or (iv) physical damage to tangible personal property, to the extent caused by Client's negligence or intentional torts, and will pay costs and damages awarded against turnKey in any such claim that are specifically attributable to Client's negligence or intentional torts or those costs and damages agreed to by Client in a monetary settlement of such claim.

- C. Infringement Indemnity. Except to the extent that Client is obligated to indemnify turnKey under this section, turnKey shall indemnify and hold harmless Client, its officers, directors, employees, shareholders, legal representatives, agents, successors and assigns, from and against any damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) arising out of any third party claims arising from a claim that the Software infringes any U.S. patent, copyright, trade secret or trademark of a third party; provided however, that (i) Client shall have promptly provided turnKey with written notice thereof and reasonable cooperation, and assistance in connection therewith; and (ii) turnKey shall have sole control and authority with respect to the defense, settlement, or compromise thereof, so long as the turnKey does not admit fault on the part of Client without the Client's prior written approval. If any materials provided by turnKey become, or in turnKey opinion are likely to become, the subject of a claimed intellectual property infringement or other claim, turnKey may, at its option: (i) procure for Client the right to continue using the materials; or (ii) replace or modify the materials to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is reasonably available, Client shall return all copies of the materials upon notice from turnKey, and turnKey shall provide Client with a pro-rata refund of the unearned fees paid by Client to turnKey in connection with any such returned materials.
- D. Limitations of Infringement Indemnity. In no event will turnKey have any obligations under this Agreement or any liability for any claim or action to the extent the claim or action is caused by, or results from: (i) the combination or use of Software or any other deliverables with non-turnKey software, services, Services or data, if such claim or action would have been avoided by the non-combined or exclusive use of the Software or other deliverables, (ii) modification of the Software or any other deliverables by anyone other than turnKey if such claim or action would have been avoided by use of the unmodified Software, (iii) the continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (iv) Client's use of the Software or any other deliverables in a manner not materially in accordance with this Agreement or related documentation, (v) any modification of the Software or other deliverables in compliance with Client's specifications (except to the extent such specifications were implemented at the direction of or acting on the advice of turnKey or were approved in writing by turnKey), or (vi) use of the Software other than in substantial compliance with this Agreement. For the avoidance of doubt, turnKey shall have no liability for any Tax Records or other information provided by Client.



- E. **Right to Defend.** As a condition to each party's indemnity obligations under this Agreement, the party claiming indemnification will provide the indemnifying party with prompt written notice of the claim, permit the indemnifying party to control the defense or settlement of the claim, so long as the indemnifying party does not admit fault on the part of the indemnified party without the indemnified party's prior written approval, and provide the indemnifying party with reasonable assistance in connection with such defense or settlement. The indemnified party may employ counsel at its own expense to assist it with respect to any such claim.

THIS SECTION CONSTITUTES EACH PARTY'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST THE OTHER PARTY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT FOR THE AVOIDANCE OF DOUBT, DAMAGES ARISING IN CONNECTION WITH OBLIGATIONS OF INDEMNIFICATION OR CONFIDENTIALITY HEREUNDER SHALL BE DEEMED TO BE DIRECT DAMAGES FOR WHICH RECOVERY SHALL NOT BE BARRED BY THIS PARAGRAPH. TURNKEY'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING HEREIN SHALL LIMIT DAMAGES CAUSED BY (I) EITHER PARTY'S FRAUD, MISREPRESENTATION, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE; (II) A BREACH BY CUSTOMER OF ANY INTELLECTUAL PROPERTY RIGHT OF TURNKEY OR ANY LICENSE GRANTED BY TURNKEY HEREUNDER; OR (III) RELATED TO THE AMOUNTS PAYABLE BY EITHER PARTY PURSUANT TO THE INDEMNIFICATION OBLIGATIONS HEREIN. SUBJECT TO THE FOREGOING, THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED THE TOTAL AMOUNT PAID AND PAYABLE HEREUNDER.

14. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which violates the terms hereunder shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.
15. **Amendment.** This Agreement may be validly amended only by the mutual agreement of the parties in a writing executed by them.



- 16. **Construction.** Whenever used in the Agreement, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.
- 17. **Entire Agreement.** This Agreement contains the entire understanding of the parties and may only be validly amended, modified or revoked in whole or in part at any time or times by the parties hereto by a written instrument signed by all the parties.
- 18. **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- 19. **Force Majeure.** Either party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause of such delay or failure.
- 20. **Governing Law.** The validity of the Agreement as well as the rights and duties of the parties hereunder, shall be governed by the law of the Commonwealth of Pennsylvania.
- 21. **Counterparts.** This Agreement may be executed separately by the parties on counterpart copies, which shall have the same force and effect as if executed in a single document. Furthermore, each party may execute the document utilizing electronic signatures and/or other electronic or facsimile documentation.

IN WITNESS WHEREOF, and with the intention of being legally bound under the laws of the Commonwealth of Pennsylvania, the parties have executed this Agreement by their duly authorized representative.

turnKey Taxes, Inc.

Client



 Authorized Signature

 Authorized Signature

Mark J. Schuster

 Print Name

 Print Name

CEO

 Title

 Title

 Date

 Date

CONCESSIONAIRE AGREEMENT – FRIENDSHIP CENTER

THIS CONCESSIONAIRE AGREEMENT (the “Agreement”) is made and entered into as of the date hereinafter set forth by and between **LOWER PAXTON TOWNSHIP** (“Owner”) and **HARRISBURG AREA YOUNG MEN’S CHRISTIAN ASSOCIATION t/d/b/a HARRISBURG AREA YMCA** (“User”), who agree as follows:

ARTICLE I

Premises, Term and Rental

Section 1.1. Granted Premises. Subject to and in consideration of the terms, covenants, and conditions of this Agreement, Owner hereby grants, demises, and lets to User, and User hereby rents from Owner certain portions of the Friendship Center, located at 5000 Commons Drive, Lower Paxton Township, Harrisburg, Pennsylvania, specifically (i) approximately 51,630 square feet of community center space, but excluding the space currently occupied by the Senior Center and Drayer Physical Therapy (together, the “Existing Tenants”) and (ii) exclusive use of the parking lot in front of the Friendship Center in common with the Existing Tenants (collectively, the “Granted Premises”). From time to time the parties may include additional facilities and fixtures in the Granted Premises by supplementing this Agreement in writing. At such time as this Agreement is so supplemented, such additional facilities and fixtures shall be included in the term “Granted Premises.”

Section 1.2. Term. This Agreement shall be and continue in force and effect for an initial term (the “Initial Term”) commencing on December 1, 2020 (the “Commencement Date”), and continuing for a period of thirty (30) years, unless sooner terminated by Owner or User in accordance with any other provision of this Agreement

Provided that User is not in default or violation of any of the terms of this Agreement, Owner grants to User the option to renew this Agreement two (2) additional terms of thirty (30) years each (each, a “Renewal Term” and, together with the Initial Term, the “Term”), subject to the same terms and conditions of this Agreement. The foregoing renewal options shall be deemed automatically exercised, unless User provides Owner with notice to the contrary no later ninety (90) days prior to the expiration of the Initial Term or the first Renewal Term, as the case may be.

The parties intend the obligations of User and Owner hereunder to be separate and independent covenants and agreements, and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Agreement.

Notwithstanding anything contained herein to the contrary, however, User shall have the right at any time to terminate this Agreement by providing ninety (90) days notice to Owner after User has completed an initial term of one (1) year. In such a case, this Agreement shall terminate on the date identified by User and the parties shall have no further rights or obligations hereunder, except for any such obligations which be their terms survive the expiration or termination of this Agreement.

Section 1.3. Monthly Rental Payment As rental for the use and occupancy of the Granted Premises for the first year of the Agreement, User shall pay, commencing on the Commencement Date, a monthly rental payment of Ten Dollars (\$10.00) (the “Monthly Rental Payment”).

The Monthly Rental Payment shall be payable on the 1st day of each subsequent calendar month, without demand, deduction, offset, or abatement, in lawful money of the United States of America at Owner’s address (or elsewhere, as designated by Owner) and shall be prorated for any partial month.

ARTICLE II

Expenditures by User and Owner

Section 2.1. Property Insurance. Throughout the Term of this Agreement, Owner shall obtain and pay for fire and extended coverage casualty insurance for the Granted Premises, with such comprehensive or so called “all risk” endorsements and in such amounts as Owner may, from time to time, deem reasonably necessary, and shall show User and the Owner as the insured thereon. Owner shall at all times keep such insurance in force and provide User with copies of said policies or certificates evidencing said coverage. The policies shall be in form and content reasonably required by Owner and User and shall be issued by an insurance company approved by Owner and User and shall contain a clause that the insurer will not cancel, materially modify or fail to renew the insurance without first giving User thirty (30) days prior written notice. If Owner fails to keep said insurance in effect, Owner shall be in default hereunder and User may, at its option, immediately obtain insurance coverage as provided for herein and charge User for the cost thereof. User shall reimburse Owner for its Proportionate Share of the cost of said insurance

Section 2.2 Renovation of Granted Premises. For purposes of this Agreement, User shall pay for any improvement, renovation, expansion or other capital project involving only the Granted Premises to be performed by contractors hired by User. Prior to any renovation of the Granted Premises, User shall obtain the approval of the Owner of the improvements to be made to the Granted Premises. Owner shall not be responsible for any costs for any improvement, renovation, expansion or other capital project involving only the Granted Premises. The parties agree and acknowledge, however, that User contemplates that it may expand the building at the Granted Premises by approximately 25,000 square feet at a future date during the Term. Owner

hereby consents to such expansion, which shall be at User's sole cost and expense (the "Future Expansion").

Section 2.3. Maintenance. User shall, at its sole expense, maintain the Granted Premises, in its present condition, ordinary wear and tear excepted. User agrees to perform all interior and exterior maintenance of the Granted Premises. Notwithstanding anything contained herein to the contrary, Owner and User shall share equally in the cost to do the first roof replacement on the Granted Premises. User shall contract with a reputable roofing contractor to replace said roof and pay said contractor directly for all work done. Owner shall reimburse User for fifty (50) percent of the total project cost of the roof replacement. All other future roof replacements shall be at the sole cost and expense of User. In maintaining the Granted Premises, any replacement and repair parts, materials, and equipment used by User shall be of a quality equivalent to those installed within the Granted Premises as of the Commencement Date. User agrees to suffer no waste during the term hereof. If User fails to promptly make such repairs or replacements, Owner may, at its option, make such repairs and replacements and User shall repay the cost thereof to Owner upon demand. Repair and maintenance work shall be done in accordance with federal, state and local laws, regulations, and ordinances pertaining thereto. Cleaning services and any other services provided only to the Granted Premises shall be provided at the sole cost and expense of User.

Section 2.4. Taxes. User shall pay, during the term of this Agreement, the real estate taxes and assessments (collectively the "Taxes") attributable to the Granted Premises and accruing during such term. User, at Owner' option, shall pay to Owner said Taxes on a monthly basis, based on one-twelfth (1/12) of the estimated annual amount of Taxes. Taxes for any fractional calendar year during the term hereof shall be prorated. In the event User does not make any tax payment

required hereunder, User shall be in default of this Agreement. The parties agree and acknowledge, however, that User is a 501(c)(3) charitable organization which generally whose properties are generally exempt from real estate taxation. User intends to seek an exemption for the Granted Premises, and Owner agrees that it will not oppose such exemption request.

Section 2.5 Operating Expenses. It is the intention of the parties and they hereby agree that this shall be a triple net Agreement, and the Owner shall have no obligation to provide any services, perform any acts or pay any expenses, charges, obligations or costs of any kind whatsoever with respect to the Granted Premises, and, subject to Section 2.6 hereof, User hereby agrees to pay one hundred percent of any and all Operating Expenses for the entire Term in accordance with the specific provisions hereinafter set forth. The term “Operating Expenses” shall include all costs to User of operating and maintaining the Granted Premises and related parking areas, and shall include, without limitation, operating materials and supplies, service agreements and charges, cleaning and custodial, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct operating expenses of operating and maintaining the Granted Premises, unless excluded from operating expenses. Notwithstanding the foregoing, operating costs (and User’s obligations in relation thereto) shall not include (i) any amount for which Owner is reimbursed through insurance, by third persons, or directly by other Users of the premises, (ii) repair costs occasioned by fire, windstorm or other casualty covered by insurance, (iii) any construction, repair or maintenance expenses or obligations that are the sole responsibility of the Owner (not to be reimbursed by User), and (iv) costs of items and services for which User reimburses Owner or pays third persons directly.

Section 2.6 Multiple Tenancy Building. The Granted Premises are part of a multiple tenancy building, and as such the responsibility of User for costs are determined by comparing the size of the reimbursements for the following: property insurance, utilities, including gas, electricity, water, sewer, storm water fees; trash removal and disposal, and any maintenance services performed by Owner or otherwise, pursuant to paragraph a of this Section shall be a percentage of the Granted Premises to the rentable floor space in said building occupied by User. It is agreed that User occupies 89.5% (“Proportionate Share”) of the floor space in the building of which the Granted Premises are a part. (51,630 sq.ft. / 57,630sq.ft. = 89.5%).

- a. Owner may, with notice to and agreement of User, elect to perform and provide certain maintenance and services pertaining to the entire building or area of which the Granted Premises are a part including, but not limited to landscaping, lawn maintenance, common area lighting, repaving and restriping the parking lot, paving maintenance and snow and ice removal. In such event, the User shall reimburse Owner for its Proportionate Share of said maintenance services. In the event that Owner does not perform and provide maintenance services, User shall contract for said maintenance services and pay its Proportionate Share of the cost thereof.
- b. Within ninety (90) days following the end of each year during the Agreement Term, Owner shall furnish User a written statement covering the Agreement year just expired (measured from the Commencement Date), showing in reasonable detail a general breakdown of the total cost of said maintenance services, the amount of User’s obligation relating thereto and the payment made by User in connection therewith. Owner shall prepare annually a good faith estimate of User’s Proportionate Share of said maintenance services for the upcoming year. User shall then pay, on the due date

of, in addition to and with the Monthly Rental Payment, one-twelfth (1/12) of the estimated User's Proportionate Share. Owner shall refund any amount over actual costs of such estimated Proportionate Share of said maintenance expenses paid by User in full to User, or User shall pay the amount under such actual costs of such estimated Proportionate Share of said maintenance to Owner, upon demand.

ARTICLE III

Condition and Use of Granted Premises

Section 3.1. Acceptance. User has inspected and is familiar with all of the Granted Premises, and accepts the Granted Premises in its present condition, "WHERE IS, AS IS, AND WITH ALL FAULTS." OWNER HEREBY DISCLAIMS ANY EXPRESSED OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 3.2. Use. Subject to the terms and conditions of this Agreement, the Granted Premises are to be used and occupied by User as a community recreational facility or for other community recreational purposes under the direction of User and any incidental uses necessary thereto and for no other purpose, unless otherwise provided herein. User shall cooperate with Drayer Physical Therapy for the use of the natatorium facilities for their mutual benefit in accordance with the terms and conditions of Section 3.2 of the Lease Agreement between Lower Paxton Township and Drayer Physical Therapy.

Section 3.3. Use of the Granted Premises by Owner. Owner, in its sole discretion, may occupy, staff, supply and use the Granted Premises if necessary in the event of an official declaration of disaster emergency by the Governor of Pennsylvania or the Owner as permitted by applicable law, for any purpose to mitigate the effects of said disaster emergency, including, but

not limited to an emergency shelter, storage and distribution of meals and beverages, storage and distribution of supplies, clothing blankets and other similar uses. Notwithstanding anything herein to the contrary, the used of the Granted Premises by Owner during a disaster emergency shall be limited to ____ days.

Section 3.4. Joint Use of the Granted Premises for Special Community Events.

Owner and User shall, not more than three (3) times per calendar year and for no more than seventy-two (72) hours at a time, use the community use parcel portion of the Granted Premises for special community events, such as the annual Holiday Tree Lighting Ceremony and the Annual Arts & Parks Red Hot 5K. The parties shall cooperate and work together to coordinate such usage for such special events. Anyone attending said special community events may, during the special community events, based on availability, use the parking lot in front of the Friendship Center.

Section 3.5. Compliance with Laws. User shall comply with all laws, ordinances, orders, rules, and regulations promulgated by all federal, state, county, municipal, and other governmental or quasi-governmental bodies and agencies having jurisdiction, and related to the business of User or the use, condition, structure, or occupancy of the Granted Premises.

Section 3.6. Dangerous Goods and Activities. User shall not use, occupy, or permit the use or occupancy of the Granted Premises, or store or permit upon the Granted Premises any goods or equipment that would render any fire and extended coverage insurance void or which would increase the premiums of such insurance. Any hazardous goods or equipment shall be stored in compliance with applicable laws.

Section 3.7. Nuisance. User shall not commit, or suffer to be committed, upon the Granted Premises, any nuisance or thing that disturbs the quiet enjoyment of Owner or any other person or business located within a reasonable distance from the Granted Premises.

Section 3.8. Signs and Advertisements. User shall not place upon nor permit to be placed upon any part of the premises, any signs, billboards or advertisements whatsoever, without the prior written consent of the Owner. All permitted signage shall be at the User's sole expense. Owner hereby consents to the placement of standard YMCA signage at and about the Granted Premises, provided such signage complies with all applicable zoning and other laws.

Section 3.9. Indemnity and Liability Insurance. User shall at all times indemnify, defend and hold Owner harmless from all loss, liability, costs, damages and expenses that may occur or be claimed with respect to any person or persons, or property on or about the Granted Premises or to the Granted Premises resulting from any act done or omission by or through User, its agents, employees, invitees or any person on the Granted Premises by reason of User's use or occupancy or resulting from User's non-use or possession of said property and any and all loss, cost, liability or expense resulting therefrom. User shall maintain, at all times during the Term, comprehensive general liability insurance with an insurance company licensed to do business in the state in which the Granted Premises are located and satisfactory to Owner, properly protecting and indemnifying Owner with single limit coverage of not less than \$_____ for injury to or \$_____ death of persons and \$_____ for property damage. During the Term, User shall furnish Owner with a certificate or certificates of insurance, in a form acceptable to Owner, covering such insurance so maintained by User and naming Owner as an additional insured.

Section 3.10. Surrender. Upon the Termination Date, User shall peaceably surrender possession of the Granted Premises to Owner in a condition and repair similar to the condition and repair of the Granted Premises on the Commencement Date, reasonable wear and tear and damage by casualty excepted.

ARTICLE IV

Condemnation and Destruction

Section 4.1. Condemnation. If, during the Term of this Agreement, the entire Granted Premises or any portion thereof shall be taken in or by condemnation proceedings for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or should be sold to the condemning authority under threat of condemnation, and such taking renders the Granted Premises reasonably unusable for User's intended purposes, this Agreement shall terminate as of the date of the taking or conveyance and all rents reserved hereunder shall abate as of the date of termination. If a lesser portion of the Granted Premises than that specified above shall be taken by condemnation or other proceeding pursuant to any governmental law, ordinance or regulation, or if the use or occupancy of the Granted Premises or any part thereof shall be temporarily requisitioned by any governmental authority, civil or military, which materially interferes with the conduct of User's business, User may, at User's option, by written notice to Owner not later than thirty (30) days following the date on which User is given written notice of the condemnation or taking, elect to treat the condemnation or taking as a taking of the Granted Premises with the same effect as if the entire Granted Premises had in fact been taken. Owner shall receive the entire award from any such taking, except that User shall be entitled to (a) any portion of such award for the Future Expansion; and (b) any award to which User may be entitled under applicable law. In addition, User, at its sole cost and expense, may pursue independent proceedings against the public authority exercising the power of condemnation to prove and establish any damage User may have sustained relating to User's business and relocation expenses.

Section 4.2. Damage by Casualty. If, during the Term or previous thereto, the Granted Premises shall be destroyed or so damaged by fire or other casualty as to become untenable,

then in such event, at the option of the Owner, this Agreement shall terminate from the date of such damage or destruction. Owner shall exercise this option to so terminate this Agreement by notice in writing delivered to User within thirty (30) days after such damage or destruction. Upon such notice, User shall immediately surrender said Granted Premises and all interest therein to Owner, and User shall pay rent only to the time of such damage or destruction. If Owner does not elect to terminate this Agreement, this Agreement shall continue in full force and effect, and Owner shall expeditiously repair the Granted Premises, placing the same in as good a condition as they were at the time of the damage or destruction, and for that purpose, may enter said Granted Premises. In that event rent shall abate in proportion to the extent and duration of untenability. In either event, User shall remove all rubbish, debris, merchandise, furniture, equipment and its other personal property within forty-five (45) days of the after the request by Owner and the time User is allowed to safely reenter the Granted Premises, whichever is later. If the Granted Premises shall be slightly damaged by fire or other casualty, so as not to render the same untenable, then Owner shall expeditiously repair the same and in that case the rent shall not abate. Except for rent abatement as herein provided, no compensation or claim shall be made or allowed to User by reason of inconvenience or loss of business arising from the necessity of repairing any portion of the Granted Premises.

ARTICLE V

Default and Remedies

Section 5.1. Events of Default. The occurrence of one or more of the following events shall, after written notice from Owner or User, as the case may require, constitute a default under this Agreement (“Events of Default”): (i) the failure of User to pay Owner any Monthly Rent Payment or any other monetary charge due from User hereunder within five (5) business days after

written notice from Owner that such payment is due, (ii) the failure of User or Owner to comply with or to observe any term or condition of this Agreement performable by and obligatory upon either, excluding the rent provisions hereof, within ten (10) business days after written notice by Owner or User, as the case may require, (iii) the failure of User or Owner to comply with or to observe any term, covenant or condition of any other contract or agreement between User and Owner, (iv) the judicial declaration of User or Owner as bankrupt or insolvent according to law, or an assignment of a substantial part of User's or Owner's property for the benefit of creditors, (v) the appointment of a receiver, guardian, conservatory, trustee in voluntary bankruptcy, or similar officer by a court of competent jurisdiction to take charge of a substantial part of User's or Owner's property, or (vi) the filing of a petition for involuntary or voluntary reorganization or arrangement of User or Owner pursuant to any provision of the bankruptcy laws.

Section 5.2. Remedies. Upon the occurrence of any event of default by User or Owner under this Agreement, which is not cured within ten (10) business days after written notice of the event of default, Owner and User, as the case may require, shall have the option of (i) terminating this Agreement by written notice hereof to the other, (ii) curing the default of the other, (iii) correcting or remedying the default of the other by injunction or otherwise; or (iv) pursuing any other remedies to which Owner or User may be entitled by contract or under law or in equity.

If Owner elects to terminate this Agreement upon written notice to User for reason of default, this Agreement shall be ended as to User and all of User's rights shall be forfeited and lapsed, as fully as if this Agreement had expired by lapse of time upon the scheduled Termination Date. In such event, User shall be required immediately to vacate the Granted Premises, the Owner shall at once have all the rights of re-entry upon the Granted Premises, without becoming liable for damages or being guilty of trespass. Upon such termination, the following sums shall be immediately recoverable by Owner from User:

- (a) Owner's cost of recovering possession of the Granted Premises, including reasonable attorneys' fees;
- (b) the reasonable cost of repairing the Granted Premises to good condition, normal wear and tear and damage by casualty excepted; and
- (c) all accrued, deferred and unpaid sums, including but not limited to Monthly Rent Payments.

The Owner and User agree that damages for the breach of the agreements set forth in this Agreement may be inadequate and that the Owner and User shall be entitled to specific performance, injunctive relief, or both, in addition to any other legal or equitable remedies to which they may be entitled in case of failure of the other to comply with the provisions hereof.

Section 5.3. Attorney's Fees. If User defaults in the performance of any of the terms or conditions of this Agreement and the Owner places the enforcement of this Agreement, or any part thereof, or the collection of any rent or charge due, or to become due, or the recovery of the possession of the Granted Premises, in the hands of attorneys, and files suit upon the same and ultimately prevails on such suit, the User shall pay the reasonable attorneys' fees of the Owner.

Section 5.4. Cumulative. The rights and remedies hereinabove provided Owner or User in the event of any default by the other, or in the event of any act, omission, or set of circumstances constituting default hereunder, shall be cumulative and not exclusive, one **or** the other, and each of said rights and remedies shall be cumulative of and without prejudice to the rights, remedies and causes of action provided Owner or User by law or equity, present or future.

The election by Owner or User of any specific remedy shall not constitute a waiver by such party of any of its other remedies.

Section 5.5. Waiver. Failure by Owner or User to complain of any action or non-action on the part of the User or Owner, or to declare any default immediately upon the occurrence thereof, no matter how long the same may continue, shall never be deemed to be a waiver by Owner or User of its rights hereunder. Owner or User may make any such complaint, declare any such default, and take such actions as may be authorized by this Agreement at any time, and from time to time. Further, no waiver at any time or any of the terms, provisions, or conditions hereof by Owner or User shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provision. The subsequent approval by Owner or User to or of any action by User or Owner requiring Owner's or User's consent or approval shall not be deemed to waiver or render unnecessary Owner's or User's consent or approval to or of any subsequent similar act by User or Owner.

ARTICLE VI

Assignment and Subordination

Section 6.1. Assignment and Subletting. User covenants and agrees to assign this Agreement or sublet the Granted Premises or any portion thereof only to entities affiliated with the User that compliment the activities and uses contained within the Granted Premises and only with the prior written consent of Owner, and any attempted assignment or subletting without any such consent, whether express or by operation of law, shall be ineffective and void for all purposes. Notwithstanding the foregoing, however, Owner hereby acknowledges and consents to User entering into short term lease or license agreements with third parties for the occupancy of all or a

portion of the Granted Premises where such occupancies are consistent with User's mission and use of the Granted Premises (i.e., swim teams, birthday parties, church services, etc.).

Section 6. **Alterations.** Except for the Future Expansion, User covenants and agrees not to permit any substantial alterations or physical additions in or to the Granted Premises without first obtaining the written consent of Owner. Upon the termination of this Agreement by lapse of time or otherwise, all such alterations, physical additions or improvements, and/or fixtures furnished and installed by User, shall, at Owner's option, become the property of Owner, or in the alternative, Owner may (except for the Future Expansion) require User to remove such property promptly upon the termination of this Agreement and repair any damage to the Granted Premises caused thereby and User's obligation to so repair shall expressly survive the termination of this Agreement. Owner shall not be required to pay for any alterations, physical additions or improvements and/or fixtures installed in the Granted Premises.

Section 6.3. **Quiet Enjoyment.** Owner covenants and agrees, subject to the other terms hereof, that so long as User shall pay all Monthly Rental Payments and any other sums herein provided, and shall observe and perform all of the covenants on User's part to be observed and performed hereunder, then, User shall peaceably and quietly hold and enjoy the Granted Premises for the Term without interruption by Owner or any person or persons.

Section 6.4. **Entry.** User covenants and agrees to permit Owner, its agents and representatives, upon reasonable advance notice, right of entry into and upon any part of the Granted Premises at all reasonable hours to inspect same or to conduct any tests or investigations, as Owner may deem necessary or desirable and User shall not be entitled to any abatement or

reduction of rent by reason of such entry. Owner shall make every effort to avoid disruption of User's business operations.

ARTICLE VII

Miscellaneous

Section 7.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Owner, and shall be binding upon and inure to the benefit of User and its successors and assigns, to the extent an assignment may be approved by Owner hereunder.

Section 7.2 Project 70 Land Acquisition and Borrowing Act and Land and Water Conservation Fund. Owner shall, at its sole cost and expense, obtain any and all required approvals and authorizations with regard to the Granted Premises from the National Park Service, pursuant to the Land and Water Conservation Fund and any and all required approvals from the Pennsylvania General Assembly pursuant to the Project 70 Land Acquisition and Borrowing Act.

Section 7.3 Right of First Refusal. In the event that Drayer Physical Therapy and the Senior Center at any time terminate their respective tenancies during User's tenancy of the Granted Premises, User shall have the right of first refusal to rent the areas previously occupied by Drayer Physical Therapy and the Senior Center from Owner for terms and conditions to be negotiated by the parties.

Section 7.4. Certifications. Owner and User shall, at any time and from time to time during the Terms upon not less than ten (10) days prior written request therefore from the other

said party, execute, acknowledge and deliver unto the requesting party a statement or statements in writing, certifying (if such be true) that this Agreement is unmodified and in good standing (or if modified, then in good standing as modified, stating the modification), and the date or dates, if any, to which Monthly Rental Payments or other sums hereunder, if any, have been paid in advance, it being the intention of the parties hereto that any such statement may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgagee of the Granted Premises, or any part thereof.

Section 7.5. Memorandum of Agreement. At the request of either party and at the requesting party's expense, the other party shall enter into, execute, and acknowledge a memorandum of Agreement for recording purposes with the understanding, however, that the provisions of this Agreement alone set forth the entire agreement of the parties.

Section 7.6. Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by either party to the other hereunder, whether required by this Agreement or in any way related to the transaction contemplated herein, shall be void and of no effect unless given in accordance with the provisions of this Article. All Notices shall be in writing and delivered to the person to whom the Notice is directed, by (a) personal delivery; (b) United States Mail, as a Registered or Certified item/Return Receipt Requested; or (c) nationally recognized overnight delivery service, such as UPS or Federal Express. Notices personally delivered shall be effective upon receipt and notices mailed or sent via overnight delivery service shall be effective when deposited in a post office or other depository under the care or custody of the United States Postal Service or the applicable delivery service, as the case may be, enclosed in a wrapper with proper postage affixed or fees paid, addressed:

If to Owner, as follows:

Bradley Gotshall, Township Manager
Lower Paxton Township
425 Prince Street
Harrisburg, PA 17109

If to User, as follows:

Richard A. Curl, President & CEO
Harrisburg Area YMCA
Corporate Office
805 North Front Street
Harrisburg, PA 17102

Any party hereto may change the address for Notices specified above by giving the other parties ten (10) days advance written notice of such change of address.

Section 7.7. Entire Agreement. This Agreement contains and sets forth the entire agreement and understanding between the parties hereto concerning the Granted Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between said parties other than as herein expressly referenced or set forth herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto, unless reduced to writing and signed by both Owner and User.

Section 7.8. No Partnership. Owner does not, by virtue of this Agreement, become a partner of User, or a joint venture or a member of a joint enterprise with User, in the conduct of User's business, or any owner of User's business. The execution, delivery and performance of this Agreement is not intended to and does not constitute an ownership interest in the User by the Owner.

Section 7.9. Usury Laws. It is the intent of Owner and User in the execution and performance of this Agreement and any-other related instrument, to remain in strict compliance with all applicable law from time to time in effect, including, without limitation, applicable usury

laws. In furtherance thereof, Owner and User stipulate and agree that none of the terms and provisions contained in this Agreement or any other related instrument shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate allowed by applicable law.

In the event the Monthly Rental Payments or any other payment required or permitted hereunder is ever deemed to constitute interest under applicable law, User shall never be required to pay any such amounts at a rate in excess of the maximum rate allowed by applicable law, or in an amount in excess of the maximum amount of interest permitted to be charged under applicable law, and the provisions of this Section 7.7 shall control over all other provisions of this Agreement or any other related instrument which may be in apparent or actual conflict herewith. In the event Owner or any of its successors or assigns shall charge, contract for, take, reserve, or receive monies that are deemed to constitute interest which would, in the absence of this provision, increase the effective rate or amount of interest payable under this Agreement and any related instrument to a rate or amount in excess of that permitted to be charged, contracted for, taken, reserved or received under applicable law then in effect, then the payments otherwise payable thereunder shall be reduced to the amount allowed under said laws as now or hereafter construed by the courts having jurisdiction, and all such monies so charged, contracted for, taken, reserved or received that are deemed to constitute interest in excess of the maximum rate permitted by applicable law shall be immediately returned to or credited to the account of User.

Section 7.10. Captions. The captions, paragraph numbers and article numbers appearing in this Agreement are inserted only as a matter of convenience and in no wise define, limit, construe or describe the scope or intent of such paragraphs or articles, nor in anywise affect this Agreement.

Section 7.11. Severability. If any provision, covenant or condition 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 provision, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision, covenant or condition of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

Section 7.12. Survival. Any representation, warranty, covenant or agreement contained herein which contemplates performance after the expiration or termination of this Agreement shall be deemed to survive such expiration or termination.

Section 7.13. Counterparts. This Agreement may be executed in two or more counterparts and all such counterparts shall be deemed to constitute one and the same instrument.

Section 7.14. No Waiver. No failure or delay on the part of any party hereto in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise of any other right or power.

EXECUTED this ____ day of _____, 2020.

ATTEST:

LOWER PAXTON TOWNSHIP

Secretary

By: _____
Chairman

ATTEST:

HARRISBURG AREA YMCA

Secretary

By: _____
Richard A. Curl, President & CEO

DRAFT