

## **Albert Kirkland, Sr., Gymnasium Management Agreement**

This Management Agreement (Agreement) made and entered into this \_\_\_\_day of January, 2022, by and between the YMCA of West Central Florida., a Florida not-for-profit corporation, having its principal place of business at 3620 Cleveland Heights Blvd, Lakeland, Florida, hereinafter referred to as the Manager, and the City of Lake Wales, a Florida municipal corporation, hereinafter referred to as the Owner.

1. **PURPOSE:**

The purpose of this Agreement is to provide a private/public partnership for the administration of the Albert Kirkland, Sr., Gymnasium (Gymnasium), 409 North Third Street, Lake Wales, Florida, for the benefit of the public.

2. **TERM:**

That for and in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Manager agree that the management services of the Manager shall commence upon approval and execution of this Agreement for a term of one (1) year. This Agreement shall automatically renew for up to two (2) additional one-year terms unless terminated by the parties. Either party shall reserve the right to terminate this Agreement by giving the other party a sixty (60) day written notice prior to the end of any term.

3. **USE:**

(a) The Manager agrees to manage and administer the property as a Gymnasium. The hours of operation of the Gymnasium for which the Manager shall be responsible is as follows:

11:00 a.m. to 8:00 p.m. Monday through Friday.

11:00 a.m. to 5:00 p.m. on Saturdays and Sundays.

YMCA shall not be responsible for any operations of the Gymnasium on Christmas Eve, Christmas Day, New Year's Eve, New Year's Day or other National Holidays.

Manager acknowledges that the Owner may cause the Gymnasium to be open during hours other than those maintained by the Manager pursuant to the terms of this Agreement.

The City shall supply janitorial supplies, bathroom supplies, operating supplies, and basketballs.

(b) All parties agree to comply with the provisions of Title VI and VII of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. Specifically, in carrying out the intent of this Lease Agreement, neither party shall discriminate in any way as to race, creed, or color, nor in any other respect in carrying out the terms of this Lease Agreement which would violate the aforesaid acts.

(c) The Manager acknowledges that due to the nature of the services to be provided hereunder, its records concerning the operation of the Gymnasium are public records and are specifically subject to the provisions of Chapter 119, Florida Statutes.

4. ORDINANCES AND STATUTES:

The Manager shall comply with all applicable statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Manager.

5. RENT:

No monthly rent shall be paid by the Manager to the Owner for use of the Gymnasium.

6. SOVEREIGN IMMUNITY:

(a) The Manager, in accordance with Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or intentional tortious acts which result in claims or suits against the owner, and agrees, only to the extent of its immunity to be liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the Owner. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract. The Manager agrees that it is an independent contractor of the Owner and not an agent or employee

(b) The Owner will seek to lessen or eliminate unnecessary risk to the Manager for acts or omissions of lessees utilizing the Gymnasium.

7. GRANT FUNDS AND MONITORING:

The Manager understands that the facility is financed by Grant funds allocated in the Owner's yearly budget and further understands that any such grant(s) may only be made on a yearly basis and that this Agreement does not constitute a covenant to budget for yearly grants in the event that funds are unavailable. The Grant for the initial term of this Agreement is in the

amount of \$81,000.00 to be paid monthly on the amount of \$6,750.00.

8. **PROJECT MONITORING/REPORTS:**  
Project Monitoring Reports. The Manager shall provide the Owner with quarterly reports that briefly describe its overall operation of the Gymnasium facility. Reports shall include, but are not limited to, a brief description of each program offered and its attendance figures.
9. **EXTERMINATION:**  
The Owner is responsible for necessary extermination services for the facility.
10. **REPAIRS:**
  - (a) The Owner is responsible for all major repairs.
  - (b) The Manager agrees to promptly report to the Owner any damages or needed repairs.
11. **MAINTENANCE:**
  - (a) The Owner acknowledges that it will maintain the premises in the condition they are in at the inception of this Agreement, and agrees to maintain said premises in the same condition, excepting only reasonable wear and tear arising from the use thereof under this Agreement.
  - (b) The Manager shall not make internal or external renovations, alterations, additions, or install any fixtures or equipment without the written consent of the Owner. All permanent fixtures are to remain with the building.
12. **INSURANCE:**
  - (a) The Owner shall maintain Comprehensive General Liability coverage as is maintained by Owner for its other properties.
  - (b) The Manager shall cause the Owner to be named as an additional insured on its existing insurance policies.
  - (c) Manager will request that all current lessees of the Gymnasium have the Manager added as an additional insured on the lessee's current Certificate of Insurance provided to the Owner.
13. **UTILITIES:**  
The Owner will be responsible for all utilities of the Gymnasium, including telephone, water, sewer, electricity, and security systems.
14. **DAMAGE BY FIRE OR OTHER CASUALTY:**
  - (a) If the property is damaged by fire or other casualty to such an extent that it is rendered unusable in whole or in part, the Owner shall have the option

to cancel the lease, or repair the property to substantially its former condition.

The Owner shall give notice of its election to the Manager within thirty(30) days after the occurrence of such damage, and if the Owner shall elect to repair the property, the Owner shall include in the notice a good faith estimate of the date upon which such repairs shall be completed.

15. NOTICE:

All notices which are required or permitted under this Agreement shall be given to the parties by certified mail, return receipt requested, hand delivery, or express courier, and shall be effective upon receipt. Notices shall be sent to the parties at the addresses set forth below or such other address as provided to the parties by written notice delivered in accordance with this section.

Notice to Manager:

YMCA of West Central Florida  
Chief Executive Officer  
3620 Cleveland Heights Blvd.  
Lakeland, FL 33883 Attn:

Notice to Owner:

City of Lake Wales  
City Manager  
PO Box 1320  
201 Central Ave., W.  
Lake Wales, FL 33859-1320

With a copy to:

Albert C. Galloway, Jr., City Attorney  
Albert C. Galloway, Jr., P.A.  
116 E. Stuart Ave.  
PO Box 3339  
Lake Wales, FL 33859-3339

16. BANKRUPTCY:

If the Manager shall become insolvent or if bankruptcy proceedings shall begin by or against the Manager, before the end of the Agreement term, the Owner is hereby irrevocably authorized at its option, to forthwith cancel this Agreement, as for default.

17. DEFAULT:

It is expressly understood between the Owner and the Manager that at any time in the event the Manager is declared in default of any provision(s)

contained herein that the Owner shall be entitled, at its option, to terminate the Manager's interest hereunder, whether during the initial Agreement term or during any extension thereof.

18. **WAIVER:**

No failure of Owner to enforce any term hereof shall be deemed to be a waiver.

19. **BACKGROUND SCREENING:**

Background screenings shall be in accordance with the Lake Wales Code of Ordinances Chapter 18, Streets, Sidewalks and Other Public Places, Article V, Use Permits – Recreation Facilities Sec. 18- League Background Checks

20. **ASSIGNMENT:**

Neither party hereto shall attempt to assign any part of this Agreement nor any responsibility or liability provided in this Agreement to a third party without the mutual written consent of both parties.

21. **ENTIRE AGREEMENT:**

This Agreement constitutes the entire agreement between the parties and may be modified only by an addendum to this Agreement or by a new Agreement in writing signed by the Owner and the Manager.

22. **AUTHORITY:**

The parties hereto acknowledge and affirm that all steps required to provide authority for entry into this Agreement have been accomplished and the individuals who execute this Agreement are duly authorized to bind the respective parties.

(Execution on following page of lease)

In witness whereof, the parties have hereunto set their hands and seals this day of January \_\_\_\_\_, 2022.

ATTEST:

\_\_\_\_\_  
Elaine C. Thompson, PhD  
CEO, YMCA of West Central Florida

\_\_\_\_\_  
James Slaton  
City Manager, City of Lake Wales

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness