BILL NO. 3922
ORDINANCE NO._____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF LEBANON, LACLEDE COUNTY, MISSOURI, (HEREINAFTER REFERRED TO AS "CITY"), AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AND EXECUTE A FACILITIES OPERATING AND LEASE AGREEMENT BY AND BETWEEN THE CITY AND THE OZARKS REGIONAL YMCA (HEREINAFTER REFERRED TO AS "YMCA").

WHEREAS, that the City of Lebanon, Missouri, is dedicated to improve the quality of life for all residents by meeting their recreational needs; *and*

WHEREAS, that the City of Lebanon, Missouri, has identified specific and qualified needs for recreational programs to improve utilization of the Cowan Civic Center (hereinafter referred to as "Center") which is owned by the City of Lebanon, Missouri,; *and*

WHEREAS, the City of Lebanon originally passed Ordinance 4677 on November 30th 2009 entering into a Facilities Operating and Lease Agreement between the Ozark Regional YMCA and the City; *and*

WHEREAS, that both parties felt it was mutually beneficial to review Said Agreement and negotiate new terms; *and*

WHEREAS, that the YMCA has provided recreational and family-based community programs for more than 120 years in the Ozarks region and has provided these service in Lebanon for the past three years; *and*

WHEREAS, that the City and YMCA still believe it is in the best interest of the community to enter into Said Agreement in order to develop and operate certain programs in designated portions of said Center as a YMCA facility (hereinafter referred to as "Lebanon YMCA").

WHEREAS, that Said Facilities Operating Agreement and Lease Agreement between the City and the Ozarks Regional YMCA was introduced to the City Council, for approval, by Council Bill No. 3922 at the January 27, 2014 Council Meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEBANON, LACLEDE COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1: That the City Council of the City of Lebanon, Missouri, hereby authorize and direct the Mayor and City Clerk, to enter into and execute, on behalf of the City, a Facilities Operating Agreement between the City of Lebanon, Missouri, (hereinafter referred to as the "City") and the Ozarks Regional YMCA (hereinafter referred to as "YMCA"). Said Agreement is attached and incorporated within marked as *"Exhibit A"*.

SECTION 2: That the City Council of the City of Lebanon, Missouri, hereby authorize and direct the Mayor and City Clerk, to enter into and execute, on behalf of the City, a Lease Agreement between the City of Lebanon, Missouri, (hereinafter referred to as the "City") and the Ozarks Regional YMCA (hereinafter referred to as "YMCA"). Said Agreement is attached and incorporated within marked as *"Exhibit A"*.

SECTION 3: That Said Ordinance shall repeal Ordinance No. 4677 in its entirety and shall be in full force and effect from and after the date of its passage and approval.

Passed and approved by the City Council of the City of Lebanon, Laclede County, Missouri on this 27th day of January, 2014.

(Seal)

_____
Mayor Lyle Anderson

Attest:

_____
City Clerk Laina Starnes

1st Reading: _____
2nd Reading: _____

FACILITIES OPERATING AND LICENSE AGREEMENT

THIS FACILITIES OPERATING AND LICENSE AGREEMENT (the Agreement), dated as of February____,2014, is made by and between the CITY OF LEBANON, MISSOURI (City), and the OZARKS REGIONAL YMCA (YMCA), a Missouri non-profit corporation. City and YMCA, each in consideration of the terms herein, agree as follows:

RECITALS

A. City is dedicated to improving the quality of life for all its residents by meeting their recreational needs, and

B. City has identified specific and qualified needs for recreation programs and facilities and intends to improve utilization of the Cowan Civic Center (The Center), which is owned by City, and

C. YMCA has provided continuous service to the Ozarks region for more than 120 years in the area of recreation and family-based community programs and is committed to building strong kids, strong families, and strong communities by working closely with community leaders, program and member participants, and key partners, and

D. City and YMCA believe it to be in their best respective interests to remain in agreement by adopting this revised Agreement in order to develop and operate certain programs in designated portions of The Center as a YMCA facility (Lebanon YMCA).

E. This facilities operating and license agreement (the Agreement), originally dated as of December 18th, 2009, and adopted by the City with Ordinance Number 4677 was made by and between the City of Lebanon Missouri (City), and the Ozark Regional YMCA (YMCA), a Missouri non-profit corporation. City and YMCA, each in consideration of the terms herein of that agreement.

Article I. EXHIBITS TO AGREEMENT

Section 1.01 Attached to this Agreement and hereby made a part hereof are the following Exhibits:

(a) EXHIBIT A - A description of those portions of The Center to be used by YMCA for operation of the Lebanon YMCA and a Schematic Drawing, defining the area to be used by the Lebanon YMCA

(b) EXHIBIT B - Rules and Regulations for operations Lebanon YMCA in The Center.

(c) EXHIBIT C - The definitions of terms and examples for calculation of the Management Charge, Start Up Funding and, described in Article 4 Financial Considerations; Management Charge.

(d) EXHIBIT D - Inventory of Start-up Equipment, Value and Depreciation Schedule.

Article II. OPERATION OF THE CENTER BY YMCA

Section 2.01 **License.** City hereby licenses to YMCA, and YMCA hereby takes from the City, a license and right to use designated portions of The Center as described on Exhibit A upon the terms and conditions herein set forth, for the purpose of operating a family exercise, recreation, and sports facility similar to other facilities operated by YMCA.

Section 2.02 **Operation.** YMCA agrees to generally operate the Lebanon YMCA during hours and in a manner used by YMCA for similar facilities. Provided, however, that such hours and manner of operations

may be reasonably adjusted from time to time by YMCA based on demand for services as defined in the Rules and Regulations on file in the City Clerk's Office. YMCA may establish Rules and Regulations governing the use of the Lebanon YMCA. The initial Rules and Regulations for the Lebanon YMCA are attached hereto as Exhibit B. YMCA may reasonably modify the Rules and Regulations from time to time. Except as otherwise set out in this Agreement, all operating expenses of the Lebanon YMCA are to be paid by YMCA out of revenues generated by the Lebanon YMCA.

Section 2.03 **Rules and Regulations to be on file at the City**. A current copy of the Rules and Regulations shall be maintained on file by the City Clerk.

Article III. TERM; RENEWAL

Section 3.01 **Initial Term.** This Agreement is effective upon execution by both Parties but the initial term of this Agreement for purposes of the licensing of the use of the Lebanon YMCA (the "Initial Term") shall have commenced on January 2, 2010 (the "Commencement Date") and shall expire as of midnight five (5) years after the Commencement Date.

Section 3.02 **Options to Extend.**

(a) *Term; Exercise.* Unless City shall give written notice to YMCA at least six (6) months prior to the end of the Initial Term or at least six (6) months prior to the end of any such Option Period then in effect that City does not wish to allow YMCA to extend this Agreement, YMCA shall have the right to extend the term of this Agreement for four (4) successive option periods of ten (10) years each (the "Option Periods") from the date which the Initial Term or the first or second Option Period, if exercised, would otherwise expire. If YMCA elects to exercise its option for an Option Period, it shall, subject to the provisions of Section 3.02 (b) below, do so by giving City written notice of such election at least six (6) months before the beginning of the Option Period in question. If YMCA gives such notice, the term of this Agreement shall be automatically extended for the Option Period in question without execution of an extension or renewal agreement.

(b) *Protection Against Forfeiture*. It is the intention of the Parties to avoid forfeiture of YMCA's right to extend the term of this Agreement pursuant to any of the Options Periods set forth in Section 3.02 (a) above through unintended failure of YMCA to give notice of exercise within the time prescribed. Accordingly, subject to City's right to terminate such option rights as set out in Section 3.02 (a) above, if YMCA shall fail to give notice of exercise of any such option within the time prescribed in Section 3.02 (a), then the original time to give such notice shall be deemed extended for an additional period commencing on the last day on which such notice by YMCA may be timely given and ending thirty (30) days after the date City gives YMCA written notice of YMCA's failure to exercise such option within the original time prescribed. If the YMCA exercises any such option after the date prescribed in Section 3.02 (a), but within the extended time permitted hereunder, the extended term to which such option relates shall commence, or shall be deemed to have commenced, at the time it would have commenced if such Option Period exercise notice had been given by YMCA within the original time prescribed in Section 3.02 (a).

Article IV. **FINANCIAL CONSIDERATIONS; MANAGEMENT CHARGE**

Section 4.01 **Definitions.** Definitions for certain terms used in this Article IV are set out on Exhibit C attached hereto and made a part hereof.

Section 4.02 **Fiscally Sound Operation**; Subsidies; and Start-Up Funding. City recognized it was necessary for City to subsidize Lebanon YMCA operations with cash assistance during at least the first two years of operation in the following amounts: **Budget Year 1**, $186,680.00; **Budget Year 2**, $60,106.00. The cash subsidy was paid by City in equal monthly installments. Additionally, on or before the opening date of the Lebanon YMCA, City did provide Start-up funding to Lebanon YMCA in the amount of $28,330.00 cash and $77,606.00 in equipment as shown on Exhibit D.

(a) *Citizen Discounts.* YMCA shall offer each citizen of the City of Lebanon and Laclede County a fifty percent (50%) discount off of the Joiner's Fee as it is set from time to time for the Lebanon YMCA

Section 4.03 **Management Charge.** For its services in operating the Lebanon YMCA, YMCA will be paid from Lebanon YMCA Revenues a Management Charge equal to twelve percent (12%) of the Lebanon YMCA Revenues. In addition to other obligations under this Agreement, YMCA will provide accounting, management information services (MIS), human resources, management, program innovation, and senior administrative management expertise to operate the Lebanon YMCA.

(a) *Payment of Management Charge.* The Management Charge shall commence immediately upon opening to the public, and YMCA may collect such charge on a monthly or less frequent basis as determined by YMCA

Section 4.04 **Reports to City.** Lebanon YMCA will report to City Council on a semi-annual basis or at the request of the City. Such reports will include a summary of the operations and financial performance of the Lebanon YMCA for the reporting period. Any audits will be performed by the YMCA's regular outside certified public accounting firm and will be made available to City. The YMCA will report program information to the Lebanon Park Board at least semi-annually, or at the request of the Park Director.

(a) *Annual Budgets.* At least thirty (30) days prior to the commencement of any partial calendar year and each calendar year of Lebanon YMCA operations hereunder, YMCA shall prepare and provide the City with a copy of the annual **Lebanon YMCA Budget** on a basis consistent with YMCA's budgeting practices at similar YMCA facilities. The budgets shall be subject to reasonable adjustment during said year based on actual operating expenses and revenues.

(b) *Accrual Basis Accounting*. YMCA's calculation of amounts under this Article IV and this Agreement generally shall be done on a modified accrual basis of accounting as required by application of GAAP consistent with YMCA's accounting practices at other facilities.

Section 4.05 **City Review Rights.** The City shall have the right at any time to review YMCA's financial and other records for the Lebanon YMCA to confirm amounts related to the Lebanon YMCA Budgets, the Operating Subsidies or any other amounts or calculations under this Agreement.

Article V. **COVENANT OF TITLE; QUIET POSSESSION**

Section 5.01 **City represents and warrants to YMCA that:** the City has good and marketable title to The Center in fee simple, free and clear of all contracts, agreements, tenancies, agreements, restrictions,

violations, encumbrances or defects in title of any nature whatsoever except customary utility easements and rights of way and any restrictions of record and other matters of record disclosed in writing to YMCA, none of which, restrict or prevent the intended use or enjoyment of the Lebanon YMCA by the YMCA.

Article VI. **ASSIGNMENT AND SUBLICENSING**

Section 6.01 **Restrictions on YMCA.** YMCA agrees that it shall have no right to make or undertake to make:

(a) Any deed of trust, mortgage, security interest or other lien with respect to its license and use rights in the Lebanon YMCA;

(b) Any assignment of its rights under this Agreement to any third party,

(c) Any sublicense of all or any portion of The Center to any third party,

(d) Any contract or agreement with a third party business entity which would use all or any part of The Center for its business purposes, or

(e) Without the express written consent of City, any contract or agreement with any third party business entity to manage the Lebanon YMCA for YMCA.

Section 6.02 **Contract Services.** Provided, however, that none of the restrictions defined in Section 6.01 shall prohibit YMCA from entering into arrangements for so-called Contract Services.

(a) Specifically Contract Services with third parties for services for activities such as yoga or massage or vending services consistent with Contract Services used by YMCA at other facilities.

(b) Any net revenues from such Contract Services shall be considered part of the Lebanon YMCA Revenues.

(c) YMCA may enter into service arrangements with companies to provide incidental food and beverages to users consistent with similar services provided by third parties at other facilities operated by YMCA such as vending machines and juice bars.

Section 6.03 **Restrictions on City.** City also agrees not to assign any of its rights under this Agreement to any person or entity except as expressly set forth herein.

Article VII. **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 7.01 **By City.** City represents, warrants and covenants as follows:

(a) City is a political subdivision of the State of Missouri.

(b) City has determined that the licensing of the Lebanon YMCA by City to YMCA is within its proper governmental or quasi-governmental functions and will further the physical, recreation and sports needs of City residents.

(c) City has lawful power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder for the term hereof, and by all required governmental or

quasi-governmental action has duly authorized the execution, delivery and performance of this Agreement.

(d) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of, or default under, any Laws, or the terms, conditions or provisions of any restriction or any agreement or instrument to which City is now a party or by which City's properties are bound.

(e) City has not made, done, executed or suffered, and warrants that it will not make, do, execute, permit or suffer, any act or thing whereby City's interests in The Center shall be or may be impaired, changed or encumbered in any manner whatsoever except as permitted in Section 5.1 above.

Section 7.02 **By YMCA.** YMCA represents, warrants and covenants as follows:

(a) YMCA is a not-for-profit corporation duly organized and existing under the laws of the State of Missouri.

(b) YMCA is duly authorized to do business in the State of Missouri and has corporate power to enter into this Agreement.

(c) YMCA has lawful power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, and by all required corporate action its officers have been duly authorized to execute, deliver and perform this Agreement.

(d) Neither the execution and delivery of this Agreement, nor the fulfillment of, or compliance with, the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of, or default under, any laws, regulation or rule, or YMCA's Articles of Incorporation or Bylaws, or the terms, conditions or provisions of any restriction or any agreement or instrument to which YMCA is now a party or by which YMCA or its properties are bound.

Article VIII. UTILITIES, REPAIRS AND MAINTENANCE

Section 8.01 **Utility Charges.** Utility will be provided by the City for operations of the Lebanon YMCA. A Per Square Foot Rental rate will be established by separate agreement for the terms of this Operating and License Agreement.

Section 8.02 **Installation and Repairs.** The Lebanon YMCA and City, shall agree to cost and responsibility to pay for any new installation of utilities and fixtures. The City shall furnish, install and maintain in good condition and repair all storm and sanitary sewers, and all gas, water, telephone equipment, electrical, telephone cabling, IT cabling, and other utilities of such size and type as may be required to provide adequate utility and telephone services for the Lebanon YMCA and The Center.

Section 8.03 **Repairs and Maintenance**

(a) Except as provided in Section 8.03 (d) below, City, at its sole cost and expense shall at all times during the term of this Agreement, maintain the Lebanon YMCA and The Center and all

improvements and fixtures t located thereon and keep them in good order, repair and operating condition.

(b) On a timely basis, City will make all necessary repairs, replacements, renewals, alterations and additions to the Lebanon YMCA and The Center and all improvements and fixtures located thereon which shall include but not limited to, the roof, walls, supporting structures, pipes, HVAC system, plumbing system, windows, glass, doors, surveillance and security equipment, other fixtures, swimming pools, including the parking lots.

(c) All repairs, replacements, renewals, additions and alterations shall be and remain the sole and exclusive property of City. YMCA shall not be required to furnish any services, equipment or supplies, or to make any repairs, replacements, renewals, alterations and additions in or to the Lebanon YMCA or The Center. City assumes the full and sole responsibility for the physical condition, repair, replacement, maintenance and periodic specialized cleaning (i.e. carpet shampoo) of the Lebanon YMCA, its fixtures and The Center except as set forth in Section 8.03 (d) below.

(d) YMCA, out of funds from Lebanon YMCA Revenues, shall furnish and maintain:

(i) Removable trade fixtures to include, but not limited to, exercise, recreation and sports equipment, and all other fixtures and equipment necessary for the YMCA's operation of the Lebanon YMCA and all other appurtenances located in or on the Lebanon YMCA

(ii) Consumable sports and recreational equipment and supplies such as bats, balls, gloves, whistles and kickboards;

(iii) Office supplies such as paper goods, pencils, pens and staples; and

(iv) Routine janitorial and custodial services for Lebanon YMCA, and

(v) Routine cleaning of the Lebanon YMCA and City's fixtures located in or on the leased premise.

Article IX. **GOVERNMENTAL COMPLIANCE**

Section 9.01 **By City.** City, at its sole cost and expense, shall comply with all Laws applicable to City and affecting The Center to the end that the Lebanon YMCA and The Center shall at all times be lawfully used and occupied, provided that YMCA's use and occupancy is in accordance with all Laws and as permitted by this Agreement.

Section 9.02 **By YMCA**. YMCA shall comply with all Laws applicable to YMCA which affects the carrying on of YMCA's particular functions and particular business in and about The Center.

Section 9.03 **Environmental Compliance.** City warrants and represents to the YMCA that to the best of its knowledge: (1) no release, leak, discharge, spill, storage, disposal or emission of Hazardous Substances has occurred in, on or under the Premises, and that The Center will be free of Hazardous Substances on the Commencement Date of this Agreement except for Hazardous Substances installed or used in or about The Center in accordance with all Laws; (2) there are no underground storage tanks under or adjacent to The Center; (3) there has not been any notice of intent to sue, notice of violation, citation, warning or similar notification under any Governmental Authority environmental law or regulation regarding The Center; and (4) there is not any pending investigation or inquiry by any Governmental Authority concerning Hazardous Substances and The Center.

Section 9.04 **No Environmental Violations by City.** City shall not cause or permit any Hazardous Substances to be used, stored, generated or disposed of (collectively "Used") on, in or under The Center by the City, the City's agents, employees or contractors, except for those Hazardous Substances which are installed in or may lawfully be used in the ordinary course of business in the operation of The Center.

Section 9.05 **No Environmental Violations by YMCA.** YMCA shall not cause or permit any Hazardous Substances to be Used on, in or under The Center by YMCA, YMCA's agents, employees or contractors, except in the ordinary course of business in the operation of any activities or business by YMCA as permitted under this Agreement, or as reasonably required in performing the obligations of YMCA under this Agreement, and then only to the extent no Laws are violated in so doing.

Section 9.06 **Indemnification.** Each party (the "Indemnifying Party") shall defend, indemnify and save the other party (the "Indemnified Party") harmless from any and all claims of third persons, and damages, costs and losses owing to third persons or suffered by Indemnified Party, including court costs, reasonable attorneys' fees and consultants' fees, arising during or after the term of this Agreement and reasonably incurred or suffered by the Indemnified Party as a result of any default or breach of any representation, warranty or covenant made by Indemnifying Party under this Article 9. It is a condition of this indemnification and save harmless that the Indemnifying Party shall receive written notice of any such claim against the Indemnified Party promptly after Indemnified Party first has knowledge thereof. This indemnification and save harmless includes any and all costs reasonably incurred by Indemnified Party after notice to Indemnifying Party for any cleanup, removal or restoration mandated by any Governmental Authority acting lawfully under Law if the Indemnifying Party shall not timely perform such work.

Article X. CASUALTY

Section 10.01 If The Center is substantially destroyed, then City, at its option, may terminate this Agreement. Otherwise, if The Center or any material part thereof shall, after the date hereof and during the term hereof, be damaged or destroyed by fire, casualty or any cause whatsoever, either in whole or in part, City shall use its reasonable best efforts with due diligence to remove any resulting debris and repair and rebuild the damaged or destroyed structures and other improvements in accordance with the original Plans and Specifications to the extent then permitted by Law. Provided, however, that City, in such rebuilding, without obtaining YMCA's consent or approval, may elect to make material deviations from the original Plans and Specifications. As soon as reasonably possible, City shall notify YMCA in writing of any such planned material deviations from the original Plans and Specifications. If such material deviations are not acceptable to YMCA, it may exercise its YMCA Re-negotiation/Termination Right set out in Section 16.3 below. In causing such rebuilding or repairs to be made, City shall be entitled to use, and shall use, all insurance proceeds available from the policies required to be carried hereunder for the particular risk in question.

Article XI. INSURANCE; INDEMNITY

Section 11.01 **Casualty.** City, at its sole cost and expense, shall obtain and maintain, throughout the term of this Agreement, a policy or policies of insurance to keep The Center and its improvements and equipment constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri, in an amount equal to the replacement cost thereof as determined by the issuing insurance company. The insurance under this Section shall name City and YMCA as insureds as their respective interests may appear, and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to City and YMCA. The insurance required pursuant to this Section may be maintained by City through a local government

insurance pool known as "MARCIT", or any similar organization of which City is a participant or through a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri as may be selected by City.

Section 11.02 **Liability.** YMCA, out of funds from Lebanon YMCA Operating Revenues, shall obtain and maintain throughout the term of this Agreement comprehensive general public liability insurance protecting YMCA and City against claims of personal injury, death and property damage occurring at Lebanon YMCA. Such public liability insurance shall provide minimum protection of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate, which insurance coverage may be provided by primary and umbrella policies and by policies with multiple locations. All policies shall name the City as an additional insured. Because of the statutory sovereign immunity limits protection afforded City and other governmental entities by RSMo. § 537.610, City may elect by written notice to YMCA not to be fully covered by YMCA's public liability insurance applicable to the Lebanon YMCA.

Section 11.03 **Worker's Compensation.** YMCA, out of funds from Lebanon YMCA Revenues, shall obtain and maintain throughout the term of this Agreement employer's liability insurance protecting both YMCA and City for claims made by YMCA's employees, including claims made under applicable worker's compensation statutes.

Section 11.04 **Certificates.** Each Party shall provide the other with certificates of coverage (or other standard forms of MARCIT or similar insurance pool participation by City evidencing the coverage's as set forth in Section 12.1 above, and payment of the premium for said coverage. The Certificates or other forms evidencing such insurance shall be provided on or before the beginning of the occupancy of the Lebanon YMCA by YMCA, and on each date the insurance is renewed, or the insurance company or insurance pool is changed. Each Party shall notify the other immediately in writing if any of the insurance policies or pool participations required hereunder are canceled or become ineffective, or if a notice of cancellation or ineffectiveness is received by the Party, unless that Party has arranged for equivalent coverage to commence on or before the date of cancellation or ineffectiveness.

Section 11.05 **Cooperation.** City and YMCA shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or insurance pool covering the events described in this Article 12.

Section 11.06 **Indemnity.** YMCA and City shall each indemnify, defend and hold harmless the other against and from all liability for claims, damages, costs, losses and expenses resulting from negligent or intentional acts or omissions of the indemnifying party, its employees and agents on or about The Center. Provided, however, that YMCA and City each respectively waive all rights of recovery against the other and the other's agents and employees for any loss or damage to The Center, or injury to or death of persons, to the extent the same is covered or indemnified by proceeds of any insurance or insurance pool, or for which reimbursement is otherwise received.

Article XII. AD VALOREM PROPERTY TAXES AND SPECIAL ASSESSMENTS

Section 12.01 **Ad Valorem Taxes.** It is believed by both City and YMCA that each are exempt from the payment of ad valorem real estate and personal property taxes with respect to The Center, Property Taxes. If, however, for any reason The Center or any improvements or equipment located thereon becomes subject to Property Taxes during the term of this Agreement, the City agrees that it will be the City's obligation to pay said Property Taxes in a timely manner.

Section 12.02 **Special Assessments**. After City's receipt from the appropriate taxing authority, or after YMCA's delivery of statements therefore to City, City shall pay and discharge, before the delinquency thereof, all special assessments, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon, or against, or be payable for or in respect of any public improvements in the area of The Center and all improvements now or hereafter located thereon (all of the foregoing being herein referred to as "Special Assessments").

Section 12.03 **Tax Statements**. City and YMCA shall cause all such appropriate taxing authorities to deliver all notices, invoices and statements relating to Property Taxes and Special Assessments to City for paying or causing the paying of the same under this Agreement, or if this cannot be achieved, YMCA shall deliver the same to City promptly upon YMCA's receipt thereof. If the tax statements were issued to or in the name of YMCA, promptly after payment of any such Property Taxes or any such Special Assessments, and in no event later than thirty (30) days after such payment, City shall deliver to YMCA copies of appropriate receipts evidencing payment.

Article XIII. ALTERATIONS

Section 13.01 **By YMCA**. YMCA, at its own cost and expense, shall have the right and privilege at all times during the term hereof to make such alterations, changes, improvements and additions to the Lebanon YMCA as YMCA may reasonably desire, subject, however, to the provisions of this Section. Prior to commencing any alterations, additions or improvements, YMCA shall submit plans therefore the ("Alteration Plans") to City for review. The Alteration Plans shall be sufficient in form and content to allow City to evaluate the proposed alterations, additions or improvements, and City shall have the right to request such additional information as City shall reasonably require. Within thirty (30) days after City's receipt of the Alteration Plans and any additional information requested by City, City will notify YMCA in writing whether City approves the alterations, additions or improvements provided for in the Alteration Plans, and any limitations or conditions upon City's approval. All alterations, additions or improvements made by YMCA shall be made in a good and workmanlike manner and in compliance with all Laws. This approval process shall not apply to any non-structural changes made by YMCA of such a minor nature that they do not require a building permit. Any alterations, changes, improvements and additions made by YMCA, except removable trade fixtures and interior YMCA signage, shall immediately become the property of City and shall be considered a part of The Center.

Section 13.02 **By City.** City at its sole cost and expense shall have the right to make such alterations, changes, improvements and additions to The Center as City reasonably determines will improve the use or operation thereof. City agrees to consult with YMCA regarding the design and construction of any such alterations, changes, improvements and additions to insure that they are suitable for and compatible with operation of the Lebanon YMCA.

(a) Any signs or notices of any kind that are displayed in or upon any part of the exterior or interior of The Center may be reasonably agreed to by both parties as to placement, content and design and cost. Such exterior signage shall reasonably reference the YMCA so long as such signs comply with all Laws. All such signage shall be erected, maintained and repaired by City at its sole cost and expense. City shall be responsible, at its sole cost and expense, for removing any such YMCA specific signage upon termination of this Agreement.

Article XIV. **YMCA'S COVENANT TO OPERATE; SPECIAL TERMINATION PROVISIONS**

Section 14.01 **Operating Covenant.** Subject to Section 14.02 below, YMCA covenants and agrees during the term of this Agreement, except when prevented from so doing by Force Majeure, to operate the Lebanon YMCA as an exercise, recreation and sports The Center facility similar to other facilities operated by YMCA. Notwithstanding the foregoing, so long as YMCA is not violating any Law or other provisions of this Agreement, nothing contained in this Agreement shall be deemed to allow City to (1) regulate the manner of operation by YMCA or the hours or days of such operation, or (2) have any right, express or implied, of censorship over any programs, activities, or events by YMCA in connection with the Lebanon YMCA.

Section 14.02 **Frustration of Purpose.**

(a) Definition. The Parties recognize and agree that despite their good faith and reasonable best efforts to implement and carry out the promotion and development of the Lebanon YMCA as contemplated by this Agreement, economic conditions, population levels and demographics or other factors beyond the reasonable control of the Parties may prevent or frustrate the Parties' efforts to cause the Lebanon YMCA to be operated on at least a Facility Break-Even basis herein a "Frustration of Purpose".

(b) **Effect.** In the event of a Frustration of Purpose, the Parties agree to first negotiate in good faith to attempt to modify the Operating Subsidy or adjust their respective rights and obligations under this Agreement in a manner that will allow YMCA to operate the Lebanon YMCA on an economically viable basis mutually satisfactory to each Party. If such an adjustment is not reasonably possible or acceptable to both Parties, either Party after ninety (90) days prior written notice to the other may terminate this Agreement herein referred to as the "Frustration of Purpose Termination Option". In such event, the Parties each agree to take all reasonable and necessary actions and execute and deliver such reasonably requested documents and instruments so as to carry out and confirm the termination of this Agreement. In the event of such a Frustration of Purpose termination, neither Party shall be required to reimburse the other Party for any prior costs and expenses incurred in connection with this Agreement except that YMCA shall pay City for the ID System a sum equal to One Thousand Eight Hundred Dollars ($1,800) for each full twelve (12) month period remaining after the termination date until the fifth (5th) anniversary of the Commencement Date.

Section 14.03 **YMCA Termination Right for Unaccepted Modification of Project Or Other City Actions.** The parties recognize and agree that during the initial or any option term of this Agreement City may wish to make, cause or permit certain modifications or expansions of The Center which City believes to be in its and its residents' best interests but which modifications or expansions YMCA may reasonably and good faith find unacceptable under the terms and conditions presently set out herein for YMCA's efficient and at least break-even operation. In such an event, the parties will first attempt to reasonably and in good faith re-negotiate and modify the terms of this Agreement in a manner satisfactory to both parties. If the parties are unable to agree to such modifications to this Agreement (or other actions or inactions have occurred hereunder which give rise to the following right), then YMCA shall have the right to (i) continue to operate under this Agreement with any such modifications as are acceptable to City or (ii) on ninety (90) days prior written notice to City, terminate this Agreement with such termination notice given to City within thirty (30) days after an impasse as to such modifications is declared by either party. This YMCA re-negotiation/termination right is referred to herein as the "YMCA Re-negotiation/Termination Right".

Article XV. **PROTECTION OF INVESTMENTS**

Section 15.01 **Need for Protection.** The parties recognize and agree that under this Agreement, each will devote significant time, efforts and financial resources (an "Investment") in establishing, developing and promoting the Lebanon YMCA as a successful and economically viable family exercise, recreation and sports The Center facility. Therefore, to reasonably protect each party's Investment, the following provisions of this Article 15 are agreed to by each Party.

Section 15.02 **No Competing Facility by YMCA**. Unless otherwise agreed by City in its sole discretion, during the term of this Agreement and, YMCA agrees not to directly or indirectly, or as a consultant to, or as an owner, or as an investor in another person or entity, be involved in a similar facility competitive to The Center, within Laclede County.

Section 15.03 **No Competing Facility by City.** Unless otherwise agreed by YMCA in its sole discretion, during the term of this Agreement, City agrees not to, nor to directly or indirectly, or as a consultant to, or as an owner, or as an investor in another person or entity, be involved in a similar facility competitive to The Center. The parties recognize that single events and activities at outdoor facilities are not competitive to The Center.

Section 15.04 **Parties' Remedies.** Without intending to limit the remedies available to the other Party, each Party acknowledges that a breach by such Party of the covenants contained in this Article 15 will result in material irreparable injury to the other Party for which there is no adequate remedy at law, and that, in the event of such a breach or threat thereof, the other Party shall be entitled to obtain a temporary restraining order or a preliminary injunction and a permanent injunction restraining such other Party and any other persons or entities acting with it from engaging in any activities prohibited by this Article 15 or such other equitable relief as may be required to specifically enforce any of the covenants of this Article 15.

Section 15.05 **Scope of Covenants to be Reasonable.** Each Party agrees that in the event that the other Party shall bring an action for the enforcement of any of the covenants contained in this Article 15 and a court shall find on the basis of the evidence introduced in said action that the scope of said covenants is unreasonable either as to time, area or activity covered, then the court shall make a finding as to what is reasonable and shall enforce said covenants by judgment or decree to the extent of such finding.

Article XVI. **DEFAULT BY PARTIES; RESOLUTION OF DISPUTES; REMEDIES**

Section 16.01 **Cure Periods.** (1) If either Party neglects or fails to pay any sum or monetary charge due from it hereunder for a period of ten (10) days after written notice of default from the other Party, or (2) either Party neglects or fails to perform or observe any of their other respective covenants, terms, provisions or conditions on its part to be performed or observed under this Agreement within thirty (30) days after written notice of default by the other Party, or if more than 30 days shall be reasonably required because of the nature of the default, such Party shall fail to proceed diligently to cure such default after such notice, then the other Party may immediately or at any time thereafter so long as said default is continuing, exercise its rights and remedies set out herein. In all events, the non-defaulting Party shall use reasonable efforts to mitigate any loss or damage which it may suffer as a result of the other's default.

Section 16.02 **Contest of Alleged Defaults in Good Faith.** Notwithstanding anything to the contrary contained in Section 16.1, with respect to any alleged default, if within ten (10) days after notice of such default, the Party alleged to be in default (1) in good faith notifies the other Party that it disputes such alleged default, and (2) in good faith follows the Dispute Resolution Procedure set out below in Section 18.4

contesting such alleged default, then such Party shall not be deemed to be in default under this Agreement with respect to such alleged default, provided that if the decision with respect to such default is adverse to the Party alleged to be in default, in whole or in part, then such Party shall forthwith commence to correct the matters complained of by the other Party, or that portion thereof as to which such decision is adverse to such Party, and complete the same within twenty (20) days after such decision or judgment, or if more than twenty (20) days are required to complete such corrections with reasonable diligence, commence to correct the same within such twenty (20) days and prosecute the same to completion with reasonable diligence.

Section 16.03 **Self-Help Remedies.** If after the expiration of any cure period either Party the "Defaulting Party" fails to perform any agreement or obligation on its part to be performed under this Agreement, the other Party the "Curing Party" shall have the right, (1) if no emergency exists, and after exhaustion of the Dispute Resolution Procedure set forth in Section 16.04, to perform the same after giving at least ten (10) days' written notice to the Defaulting Party, and (2) in any emergency situation, to perform the same immediately without notice or delay and without the need to exhaust the Dispute Resolution Procedure. For the purpose of rectifying a default of the Defaulting Party as aforesaid, City as the Curing Party shall have the right to enter the Premises. The Defaulting Party shall on demand reimburse the Curing Party for the costs and expenses reasonably incurred by the Curing Party in rectifying defaults as aforesaid, including attorneys' fees, together with interest thereon at the Default Rate. Any act or thing done by the Curing Party pursuant to this Section 18.3 shall not constitute a waiver of any such default by the Curing Party or a waiver of any covenant, term or condition herein contained or the performance thereof. Notwithstanding anything to the contrary herein, if any failure by the Defaulting Party to perform its agreements or obligations hereunder shall (1) result in any insurance required to be maintained hereunder to not be in full force and effect at any time during the term of this Agreement, (2) result in serious injury to persons or property, or the foreclosure of any lien upon the Premises, or (3) otherwise result in significant adverse consequences to the Curing Party if such failure to perform is not cured promptly following discovery of such failure to perform, then the Curing Party shall have the right to proceed with the cure of such failure to perform by the Defaulting Party prior to the expiration of the cure period provided for herein, within such time frames which are reasonable under the circumstances. If the Defaulting Party contends that some or all of the amounts expended by the Curing Party in such circumstances were excessive or were not required to be expended for any reason, then the Defaulting Party shall have the right to submit such contention to the Dispute Resolution Procedure.

Section 16.04 **Dispute Resolution Procedure.** City and YMCA each wish to attempt to reach an amicable resolution of any disputes and controversies which may arise between them under this Agreement at the earliest possible date. Therefore, except where a party is entitled to take immediate judicial action under Section 16.05 below, or in any event where a Curing Party may take immediate self-help action under Section 16.03 above, City and YMCA shall attempt to resolve any dispute or controversy between them in the following three-step "Dispute Resolution Procedure": (1) First, the Senior Staff of City and YMCA shall meet and attempt to resolve the dispute; (2) Second, if they are unsuccessful, the City Administrator and the CEO of YMCA, or other head of each Party's governing body, shall meet to review and attempt to resolve the dispute; (3) Third, if they are unsuccessful, then the matter shall go to non-binding mediation with a mediator and under a time schedule and conditions reasonably acceptable to both parties. Such Dispute Resolution Procedure shall also be applicable, if necessary, after any Curing Party action pursuant to the emergency situation exception;

Section 16.05 **Rights and Remedies at Law and Equity; Injunctive Relief.** If the Dispute Resolution Procedure set forth above is unsuccessful to resolve the dispute or controversy, or the parties cannot agree on a mediator(s) or the terms and conditions of mediation, then either Party may pursue such rights and

remedies it may have at law and equity generally. The Dispute Resolution Procedure shall not be applicable to an action of the type for which a Party is entitled at law or in equity to immediate judicial injunctive relief or judicial specific performance arising out of the activity to be enjoined or caused to be performed in order to prevent irreparable harm or injury.

Section 16.06 **Remedies Cumulative; Legal Expenses.** The various rights and remedies given to or reserved to City and YMCA by this Agreement or allowed by law shall be cumulative, irrespective of whether so expressly stated. In case a judicial action shall be brought because of a default or the breach of an agreement or obligation contained in this Agreement on the part of YMCA or City to be kept or performed, and such a default or breach shall be established, the prevailing party shall be entitled to recover all costs and expenses reasonably incurred in connection with such suit, including attorneys' fees.

Article XVII. CITY'S ACCESS TO LEBANON YMCA

Section 17.01 **Routine Access.** City and its authorized representatives shall have full access to enter Lebanon YMCA at any time for any purpose related to this Agreement. City will use its reasonable best efforts (1) in entering or inspecting the Lebanon YMCA not to disrupt or interfere with any activities then being conducted by YMCA or its permitted agents and (2) to coordinate maintenance activities or other work at The Center to minimize any disturbance or interference with YMCA and its permitted agent's activities. YMCA staff may keep locked desks and secure files at the Lebanon YMCA. In the event of a civil disaster or other emergency, the Mayor of City shall also have the authority, pursuant to the provisions of the Emergency Operations Plan in effect at the time, to occupy and use any part of the Kenneth E. Cowan Civic The Center for any purpose required for the health and safety of the public for the duration of the emergency.

Section 17.02 **Special Events.** City may from time to time host special events at the Lebanon YMCA subject to reasonable review by and coordination with YMCA. It is expected that City will give YMCA at least thirty (30) days' prior notice when requesting use of the Lebanon YMCA under normal circumstances. In the event thirty (30) days' notice is not possible due to circumstances beyond the control of City, such consent or approval will not be unreasonably withheld.

Article XVIII. FORCE MAJEURE

If either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power or other utilities, restrictive Laws (except as otherwise specifically provided herein), terrorist acts, riots, insurrection, war or other reason not the fault of the Party delayed in performing the work or doing the acts required under the terms of this Agreement collectively, "Force Majeure", then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article shall not (1) operate to excuse City from timely payment of any amounts due YMCA or any other monetary charge required to be paid by either Party under the terms of this Agreement, or (2) be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds unless such funds were to be supplied by the other Party to this Agreement.

Article XIX. **NOTICES.**

(a) Any notice required or permitted to be given pursuant to this Agreement shall be effective and valid if in writing, and delivered personally by reputable express courier or delivery service, or sent by verifiable facsimile machine, with a copy by first class mail postage prepaid or by certified or registered U.S. Mail postage prepaid, return receipt requested, as follows:

If to the City:	City of Lebanon, Missouri 401 South Jefferson Lebanon Missouri 65536 Attention: City Administrator	**With a copy to:**	City of Lebanon, Missouri 401 South Jefferson Lebanon Missouri 65536 Attention: City Clerk
If to the YMCA:	Ozarks Regional YMCA 417 South. Jefferson Ave. Springfield, MO 65806 Attention: CEO	**With a copy to:**	Lathrop & Gage LLP P. O. Box 4288 Springfield, MO 65808 Attention: Frank M. Evans, III

(b) Unless otherwise specified, notice shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after the same is deposited with the United States Postal Service. Notices given by Counsel to either Party shall be deemed given by such Party. Any person or entity may by written notice to the others change the address for such person or entity's receipt of notices.

Article XX. **NON-WAIVER OF PERFORMANCE AND UNDER PROTEST**

Section 20.01 **In General.** One or more waivers of any covenant, term or condition of this Agreement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term or condition, nor shall any delay or omission by either Party to seek a remedy for any breach of this Agreement or to exercise a right accruing to such Party by reason of such breach be deemed a waiver by such Party of its remedies or rights with respect to such breach. The consent or approval by either Party to or of any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

Article XXI. **FURTHER ACTIONS; REASONABLENESS AND COOPERATION BY PARTIES; TIME FOR CERTAIN ACTIONS**

Section 21.01 **In General.** Each Party agrees to take such further actions and to execute such additional documents or instruments as may be reasonably requested by the other Party to carry out the purpose and intent of this Agreement. Except where expressly stated to be in a Party's sole discretion, or where it is stated that a Party has the ability to act in its sole judgment or for its own uses or purposes, wherever it is provided or contemplated in this Agreement that a Party must give its consent or approval to actions or inactions by the other Party or a third person in connection with the transactions contemplated hereby, such consent or approval will not be unreasonably withheld or delayed nor will any other determinations which must be made by a Party in the course of performing and administering this Agreement be unreasonably made. City and YMCA each also agree to cooperate with and reasonably assist each other in good faith in carrying out the purpose and intent of this Agreement and the overall goals and purposes for The Center

and the Project. If no time period is set hereunder for a Party to approve or consent to an action or inaction by the other Party or a third person such approval shall be given or affirmatively withheld in writing within twenty (20) days after it is requested in writing or it shall be deemed given.

Section 21.02 **Qualification as "Contract and Cooperative Action".** If the Parties determine it is in their mutual best interests, they will cooperate and work together to have this Agreement classified and recognized as a "contract and cooperative action" under RSMo. 70.210 et seq.

Article XXII. GENERAL PROVISIONS

Section 22.01 **Annual Appropriation.** City is obligated only to make any payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose for City's then current fiscal year. Provided, however, if City shall fail to make any payments required of City hereunder because of any such non-appropriation, YMCA may exercise its YMCA Re-negotiation/Termination Right set out in Section 16.3 above.

Section 22.02 **Governing Law, Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Missouri with respect to contracts to be wholly performed herein. In any action, by or against the Lessor under this lease, exclusive jurisdiction and venue shall lie in Laclede County, Missouri, and with the Circuit Court of Laclede County, Missouri.

Section 22.03 **Modification of Agreement;** No Waiver by Prior Actions. The terms, covenants and conditions of this Agreement may not be changed orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, modification or discharge is sought. The failure of either Party hereto to insist in any one or more cases upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by the other Party shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

Section 22.04 **Relationship of the Parties;** No Third Party Beneficiaries. This Agreement shall not create a partnership between the Parties and is limited to the specific purposes set out herein. Neither Party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other Party. The Parties do not intend to confer any benefit hereunder on any other person or entity other than the Parties hereto.

Section 22.05 **Agreement Binding on Successors and Assigns.** Except as herein otherwise expressly provided, all covenants, agreements, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest and assigns.

Section 22.06 **No Brokers.** Each Party represents and warrants to the other that it has not incurred or caused to be incurred any liability for real estate brokerage commissions or finder's or agent's fees in connection with the execution or consummation of this Agreement for which the other Party may be liable. Each of the Parties agrees to defend, indemnify and hold the other harmless from and against any and all claims, liabilities or expense (including reasonable attorneys' fees) in connection with any breach of the foregoing representations and warranties.

Section 22.07 **Execution; Counterparts.** Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so and upon request by the other Party proof of such authority in customary form will be furnished to the other Party. This Agreement may be executed at different times and in two or more counterparts and all counterparts so executed shall for all

purposes constitute one agreement, binding on the Parties hereto, notwithstanding that both Parties may not have executed the same counterpart. And, in proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement is sought.

Section 22.08 **Survival.** All provisions of this Agreement which by their terms provide for or contemplate obligations or duties of a Party which are to extend beyond the expiration or termination of this Agreement (and the corresponding rights of the other Party to enforce or receive the benefit of such obligations or duties), shall survive such expiration or termination.

Section 22.09 **Intellectual Property**. Nothing in this Agreement shall give City any rights to use the YMCA name, service marks or trademarks. Upon termination of this Agreement, all YMCA identifying signs and documents shall be removed from The Center and any programs conducted at The Center.

IN WITNESS WHEREOF, City and YMCA have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF LEBANON, MISSOURI

By: _____

Attest: _____

Pursuant to § 55.160 RSMo. I certify that there are sufficient unencumbered funds or anticipated revenue against which this obligation is to be charged.

By: _____

OZARKS REGIONAL YMCA

By: _____

Attest: _____

Exhibit A

LEBANON YMCA

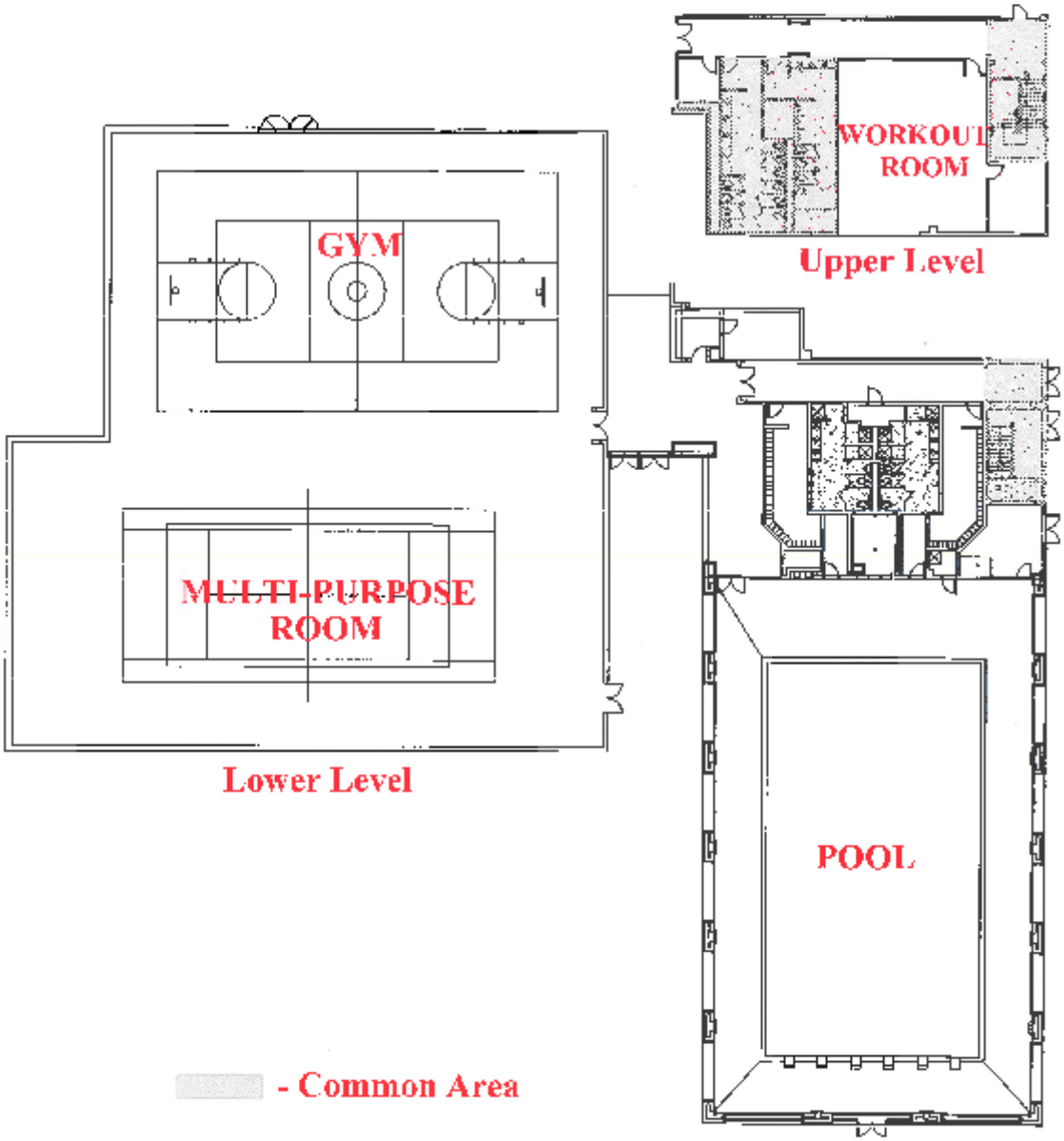


Exhibit B

the Y

FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

Lebanon Family YMCA Fitness Center Rules

1. Youth age 14 and above are allowed to use the Fitness Center. Youth ages 12-13 are not allowed in the Fitness Center until they have successfully completed Youth Strength Training (YST) please see YMCA staff for details.
2. Members are responsible for using the fitness equipment as it was intended to be used.
3. Appropriate dress attire is mandatory at all times while using workout equipment. Shirts, athletic pants/shorts and close-toed rubber soled shoes are required. Jeans, open-toed or open-heeled shoes and boots are prohibited
4. For the security of your personal belongings and the safety of other members, please keep all gym bags, coats, and other personal items in the locker room. The YMCA is not responsible for theft or disappearance of your personal items.
5. No food or gum is allowed in the Fitness Center. Drinks must be in a sports bottle or closed container.
6. Members are not allowed to use electrical outlets for personal devices.
7. It is the responsibility of the member to wipe off all strength and cardio equipment after each use. Paper towels and cleaning solution are located throughout the Fitness Center.
8. Offensive language and/or noises, such as, loud screaming or grunting is not allowed.
9. Please allow other members the opportunity to work-in while using the strength training equipment. Minimize multi-station workouts during peak usage.
10. Spotters and clamps or weight collars are recommended for free weight exercises.
11. Slamming or dropping dumbbells, barbells, Olympic plates or kettle bells is prohibited since it can damage equipment and compromise the safety of our members.
12. No chalk is allowed
13. For safety and courtesy, please refrain from using cell phones while on the equipment. Please conduct cell phone conversations in the lobby.
14. For safety and courtesy cell phones and cameras of any type may not be used in the locker rooms for any reason.
15. Please return weights to the rack in proper order when finished.
16. Sessions of instruction or any form of personal training must be conducted by a YMCA staff member. No outside contracting or non-approved private instruction is allowed.
17. Colognes and perfumes must be worn conservatively and should not be offensive, irritating, or create an allergic reaction to others.
18. Any person who fails to comply by these or additional rules implemented by the staff may be asked to leave the Fitness Center and/or have their membership privileges suspended or cancelled.

OZARKS REGIONAL YMCA 417 S. Jefferson, Springfield, MO 65806 P 417 862 7456 F 417 866 9527 orymca.org

ROY BLUNT YMCA OF BOLIVAR
CAMP WAKONDA
CASSVILLE YMCA
PAT JONES YMCA
MONETT AREA YMCA
OZARK MOUNTAIN FAMILY YMCA
WARD, YOUR DOWNTOWN YMCA
LEBANON FAMILY YMCA
DALLAS COUNTY AREA YMCA

United Way
United Way of the Ozarks

Exhibit B

the Y

FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

Lebanon Family YMCA Gymnasium Rules

1. Youth age 10 and above are allowed to use the YMCA. Youth ages 9 and below are required to be under the direct supervision of either a parent/adult guardian or a responsible person age 16+.
2. Athletic rubber soled shoes only on gym floor. No boots or heeled shoes allowed.
3. All clothing and gym bags will be kept in locker room or hanging on coat racks.
4. There is no hanging from the rim or climbing up the net for any reason. Violation of this policy will result in suspension of membership privileges.
5. Profanity, unnecessary roughness, kicking or throwing basketballs, dodge ball spitting, fighting or similar actions will result in a membership suspension or termination.
6. No food, drinks or gum are allowed in gym at any time.
7. No glass containers are permitted.
8. Members are not allowed to use electrical outlets for personal devices.
9. All members, guests, and YMCA staff members will be treated with respect regardless of race, sex, creed, ability or social status.
10. Persons caught deliberately damaging YMCA facilities or property will be immediately suspended and may have their membership terminated and/or be prosecuted by law.
11. Possession of, sale or usage of drugs, alcohol and weapons are prohibited.
12. Sessions of instruction or any form of personal training must be conducted by a YMCA staff member. No outside contracting or non-approved private instruction is allowed.
13. Any person who fails to comply by these or additional rules implemented by the staff may be asked to leave the Gymnasium and/or have their membership privileges suspended or cancelled.

Exhibit B

Lebanon Family YMCA Aquatic Center Rules

1. Admittance to the aquatic center will be refused for the following reasons: Inability to care for self, improper attire, improper behavior, infectious conditions or contagious diseases such as open sores, influenza, eye infections, rash, or diarrhea.
2. Children under the age of 10 must have a parent or responsible party in the pool area at all times. A responsible party is defined as a person 16 years of age or older. Children under 46 inches tall must be within arm's reach of a responsible party, who must be in the water, at all times, unless they have passed the swim test.
3. Everyone must shower off before and after using the pool and after using the locker rooms if they are re-entering the pool.
4. Proper swimsuits must be worn. Cutoffs, sports bras, regular undergarments, street clothing, etc., are prohibited. Thongs and other revealing swimsuits are also prohibited.
5. Street clothes are allowed on the pool deck only.
6. Individuals wishing to request variance from this policy due to religious or medical reasons must see the Aquatic Director.
7. All non-toilet trained (incontinent) patrons must wear a swim diaper and proper swim attire at all times. For sanitary reasons, all clothing and diaper changes must be made in the locker rooms.
8. No food or gum is allowed on pool deck. Water is allowed in a plastic bottle only.
9. No Diving, Running, or Horseplay.
10. Swimmers under the age of 18 must pass a swim test before swimming in the deep end.
11. Inflatable's are prohibited in pool. This includes, but not limited to inflatable toys, inner tubes, arm floaties, and rafts. Noodles and soft toys (such as Splash balls) are allowed in the pool.
12. Personal floatation devices must be U.S. Coast guard approved. A responsible party must be within arm's reach of the person using the floatation device at all times.
13. Patrons may not be carried on another's shoulders or back in the pool area.
14. Kickboards and other equipment are for lap swimming, swim lessons and Yellowjackets swim team only.
15. Lap swimmers must swim continuously.
16. Reasonable and safe accommodations will be made for any guest with special needs. Please see the aquatics staff for assistance.
17. Swimmers violating personal conduct regulations, written or verbal, may be subject to disciplinary action or asked to leave without a refund. Swimmers who break the rules will receive one warning. The second offense will result in a time out. A third offense will result in pool privileges being taken away the rest of the day.

Aquatics Training

In an attempt to provide the safest facility possible, our staff undergoes extensive training. We may simulate rescue situations at any time, including recreational swim test. This training may include the use of a red ball or "live victims" in the pool or on the deck. In the event that you witness one of these training sessions, please do not be alarmed and/or call "911". The aquatics management staff will notify all patrons of this training as it prepares our staff to respond to emergency situations.

Exhibit C

Definitions of Terms and an example for calculation of the Management Charge

Budget Year	The twelve (12) month period used by the either agency for calculation of it annual financial statements.
Startup Funding	Capital made available through individuals, organizations, and the City of Lebanon for the establishment of a Lebanon YMCA branch.
Management Charge	A fee levied to Lebanon YMCA intended to compensate the Corporate YMCA, staff, and managers for the provision of financial and other operational expertise in support of service provision of the local organizational unit. See Table 1 of this exhibit for a example of calculation of this charge.
Operations	The act of creating value from assets owned, leased, or otherwise operated by the Lebanon YMCA through the provision of goods or services to the community.
Accrual Basis	A method of accounting wherein revenues and expenses are recorded as incurred, with no regard for when cash is exchanged.
City Equipment	All City-owned furniture, fixtures, or other controlled assets that are either have a permanent connection to the structure of the building or facility utilities and non permanent assets and fixtures, provided to the Lebanon YMCA for its use in the course of offering programming to the community.
YMCA Equipment	All YMCA-owned furniture, fixtures, or other equipment that typically have no permanent connection to the structure of the building or facility utilities, provided to the patrons of the Lebanon YMCA for their use in the course of utilizing programming offered to the community.

Table 1

Contributions	$ 36,279	$ 16,089	$ 33,182	$ 47,239
Special Events	$ -	$ -	$ -	$ -
United Way Including Special Grants	$ -	$ -	$ -	$ -
Total Contributions	$ 36,279	$ 16,089	$ 33,182	$ 47,239
Grant Revenue	$ -	$ 10,311	$ 39,465	$ 23,509
Membership Dues	$ 203,892	$ 296,769	$ 316,291	$ 271,830
Program Fees	$ 49,088	$ 65,598	$ 121,054	$ 117,064
Misc Sales & Service	$ 16,896	$ 24,171	$ 37,254	$ 31,725
Gain/Loss on Disposal of Asset	$ -	$ -	$ -	$ 2,000
Miscellaneous Income	$ 1,354	$ (1,163)	$ 948	$ 629
Facility Rental Income	$ 15,584	$ 22,001	$ 22,891	$ 16,239
City of Lebanon Subsidy & Start-up Funding	$ 227,664	$ 60,186	$ -	$ -
Total All Other	$ 514,478	$ 477,873	$ 537,903	$ 462,996
Total Revenue	$ 550,757	$ 493,962	$ 571,085	$ 510,235
Management Charge	12%	12%	12%	12%
	$ 66,091	$ 59,275	$ 68,530	$ 61,288

Exhibit D

Strength Equipment Purchased by City of Lebanon												
Purchase			Useful		Book							
Date	Description	Quantity	Life	Amount	Value							
01/19/10	Adjustable Bench	2	3	$ 1,192.50	$ -							
	Olympic Flat Bench	1	3	$ 633.75	$ -							
	Utility Bench	1	3	$ 333.75	$ -							
	Flat Bench	1	3	$ 258.75	$ -							
	Olympic Incline Bench	1	3	$ 746.25	$ -							
	Scott Curl	1	3	$ 596.25	$ -							
	Weight Storage Attachment	1	3	$ 296.25	$ -							
	Twin Tier Dumbbell Rack	2	3	$ 1,342.50	$ -							
	Power Cage Station	1	3	$ 1,496.25	$ -							
	Barbell Rack	1	3	$ 633.75	$ -							
	Squat Rack w/Adjustable Stop	1	3	$ 1,158.75	$ -							
	Plate Loaded Leg Press	1	3	$ 2,846.25	$ -							
	Plate Loaded Smith Press	1	3	$ 2,958.75	$ -							
	Plate Loaded Seated Calf	1	3	$ 1,083.75	$ -							
	VR3 Chest Press	1	3	$ 2,661.75	$ -							
	VR3 Overhead Press	1	3	$ 2,596.75	$ -							
	VR3 Seated Leg Press	1	3	$ 3,604.25	$ -							
	VR3 Leg Extension	1	3	$ 2,661.75	$ -							
	VR3 Seated Leg Curl	1	3	$ 2,661.75	$ -							
	VR3 Arm Curl	1	3	$ 2,271.75	$ -							
	VR3 Arm Extension	1	3	$ 2,271.75	$ -							
	VR3 Abdominal Crunch	1	3	$ 2,174.25	$ -							
	VR3 Back Extension	1	3	$ 2,531.75	$ -							
	VR3 Fly/Rear Delt	1	3	$ 2,791.75	$ -							
	VR3 Lat Pulldown	1	3	$ 2,401.75	$ -							
	VR3 Lateral Raise	1	3	$ 2,531.75	$ -							
	VR3 Hip Abduction	1	3	$ 2,401.75	$ -							
	VR3 Hip Adduction	1	3	$ 2,401.75	$ -							
	VR3 Assisted Dip/Chin	1	3	$ 3,084.25	$ -							
	VR3 Row	1	3	$ 2,856.75	$ -							
	Delivery & Installation		3	$ 7,458.50	$ -							
	Total			**$ 64,941.50**	$ -							
Cardio & Strength Equipment Purchased by YMCA												
12/15/09	C954i Treadmill	5	3	$ 20,250.00	$ -							
	EFX 576i Exp w/ Cross Ramp	2	3	$ 8,990.00	$ -							
	AMT 100i	2	3	$ 9,990.00	$ -							
	C846i Upright Cycle	2	3	$ 3,700.00	$ -							
	C846i Recumbent Cycle	2	3	$ 4,200.00	$ -							
	Freight & Installation		3	$ 3,063.45	$ -							
01/10/10	12 Sided DBs & Olympic Bench		3	$ 6,490.74	$ -							
	Total			**$ 56,684.19**	$ -							

[End of "Exhibit A" Documentation]

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into this 10 day of February, 2014 by and between The City of Lebanon, Laclede County, Missouri a municipal corporation, hereinafter called "Lessor", and Ozarks Regional YMCA, ("Lessee".)

WHEREAS, Lessee is currently in need of recreational space to provide recreational programs and other recreational opportunities within the City of Lebanon, Missouri; and Lessor, for and in consideration of the rents, covenants and agreements hereinafter mentioned and hereby agreed to be paid and kept and performed by Lessee, does hereby Lease to Lessee, and Lessee does hereby Lease from Lessor, the premises described herein on the terms and conditions contained herein.

Section 1 **Premises.** In consideration of the mutual promises and agreements herein contained, Lessor does by these presents rent, lease and let unto Lessee and Lessee hereby leases that certain real property in the Cowan Civic Center more specifically, more or less 30,000 square feet of available space (the "Building"), as shown in Exhibit A, parking areas, access drives, other exterior areas, located and/or to be constructed on the space; (the Space), building and other improvements and fixtures and removable trade fixtures described above are hereinafter (sometimes collectively) referred to as the "Leased Premises" or the "premises", upon the following terms and conditions.

Section 2 **Effective Date**. The Effective Date of this Lease shall be January 1, 2014.

Section 3 **Term; Termination**. The initial term of the Lease shall begin on January 1, 2014 and shall continue for a period of 12 months, terminating on December 31, 2014 ("Initial Term") or such other date as agreed by the parties in writing. Lessor grants to the Lessee the right and option to renew this Lease on every Ten (10) years immediately following the Initial Term for a maximum of 4 successive terms. The option may be exercised only if Lessee is not in default under this Lease upon the date of such exercise, and provided Lessee gives Lessor notice that Lessee is exercising the option not less than Six (6) months before the end of the then expiring Term. All of the terms and conditions of this Lease in effect as of the exercise of an option to renew will apply to the Renewal Term, except for any change in Base Rent provided for in Section Four (4) Rent. As used in this Lease, the word "Term" shall mean the Initial Term and if the option is exercised, the Renewal Term, Lessor acknowledges and agrees that upon the expiration of the Initial Term or any Renewal Term, provided Lessee has not exercised any applicable renewal option, Lessee will have the right to vacate the Leased Premises and shall have no further obligations under this Lease.

Section 4 **Rent**. Lessee covenants and agrees to pay Lessor, as "Base Rent" for the Premises, as follows:

4.1 The annual base rent shall be set at One Dollar fifty Cents ($1.50) per square foot payable in quarterly payments. This base rent does not include any lessee allowances, or any other expenses normally due and payable by the Lessee to the Lessor or any other service and/or product provider. If Lessor and Lessee decide to extend this lease beyond the Initial Term, Lessor and Lessee will negotiate a rental rate schedule for such lease beyond the Initial Term. Provided, however, in Calendar Year 2015, The Base Rent will escalate to Three Dollars and No Cents ($3.00) per square foot payable in quarterly payments, and in Calendar

year 2016, The Base Rent will again escalate to Four Dollars and No Cents ($4.00) per square foot payable in quarterly payments.

4.2 Except as set forth in 4.3 below, Base Rent payable to Lessor under this Lease shall be paid in the above listed quarterly installments, each due and payable by the fifteenth (15th) of the month following the beginning of each quarter of the Term, as follows: Account Receivable 401 South Jefferson Lebanon Missouri 65536

4.3 The Base Rent for the first quarter of this Lease shall be due and payable at the time of execution of this Lease by Lessee, which such amounts are not intended to be and shall not be considered a deposit. Rent for the second quarter and all other subsequent quarter shall be due as set forth in Section 4.2

4.4 **Additional Terms**. Any obligation that Lessee is required to pay Lessor under the terms and conditions of this lease or any payments made by Lessor on the Lessee's behalf for any reason shall be treated as additional rent and may be collected or enforced as by law as an additional rental obligation.

Section 5 Tenant Use/Landlord Right to Entry.

5.1 **Tenant Use**. The Leased Premises shall be used and occupied for the principal purpose of providing recreation programs. Lessee will not use or occupy the Leased Premises for any unlawful purpose, and will comply with all present and future laws, ordinances, regulations, codes and orders of the United States of America, the state of Missouri, and all other governmental entities or agencies having valid jurisdiction over the Leased Premises.

5.2 **Landlord's Right to Entry**. Upon reasonable notice to Lessee and provided Lessee's business operations are not impaired thereby, Lessor and Lessor's agents and representatives shall have the right to enter and inspect the Premises at any time during normal business hours for the purpose of inspecting, maintaining or repairing the Premises and/or inspecting the performance by Lessee of the terms and conditions hereof or make such alterations, repairs, improvements or additions to the Premises as required hereunder. Notwithstanding anything in this section to the contrary, Lessor may enter the Premises at any time with or without notice to Lessee in the event of an emergency for the purposes of securing and/or repairing the Premises. In addition, during the last 60 days of the initial lease Term or during the last 60 days of any renewal or extension Term Lessor may show the Premises to prospective tenants, purchasers or agents of said parties.

Section 6 Lessor's Obligation to Maintain. Notwithstanding anything in this section to the contrary, Lessor shall not be responsible to repair any damage or make any replacement to the extent damage or destruction is caused by the negligence or willful misconduct of Lessee or its invitees and all such repairs and replacements shall be at Lessee sole expense; nor shall Lessor be required to make any repair resulting from (i) the installation, use or operation of Lessee's property, fixtures and equipment, (ii) Lessee use or occupancy of the Premises in violation of this Lease, (iii) fire and other casualty, except as provided by this Lease or (iv) condemnation, except as provided in this Lease.

Lessor shall be responsible for the costs of repair or replacement of exterior conditions caused by failure of the products used by or work done by the general contractor and

subcontractors hired by the Lessor; and will make every reasonable effort to assist the Lessee to have such conditions corrected at the cost of the company providing the failed product or by the contractor(s) performing the work.

Section 7 **Lessee's Obligation to Maintain**. Lessee shall keep the Leased Premises in good order and condition and take any actions necessary or appropriate to keep and maintain the Leased Premises in good order and condition. Specifically, the Lessee shall maintain industry standards for water quality for all aquatic systems.

At the end or termination of this Lease, Lessee shall deliver the Leased Premises with all permanent improvements located thereon, in good repair and condition, reasonable wear and tear and damage by fire, tornado or other casualty excepted.

In the event Lessee fails to maintain the Premises in good order, condition and repair, which failure continues at the end of ten (10) days following Lessee's receipt of written notice from Lessor stating with particularity the nature of the failure, Lessor shall have the right to enter the Premises and perform such maintenance, repairs or refurbishing at Lessee's sole cost and expense.

Section 8 **Net Lease**. It is intended that this Lease be a "triple net lease," and that the rent to be paid hereunder by Lessee will be received by Lessor without any deduction or offset by Lessee except as specifically provided for in this Lease. Tenant shall carry the insurance at its sole cost and expense as required by Section Eleven (11) hereunder.

Section 9 **Utilities; Taxes**. Lessee shall pay for its phone service and other telecommunications systems used or consumed by it in the Leased Premises, and for any special equipment or cost of installation required by Lessee. All fees and other cost in connection with the Leased Premises during the term of this Lease are to be paid by Lessee, including all deposits associated therewith. Lessee shall pay for its own personal property taxes assessed in connection with Lessee's personal property on the Leased Premises. To the extent that Lessor has no control over the utility service provided to Lessee from utility providers Lessor shall not be liable to Lessee for interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute constructive eviction or grounds for rental abatement. The Lessee shall make all practicable attempts to manage energy consumption following best practices as provided by the Energy Audit Report dated 2010 or other current standards.

Section 10 **Liability of Lessor/Insurance; Damage/Destruction**. During the Term hereof, the Lessee shall maintain general public liability insurance in a minimum amount of $1,000,000 covering the Leased Premises for claims arising from death or damage to person or property occurring in or about the Leased Premises and common areas and naming Lessor as an additional insured and/or loss payee. Lessee shall further keep workers' compensation coverage as administered by the State of Missouri Attorney General's Office having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Lessee in the conduct of its operations on the Premises. Lessee shall keep the Leased Premises insured throughout the Initial Term and all renewal terms against the following: Fire and extended coverage against loss or damage by fire and such other risks as may be included in the broadest form of all risk insurance coverage from time to time

available. Said insurance shall cover the replacement costs of the facility, and other improvements to the property. Lessor shall be named as additional insured and/or loss payee. Except as otherwise set forth in this Lease, Lessor shall not be obligated to repair damage to or to replace alterations, improvements or additions owned or installed by Lessee, or any fixtures, furniture, furnishings, equipment or other property of Lessee kept on the Leased Premises, except to the extent such damage is caused by the negligence or willful misconduct of Lessor or its agents, invitees or representatives.

Each of the policies required in this section shall not be modified except upon thirty (30) days written notice to the other party. If the liability policies to be kept by each party do not contain a separation of insured's provision or a substantially similar clause, the policies shall be endorsed to provide cross-liability coverage by being named as an additional insured and/or loss payee. In the event that the Premises or any portion of the Premises are rendered untenantable due to damage or destruction of the Premises and such damage is not covered by insurance proceeds then Lessor shall have the right at Lessor's option either (i) to repair such damage as soon as reasonably possible at Lessor's expense, or (ii) to give written notice to Lessee within thirty (30) days after the date of the occurrence of such damage of Lessor's intention to terminate this Lease as of the date of the occurrence of such damage; provided, however, that the foregoing right shall not apply if such damage or destruction results from a breach by Lessor of its obligations under this Lease.

Lessee shall deliver to Lesssor certificates of insurance for all insurance required to be maintained by Lessee upon request by Lessor. Each party shall notify the other within twenty-four (24) hours if feasible or as soon as reasonably possible after the occurrence of any accidents or incidents in the Premises, which could give rise to a claim under any of the insurance policies required under this section. If during the Term there shall be damage to the Premises by fire, the elements, accident or other casualty (any such causes are referred to herein as a "Casualty") Lessor shall promptly proceed to restore the Premises to substantially the condition in which it was immediately prior to the occurrence of such damage. Alternatively, if during the Term the Premises or any portion of the Premises are rendered untenable due to a Casualty or otherwise, or if damage to the Premises materially interferes with Lessee's use of the premises, Lessee shall have the right at Lessee's option to (1) waive its right to enforce the preceding sentence, (2) terminate this Lease as of the date the Premises or any portion of the Premises were rendered untenable, and (3) demand Lessor to proportionately refund rent paid for occupancy during the period after termination.

Section 11 Indemnification.

11.1 Lessor agrees to indemnify and hold harmless Lessee, its directors, officers, employees, agents, representatives, successors, assigns, and subcontractors from and against any and all claims, demands, actions, settlements or judgments, including reasonable attorneys' fees and litigation expenses, based upon or arising out of the activities described in this Lease, where such claims, demands, actions, settlements, or judgments relate to the negligence, actions or omissions of Lessor or its agents, employees, invitees, or contractors.

11.2 The parties hereto hereby release each other and each other's directors, officers, employees, agents, representatives, successors, assigns and subcontractors from and against any and all claims for loss or casualty relating to the Leased Premises and common areas, the extent to which insurance proceeds pay for such loss or casualty, regardless of cause, including the

negligence of either party or its directors, officers, employees, agents, representatives, successors, assigns and subcontractors; and the parties further agree that any such insurance shall contain a clause whereby the insurer waives its right of subrogation against the other party. Each party shall give to each of its insurance companies which has issued one or more policies of insurance covering the Leased Premises notice of the provisions of this section and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this section. If the premises are damaged resulting from the intentional or willful misconduct of Lessee or its officers directors, invitees, employees, contractors, subcontractors or agents, Lessee shall be liable to Lessor for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds from policies of insurance required to be maintained pursuant to the provisions of this Lease. In all such cases, Lessee shall reimburse Lessor for any deductible paid by Lessor.

11.3 The duties to indemnify and hold harmless set forth in this section shall survive the termination and/or expiration of this Lease.

Section 12 **No Assignment by Lessee**. Except as otherwise expressly provided in this Lease, Lessee may not assign any of its rights or obligations under this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Except as specifically provided in this Lease, any attempted assignment or delegation of Lessee's rights, claims, privileges, duties, or obligations hereunder not in compliance with this section shall be null and void. This Lease may not be assigned by operation of law. Notwithstanding the foregoing, Lessee may, upon notice to Lessor but without Lessor's consent, assign this Lease to any corporation into which or with which Lessee may merge or to any corporation or other business entity or to any company which may result from a reorganization or consolidation by or with Lessee, or to which Lessee shall sell all or substantially all of its assets or substantially all of its corporate shares ("Permitted Transferee"). Should the Lessee's assets be transferred to a new legal entity, the Lease shall be assigned to such entity, provided that such entity agrees to be bound by all terms and conditions of this Lease, and further provided that in the event such assignment is not made to a Permitted Transferee, such assignment shall not relieve Lessee of its liabilities and obligations incurred under the Lease whether arising prior to or following such assignment, and provided further that in such event, Lessee will perform or take whatever steps may be necessary to achieve full performance of the Lease obligations when due. Notwithstanding the foregoing, any assignment of this Lease by Lessee to a Permitted Transferee shall relieve Lessee of its obligations under this Lease arising from and after the date of such assignment. Any purported assignment or subletting contrary to the provisions hereof shall be void and shall constitute an event of default hereunder.

Section 13 **Condemnation**. If all of the Premises is condemned by eminent domain, or sold under threat of condemnation for any purpose, this Lease shall terminate as of the earlier of the date the condemning authority takes title to or possession of the Premises, and Rent shall be adjusted to the date of termination. If any part of the Leased Premises should be taken and such partial condemnation materially impairs Lesee's ability to use the Premises for Lessee's business in the same manner as Lessee has used the Premises, as reasonably determined by Lessee, then Lessee shall have the right to terminate the Lease as of the earlier of the date title vests in the condemning authority or as of the date an order of immediate possession is issued and rent shall be adjusted to the date of termination. If such partial condemnation

does not materially impair Lessee's ability to use the Premises for the business of Lessee in the same manner as Lessee has used the Premises, Lessor shall restore the Premises as closely as reasonably possible to their condition prior to such condemnation, excluding the portion thereof lost in such condemnation, and this Lease shall continue in full force and effect except that after the date of such title vesting rent shall be adjusted to reflect the decreased square footage of the Premises. Lessee shall have the right to file claims for damages or awards in any such condemnation as its interest may appear, including for Lessee's personal property affected thereby.

Section 14 Events of Default.

14.1 The following events shall be deemed to be events of default under this Lease as follows:

14.1.1 Lessee shall desert or vacate the Leased Premises or fail to carry out any duties imposed on Lessee by law and continue to do so upon expiration of thirty (30) days written notice thereof by Lessor.

14.1.2 Lessor shall fail to carry out any duties imposed by law and continue to do so upon expiration of thirty (30) days written notice thereof by Lessee.

14.1.3 Lessee or Lessor shall fail to comply with any term, provision or covenant of this Lease (or any event of default as specified elsewhere in this Lease) and such party shall not cure, or commence in good faith to cure, such failure within thirty (30) days after written notice thereof to the defaulting party (unless the specific terms of the Lease require compliance in more or less time). Lessee shall not be in default for the non-payment of Base Rent or any other amount due hereunder unless such failure continues for five (5) days after the due date therefore.

14.1.4 Lessee or Lessor shall become insolvent or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, or an inability to pay debts generally.

14.1.5 Lessee or Lessor shall file a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof; or shall be adjudged bankrupt or insolvent in proceedings filed against Lessee or Lessor.

14.1.6 A Receiver or trustee shall be appointed for all or substantially all of the assets of Lessee or Lessor which is not discharged within 60 days.

14.2 Upon the occurrence of any such event of default, the non-defaulting party shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

14.2.1 Immediately terminate this Lease, in which event, if Lessee is the defaulting party Lessee shall immediately surrender the Premises to Lessor, and if Lessee shall fail to do so, Lessor may, without prejudice to any other remedy which it may have in law or equity for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Premises or any part thereof; and if Lessor is the defaulting party Lessee shall have all remedies accorded to Lessee under the law, including, without limitation, the right to declare a constructive

eviction and terminate this Lease abating rent as of the date of such declaration, or payment of rent into escrow pending a determination for Lessor's and Lessee's rights.

14.2.2 Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies hereby provided or any other remedy provided by law. Failure by the non-defaulting party to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violations or breach of any of the terms, provisions, and covenants herein contained.

14.2.3 A defaulting party hereunder shall indemnify the non-defaulting party for all costs including reasonable attorney and legal fees and costs incurred in enforcing any right of the non-defaulting party hereunder.

Section 15 **Property Left on the Leased Premises**. Upon the expiration of this Lease or if the Leased Premises should be vacated at any time, or abandoned by the Lessee, or this Lease should terminate for any cause, and at the time of such expiration, vacation, abandonment or termination, the Lessee or Lessee's agents, subtenants or any other person should leave any property of any kind or character on or in the Leased premises, unless otherwise agreed by the parties to this Lease, the fact of such leaving of property on or in the Leased Premises for more than ten (10) days shall be conclusive evidence of intent by Lessee, Lessee's agents or subtenants, to abandon such property so left in or upon the Leased Premises, and such leaving after ten (10) additional days (unless a longer time is required by law) written notice by Lessor to Lessee shall constitute abandonment of the property.

Section 16 **Holding Over**. If Lessor holds over or remains in possession of the Leased Premises after expiration of this Lease or after any sooner termination thereof without any new lease of said Leased Premises being executed by the parties hereto, or if rent is paid by Lessee and accepted by Lessor for or during any period of time Lessee holds over and remains in possession such acceptance shall create a tenancy from month to month. Such tenancy may at any time be terminated by either party hereto by giving thirty (30) days written notice to the other party. In the event of any such holding over the parties shall be bound by the requirements and provisions of this Lease.

Lessor covenants and agrees that so long as Lessee has committed no default under this Lease, Lessee's peaceful and quiet possession of the Leased Premises during the Term of this Lease shall not be disturbed by Landlord or by anyone claiming by, through or under Lessor.

Section 17 **Partial Invalidity**. If any provision of this Lease is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Lease, unless such invalidity or unenforceability would defeat an essential business purpose of this Lease.

Section 18 **No Joint Venture**. It is expressly agreed and understood by the parties hereto that neither party is an agent, partner, or joint venture with or of the other.

Section 19 **Further Assurances**. Each party agrees, at its own cost, to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may

reasonably require to consummate, evidence or confirm this Lease contained herein in the manner contemplated hereby.

Section 20 **Governing Law**. This Lease shall be governed by and construed in accordance with the laws of the State of Missouri as applicable to agreements made and to be performed wholly within that state, irrespective of such state's choice-of-law principles. In any action, by or against the Lessor under this lease, exclusive jurisdiction and venue shall lie in Laclede County, Missouri, and with the Circuit Court of Laclede County, Missouri.

Section 21 **Attorneys' Fees**. Notwithstanding anything in this Agreement to the contrary, should either party institute any action or proceeding arising out of this Lease the substantially prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the substantially prevailing party in connection with such action or proceeding. The determination of which party is the "substantially prevailing party," shall be made by the court or arbitrator, as applicable, at the time of the action or proceeding, as the case maybe. Notwithstanding the foregoing, attorneys' fees incurred in enforcing any judgment are revocable as a separate item and such agreement of the parties is intended to be severable from the other provisions of this Lease and is intended to survive any judgment and is not to be deemed merged into any judgment.

Section 22 **Successors and Assigns**. This Lease and the rights, privileges, duties and obligations of the parties hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assignees.

Section 23 **Waiver**. No waiver of or failure by any party to enforce any of the provisions, terms, conditions, or obligations herein shall be construed as a waiver of any subsequent breach of such provision, term, condition, or obligation, or of any other provision, term, condition, or obligation hereunder, whether the same or different in nature. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

Section 24 **Force Majeure**.

24.1 Neither party hereto shall be liable for any delay or failure in the performance of any obligation under this Lease or for any loss or damage (including indirect or consequential damage) to the extent that such nonperformance, delay, loss or damage results from any contingency which is beyond the control of such party, provided such contingency is not caused by the fault or negligence of such party. A contingency for the purposes of this Lease shall be Acts of God, fires, floods, earthquakes, explosions, storms, wars, hostilities, blockades, public disorders, quarantine restrictions, embargoes, strikes, or other labor disturbances, and compliance with any law, order or control of, or insistence by any governmental or military authority.

24.2 The party claiming to be affected by such contingency shall give immediate notice to the other party, giving full particulars thereof, and all such contingencies shall, as far as is reasonably possible, be remedied with all reasonable efforts and dispatch. The existence of such contingencies shall justify the suspension of performance hereunder by either party and shall extend the time for such performance for a period equal to the period of delay;

provided, however, that if such period of delay shall exceed sixty (60) days from the date of such notice, either party shall have the right to cancel this Lease.

Section 25 **Authority**. Any entity signing this Lease on behalf of any other entity hereby represents and warrants in its individual capacity that it has full authority to do so on behalf of the other entity. Any individual signing this Lease on behalf of an entity hereby represents and warrants in his individual capacity that he has full authority to do so on behalf of such entity.

Section 26 **Integration**. This Lease and all Exhibits hereto shall constitute the entire agreement between the parties with regard to the subject matter hereof and thereof. There are no agreements, representations or warranties between or among the parties other than those set forth in this Lease or the documents and agreements referred to in this Lease.

Section 27 **Amendments.** This Lease may be amended at any time by mutual agreement of the parties without additional consideration, provided that before any amendment shall become effective, it shall be reduced to writing and signed by each of the parties.

Section 28 **Counterparts**. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

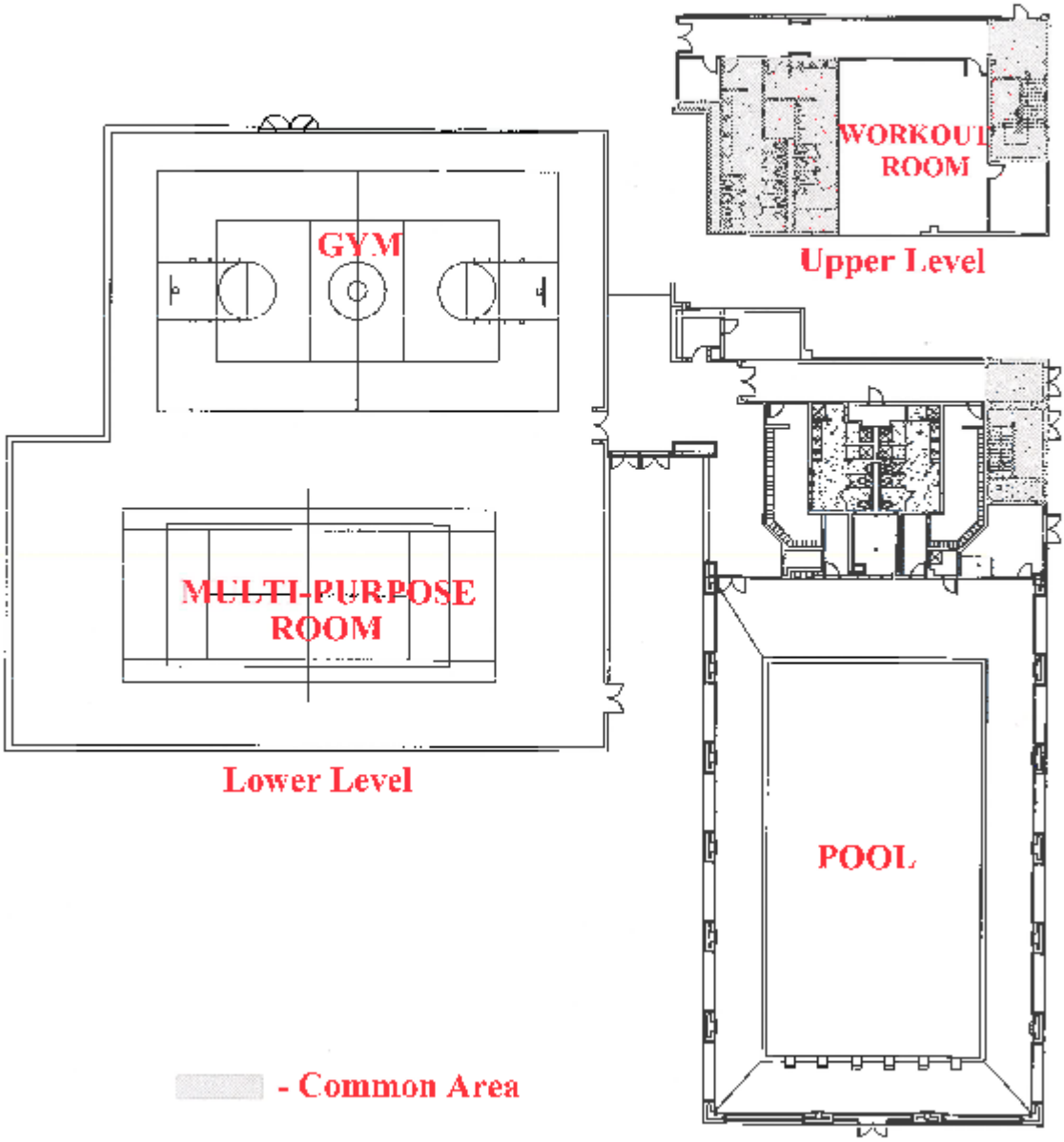
Section 29 **Consent to Jurisdiction and Forum Selection**. The parties agree that all actions or proceedings arising in connection with this Lease shall be tried and litigated exclusively in the State and Federal courts located in the County of Laclede, State of Missouri. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to or arising out of this Lease in any jurisdiction other than that specified in this section. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section, and stipulates that the State and Federal courts located in the County of Laclede, State of Missouri shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Lease. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Lease, or in the manner set forth in the Notice Section of this Lease. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

Section 30 **Notices**. Unless otherwise specified herein, all notices contemplated by this Lease may be made by sending a letter via first class mail, postage prepaid, to the appropriate party at the following addresses:

If to the City:	City of Lebanon, Missouri 401 South Jefferson Lebanon Missouri 65536 Attention: City Administrator	**With a copy to:**	City of Lebanon, Missouri 401 South Jefferson Lebanon Missouri 65536 Attention: City Clerk
If to the YMCA:	Ozarks Regional YMCA 417 South. Jefferson Ave. Springfield, MO 65806 Attention: CEO	**With a copy to:**	Lathrop & Gage LLP P. O. Box 4288 Springfield, MO 65808 Attention: Frank M. Evans, III

IN WITNESS WHEREOF, the parties hereto have set their hand this day and year first above written.

_____	_____
SIGNATURE	SIGNATURE
_____	_____
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
"LESSOR"	"LESSEE"
Attest:	Attest:
_____	_____
SIGNATURE	SIGNATURE
_____	_____
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
NOTARY SEAL:	NOTARY SEAL:

Exhibit A

LEBANON YMCA