

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING A GROUND LEASE AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY, INC., FOR THE LOCATION OF A CLUB IN DREHER PARK; AUTHORIZING EXECUTION OF THE LEASE AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THESE PURPOSES; APPROVING THE CONCEPT PLAN; GRANTING A LICENSE FOR ENTRY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the Boys & Girls Club of Palm Beach County is the largest non-for-profit in the county serving our young people, and has 17 locations serving more than 10,000 youth between the ages of six and 18; and

WHEREAS, the Boys & Girls Club has identified a greater need for service for youth living within the City's District 5, in which Dreher Park is located; and

WHEREAS, the Boys & Girls Club is conducting a fund-raising campaign for a District 5 Club, and has raised \$10 million; and

WHEREAS, the Boys & Girls Club proposed construction of a 25,000 sq. foot, state-of-the-art Club in District 5, conveniently located in Dreher Park along Southern Boulevard pursuant to a ground lease with the City of West Palm Beach; and

WHEREAS, the major components of the Club will be a teen center, educational/study labs, gymnasium and multi-purpose areas. The Club will provide academic support by certified teachers; mental health programs to address childhood trauma; hunger relief; and career readiness programming for teens; and

WHEREAS, the Cox Science Center and Aquarium and the Palm Beach Zoo support the location of a Club on the North end of Dreher Park; and

WHEREAS, by Resolution No. 103-23, the City Commission declared a portion of Dreher Park as surplus and directed the negotiation of the terms of a ground lease with the Boys & Girls Club; and

WHEREAS, the Parks and Recreation Advisory Committee voted to recommend approval of the proposed material terms; and

WHEREAS, by Resolution No. 303-23, the City Commission approved a Term Sheet for a Dreher Park lease; and

WHEREAS, the significant terms of the Ground Lease include the following:

Club Facilities: The Boys & Girls Club will design, fund, and construct the Club facilities.

Additional Improvements:

ORDINANCE NO. 5099-24

Parking area. The Boys & Girls Club will design, fund and construct a parking area, which may be used by the general public when the Club facilities are closed.

Mound removal. The Boys & Girls Club will remove two mounds of approximately one acre in size and install sod and irrigation to provide a more functional green space for the community.

WPB Resident Preference. BGC shall give a transportation preference for providing service and participation in programs to youth who reside, or attend public schools within, the jurisdictional boundaries of the City of West Palm Beach. To the extent that BGC provides transportation, it will be provided only to West Palm Beach residents and those children attending public schools within the City and included in the transportation plan.

Lease Term. A lease term of Thirty (30) years with a renewal option for an two (2) additional terms of ten (10) years each.

Rent. Annual rent of \$100.00 per year.

Construction Timeline. Construction shall commence within 36 months of execution of a Lease. Construction will be completed within 4 years of commencement of construction.

Small Business / MWBE Participation. Contractors will be required to use their best good faith efforts to engage at least 18% contractors and subcontractors from small businesses and minority/women owned businesses certified by the City.

Local Workforce. Contractors will be required to use their best good faith efforts to have local workforce participation of 8% of the value of the Club facilities construction work. Additionally, the Boys & Girls Club will seek a construction manager with a business address within the City and which demonstrates its experience managing an active apprenticeship and/or job training program.

Maintenance. The Boys & Girls Club will be responsible for all operating and maintenance costs for the Club facilities. Additionally the Boys & Girls Club will maintain the parking area constructed, their monument sign and the access sidewalk.

Naming Rights. The Boys & Girls Club will be permitted to place the name of up to 4 significant donors on exterior Club facilities.

WHEREAS, Section 2-31(27)(c) of the Code Ordinances eliminates the requirement for appraisal of the property to be leased if the lessee is a bona fide not-for-profit 501(c)(3) corporation. Accordingly, appraisals were not required for this transaction;

WHEREAS, Section 2-31(27) of the Code Ordinance provides for approval of a lease of City property by ordinance approved by four-fifths of the membership of the City Commission;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, THAT:

SECTION 1: The City Commission continues to find and determine that assisting the Boys & Girls Clubs of Palm Beach, Inc., to better serve students in West Palm Beach, particularly those in the Southern neighborhoods near Dreher Park, benefits the general welfare and serves a public purpose.

SECTION 2: The City Commission hereby approves the lease of approximately ± 1.65 acres of a portion of Dreher Park for development of a Boys and Girls Club, along with use of a parking area and adjacent access pursuant to the terms of the lease, with a lease term of thirty (30) years with two renewal options of ten (10) years each.

SECTION 3: The City Commission hereby approves that Ground Lease Agreement with the Boys and Girls Clubs of Palm Beach County, Inc., for the approximate ± 1.65 acres portion of Dreher Park, along with rights to the adjacent Maintenance Area, in form and substance similar to that attached hereto as **Exhibit A** (the "Lease").

SECTION 4: The City Commission hereby approves the Concept Plan for the Boys and Girls Club in Dreher Park, as presented at the April 29, 2024, Commission meeting, and attached as **Exhibit B**. Any revisions to the Concept Plan which require Commission approval shall be considered via resolution.

SECTION 5: The City Commission hereby approves a License for Entry ("License"), in form and substance similar to that attached as **Exhibit C**, to allow the Boys and Girls Club, its consultants, contractors and agents, to commence geotechnical soil borings and minor site preparation, prior to the Effective Date of the Lease.

SECTION 6: Upon execution of the Lease by the Boys and Girls Clubs of Palm Beach County, Inc., the Mayor is authorized to execute two (2) originals of the Lease. The Mayor is further authorized to execute any other documents, including permit applications, required under or necessary for the operation of the Lease.

SECTION 7: One fully-executed original of the Lease shall be retained by the City Clerk as a public record. The City Clerk shall record one fully-executed original of the Lease in the Public Records of Palm Beach County.

SECTION 8: The City Clerk shall provide a copy of the fully-executed Lease to Leah Rockwell, Director of Parks & Recreation, and to Nancy Urcheck, Deputy City Attorney, for forwarding to the Boys and Girls Clubs of Palm Beach County, Inc.

SECTION 9: Upon execution of the License by the Boys and Girls Clubs of Palm Beach County, Inc., the Mayor is authorized to execute the License.

ORDINANCE NO. 5099-24

SECTION 10: One fully-executed License shall be retained by the City Clerk as a public record.

SECTION 11: The City Clerk shall provide a copy of the fully-executed License to Leah Rockwell, Director of Parks & Recreation, and to Nancy Urcheck, Deputy City Attorney, for forwarding to the Boys and Girls Clubs of Palm Beach County, Inc.

SECTION 12: This Ordinance has been approved by 4/5ths of the membership of the City Commission at First Reading, meeting the requirements of Section 22-31(27) of the City of West Palm Beach Code of Ordinances.


SECTION 13: This Ordinance shall take effect 31 days after final passage and shall be subject to the initiative process set forth in the City Charter.

FIRST READING THIS 29TH DAY OF APRIL, 2024.

SECOND READING AND PASSAGE THIS 13TH DAY OF MAY, 2024.





ATTEST:

X 

CITY CLERK
Signed by: Shaquita Lashae Edwards


**CITY OF WEST PALM BEACH
BY ITS CITY COMMISSION:**


 Recoverable Signature

X 

PRESIDING OFFICER
Signed by: Keith A. James

**APPROVED AS TO FORM AND
LEGALITY:**

 Recoverable Signature

X 

CITY ATTORNEY
Signed by: Nancy DeSimone Urcheck

PREPARED BY AND RECORD & RETURN TO:

CITY OF WEST PALM BEACH
Engineering Services - Vincent J. Noel, PSM
401 Clematis St.
City Hall, 4th Floor
West Palm Beach, FL 33401
WPB No. 32618.001

Parcel No. 74-43-44-04-00-003-0020

GROUND LEASE AGREEMENT
For
PORTION OF DREHER PARK
Between
THE CITY OF WEST PALM BEACH
and
THE BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY, INC.



**GROUND LEASE AGREEMENT
For
PORTION OF DREHER PARK**

WPB No. 28686

THIS LEASE AGREEMENT is made and entered into by:

CITY OF WEST PALM BEACH, a Florida municipal corporation, with an address of 401 Clematis Street, West Palm Beach, Florida 33401, hereinafter referred to as “**City**”, and

THE BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY, INC., a Florida Not for Profit corporation, with a principal address of 800 Northpoint Parkway, #204, West Palm Beach, FL 33407, hereinafter referred to as “**BGC**”.

W I T N E S S E T H:

WHEREAS, the mission of BGC is to enable all young people to reach their full potential as productive, caring, responsible citizens; and to do so by providing a safe, fun and engaging environment for children and teens to learn and grow; and

WHEREAS, the Boys & Girls Clubs of Palm Beach County, Inc., has expressed a desire to open a Club in the area of Dreher Park to serve West Palm Beach area school youth; and

WHEREAS, the City Commission of the City of West Palm Beach has found that that assisting the Boys & Girls Clubs of Palm Beach, Inc., to better serve West Palm Beach youth contributes to the education and general welfare of the public, benefits the community, and serves a public purpose; and

WHEREAS, by Resolution No. 103-23, the City Commission approved a term sheet for the ground lease of an area of approximately 1.65 acres, more or less, in the Northwest area of Dreher Park for the development of a Boys and Girls Club facility;

NOW, THEREFORE, the City and BGC agree to the lease of a portion of Dreher Park in accordance with the terms and conditions of this Lease;

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ARTICLE 1 DEFINED TERMS

- a) **“Additional Rent”** is described in Article 12.
- b) **“Agreement” or “Lease”** shall mean this Lease Agreement.
- c) **“Bond Rights”** are referenced in Sections 8.19 and 8.10.
- d) **“Building Permit”** shall mean the required building permit(s) and license(s) to be issued by the City’s Development Services Department or any other city governmental division or unit having jurisdiction over the Leased Property.
- e) **“City”** shall mean the City of West Palm Beach, Florida.
- f) **“Club”** shall mean the BGC improvements and facilities constructed on the Leased Property, as described in Section 6.1.
- g) **“Commence Construction”** or the **“commencement of construction”** shall mean the completion of all site preparation and foundation work and the initiation of construction of the vertical support elements, as certified by the applicable architect. This definition shall apply to the use of these terms, regardless of whether the words are capitalized.
- h) **“Complete Construction”** shall mean completion of the final inspection and approvals, including issuance of a certificate of occupancy. This definition shall apply to the use of these terms, regardless of whether the words are capitalized.
- i) **“Continuous Construction”** is defined in Section 8.18.
- j) **“Continuous Operation”** is defined in Section 5.7.
- k) **“Contractor”** shall mean a legal entity licensed as a general contractor in the State of Florida under a direct or prime contract with the BGC, responsible for the construction of the Improvements, or the repair of any buildings or facilities, or any portion thereof. This definition shall apply to the use of these terms, regardless of whether the words are capitalized.
- l) **“Default”** is defined in Article 16.
- m) **“Easements”** are described in Section 10.2.
- n) **“Effective Date”** is defined in Section 3.1.
- o) **“Force majeure”** is defined in Section 19.4.
- p) **“Governmental Approvals”** is defined in Sections 8.5.
- q) **“Hazardous Materials”** shall mean any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics. The term "Hazardous Materials" includes, without limitation, any substance regulated under any and all federal, state and local statutes, laws (including case law), regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions, whether now or hereafter in effect, relating to human health, the environment or to emissions, discharges or releases of pollutants, contaminants, toxic substances, hazardous substances or wastes into the environment including,

without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous materials or wastes or the clean-up or other remediation thereof.

r) **“Improvements”** shall mean the Improvements as described in Section 6.2 and shown in Exhibit A.

s) **“Local Workforce”** requirements are addressed in Section 8.13.

t) **“Planning and Zoning Approvals”** shall mean final and non-appealable Site Plan approval, Plans & Plats Review Committee approval, Zoning Board approval (if required), City Commission regulatory approval (if required), subdivision and/or re-plat approval, and any required waivers and/or variances.

u) **“Leased Property”** shall mean that certain parcel of real property owned by the City identified in Section 4.1, and as shown in Exhibit A and legally described in Exhibit B.

v) **“Maintenance Area”** is described in Section 4.1 and Section 6.2, and depicted in Exhibit A.

w) **“Off-Lease Improvements”** are described in Section 4.1 and Section 6.3, and depicted in Exhibit A.

x) **“Small / Minority Woman Business”** participation is addressed in Section 8.12.

y) **“Term”** is defined in Section 3.2 and includes the Renewal Term, if exercised.

1.2 **Other Defined Terms**. Other capitalized terms contained in this Lease shall have the meanings assigned to them in this Lease, or as the context requires.

ARTICLE 2 **RECITALS**

2.1 **Recitals**. The recitals set forth in this Lease are true and correct and are hereby incorporated into this Lease.

ARTICLE 3 **EFFECTIVE DATE & TERM**

3.1 **Effective Date**. This Lease shall commence thirty-one (31) days after approval by the City Commission at the Second Reading of the approving ordinance, subject to the initiative process set forth in the City Charter (**“Effective Date”**). In the event that a petition to repeal the approving ordinance is filed with the City Clerk within thirty (30) days after the second reading, then this Lease shall be subject to the referendum process as set forth in Article VI of the City Charter.

3.2 **Term**.

a) Term. The term of this Lease shall be thirty (30) years (**“Term”**), unless extended or terminated earlier in accordance with the terms of this Lease.

b) Extension. Provided BGC is not then in material default under this Lease beyond any applicable notice and cure period, BGC shall have the option, by written notice to City not less than six months prior to the expiration of the initial Term and the first renewal Term, to extend the Term for two (2) additional periods of ten (10) years (each, a “**Renewal Term**”), upon the same terms and conditions set forth in this Lease, as applicable.

ARTICLE 4 **LEASED PROPERTY**

4.1 **Leased Property**. The real Leased Property subject to this Lease is:

a) Leased Property: Approximately 1.65 acres, more or less, located just West of the Southern Boulevard entrance to Dreher Park, and accessed from Dreher Trail North (the “**Leased Property**”) as shown in Exhibit A and described in Exhibit B; and

b) Maintenance Area: Approximately 0.9 acre, more or less, consisting of the vehicle entrance to Dreher Trail North, the monument sign area, and Parking Area for the Club (the “**Maintenance Area**”); and

c) Off-Lease Improvements. The areas upon which BGC will construct improvements related to the development of the Club, including the areas in which mounds will be removed, the area for expansion of a lake, and the area in which underground utilities will be installed (“**Off-Lease Improvements**”);

4.2 **Lease**. City hereby leases to BGC and BGC does take and lease from City, the Leased Property, subject to:

(a) Conditions, restrictions, easements, reservations and limitations, if any, now appearing of record;

(b) City and/or County Zoning Ordinances now existing, or which may hereafter exist during the term of this Lease; and

(c) All of the terms, covenants and conditions contained in this Lease.

4.3 **As Is**. BGC hereby acknowledges and agrees with the City that, except as otherwise expressly provided in this Lease: (i) BGC is expressly leasing the Leased Property in its existing condition “**AS IS, WHERE IS, AND WITH ALL FAULTS**” with respect to all facts, circumstances, conditions and defects, and BGC acknowledges that one or more “mounds” contain non-organic debris (construction and demolition debris/tires) from a former landfill located in or near the Leased Property; (ii) the City has no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate BGC for same; (iii) the City has specifically bargained for the assumption by BGC of all responsibility to inspect and investigate the Leased Property as to all risk of adverse conditions, except as otherwise provided in this Lease; (iv) BGC has undertaken all such inspections and investigations of the Leased Property as BGC deems necessary or appropriate under the circumstances as to the condition of the Leased Property and the suitability of the Leased Property for BGC's intended use, and based upon same, BGC is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers; (v) the City is not making and

has not made any warranty or representation with respect to any materials or other data provided by the City to BGC (whether prepared by or for the City or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Leased Property as an inducement to BGC to enter into this Lease; and (vi) by reason of all the foregoing, BGC assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Leased Property.

4.4 **No Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, THE CITY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO: THE LEASED PROPERTY OR ITS CONSTRUCTION; DEFECTS CAUSED BY ACTS OF BGC OR ANY CONTRACTOR ON THE LEASED PROPERTY, OR ANY SUPPLIER, CONTRACTOR, SUBCONTRACTOR, OR MATERIALMAN; DEFECTS PERTAINING TO STRUCTURAL ELEMENTS, SYSTEMS, EQUIPMENT, APPLIANCES, UTILITIES, OR FIXTURES RELATED TO THE LEASED PROPERTY; TAX LIABILITIES; ZONING (OTHER THAN WITH RESPECT TO GOVERNMENTAL APPROVALS); LAND VALUE; AVAILABILITY OF ACCESS OR UTILITIES; INGRESS OR EGRESS; OR GOVERNMENTAL APPROVALS; REGARDLESS OF WHETHER SUCH CONDITIONS CURRENTLY EXIST OR EMERGE OVER TIME, OR THE SOIL CONDITIONS OF THE REAL LEASED PROPERTY CREATED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS LEASE. BGC FURTHER ACKNOWLEDGES THAT BGC IS LEASING THE LEASED PROPERTY "AS IS" AND IN ITS PRESENT CONDITION AND THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, BGC IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE MADE BY THE CITY, OR ANY OF ITS EMPLOYEES OR AGENTS WITH RESPECT TO THE LAND OR LEASED PROPERTY, AND THAT, IN FACT, NO SUCH REPRESENTATIONS WERE MADE EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE.

4.5 **No Subordination.** Under no circumstances will the City's fee estate be subordinate to this Lease or BGC's leasehold interest. However, the City's fee estate will be subject to this Lease and the BGC's leasehold interest.

4.6 **Title to Leased Property.** In no event, and regardless of the Term, shall BGC assert that this Lease grants or conveys to the BGC a fee simple interest in the Leased Property.

ARTICLE 5

USE OF LEASED PROPERTY

5.1 Use of Leased Property.

- a) BGC shall have the exclusive use of the Leased Property solely for operating a Boys and Girls Club ("Club") as a charitable organization, to provide social and community services for the youth and teens of West Palm Beach, as described in **Exhibit C**, and all other activities customary for not for profits such as, but not limited to donor and volunteer recognition events and activities, and promotion of BGC, and for no other purposes without the express written consent of City which may be withheld or delayed

in City's sole discretion.

- b) BGC shall conform its use and occupancy of the Leased Property to all building, fire, health and sanitation requirements and other codes, regulations, restrictions and laws imposed by any governmental or quasi-governmental authority or agency having jurisdiction over the Leased Property including those of City.
- c) BGC shall be responsible to ensure that the Leased Property retains the character of a youth-focused facility, is well maintained, and is operated in a reputable manner consistent with the standards and practices of BGC, subject to the terms and conditions of this Lease.
- d) No commercial activities shall be permitted on the Leased Property except as otherwise provided in this Lease; however, BGC has the ability to contract and/or license commercial entities to carry out its operational responsibilities associated with the permitted uses and for the sale of food and/or merchandise. BGC shall be entitled to retain any proceeds generated from such concessions. Concession agreements for goods and/or services within the Leased Property, in accordance with BGC's use of the Leased Property, will not require approval of the City. BGC shall ensure that all such contracts/licenses are compliant with the terms of the lease and local, state and federal laws.
- e) Notwithstanding the foregoing, BGC may on an intermittent (not regularly scheduled) basis, permit any individual, group, association, non-profit or profit organization (public or private), to use the Club facilities. Such uses shall be in accordance with Club purposes and policies, and the terms of this Lease. This section is not intended to limit BGC from partnering with the School District of Palm Beach County or other not-for-profit entities with consistent missions and granting such partners license to use the Leased Property pursuant to BGC policies and consistent with this Lease, provided such licenses are short term and are not sub-leases.
- f) BGC shall be authorized to sell and serve alcohol at fundraising and special events held on the Leased Property.

5.2 **Nondiscriminatory Services Requirement.** BGC shall ensure that use of the Leased Property and the BGC facilities are provided without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information, in each case, in accordance with applicable laws.

5.3 **WPB Resident Preference.** BGC shall give a transportation preference for providing service and participation in programs to youth who reside, or attend public schools within, the jurisdictional boundaries of the City of West Palm Beach. To the extent that BGC provides transportation, it will be provided only to West Palm Beach residents and those children attending public schools within the City and included in the transportation plan.

5.4 **Hours of Operation.** Dreher Park is open from sunrise to sunset. The BGC's hours of program operations on days when school is in session are Monday through Friday 1:30 pm to 9:00 pm. The BGC's hours of program operation when school is not in session (summer, generally, but including school holidays, teacher work days, break, etc.) are Monday through Friday, 6:30 am to

7:00 pm. There shall be no overnight use of the Leased Property for programming unless otherwise agreed to in writing by BGC and the City. BGC shall utilize the Leased Property a minimum of forty (40) hours per week, except when closed for holidays or maintenance. Notwithstanding the foregoing, the BGC shall have use of the Leased Property 24/7/365 for administrative and maintenance functions related to its permitted use.

5.5 **Holidays.** The BGC may be closed during the following holidays each year: New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

5.6 **City Use.** When not otherwise scheduled for BGC activities, BGC will provide a process for City's reasonable use of the Club's conference and meeting rooms, computer lab, and gymnasium, for City business and meetings (intermittent and not regularly scheduled) at no charge to the City, except for out of pocket expenses, and conditions required by BGC policies.

5.7 **Continuous Operation.** BGC acknowledges that it is important to the City that the BGC remains in Continuous Operation, subject to the terms of this Lease. **"Continuous Operation"** shall mean that the BGC shall utilize the Leased Property a minimum of forty (40) hours per week, subject to force majeure, and except for holidays or any period of casualty or construction/remodeling, and repair and maintenance. If the Leased Property is not in Continuous Operation for thirty (30) consecutive calendar days or more, BGC shall be in default under this Lease, subject to applicable notice and cure period. Should BGC fail to commence, within thirty (30) days of written notice from the City, commercially reasonable efforts to cause the BGC to become operational and does not diligently pursue such efforts, then the City shall have the rights and remedies set forth in Article 16. Notwithstanding the foregoing, nothing herein shall prohibit the BGC from temporarily closing operations for a reasonable time, upon prior written notice to City: (a) to complete alterations, repairs, restoration or renovations to the Leased Property, (b) to complete repairs necessitated by a casualty event (in which event the terms of Article 12 apply); (c) in connection with an interruption of utilities; (d) as a result of a material default by City that interferes with BGC's use and occupancy; (e) as a result of eminent domain to the extent BGC is prevented from reasonably operating on the Leased Property; (f) as a result of force majeure; or (g) any other event that may pose a threat to the public health or safety or damage to the Leased Property.

5.8 **Right of Quiet Enjoyment.** BGC shall have legal, quiet, and peaceful possession of the Leased Property, so long as BGC is not in material default of this Lease.

5.9 **No Nuisance.** BGC shall not operate or use the Leased Property in a manner that arises to a nuisance. BGC shall not use, or allow the use of, any portion of the Leased Property in any manner that constitutes or might constitute nuisance or other unreasonable annoyance or disturbance, subject to any applicable law. BGC shall not do or permit to be done, on or about the Leased Property any act that: (a) violates any federal or state law or regulation, or City ordinance or code provision; (b) invalidates or conflicts with any provision of any insurance policy covering the Leased Property; (c) subjects the City to any liability or responsibility for injury to any person or Leased Property (beyond that which is covered by insurance or an indemnification) by reason of BGC's operations on the Leased Property; or (d) violates any provision of this Lease.

5.10 **No Waste.** BGC will not permit, commit or suffer waste or impairment of any portion of the Leased Property, or take any act which may adversely affect City's interest in the Leased Property.

5.11 **No Hazardous Materials.** During the Term, BGC shall neither cause nor permit the Leased Property to be used to process, manufacture, transport, store, dispose of or emit Hazardous Materials, except in compliance with all applicable government regulations; or release of Hazardous Materials onto the Leased Property, or any other Leased Property, or into the air as a result of any intentional or unintentional act or omission on the part of BGC or its contractors. BGC shall comply with, and ensure compliance by all occupants of the Leased Property, at all times during the Term, with all applicable environmental laws, ordinances, rules and regulations of federal, state and local governments (individually and collectively). BGC shall keep the Leased Property free and clear of any liens imposed by such laws. In the event that BGC receives any notices or advice from any governmental agency or any sources whatsoever with respect to Hazardous Materials, at, under, on, from, adjacent to or affecting the Leased Property, BGC shall promptly notify City. BGC shall defend, indemnify and hold harmless City and its commissioners, officers, employees and agents, from and against any claims, demands, penalties, fines liabilities, settlements, damages costs or expenses of any kind or nature, known or unknown, contingent or otherwise, (including reasonable attorneys' fees at appellate levels, consultant fees, investigation and laboratory fees, court costs and litigation expenses) arising out of or in any way related to any of the following, intentionally or negligently caused by BGC or its contractors during the Term: (i) the presence, disposal, release or threatened release of any Hazardous Materials whether on, from or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise not existing prior to the Effective Date; (ii) any personal injury, including wrongful death, or damage to Leased Property, real or personal, arising out of or related to such Hazardous Materials; (iii) any lawsuit brought, threatened or settled or the enforcement of any governmental regulations or City ordinances related to Hazardous Materials and the Leased Property. The provisions of this Section shall be in addition to any and all other obligations and liabilities BGC may have to City at law or in equity under this Lease and shall survive the expiration or termination of this Lease.

ARTICLE 6

BUILDINGS AND IMPROVEMENTS

6.1 **Improvements within the Leased Property.** BGC is authorized to construct a one-story building approximately 19,271 square foot in size, containing office and daycare space, an approximately 11,820 square foot gym, an outdoor classroom, and an outdoor playground (the "Club").

6.2 **Improvements within the Maintenance Area.** BGC shall fund, design and construct the following improvements as part of the construction of the Club facility:

- a) **Parking Area.** BGC agrees to fund, design and construct approximately 38 paved and grass parking spaces, with landscape and irrigation, as shown on the Site Plan. While not within the Leased Property, BGC shall have the right to exclusive use of the Parking Area during Club operating hours. The remainder of the time, the Parking Area shall

be open for use by the general public. BGC shall fund the installation and maintenance of any gate(s) installed to control access to the Parking Area, along with any signage necessary to advise the public of the exclusive use during BGC hours and that use by the public during BGC hours will be subject to towing.

- b) **Access to Dreher Trail North.** The vehicular and pedestrian access from/to Dreher Trail North shall be funded, designed and constructed by BGC according to the Site Plan. BGC shall have the right to use the driveway connection to Dreher Trail North, as well as the existing Dreher Trail North road network for vehicular ingress/egress to the Club. BGC shall have the exclusive use of the drive connection to Dreher Trail North during Club programmatic operating hours. The remainder of the time the driveway shall be open for use by the general public.

c) **Monument Sign.** BGC shall fund, design and construct a monument sign, identifying the Club, including the BGC logo, at the intersection of Dreher Trail North and the entrance drive to the Club in the location generally identified on the Site Plan. Following consideration and approval of a monument sign pursuant to the City's Code of Ordinances, the City Commission, in its proprietary capacity, shall have the final approval of the monument sign to ensure same is consistent with the then current Master Plan for Dreher Park, which approval shall not be unreasonably withheld or delayed.

These Improvements described in this Section 6.2 shall collectively be referred to as the “**Maintenance Area Improvements**”.

The Club improvements and the Maintenance Area Improvements shall collectively be referred to as the “**Improvements**”.

6.3 **Additional Off-Lease Improvements.** City hereby grants BGC a license to perform the additional Off-Lease Improvements within Dreher Park, provided such additional improvements are performed in accordance with the approved plans and this Lease.

- a) **Mound Removal.** BGC will be responsible for the removal of two mounds of approximately one (1) acre which are located in the vicinity of the Leased Property. BGC will then install Bahia sod and irrigation at the former mound area to provide a more functional green space for the community. After completion of the mound work required by this section, BGC shall not have any responsibility for the ongoing maintenance, operation, or programming of the functional green space including the irrigations system.
- b) **Lake Improvements.** BGC will be responsible for modifying the lake area adjacent to the Leased Property in order to accommodate the Club building placement as well as provide storm water retention. As part of the lake improvements, BGC will remove the existing gazebo and dock structures. Additionally, four (4) parking spaces along the roundabout will be relocated and constructed by BGC. Access from these spaces around the lake, to approximately where the gazebo exists, will also be constructed by BGC. Following completion of the lake improvements, BGC shall not have any responsibility for the ongoing maintenance. All areas identified as part of the lake

improvements shall be open for use by the general public.

The mound removal, lake improvements and other infrastructure improvements to be made in Dreher Park by BGC shall collectively be referred to as the “**Off-Lease Improvements**”.

ARTICLE 7

FINANCIAL RESPONSIBILITY

7.1 **Financial Responsibility.** BGC shall be responsible for all of the costs of the Improvements, including but not limited to the following:

- a) Design costs, including the fees and costs of all consultants, architects and engineers;
- b) Costs to obtain Governmental Approvals and permits, including building permit fees and impact fees;
- c) Costs related to installation and construction of the utility and infrastructure for the Club and pursuant to this Lease, including but not limited to regulatory and permit fees, utility connection and capacity fees.
- d) Costs related to construction of the Improvements, including but not limited to, all costs due to contractors, subcontractors, and suppliers, payment bond(s), performance bond(s), and insurance;
- e) Costs of all furniture, fixtures and equipment to be purchased for the Club.

7.2 **Cost Estimate.** A pre-assessment estimate of land development and construction costs specific to the site and adjusted for time, is \$12 Million dollars (Base Estimate), which has been secured by BGC. Upon completion of schematic design, BGC will provide to the City an updated cost estimate for the Improvements. In the event that the updated cost estimate exceeds \$12 Million dollars (Base Estimate), BGC shall have the right to terminate the Lease. If BGC decides to proceed with the design for the Improvements with an estimate higher than \$12 Million, the higher estimate shall become the Base Estimate for the purposes of implementing BGC’s right to terminate the Lease prior to construction. Prior to commencement of construction, if BGC finds the cost estimate for construction of the Club facilities to exceed its budget (the updated Base Estimate), BGC may terminate the Lease. If BGC elects to proceed with construction with an updated Base Estimate of more than \$12 Million, BGC shall provide the City with sufficient evidence that BGC has obtained 100% of the funding required for the construction, including contingency.

ARTICLE 8

DESIGN AND CONSTRUCTION

8.1 **Schematic Design.** At completion of schematic design of the construction plans for the Improvements and Off-Lease Improvements, BGC shall:

- a) **Trees.** BGC shall provide to the City a tree survey and plan for tree mitigation / relocation for approval by the City’s landscape planner, acting for the City in its proprietary capacity. BGC will use good faith efforts to save or relocate old growth trees within the Leased Property.

- b) Environmental. BGC shall provide to the City a Phase I environmental study including cost estimates for removal of debris within the Leased Property and proper regulatory close-out if necessary. If necessary, BGC shall submit a removal and/or remediation plan and associated cost estimate which includes identification of any hazardous materials that may be on-site. BGC and City, through its Engineering Services Department and City Administration, acting in the City's proprietary capacity, shall agree to the methods for removal and disposal of any hazardous waste as well as responsibility for those expenses. If the parties are unable to agree, either party will have the ability to terminate the Lease. This provision does not apply to the agreed removal of the mound.
- c) Access Plan. BGC shall provide to the City an access plan for the Club which will allow the Club to operate independent of Dreher Park and beyond Park hours, but no later than 12:00 a.m., unless otherwise agreed to in writing by BGC and the City. The access plan shall identify the location of any physical improvement (i.e. gates) that will be installed and responsibility for operating same to control access. City, through its Parks and Recreation Department, and BGC shall agree to the access plan for the Club. In the event the City and BGC do not mutually agree to such access plan, BGC may terminate the Lease.
- d) Cost Estimate. BGC shall submit the cost estimate and associated election pursuant to Section 7.2.

8.2 **Concept Plan.**

a) BGC shall obtain approval by the City Commission, in its propriety role, of the final Concept Plan for the BGC Club facilities on the Leased Property. The Concept Plan shall include, without limitation, conceptual drawings, architectural renderings, exterior elevation and facade renderings, parking plan, preliminary site and landscaping plans and a narrative description of the design and construction standards and materials proposed for the exterior finishes and appearances. Once the Concept Plan is approved, BGC shall not make any material deviations from such Concept Plan. It is intended that the City Commission approval of the Concept Plan shall occur concurrent with the approval of this Lease.

b) "Material deviation" with respect to this Article shall not include minor changes due to unforeseen issues and/or conditions encountered in the field during construction, provided there is still conformance to the applicable Site Plan; and shall not include changes required to comply with Planning and Zoning Approvals or Governmental Approvals.

c) BGC acknowledges that the City's review and approval of the Concept Plan pursuant to this Section is in the City's proprietary capacity as Leased Property owner and is not in its regulatory capacity and may include qualitative considerations relating to the overall visual appearance and construction quality of the Improvements and its impact on the surrounding areas and uses, or any other factors deemed relevant by the City.

8.3 **Americans with Disabilities Act.** BGC shall comply with the applicable requirements of the Americans with Disabilities Act, the State of Florida Accessibility Requirements Manual, and any similar or successor laws, ordinances, rules, regulations and orders, including, but not limited to 28 CFR Part 36, 49 CFR Parts 27 and 37, and shall cooperate in a commercial and reasonable manner with City to ensure the Improvements remain in compliance with such requirements

throughout the Term of this Lease. BGC, at its sole cost and expense, shall cause the design of the Improvements to comply with the provisions of the Americans with Disabilities Act and other similar federal, state, and local laws and regulations, including, without limitation, any alterations required under ADA for the purposes of “public accommodations” (as that term is used in the ADA), subject to any “grandfather” exemption or as to which BGC has any other legal exemption excusing it from current compliance.

8.4 **Pre-construction Conditions.** Prior to commencement of construction, each of the following conditions shall have been met:

- a) **Regulatory Approvals.** BGC shall have obtained all required Governmental Approvals, in accordance with Sections 8.5.
- b) **Required Permits.** BGC shall have obtained all required permits, including building permits, in accordance with Section 8.7.
- c) **Payment Bond(s).** BGC provided the City with copies of the payment bonds in accordance with Section 8.9.
- d) **Performance Bond(s).** BGC shall provide the City with copies of the performance bonds in accordance with Section 8.10.
- e) **Insurance.** BGC shall have delivered to the City the certificates of insurance or other evidence of required coverage, pursuant to Article 14.
- f) **Small Business and MWBE.** BGC shall have obtained written approval from the City’s Office of Small and Minority Business Programs in accordance with Section 8.12.
- g) **Local Workforce Plan.** BGC shall have obtained written approval of BGC’s Local Workforce Plan in accordance with Section 8.13.
- h) **Emergency Plan.** BGC shall have delivered its contractor’s hurricane/emergency plan to the City, pursuant to Section 8.14.
- i) **Funding.** BGC shall have complied with Section 7.2.

8.5 **Governmental Approvals.** BGC shall, at BGC’s expense, obtain all necessary planning and zoning approvals and other Governmental Approvals necessary to construct the Improvements, including but not limited to: Site Plan approval, Plans & Plats Review Committee approval, City Commission regulatory approval (if required), and the granting by the applicable board of any required waivers and/or variances, and any other approvals from any governmental agency with jurisdiction (collectively, the “**Governmental Approvals**”). BGC shall be required to comply with all procedures and requirements applicable to the Lease and development of the Improvements that would also be applicable to any similarly situated projects in the City of West Palm Beach. All applicable Planning and Zoning approvals shall be issued in the name of BGC. The term “Governmental Approvals” shall not include the City’s review and approvals in its proprietary capacity as property owner.

8.6 **Infrastructure/Utilities.**

a) BGC shall be required to submit complete drawings/plans for water, sewer and stormwater infrastructure for the City's review and approval, in the City's regulatory capacity, and such drawings/plans shall be required to comply with all code and technical requirements.

b) BGC shall be responsible for all reasonable and customary costs associated with the design, construction and installation of all infrastructure facilities necessary to serve the Club and Maintenance Area Improvements. During construction, BGC shall be responsible for all costs associated with the protection of all utilities installed, replaced, or relocated, as required as part of the Improvements, whether such utilities are located on the Leased Property, the Maintenance Area, or adjacent to the Leased Property or right-of-way, including but not limited to water, sewer, stormwater, telephone, electric or cable, and for any necessary relocation or replacement of such utilities or existing infrastructure to accommodate the Improvements.

c) BGC shall be responsible for the installation or relocation of utility mains and service as shall be required for the Improvements and such utility mains shall become the property of City upon installation. Metering devices shall become the property of City upon installation.

8.7 **Permits.** Except as otherwise provided in this Lease, all SFWMD permit(s), building permits(s) and other regulatory permit(s) required for development and construction of the Improvements shall be obtained by BGC at BGC's expense.

8.8 **Art in Public Places.** BGC represents that it is a not-for-profit corporation that is tax exempt under section 501(c)(3) of the internal revenue code. Provided the Leased Property is used solely in furtherance of BGC's purpose, BGC will not be subject to the City's public art assessment.

8.9 **Payment Bond(s).** BGC shall ensure that payment bond(s) providing security for the claims of contractors, sub-contractors, and suppliers performing services related to the construction of the Improvements, which comply with the requirements of Sec. 255.05, Fla. Stat., and which, in the aggregate, be in an amount equal to 100% of the applicable construction contract(s), naming the contractor as principal and BGC and City as co-obligees, with all premiums paid, are provided. Such bond shall be issued by a surety that: i) is authorized to do business in the State of Florida and which is in full compliance with the Florida insurance code; and ii) has at least the ratings of A-/Class V. Such bond(s) shall be recorded in the public records of Palm Beach County, as required by statute. A copy of the recorded bond(s) shall be provided to City no later than three (3) days prior the commencement of construction by such contractor. BGC acknowledges that no payment may be made to its contractor for construction work related to the Improvements unless the City has received and approved a copy of the recorded bond. City shall have the right to draw on any bond ("**Bond Rights**") in the event the City becomes subject to liability due to BGC or BGC's contractor(s) failure to make payment to subcontractors and/or suppliers. The proceeds shall be used by City to satisfy any unpaid amounts actually due subcontractors and/or suppliers.

8.10 **Performance Bond(s).** To protect the City as owner of the Leased Property, in accordance with Section 255.05, Fla. Stat., BGC shall provide a performance bond(s) related to the

construction of the Improvements, which, in the aggregate, be in an amount equal to 100% of the applicable construction contract(s), naming the contractor as principal and BGC and City as co-obligees, with all premiums paid, are provided. Such bond shall be issued by a surety that: i) is authorized to do business in the State of Florida and which is in full compliance with the Florida insurance code; and ii) has at least the ratings of A-/Class V. Such bond(s) shall be recorded in the public records of Palm Beach County, as required by statute. A copy of the recorded bond(s) shall be provided to City no later than three (3) days prior the commencement of construction by such contractor. BGC acknowledges that no payment may be made to its contractor for construction work related to the Improvements unless the City has received and approved a copy of the recorded bond. City shall have the right to draw on any bond (“**Bond Rights**”) in the event the contractor defaults under its contract and BGC does not make a claim under the bond(s).

8.11 **Obligation to Maintain Insurance During Construction.** During construction of the Improvements and until completion of construction of all Improvements, the BGC shall obtain and maintain, or caused to be maintained, in full force and affect, the insurance coverages required in Article 14.

8.12 **Small Business and MWBE Participation.** BGC shall require its contractors and subcontractors to engage contractors and subcontractors from small businesses and minority/women owned businesses certified as Small Businesses by the City of West Palm Beach or Palm Beach County, or certified as Minority/Women Business Enterprises by the City and owned by either African Americans, Hispanic Americans or Caucasian Women. The aggregate value of such small business and MWBE participation shall be no less than eighteen percent (18%) of the value of the construction of the Improvements. The City’s Office of Small and Minority Business Programs shall have the authority to review the BGC’s records to monitor compliance with this requirement.

8.13 **Local Workforce.** BGC shall require its contractors and subcontractors to conduct two (2) job fairs within the City of West Palm Beach and to use their best good faith efforts to have local workforce participation of at least eight percent (8%) of the value of the Improvements construction work. BGC and/or its contractors and sub-contractors working at the Leased Property shall employ persons residing within the municipal boundaries of the City to meet this local workforce requirement. The City’s Office of Small and Minority Business Programs shall have the authority to review the BGC’s records to monitor compliance with this requirement.

8.14 **Hurricane / Natural Disaster Plan.** BGC shall ensure that the contract(s) with BGC’s contractor(s) for the construction of the Improvements shall provide that the BGC’s contractor(s) shall have a plan in place, prior to the commencement of construction, which shall describe the actions to be taken by BGC’s contractor(s) to secure the Leased Property and Improvements in the event a tropical storm or hurricane, high wind warning, flood or other natural event or disaster is predicted to affect the West Palm Beach area. A copy of such plan shall be provided to the City.

8.15 **Temporary Construction Easements.** The City for and in consideration of the additional sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by BGC, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to BGC, subject to the terms and conditions of this Section 8.15, temporary construction easements (singularly and collectively, the “TCE”) in, on, over, under and across those certain portions of Dreher Park to be determined

by survey and approved in writing by the City (the “**TCE Areas**”), for the construction of the Maintenance Area Improvements and the Off-Lease Improvements. The TCE shall be subject to the following conditions:

1. BGC, its employees, contractors, subcontractors, consultants and licensees shall be allowed to enter upon and use the TCE Areas for construction of the BGC Club facility, the Maintenance Area Improvements and the Off-Lease Improvements, including the construction work and the staging and storage of construction vehicles, equipment and materials to be utilized in the construction. No other use shall be granted by this TCE. BGC’s use of the TCE Areas shall be to the minimum extent reasonably necessary for the construction work and staging of materials and equipment.
2. City acknowledges that during BGC’s use, the TCE Area will be a construction site under the exclusive control of BGC and BGC’s contractors.
3. Fence. BGC shall have the right to temporarily fence off the TCE Areas for the protection of the public and the equipment and materials.
4. Easement Term. The term of this TCE for each TCE Area shall be only until the construction work for the applicable improvements are completed. BGC shall vacate the TCE Areas as soon as practical.

8.16 **Compliance**. BGC shall ensure that the Improvements are constructed in accordance with the approved Site Plan, the Planning and Zoning Approvals, Governmental Approvals, and this Lease.

8.17 **Commencement of Construction**. BGC shall commence construction of the Improvements no later than thirty-six (36) months after the Effective Date of this Lease. Subject to force majeure, if the BGC fails to commence construction of the Improvements by such date, such failure shall be a Default; and provided such failure has not been cured within ninety (90) calendar days after written notice from the City, either BGC or City may terminate this Lease.

8.18 **Continuous Construction**.

a) Subject to force majeure, and with time being of the essence, BGC shall engage or cause engagement in the Continuous Construction of the Improvements such that once construction commences for any Improvements, BGC’s contractor(s) shall engage in the continuous construction of the construction work of such Improvements.

b) Subject to force majeure, if construction or progress of any Improvements ceases for twenty (20) calendar days or more within any 30-day period, and the BGC: 1) fails to cure such failure within thirty (30) calendar days of written notice from the City, or 2) fails to engage the surety with 60 days and present a plan, acceptable to the City within 120 days, then the City shall have the rights and remedies set forth in Article 16.

c) Delays. BGC agrees to deliver to City prompt notice of any delays in the critical path of progress of the construction of the Improvements which may reasonably be expected to give rise to a violation of Section 8.18 regardless of whether such delay is a force majeure event or will not be considered a break in Continuous Construction. Included in such notice shall be the

reason for the delay and BGC's current reasonable estimate of when construction will commence. When BGC becomes aware of any change in the estimate, BGC agrees to promptly update its estimate by delivery of notice to City. In addition to force majeure delay, the City Commission may excuse any break in Continuous Construction in the exercise of its sole proprietary discretion, upon written request of the BGC.

8.19 **Completion.** Completion of construction of the Improvements within the Leased Property shall occur no later than four (4) years from the commencement of construction, subject to force majeure; and provided that BGC is exercising reasonable efforts to pursue completion in the event of a claim under the performance bond, if necessary.

8.20 **Performance of Improvements.** All Improvements shall be performed diligently and in good and workmanlike manner and substantially in accordance with the approved plans. Nothing herein shall impose any liability upon City for any failure by BGC to comply with any laws or requirements or observe any safety practices in connection with such construction, or constitute an acceptance of any work that does not comply in all material respects with the approved plans, applicable laws or the provisions of this Lease.

8.21 **Work Hours; Noise.** BGC shall comply with all City ordinances and regulations regarding work hours and noise. BGC shall be solely responsible for addressing any complaints by adjacent property owners or related fines by regulatory agencies.

8.22 **Safety.** The construction contract(s) with the BGC's contractor(s) for the construction of the Improvements shall provide that such contractor(s) shall take all necessary precautions for the protection of the public. The contractor(s) shall provide a maintenance of traffic plan approved by the City and shall implement such plan.

8.23 **Security of Premises.** BGC acknowledges and accepts full responsibility for the security and protection of the BGC's buildings, facilities, equipment, and personal Property placed on or installed in or upon the Leased Property or Maintenance Area, and for the prevention of unauthorized access to the BGC's buildings and facilities. BGC fully understands that the police security protection provided by City is limited to that provided by the West Palm Beach Police Department to any other business situated in West Palm Beach, and expressly acknowledges that any special security measures deemed necessary or desirable by the BGC for additional protection of the Leased Property and the BGC's buildings and facilities constructed thereon, and BGC's personal property, shall be the sole responsibility of the BGC and shall involve no cost to City.

8.24 **Obligation to Maintain Insurance During Construction.** During construction of the Improvements and until completion of construction of all Improvements, the BGC shall obtain and maintain, or caused to be maintained, in full force and effect, the insurance coverages required in Section 14.3.

8.25 **As-Built Survey.** Upon completion of construction of the Improvements, BGC shall provide as-built plans/survey to the City detailing the Improvements constructed and installed, including all underground utility facilities.

8.26 **Performance of Government Functions.** Notwithstanding anything in this Lease to the contrary, nothing contained in this Lease shall in any way stop, limit or impair the City from

exercising or performing any regulatory, policing, legislative, governmental or other powers or functions derived under applicable law with respect to the Leased Property or the Improvements. Nor shall anything in this Lease constitute or imply approval or special handling and/or consideration for or exemption from any permit by the planning, zoning, building or other regulatory authorities of the City of West Palm Beach. BGC shall be required to comply with all procedures and requirements applicable to the Improvements that would also be applicable to any similarly situated project in the City of West Palm Beach.

ARTICLE 9

PROTECTION AGAINST MECHANICS' LIENS AND CLAIMS

9.1 **City's Interest Not Subject to Liens.** Pursuant to Florida Statutes Section 713.10, any and all liens or lien rights shall extend to and only to the right, title and interest of BGC in the Leased Property. The right, title and interest of the City in the Leased Property, Dreher Park, or any portion thereof, shall not be subject to liens or claims of liens for the any work performed for the BGC on the Leased Property. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of the City express or implied by implication or otherwise; to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of the Leased Property, or any part thereof, nor as giving BGC, any contractor, or sub-contractor, any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against City's interest in the Leased Property, or any part thereof, or against assets of the City, including Dreher Park, or City's interest in any Rent and other monetary obligations of BGC as defined in this Lease. A memorandum of this Lease shall be recorded in the Public Records of Palm Beach County for the purpose of protecting the City's estate from contractors' claims of lien, as provided in Chapter 713.10, Florida Statutes.

9.2 **BGC's Duty to Keep Leased Property Free of Liens.** BGC shall pay when due all costs for work performed and materials supplied to the Leased Property and the Improvements. BGC shall keep City, Dreher Park, and the Leased Property free from all liens, stop notices and violation notices relating to the work performed, materials furnished or obligations incurred by or for BGC and BGC shall protect, indemnify, hold harmless and defend City, and the Leased Property of and from any and all loss, cost, damage, liability and expense, including reasonable attorney's fees and costs, arising out of or related to any such liens or notices. BGC shall cause all contracts entered into between BGC and contractor(s) in privity with BGC to provide that:

- (a) City shall not be liable for any work performed or to be performed at the Leased Property, or any part thereof, or for any materials furnished or to be furnished to the Improvements, or any part thereof;
- (b) No mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall be attached to or affect City's interest in the Leased Property, Dreher Park, or any part thereof, or any assets of the City, or the City's interest in any Rent or other monetary obligations of BGC arising under this Lease.

9.3 **Contesting Liens.** If a mechanic's, laborer's, vendor's, materialman's or other similar statutory lien is recorded against City property on which the Improvements are being performed, including the Leased Property, and BGC desires to contest such lien rather than discharge it, BGC shall notify the City of its intention to do so within thirty (30) days after BGC's receipt of notice of the filing of such lien. In such case, BGC, at BGC's sole cost and expense, shall protect the City by transferring such lien to bond within such thirty (30) day period and from any cost, liability or damage arising out of such contest. The lien, if BGC timely provides the bond described above, shall not be a Default until thirty (30) days after the final determination of the validity thereof provided that, within that time, BGC shall satisfy and discharge such lien to the extent held valid. In the event that BGC fails to transfer or satisfy such claim within the thirty (30) day period, City may do so and thereafter charge BGC all costs incurred by City in connection with the satisfaction or transfer of such claim, including reasonable attorneys' fees, and BGC shall promptly pay to City all such costs upon demand. Failure of BGC to reimburse the City for the resolution of such liens shall be a Default under this Lease. In the event of any such contest, BGC shall protect and indemnify the City against all loss, expense and damage resulting therefrom. Notwithstanding this provision, BGC retains the duty to keep the Leased Property free of liens.

ARTICLE 10

OPERATION AND MAINTENANCE OF LEASED PROPERTY

10.1 **Maintenance.** BGC shall operate and maintain the Leased Property and Maintenance Area, including the Improvements located thereon, at BGC's sole cost and expense, in good repair and condition, and in a clean, pleasant, sanitary and safe condition and in compliance with all applicable laws. BGC shall be responsible for all utility fees (electric, gas, cable, telephone, water, sewer). BGC shall take all necessary steps to mitigate any potential dangers or hazards until repairs can be made. BGC shall provide and be responsible for all costs of operation and maintenance of the Leased Property and Maintenance Area, including without limitation, cleaning and janitorial services, waste removal, landscaping, repairs, extermination, security and other necessary charges. BGC shall comply with this same standard of care for the Maintenance Area as it has for the Leased Property. BGC shall ensure that the exterior of all buildings and the Parking Area within the Leased Property are maintained in a neat and clean manner and remain reasonably free from trash and debris at all times. Specifically, with respect to the Maintenance Area:

- a) **Parking Area.** BGC shall be responsible for the maintenance and operation of the Parking Area, including the landscaping and irrigation, any access gate, and signage. Notwithstanding the above, the City shall be solely responsible for all costs associated with repairing the parking Area if such repair was as a result of a failure of the City's force main located thereunder.
- b) **Driveway Connection.** BGC shall be responsible for the maintenance and operation of the driveway connection to Dreher Trail North, including the landscaping and irrigation.
- c) **Sidewalk.** BGC shall be responsible for the maintenance of the sidewalk installed by BGC to connect the main Club entrance to the sidewalk at Dreher Trail North. (The existing sidewalk along Southern Boulevard and along Dreher Trail North remain the responsibility of the City).

- d) Monument Sign. BGC shall be responsible for the maintenance of BGC's monument sign and the surrounding property and landscaping within the Maintenance Area. BGC shall fund, construct and maintain the monument signage surrounding property.

10.2 **Easement.** The City for and in consideration of the additional sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by BGC, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to BGC, and its contractors, the right to access the Maintenance Area and perform such action as necessary to maintain the Maintenance Area Improvements pursuant to this Article 10, subject to the conditions of this Section 10.2:

- a) Parking Area: BGC shall have the right to exclusive use of the Parking Area during Club operating hours. The remainder of the time, the Parking Area may be used by the general public.
- b) Driveway and Sidewalk connection: BGC shall have the right to utilize the driveway connection and sidewalk access from/to Dreher Trail North which is located within the Maintenance Area. BGC shall have the right to exclusive use of the driveway connection to Dreher Trail North within the Maintenance Area during Club operating hours. The remainder of the time, the driveway connection may be used by the general public.
- c) Monument Sign: BGC shall have the exclusive right to construct, maintain, repair, replace, or reconstruct a monument sign, identifying the Boys and Girls Club which may include solar signage lighting, within the Maintenance Area.

BGC shall restore the Maintenance Area and shall remove all debris and safety hazards following any repair or maintenance within the Maintenance Area. BGC shall not allow any lien, mortgage, or other encumbrance to be filed or recorded against the Maintenance Area as a result of, or in connection with, BGC's use of the Maintenance Area.

10.3 **Repairs.** BGC shall be responsible for any and all structural repairs, of any nature, necessary to be made to the buildings and Improvements on the Leased Property. BGC's obligations shall include but not be limited to maintaining the structural soundness of the roof, foundation and exterior walls and maintaining and replacing if necessary heating, air conditioning, electrical and plumbing systems and BGC's fixtures on the Leased Property. BGC shall promptly make all mechanical, structural and nonstructural, foreseen and unforeseen, and ordinary and extraordinary changes and repairs or replacements of every kind and nature which may be required to be made for any reason upon or in connection with the Leased Property. BGC acknowledges that City shall have no obligations, whatsoever, during the term of this Lease, for the repair, maintenance, alteration or performance or any other repairs to the Leased Property including any plumbing, ventilating, electrical, air conditioning or other mechanical installations. BGC waives the provision of any law, or any right BGC may have under common law, requiring City to repair or maintain the Leased Property.

10.4 **Landscaping.** BGC shall maintain all landscaping on the Leased Property and in the Maintenance Area in good condition and free from unsightly conditions and in compliance with City Code requirements. BGC's landscaping responsibilities shall include, without limitation, irrigation, mowing grass, trimming shrubs and trees, and replacing damaged or dead landscaping. For purposes of this Section, "good condition" means a standard of maintenance of the landscaping

reasonably comparable to the landscaping at Dreher Park and in compliance with the landscape plan as part of the Planning and Zoning Approvals. Landscape maintenance shall be performed in accordance with the following requirements:

a) Watering. All newly installed or relocated landscaping shall be watered regularly for the initial twelve (12) months after installation to ensure that the tree/plant will survive. Watering of trees should always be in a sufficient amount to thoroughly soak the root ball of the plant and the surrounding area, promoting deep root growth and drought tolerance.

b) Fertilization. Palms, shrubs, trees and turf areas should be fertilized in such a manner and frequency to ensure that the plant material remains healthy and vigorously growing. All fertilizing of plant material shall comply with Sections 34-116, 34-117 and 34-118 of the City Code.

c) Mulching. Mulch shall not be mounded up on the trunks of trees, palms, and the base of shrubs to encourage air movement. In accordance with Section 94-446 of the City Code, a minimum of three inches of compacted, sustainably harvested, non-cypress organic mulch shall be placed around all newly installed trees, shrubs and ground cover planting areas. The use of melaleuca mulch is encouraged. Mulch consisting of any exotic invasive species must be certified seed-free by the producer. Use of cypress mulch is prohibited.

d) Pruning. All pruning and tree trimming shall be performed in accordance with Section 94-446 of the City Code and according to American National Standard Institute ANSI A300 standards, and shall be supervised by a certified arborist. Trimming above 13.5 feet for clearance, lions tailing, and shaping or shearing of shade trees into rounded or lollipop shapes is prohibited.

e) Staking and Guying. All staking materials, except for replacements, shall be removed by the earlier of the expiration of any applicable warranty period or one year from installation. Staking and guying attachment materials shall be securely fastened and closely monitored so that they do not create public hazards.

f) Plant Replacement. Plant replacement shall be substantially the same species, specification, size and quality as originally installed during construction, and in accordance with Section 94-445 of the City Code. Should it become necessary to change the species, such change shall be subject to the City's reasonable approval.

g) Tree abuse. Tree abuse shall not be permitted. The following shall be considered tree abuse:

1. Damage inflicted upon any part of a tree including the root system by machinery, storage materials, excavation and chemical application.
2. Damage inflicted by cutting a tree which permits infection or pest infestation.
3. Improper cutting of a tree, permanently reducing the function of the tree, or causing it to go into shock; cutting which destroys the natural shape; hat-racking; tears and splitting of limb ends or peeling, stripping of the bark.
4. Girdling a tree with use of wires, weed eaters or mower damage.
5. Removal of the bark more than one-tenth of the tree.

6. Improper staking techniques resulting in damage to the tree or the use of nails directly into the trunk.

10.5 **Lighting**. BGC shall be responsible for the maintenance and replacement of any specialty lighting fixtures installed on the Leased Property or within the Maintenance Area. Should the BGC install lighting with illumination that results in increased cost to the City, BGC shall be responsible for all such additional electrical costs.

10.6 **Waste Removal**. BGC shall be responsible for the provision of waste and trash removal services for the Leased Property and agrees to deposit trash, garbage and debris in appropriate containers for collection. BGC shall have access to and use of Dreher Trail North, up to and around the roundabout, for purposes of access to the dumpster enclosure.

10.7 **Grease Traps**. BGC shall comply with the City Code regarding wastewater and grease. If applicable, based on food service located on the Leased Property, BGC shall cause to be done whatever is necessary to properly maintain and clean the grease trap as often as necessary to prevent clogging or discharge, and in compliance with the City Code, including pump down and cleaning.

10.8 **Fire Extinguishing Systems**. From time to time and as often as reasonably required by any governmental authority having jurisdiction, BGC shall ensure that water pressure, water flow, and other appropriate tests of the fire extinguishing systems and apparatus located on the Leased Property are conducted.

10.9 **No Other Alterations**. Other than the improvements specifically authorized in this Lease, BGC shall not make, or permit to be made, any material alteration, modification, addition or improvement (hereinafter referred to individually as an “**Alteration**” and collectively as the “**Alterations**”) to the Leased Property, its buildings, fixtures or completed Improvements, or any part thereof without the prior written consent of City. None of the following shall constitute “Alterations”: (1) any exterior painting, awnings, replacement of landscaping with the same paint color, landscape material, or minor exterior alterations to the buildings or fixtures within the Leased Property that do not require a building permit; (2) any interior alteration, modification, addition, or improvements to the buildings or fixtures, or (3) the installation of furnishings, fixtures, equipment or decorative improvements and the interior repainting or re-carpeting of the Leased Property. Exterior painting and other landscape modifications will require City approval.

10.10 **Access and Right of Entry by City**. City and City’s agents shall have the right to enter the Leased Property at all times to examine the same after giving BGC at least twenty-four (24) hours prior notice (such advance notice not being required in emergency situations) to inspect the Leased Property and Improvements thereon. If deemed necessary by City, City may provide the BGC with a written list of items requiring repair by the BGC per the terms of this Lease. The BGC shall have thirty (30) days from its receipt of the list to repair all items on the list, subject to force majeure and unless the nature of such repair is such that it cannot be accomplished within 30 days, in which case the BGC shall be allowed a reasonable period of time to make such repairs, provided BGC promptly and diligently pursues such repairs. The failure of BGC to make the indicated repairs within such time period shall be a Default. The failure of the City to provide a list of repairs to BGC shall not relieve BGC of its maintenance and repair obligations. If BGC's

employees or agents shall not be personally present to open and permit entry into the Leased Property, at any time, when for any reason an entry by the City is necessary to address or prevent an emergency or threat to the health and safety of the public or the neighborhood, City, or City's agents may enter the Leased Property without liability therefor and without in any manner affecting the obligations and covenants of this Lease. Nothing herein, however, shall be deemed or construed to impose upon City any obligations, responsibility or liability whatsoever, for the care, maintenance, or repair of the Leased Property, or any building or facility located thereon.

10.11 **Emergency Plan.** BGC shall have in place and provide City with a copy of, its emergency plan which describes detailed procedures of actions to be taken by BGC, to secure and protect the Leased Property, the public, patrons and employees, in the event of an emergency (natural disaster or other emergency).

10.12 **Utilities.**

a) **Service Charges.** BGC shall fully and promptly pay for all water, sewer, gas, electric, telephone, cable and other utilities of every kind furnished to any portion of the Leased Property through the Term.

b) **Interruption of Service.** No failure, delay or interruption in supplying any utility services for any reason whatsoever (whether or not a separate charge is made therefor) shall be construed to be an eviction of BGC or shall be grounds for any claim by BGC under this Lease for damages, consequential or otherwise, except that Rent shall abate during the period of failure or interruption in the event that such failure or interruption is caused by the City or its employees, agents, or contractors.

10.11 **Derelict Vehicles/Towing.** BGC shall have the authority to cause Derelict Vehicles to be removed from the Maintenance Area. . BGC may obtain towing services for the removal of Derelict Vehicles from the Maintenance Area and abandoned or unauthorized vehicles in the Maintenance Area at no cost to City.

10.12 **No City Obligation.** City shall have no obligation to maintain the Leased Property or make any repairs or replacements of any kind, to the Leased Property or buildings or facilities of the BGC located thereon.

10.13 **City Maintenance Responsibility.**

- a) Following completion of the Off-Lease Improvements, the City shall be responsible for repair and maintenance of the Off-Lease Improvements, including the lake, and the City utilities.
- b) City shall be responsible for all repairs to and resulting from maintenance, repair to, or replacement of, the City's force main to be located under the Parking Area.
- c) If the City fails to repair or maintain any infrastructure or utilities serving the Leased Property which are the City's responsibility, in good order and condition, similar to those of other City parks and in compliance with applicable codes and permits, BGC shall provide written notice to the City of the need for repairs. Within thirty (30) days of receipt of such notice, the City shall advise the BGC whether it will perform the

necessary maintenance or make such repairs, and the City shall have sufficient time to procure such services pursuant to the requirements of its procurement code and the law. In the event, after sufficient time pursuant to the requirements of the procurement code and the law, City does not perform the maintenance or make the repairs, and such failure significantly and detrimentally affects the operation of the Leased Property, the BGC shall have the right, but not the obligation, to perform such repair, maintenance, or replacement upon thirty (30) days' prior notice to the City. Any work performed by the BGC shall be completed in accordance with applicable City and industry standards and permits; and the City shall be named as an additional insured on all of BGC's contractor/subcontractors insurance coverages; and, all contracts in amounts of \$200,000 or more, or as otherwise required by law, shall require performance and payment bonds which comply with Sec. 255.05, Florida Statutes, and which name the City as a co-obligee. The City shall reimburse the BGC for all reasonable documented costs incurred by the BGC under this section, subject to funding appropriation in accordance with the law. In the event City funding is not available for such reimbursement in the then-current budget, City and BGC shall negotiate a reimbursement payment schedule.

ARTICLE 11 SPECIAL TERMS

11.1 **Naming Rights.** BGC shall be permitted to place the name of up to four (4) significant donors on exterior Club facilities, provided any such signage complies with the City Code of Ordinances, the Master Plan for Dreher Park and the Lease, which will include the following requirements:

- Such person shall not have been convicted of a crime of moral turpitude or found by a competent authority to have violated ethics laws or regulations.
- The naming for such donor shall not be considered to endorse or advocate any religion or specific religious belief, nor have an obscene connotation, or malevolently portray or demean any race, ethnicity or other protected group.
- BGC shall make reasonable commercial efforts to perform due diligence with respect to a proposed name/naming rights donor.
- The City Commission shall have final approval of the Naming Rights; however, the City may not reject a proposed naming based on political positions.
- Names of donors shall only include letters and/or numbers and in no case shall include advertising, logos, etc. nothing in this section is intended to prohibit BGC from displaying its logo on exterior signage.

11.2 **Use of Dreher Park.**

- a) BGC may utilize Dreher Park in the same manner as the general public.

- b) Special Events. BGC shall obtain a Special Event permit for any special events, within or outside of the Leased Property, in accordance with Section 78-152 the City Code of Ordinances, however nothing in this section is intended to limit BGC use of the Leased Property during its hours or program operation. From time to time, BGC will hold events permitted under the Lease on a Saturday or Sunday. For such events, BGC shall be allowed to use the Parking Area on a non-exclusive basis and without a permit. If exclusive use of the Parking Area is required outside of regular programming hours, a Special Event permit shall be required. BGC shall obtain the appropriate alcohol licenses or permits for any special events at which alcohol will be served, in compliance with state law and the City Code of Ordinances.

11.3 **Reporting**. BGC shall timely submit the following reports to the City:

- a) Construction. Within thirty (30) days of each anniversary of the construction commencement date, during the construction period, BGC shall submit to the City a report on the progress of the project including payments made, Small Business/MWBE participation, local contractor and local workforce participation, as applicable, along with a capital expense report detailing the capital costs incurred by BGC during the year.
- b) Accountings. BGC shall, no later than March 1st of each calendar year provide to City the annual financial report for the Club and the annual audit for the Boys & Girls Clubs of Palm Beach County Inc. which includes the capital costs incurred by BGC during the prior calendar year for the Club facilities, any income derived from the Club facilities, and any sales or other taxes paid during the year, or as required by the City's external auditor. The annual report shall contain the total value of pledges, donations and financial commitments. No pledges, donation or financial commitments may contain conditions that are inconsistent with the Lease.
- c) Services. BGC shall, no later than March 1st of each calendar year provide to City a report detailing the number of participants BGC served during the prior calendar year, along with a list of the zip codes in which the participants live, and the number of participants from each zip code.

ARTICLE 12

RENT

12.1 **Rent**. In consideration for BGC's removal of the large debris mound(s) of approximately 0.7 acres located adjacent to the Leased Property, BGC shall pay rent in the amount of One Hundred Dollars (\$100.00) per year for the Lease term.

12.2 **Triple Net Lease**. This Lease shall be deemed to be "triple net" without cost or expense to City. BGC shall pay all costs and expenses of every kind and nature whatsoever arising out of or in connection with the Leased Property which arise or become due during the Term of the Lease, including, but not limited to, cost and expenses relating to taxes, insurance, and the maintenance and operation of the Leased Property. It is the intent of City and BGC that all costs, expenses and obligations of any kind relating to the maintenance and operation of the Leased Property, including all repairs and replacements, which may arise or become due during the Term shall be paid by

BGC. In the event that the City has made any such payment in order to protect its ownership interest in the Leased Property, BGC shall reimburse the City for such costs, payable as Additional Rent.

12.3 **Additional Rent.** BGC shall pay to City, within ten (10) days of demand, as Additional Rent, all real estate taxes, both general and special, capital assessments, all sewer, water and fire protection assessments, rental, occupancy or use taxes, sales taxes and all similar taxes and assessments or any other charges or taxes, if any, levied or assessed with respect to the Property, for which City is responsible by reason of or in any manner connected with or arising out of the Association's possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Leased Property, whether such taxes are general or special, ordinary or extraordinary, or foreseen, or unforeseen, or which the City has paid on behalf of BGC to protect the City's ownership interest in the Leased Property.

ARTICLE 13

TAXES

13.1 **Taxes.** BGC shall pay and discharge as they become due, promptly and prior to delinquency, any and all Federal, State and local taxes and fees, all special assessments of any kind, assessments, charges, fees and liens assessed or imposed by any governmental authority against the Leased Property, the buildings thereon, BGC's personal property, sales tax, and operations on the Leased Property, BGC's leasehold interest, or against City by reason of its ownership of the Leased Property.

13.2 **Real Estate Taxes and Special Assessments.** BGC shall be responsible for the prompt payment of any and all real estate taxes and special assessments assessed against the Leased Property during the Term and shall provide City with proof of payment prior to delinquency. As a long term lessee, City will consent to the BGC arranging with Palm Beach County to directly receive any property tax bills for the Leased Property. BGC shall be responsible for the receipt of the property tax bill and timely payment of any real estate taxes and assessments that may be assessed against the Leased Property. In the event of failure of BGC to pay and real property taxes or assessments levied on the Leased Property, and the City makes such payment due to protect its ownership interests in the Leased Property, BGC shall reimburse such payments made by the City as Additional Rent

13.3 **Personal Property Taxes.** BGC shall be responsible for the prompt payment of any and all personal property taxes assessed against the Improvements on the Leased Property or BGC's personal property, during the Term, and shall, upon written request, provide City with proof of payment prior to delinquency.

13.4 **Sales Tax.** BGC shall be responsible for the prompt payment of any and all sales tax resulting from BGC's operations under this Lease. BGC acknowledges that BGC may be required to remit sales taxes applicable to the payment of Rent and shall remit such taxes to City with its payment of Rent unless otherwise exempt as approved by the Florida Department of Revenue or any successor agency thereto.

13.5 **Other Taxes or Impositions.** BGC shall be responsible and shall timely pay any and all tax or other assessments, levy, charge and any other applicable federal, state or local taxes, which may become due in connection with this Lease or BGC's use and occupation of the Leased Property, or upon the business conducted on the Leased Property, or upon any of BGC's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to sales or excise taxes on rentals, personal property taxes assessed against tangible and intangible personal property of BGC. BGC hereby covenants and agrees to pay monthly to City, as Additional Rent, any tax, or imposition in lieu thereof (excluding State and/or Federal Income Tax) now or hereinafter imposed upon the use or occupancy of the Leased Property imposed by the United States of America, the State of Florida or Palm Beach County, notwithstanding the fact that the statute, ordinance or enactment imposing the same may endeavor to impose the tax upon City as landlord/lessor, to the extent as applicable.

13.6 **Right to Contest Taxes.** If BGC shall, in good faith, desire to contest the validity or amount of any tax, assessment, levy or other charge to be paid by BGC which may become due in connection with this Lease or BGC's use and occupation of the Leased Property, BGC shall be permitted to file a notice of contest; provided that BGC shall give City prior written notice of BGC's intention to contest such tax and further provided that BGC indemnifies City against any costs, liability or damage arising out of BGC's tax contest. The City shall not be required to join in any such contest proceeding, but may join or participate in the City's sole discretion. Notwithstanding the foregoing, if BGC intends to contest the payment of real property taxes, or any other tax, the non-payment of which could result in the issuance of a tax certificate or tax deed for the Leased Property, then, not less than thirty (30) days prior to the date before such tax to be contested would become delinquent, BGC shall either: (i) provide City with a bond from a surety qualified to do business in Florida, in the amount of the contested taxes, which City may utilized to prevent the issuance of a tax certificate once the validity of the contested taxes is finally determined and BGC fails to pay such taxes; or (ii) BGC shall have paid into the registry of the court of competent jurisdiction a sum of money not less than the amount of the contested taxes, provided such money may never be withdrawn excepting for its application to the payment of the contested taxes without the consent in writing of the City. Upon the termination of any such proceedings, BGC shall pay the amount of such tax, assessment, levy or other charge, or part thereof, if any, as finally determined in such proceedings, together with any costs, fees, including counsel fees, interest, penalties and any other liability in connection therewith.

13.7 **Business Tax Receipt.** The BGC may also be required to pay the City business tax and obtain a business tax receipt for BGC's operations at the Leased Property. BGC may also be required to obtain a City Certificate of Use.

13.8 **Tax Exempt Status.** BGC represents that BGC is a tax exempt organization pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code and that BGC shall maintain its tax exempt status throughout the term of this Lease. Accordingly, certain of the tax obligations under this Article may not apply to BGC's lease and operation of the Leased Property.

ARTICLE 14

INSURANCE; INDEMNIFICATION

14.1 Responsibility to Insure.

- a) BGC. As provided in this Article, BGC shall be responsible to obtain and maintain during the Term property insurance (including windstorm) for the Club facilities, all Improvements on the Leased Property, and the BGC monument sign and any signage lighting, for their full replacement value, along with flood insurance. (if applicable).
- b) City.
 - i. The City will provide property insurance coverage for the Off-Lease Improvements as part of its coverage for Dreher Park and City property. Except for the monument sign and appurtenances, BGC will not be responsible for insuring against damage to the Off-Lease Improvements.
 - ii. In the event City the City uses the Club for City business, pursuant to Section 5.6, the City will provide BGC with its certificate of self-insurance for general liability in accordance with the limits set forth in Section 768.28, Florida Statutes, and self-insurance for property damage caused by the City, its commissioners, officers, and employees.

14.2 Obligation to Maintain Insurance During Term. Upon occupancy of the Club, and during the Term, BGC shall obtain and maintain, or caused to be maintained, in full force and affect, at BGC's expense, the following minimum insurance coverages:

- a) Leased Property Damage/Hazard Insurance. A standard Leased Property insurance policy insuring BGC's buildings, facilities and Improvements against loss by fire and other hazards, casualties and contingencies, including but not limited to windstorm or other act of nature, in an amount not less than one hundred percent (100%) of the full replacement value. BGC shall be entitled to any insurance proceeds and shall use such proceeds for restoration of the BGC's buildings, facilities and Improvements.
- b) Commercial General Liability. General commercial liability insurance covering any occurrence on the Leased Property and the intended operation and use of the Leased Property covering Leased Property damage, bodily injury or death, in an amount of not less than Two Million Dollars (\$2,000,000) (aggregate) and One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and Leased Property damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form Leased Property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. At each ten (10) year anniversary of the date of this Lease during the Term, City shall have the right to require reasonable increases in such amounts of insurance to reflect customary and usual coverages required of similar operations in the City of West Palm Beach.

- c) **Umbrella or Excess Liability Insurance:** The minimum liability limits required above may be satisfied under an Umbrella or Excess Liability policy.
- d) **Flood Insurance.** If required by the flood zone, flood insurance in a commercially reasonable amount shall be maintained.
- e) **Workers' Compensation.** BGC shall maintain, or cause to be maintained by any employer operating on the Leased Property, Workers' Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than One Million Dollars (\$1,000,000) "each accident," One Million Dollars (\$1,000,000) "disease policy limit," and One Million Dollars (\$1,000,000) "disease each employee" or in such amounts not less than the statutorily required amounts.

14.3 Obligations to Maintain Insurance During Construction. During all periods of construction of the Improvements and until Completion of Construction of such Improvements, BGC shall obtain and maintain, or caused to be maintained by its contractor(s), in full force and affect, the following additional minimum insurance coverages:

- a) **Builders Risk.** Builder's risk insurance on an estimated completed value basis of the Improvements. The Builder's Risk insurance must be on an all risk basis, including, but not limited to the risk of direct physical loss or damage by fire, lightning, windstorm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and other such causes as covered by such form of insurance. Such policy shall include: (1) an endorsement for broad form Leased Property damage, demolition costs and debris removal additional insurance; (2) a "Replacement Cost Endorsement" in amount sufficient to prevent the insured from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the full replacement cost, to be determined at least once annually and subject to reasonable approval by City; and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for construction work performed and equipment, supplies and materials furnished to the Leased Property or any other authorized Leased Property, or to any bonded warehouse for storage pending incorporation in the work, without deduction for physical depreciation and with a deductible not exceeding \$500,000 per occurrence. Such policy may not contain a coinsurance penalty provision.
- b) **Commercial General Liability.** Commercial General Liability Insurance for all operations including but not limited to Contractual, Products and Completed Operations and Personal Injury with limits of not less than Two Million Dollars (\$2,000,000) (aggregate) and One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and Leased Property damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed.

- c) Business Automobile Liability Insurance: Business automobile liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limits bodily injury liability and Leased Property damage. The policy must be no more restrictive than the latest edition of the business automobile liability policy without restrictive endorsements and must include owned vehicles and hired and non-owned vehicles.
- d) Environmental Liability/Pollution Liability insurance with minimum limits of Two Million Dollars (\$2,000,000) per pollution condition and Three Million Dollars (\$3,000,000) annual aggregate, providing coverage for damages including, without limitation, third-party liability, clean up, corrective action, including assessment, remediation and defense costs, subject to the terms and conditions of the respective policies.
- e) Umbrella or Excess Liability Insurance: The minimum liability limits required above may be satisfied under an Umbrella or Excess Liability policy.

14.4 **Insurance Requirements**. All insurance to be provided pursuant to this Article 12 shall be: (i) issued by an insurance company with a Best's A- rating or to the extent it is commercially reasonable without significant costs increases, an A+ licensed to do business in Florida; (ii) be issued as a primary policy; and (c) name the City as an additional insured, as provided in Section 14.5.

14.5 **Additional Insured and Loss Payee**. The "City of West Palm Beach, its commissioners, employees and agents", shall be named as an additional insured on each liability insurance policy. Additional insured shall be defended and indemnified for claims to the extent caused by the acts, actions, omissions or negligence of BGC or its contractor(s), as appropriate, their employees, agents, subcontractors, and representatives; but not defended or indemnified for the City's own acts, actions, omissions, negligence.

14.6 **Certificate of Insurance**. At least three (3) days prior to commencement of construction, BGC shall provide to City those certificates of insurance evidencing the insurance required during construction pursuant to Section 14.3 and specifying the additional insured. At least three (3) days prior to the opening of the Club for operation, BGC shall provide to City those certificates of insurance evidencing the insurance required during the Lease Term, pursuant to Section 14.2, and specifying the additional insured. Complete copies of the policies with all endorsements for the Leased Property/Hazard, Commercial Liability and Flood insurance shall be provided to City upon request. Renewal certificates of insurance shall be furnished ten (10) calendar days prior to the date of their expiration. Insurance shall not be canceled, modified, or restricted, without thirty (30) calendar days' prior written notice to City.

14.7 **Waiver of Subrogation**. The BGC and City agree to a mutual waiver of subrogation as to their respective insurance policies. BGC agrees to obtain a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, BGC shall notify City and request of the insurer that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids

coverage if BGC enters into such an agreement on a pre-loss basis.

14.8 **Insurance Limits.** City makes no representation that the limits of insurance specified to be carried by BGC under the terms of this Lease are adequate to protect BGC and BGC shall provide any such additional insurance as BGC deems adequate to protect its own interests. The liability of BGC will not be limited in any way by the amount of proceeds actually recovered under the policies of insurance required to be maintained pursuant to this Lease.

14.9 **Casualty.**

a) **Damage.** The rights and obligations of the parties under this Lease shall not be modified or terminated if the BGC's buildings, facilities and Improvements are damaged or destroyed in whole or in material part rendering the remainder of the Leased Property unsuitable for the permitted use, by fire or other casualty during the term of this Lease; provided any such event shall be deemed a force majeure event and Rent shall abate from the date the casualty occurred until the BGC's buildings, facilities and Improvements are restored. In case of damage to or destruction of any buildings, facilities and Improvements BGC shall file a claim for insurance coverage within thirty (30) days after the occurrence of damage, and shall provide a copy to the City.

b) **Determination.** If fifty percent (50%) or more of the buildings or the Improvements shall be damaged by fire or other casualty so as to be uninhabitable/unusable, then BGC shall have the option, to be exercised within 90 days after such event, to: (a) elect to repair or restore the buildings and Improvements; or (b) promptly demolish the remaining buildings and Improvements and clear all debris, unless otherwise directed by the City, and surrender possession of the Leased Property to City., City and BGC shall thereafter be relieved from any further obligations under this Lease except those that survive any such termination.

c) **Rebuilding and Restoration.** If BGC elects to repair or restore the buildings and Improvements, the insurance proceeds shall be applied to the restoration or repair of the damaged BGC buildings, facilities and Improvements. Within one hundred twenty (120) days after receipt of the applicable insurance proceeds, subject to force majeure and receipt of all governmental approvals including building permits, BGC shall promptly repair and restore the applicable buildings, facilities and Improvements to a condition as good or better than that which existed prior to the damage or destruction, subject to force majeure events.

14.10 **Indemnification of City Against Liability.** BGC shall indemnify City against, hold City harmless from, any and all claims, liabilities, damages, losses, costs and expenses, including without limitation, reasonable attorneys' fees and costs arising out of or in any way connected with (a) injury to or death of any person at the Leased Property, and (b) damage to or destruction of any property, occurring in, on or about the Leased Property; attributable to or resulting from the condition, use or occupancy of the Leased Property by BGC or BGC's failure to perform its obligations under the Lease, except such as is caused by gross negligence or willful misconduct of City, its contractors or employees. The foregoing indemnity obligation of BGC shall include reasonable attorneys' fees, investigation costs and all other reasonable costs and expenses incurred by City from the first notice that injury, death or damage has occurred or that any claim or demand is to be made or may be made. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Lease or otherwise. This paragraph shall not be construed to require BGC to indemnify City for its own negligence, or intentional acts

of City, its agents or employees. The provisions of this section shall survive the termination of this Lease with respect to any damage, injury or death occurring prior to such termination.

14.11 **Indemnification by City.** City shall, to the extent permitted by law, indemnify and save harmless BGC from any and all claims, suits, actions and damages, and/or causes of action that specifically relate to the City's use of the Leased Property and Parking Area to the extent that such claim, suit, action or damages are directly caused by a City act or omission. This indemnification shall not constitute a waiver of sovereign immunity. Beyond the limits set forth in Florida Statutes 768.28, nor shall the same be construed to constitute an agreement by the City to indemnify BGC for BGC's negligent, willful or intentional acts or omissions.

14.12 **No Liability of City.** Notwithstanding any other provision in this Lease, City shall not be responsible or liable to BGC for any claims for compensation or any losses, damages or injury whatsoever sustained by BGC resulting from failure of any of the following: (a) water supply, heat, air conditioning, electrical current, or sewerage, drainage facility, or other utility (unless caused by the gross negligence or willful misconduct of City); or (b) caused by natural physical conditions on the Leased Property, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, hurricane, act of God, or by state of war, civilian commotion or riot, terrorist acts or any cause beyond the control of City.

14.13 **Disclaimer of Liability.** BGC HEREBY DISCLAIMS, AND HEREBY RELEASES THE CITY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS OF INCOME, REVENUE, PROFIT OR VALUE; AND LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY THAT MIGHT BE LOCATED OR STORED ON THE LEASED PROPERTY, UNLESS AND TO THE EXTENT SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY A CITY ACT OR OMISSION OR IS CAUSED BY THE BREACH OF CITY'S OBLIGATIONS UNDER THIS LEASE. THE PARTIES EXPRESSLY AGREES THAT UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGE RELATED TO THE LEASING OF THE LEASED PROPERTY PURSUANT TO THIS LEASE.

14.14 **Duty to Notify.** BCG shall, within three (3) business days of receipt, furnish City with any (i) notices received from any insurance company or governmental agency or inspection bureau regarding any unsafe or unlawful conditions within the Leased Property or Maintenance Area, and (ii) notices or other communications sent by relating to environmental laws or hazardous substances on the Leased Property or Maintenance Area.

14.15 **Sovereign Immunity.** Nothing in this Lease shall be deemed to be a waiver of the protections of sovereign immunity or the limitations of Section 768.28, Florida Statutes, by the City of West Palm Beach.

ARTICLE 15

EMINENT DOMAIN

15.1 **Condemnation.** It is understood and agreed that if at any time during the Term of this Lease the Leased Property or the buildings, Improvements and facilities located thereon or any portion thereof be taken, appropriated or condemned by reason of eminent domain by any agency other than the City, there shall be such division of the proceeds and awards in such condemnation proceedings, and other adjustments made, as shall be just and equitable under the circumstances. If City and BGC are unable to agree upon what division or other adjustments are just and equitable within thirty (30) days after such award shall have been made, then the matters in dispute shall by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy in Palm Beach County, Florida, for its decision and the determination of the matters in dispute. If the legal title to the entire Leased Property be wholly taken by condemnation, this Lease shall automatically and without notice be cancelled. If a partial taking by an entity renders the remainder of the Leased Property unsuited for the permitted uses set forth herein, then BGC shall have the right to terminate this Lease as of the date BGC is required to surrender possession to the condemning authority; however, nothing contained herein shall authorize City to be the condemning authority.

ARTICLE 16

DEFAULT

16.1 **BGC's Default.** The occurrence of any one of the following events shall constitute an event of default on the part of BGC, subject to applicable notice and cure period ("**Default**"):

- a. A default by BGC in the payment when due of any installment of Rent or Additional Rent, or any other monies due and payable under the terms of this Lease and the continuation of such default for a period of fifteen (15) days after written notice from City;
- b. Failure of BGC to commence construction as required by Section 8.17, subject to force majeure;
- c. Failure of BGC to timely complete construction as required by Section 8.19, subject to force majeure;
- d. Repeated use of the Leased Property in violation of Article 5 (two such violations in any 2-year period);
- e. Failure to comply with the Continuous Operation requirements of Section 5.7, subject to force majeure;
- f. Repeated failure to maintain the Leased Property in compliance with Article 10 (three such violations in any 2-year period);
- g. Failure to pay taxes or other assessments, pursuant to Article 13;
- h. Any failure by BGC to discharge any lien or encumbrance placed on the Leased Property in default of Article 9;

- i. Repeated failures to comply with the insurance requirements of Article 14 of this Lease (two such violations in any two-year period);
- j. BGC allows a nuisance or other annoyance on the Leased Property in breach of Section 5.9, three or more times in any three-month period;
- k. Waste or environmental violation is committed to the Leased Property in violation of Section 5.10 or Section 5.11;
- l. BGC vacates or abandons all or any portion of the Leased Property;
- m. There is an assignment or sub-lease of the Leased Property in violation of Article 17;
- n. Repeated failure by BGC to timely submit reports, as required by Section 11.3, resulting in late submittal of reports for three reporting periods in any four-year period, subject to force majeure;
- o. Failure by BGC to maintain its legal existence as a Federal tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code, or its equivalent, or the dissolution or liquidation of the corporation which constitutes the BGC;
- p. BGC makes an assignment for the benefit of creditors; or if BGC files a voluntary petition under Title 11 of the United States Code, or if BGC files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of BGC, of all or any substantial part of its properties, or of all or any part of the Leased Property or Improvements (the “**Bankruptcy Event**”);

16.2 Cure Period. Each Notice of Default (except for a Bankruptcy Event) shall provide the BGC with a period of thirty (30) days after notice is given by City (or any other time period specifically established for such default in this Lease) within which to cure such Default, or, if such a default is of such a nature that it cannot reasonably be remedied within thirty (30) days but is otherwise susceptible to cure, BGC shall, within the within thirty (30) days after Notice of Default was given, institute steps necessary to remedy such default and ensure such efforts to cure are carried out to completion with diligence and continuity (“**Cure Period**”). From time to time, as reasonably requested by City, BGC shall advise City of the status of the efforts to cure the Default. Notwithstanding anything to the contrary in this Lease, each Default shall be subject to a Cure Period.

16.3 City’s Remedies. If a Default occurs, and such Default is not corrected or cured within the Cure Period, City shall have the following remedies:

- (i) Prior to taking any other remedy, City shall take action to enforce strict performance or observance by BGC, or enjoin such breach;
- (ii) Enforce City’s performance Bond Right pursuant to Sections 8.10 and 8.11.;
- (iii) Terminate this Lease pursuant to Section 16.4; and/or
- (iv) Elect any other remedy available at law or in equity.

City's election of a remedy with respect to a Default shall not limit or otherwise affect City's right to elect any of the other remedies available to City under this Lease or at law or equity. The City may recover from BGC all actual damages incurred by reason of such breach or Default, including the cost of recovering the Leased Property. City shall use commercially reasonable efforts to mitigate any damages as a result of BGC's default.

16.4 **Strict Performance.** No failure by City to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available by reason of a Default, shall constitute a waiver of any such Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any default or Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

16.5 **Termination.** In the event of any Default by BGC, then in addition to any other remedies available to City at law or in equity and under this Lease, City shall have the immediate option to terminate this Lease and all rights of BGC hereunder by giving written notice of such intention to terminate. In the event that City shall elect to so terminate this Lease then City may recover from BGC:

(1) the amount of any unpaid Rent, Additional Rent, and any other sums due and payable which have been earned at the time of such termination; plus

(2) any other amount necessary to compensate City for all the detriment caused by BGC's Default and termination of this Lease, or which is in the ordinary course would be likely to result therefrom, including, without limitation:

(A) any costs or expenses incurred by City (i) in retaking possession of the Leased Property; (ii) in maintaining, repairing, preserving, restoring, cleaning, altering, remodeling, rehabilitating or demolishing the Leased Property or any buildings and Improvements; (iii) in carrying the Leased Property, including taxes, insurance premiums, utilities and security precautions; and

(B) any concessions, grant, or other contribution made or paid by City to the benefit of BGC in consideration of this Lease; plus

(3) such reasonable attorneys' fees incurred by City as a result of the Default, and costs in the event suit is filed by City to enforce such remedy.

16.6 **Statutory Rights.** BGC recognizes the validity and applicability of the statutory and summary remedies provided by the statutes of the State of Florida for the protection of lessors and landlords and the enforcement of landlords' rights. BGC recognizes that by virtue of the decisional law of the State of Florida, Sections 83.05, 83.06 and 83.08, Florida Statutes, as it now reads, or any amendments thereto, are treated and considered as being part of this Lease.

16.7 **Remedies Under Bankruptcy and Insolvency Codes.** If a Bankruptcy Event occurs and is not stayed or dismissed within thirty (30) days after such filing or other action; or if, within ninety (90) days after the commencement of a proceeding against BGC seeking any reorganization,

arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of BGC for any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of BGC, of all or any substantial part of its assets, or of all or any part of the Leased Property or Improvements and such appointment has not been vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment has not been vacated, or if an order for relief is entered or if any stay of proceeding or other act becomes effective against BGC, or in any proceeding which is commenced by or against BGC under the present or any future federal bankruptcy code or in a proceeding which is commenced by or against BGC seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, City shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease.

16.8 BGC's Remedies. The City shall be in default of this Lease if the City fails to perform and observe any of its obligations required to be performed under this Lease or applicable law, and fails to cure such default within thirty (30) days of the City's receipt of written notice of such default from the BGC; provided, however, that if the nature of the City's default is such that it cannot reasonably be cured within such 30 day period, then City shall, within the thirty (30) days after Notice of Default was given, institute steps necessary to remedy such default and ensure such efforts to cure are carried out to completion with diligence and continuity. From time to time, as reasonably requested by City, BGC shall advise City of the status of the efforts to cure the Default. In the event of any default by the City, BGC shall have the following remedies:

- (i) Prior to taking any other remedy, BGC shall take action to enforce strict performance or observance by City or enjoin such breach;
- (ii) Enforce any remedy specified in this Lease;
- (iii) Elect any other remedy available at law or in equity.

BGC's election of a remedy with respect to a City default shall not limit or otherwise affect BGC's right to elect any of the other remedies available to under this Lease or at law or equity. BGC shall use commercially reasonable efforts to mitigate any damages as a result of BGC's default.

16.9 Remedies Cumulative. Each right and remedy of any party provided for in this Lease, except as expressly provided otherwise, shall be distinct, separate and cumulative and shall be in addition to every right other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and any two or more or all of such rights and remedies may be exercised at the same time.

16.10 Non-Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said

party of any of its rights under this Lease. No action or inaction by a party shall constitute a waiver of a default. No waiver by either party of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or consent to or approval of any other action on the same or any subsequent occasion.

16.11 **Waiver of Landlord Lien.** City waives any contractual, statutory, or other landlord's lien on any trade fixtures, furniture, equipment, and other personal property owned by BGC.

ARTICLE 17

NON-ASSIGNABLE

17.1 **Assignment, Subletting or Transfer.** BGC shall not, without the prior written consent of City, which consent may be withheld or conditioned by City in its sole and absolute discretion, transfer, sublet or assign this Lease or any interest herein, sublet the Leased Property or any part thereof, or permit the use of the Leased Property by any party other than BGC except as provided in Section 5.1. Any of the foregoing acts without such consent shall be void and shall, at the option of City, terminate this Lease.

17.2 **Transfers not Binding.** Any attempt by BGC to assign or transfer any of its rights or obligations under this Lease without the City's approval will result in City's immediate cancellation of this Lease. Specifically, no assignment of any right or obligation under this Lease shall be binding on the City without the formal written consent of the City Commission.

17.3 **No Transfer by Action of Law.** In addition, this Lease and the rights and obligations contained in this Lease shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of BGC's insolvency or bankruptcy, City may at its option terminate and cancel this Lease.

ARTICLE 18

EXPIRATION & TERMINATION

18.1 **Buildings and Improvements.** All buildings, Improvements and any fixtures, equipment and appurtenances, above or below ground, constructed or placed upon the Leased Property, shall be the Leased Property of BGC until the expiration or termination of this Lease. Upon the expiration or termination of this Lease, the BGC's buildings, Improvements, and any fixtures, equipment and other items appurtenant to the buildings and Improvements (including but not limited to air conditioning, electrical or plumbing fixtures, or fixtures which, if removed from the Leased Property, would render the buildings and Improvements uninhabitable) shall become the Leased Property of the City. Upon the request of City, BGC shall provide City with a bill of sale or other evidence of the transfer of ownership of the buildings, Improvements and any fixtures, equipment and appurtenances, which shall be transferred to the City free and clear of all liens,

mortgage and other encumbrances. This provision shall survive expiration or termination of this Lease.

18.2 **Surrender**. Notwithstanding the foregoing section, upon the expiration or termination of this Lease, the Leased Property and all buildings and Improvements shall automatically revert to City without the execution or delivery of any instrument of conveyance, and BGC shall be immediately obligated to quit the Leased Property. Any notice to quit or notice of City's intention to reenter the Leased Property is hereby expressly waived by BGC. Upon the termination of this Lease, BGC shall surrender possession and vacate the Leased Property, and remove BGC's personal property. If BGC does not timely vacate the Leased Property, City may proceed to recover possession of the Leased Property.

18.3 **BGC's Personal Property**. Any and all personal property, merchandise, furnishings, trade fixtures and equipment of BGC left or abandoned by BGC following an expiration or termination of this Lease, which may be removed from the Leased Property by City, pursuant to the authority of this Lease or by law, may be removed and stored in a commercial warehouse or otherwise by City, at the risk, cost and expense of BGC. City shall not be responsible for the value, preservation or safekeeping of such property, merchandise, furnishings, trade fixtures and equipment. BGC shall have thirty (30) days from the date of removal to retake such property, merchandise, furnishings, trade fixtures and equipment from storage and to pay to City all expenses incurred in the removal and all storage charges. Any such property not re-taken from storage by BGC within the thirty days shall be conclusively deemed to have been forever abandoned by BGC and City may be retained by City or disposed of in such manner as City shall choose, but such disposal shall not relieve BGC of the obligation to reimburse City for the cost of removal, storage and disposition of such property. This provision shall survive the expiration or termination of this Lease.

18.4 **Holdover Tenancy**. If BGC shall holdover after expiration of the Term, BGC may, at City's option, be deemed to be occupying the Leased Property as a tenant at sufferance, which tenancy may be terminated by seven (7) calendar day's written notice. During such tenancy, BGC agrees to pay to City, in advance, rent in an amount equal to one hundred fifty percent (150%) of the average market rent for the Leased Property, as determined by an appraiser for the City, which City in its sole discretion shall determine; and BGC shall remain bound by all other terms and conditions of this Lease. This provision shall survive the expiration or termination of this Lease.

ARTICLE 19

ADDITIONAL TERMS

19.1 **Compliance with Laws**. BGC, at its sole cost and expense, shall promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force; with the requirements of any board of fire underwriters or other similar body now or hereafter constituted; with any direction or occupancy certificate issued pursuant to any law by any public officer or officers; and with the provisions of all recorded documents affecting the Leased Property (including, without limitation, any ground lease, mortgage or covenants, conditions and restrictions), insofar as any thereof relate to or affect the condition, use or occupancy of the Leased Property, including, without limitation, structural, utility system and life safety system changes necessitated by BGC's acts, use of the Leased Property or

by improvements made by or for BGC.

19.2 **Corporate Authority.** Each of the persons executing this Lease on behalf of BGC represents and warrants that it is a duly organized and existing 501(c)(3) corporation, that BGC has been and is qualified to do business in Florida, that BGC has full right and authority to enter into this Lease, and that each and both of the persons signing on behalf of BGC were authorized by BGC to do so on its behalf.

19.3 **Books and Records; Right to Audit.** BGC shall keep and maintain all books, records, contracts and documents attributable to BGC's operation and maintenance of the Improvements for not less than five (5) years (ten (10) years if related to construction work). BGC shall produce the appropriate books and records on request of City. Nothing herein shall be construed to require BGC to release any personal or confidential information regarding the youth served by BGC.

19.4 **Force Majeure.** Either party shall be excused from performing any of its respective obligations or undertakings provided in this Lease, (except: i) as provided in Article 14 and Article 16; ii) obligations to pay any sums of money under the applicable provisions hereof; and iii) obligations to pay taxes or remove liens or encumbrances on the Leased Property), for so long as the performance of such obligations are prevented or delayed for reasons not caused by such party, including but not limited to delays caused by acts of God, tropical storms or severe weather, fire, earthquake, flood, tornado, hurricane, explosion, war (declared or undeclared), terrorist activity, cyber attack, invasion, insurrection, riot, epidemic, pandemic, quarantines, or other health crises, general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, public requisition, government action, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the respective party if such party hereto gives notice of such delay to the other party within twenty (20) days of the occurrence of such event.

19.5 **Real Estate Brokers.** City and BGC each represents and warrants to the other that such party has not authorized or employed, or acted by implication to authorize or to employ, any real estate broker or salesman to act for such party in connection with this Lease. Each party shall indemnify, defend and hold the other harmless from and against any and all claims by any real estate broker or salesman for a commission, finder's fee or other compensation as a result of the inaccuracy of such party's representation above.

19.6 **No Partnership Relationship.** It is understood and agreed that City shall in no event be construed or held to be a partner or associate of BGC in the conduct of BGC's business, nor shall City be liable for any debts incurred by BGC in the conduct of BGC's business, but it is understood and agreed that the relationship is and at all times shall remain that of landlord and tenant.

19.7 **Adequate Consideration.** The parties acknowledge and agree that this Lease is intended to be binding and enforceable and each party waives any right to challenge the enforceability of this Lease, based on the discretion afforded either party in evaluating the transaction and the negotiation of this Lease. BGC acknowledges that City has expended time and resources toward this Lease and that such constitute good and sufficient consideration for this Lease. City acknowledges that this Lease requires BGC to commit time and resources in pursuing the

Improvements and this Lease, and that such constitutes good and sufficient consideration for this Lease.

19.8 **Notices.** All notices, consents, approvals, and elections (collectively, “notices”) to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service or alternatively shall be sent by United States Certified Mail, with delivery confirmation, and in addition, shall be emailed with documentation of the time and date sent. The effective date of any notice shall be the later of the date of delivery of the notice if by personal delivery, courier services, national overnight delivery service or the date the email is sent, or if mailed by United States Certified Mail, with delivery confirmation, upon the date which the return receipt is signed. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

If to City:

City of West Palm Beach
Attn: City Administrator
401 Clematis Street
West Palm Beach, FL 33401

With a Copy to:

City of West Palm Beach
Attn: City Attorney
Post Office Box 3366
West Palm Beach, FL 33402-3366

If to BGC:

Boys and Girls Club of Palm Beach County, Inc.
Attn: President & CEO
800 Northpoint Parkway, #204
West Palm Beach, FL 33407

With a Copy to:

Boys and Girls Club of Palm Beach County, Inc.
Attn: Chairman, Board of Directors
800 Northpoint Parkway, #204
West Palm Beach, FL 33407

All such notices, requests and other communications may be given on behalf of either party by their respective attorney.

Any party may from time to time change the address at which notice under this Lease shall be given such party, upon three (3) days prior written notice to the other parties.

19.9 **Non-liability of Officials and Employees.** No member, official or employee of the City shall be personally liable to BGC, or any successor in interest, in the event of any default or breach by the City for any amount or of any obligation which may become due to BGC under the terms of this Lease; and any and all such personal liability, either at common law or in equity or by constitution or statute, or arising out of any and all such rights and claims against, every such person, or under or by reason of the obligations, covenants or agreements contained in this Lease, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

19.10 **No Special Considerations.** Notwithstanding anything in this Lease to the contrary, nothing contained in this Lease shall in any way stop, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions that it may have with respect to the Leased Property nor shall anything in this Lease constitute or imply approval or special handling and/or consideration for or exemption from any permit by any regulatory authorities of the City.

19.11 **Use of City Logo or City Seal.** BGC shall not use the City Logo or City Seal for any purpose without the express written approval of the City, and as may be approved for event sponsorships.

19.12 **Public Entities Crimes.** BGC certifies that BGC and its contractor(s), suppliers, subcontractors and consultants who will perform construction work at the Leased Property have not been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the Effective Date of this Lease or the relevant subcontract. Violation of this section may result in this Lease being voidable, in accordance with Fla. Stat. Sec. 287.133.

19.13 **Discriminatory Vendor List.** In accordance with Fla. Stat. Sec. 287.134, BGC certifies that BGC, and its contractor(s), suppliers, subcontractors and consultants and their principals and owners are not listed on the Discriminatory Vendor List, kept by the Florida Department of Management Services. Violation of this section may result in termination of this Lease in accordance with Fla. Stat. 287.134.

19.14 **Scrutinized Companies List.** Pursuant to Fla. Stat. Sec. 287.135, BGC represents that BGC is not on the Scrutinized Companies that Boycott Israel List, maintained by the State of Florida, and is not engaged in a boycott of Israel. BGC further represents that it is not on the Scrutinized Companies with Activities in Sudan List, or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business activities in Sudan or Cuba. Violation of this section may result in termination of this Lease.

19.15 **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Palm

19.16 **Public Records.**

- a) BGC shall comply with Chapter 119, Florida Statutes, regarding public records. BGC shall keep and maintain all documents, correspondence, computer files, emails, and/or reports, photographs and videos, prepared with respect to the Leased Property. A request to inspect or copy public records relating to the operation and maintenance of the Improvements under this Lease must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the BGC of the request, and the BGC shall provide the records to the City or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the City, upon request, in a format that is compatible with the information technology systems of the City.
- b) Upon expiration or termination of this Lease, BGC shall transfer, at no cost, to the City all public records in possession of BGC related to the Leased Property. The BGC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- c) BGC shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records disclosure requirements may include plans, drawings and records related to the physical security of City buildings or security systems and shall not be disclosed by BGC, except as authorized by law and specifically authorized by City.
- d) Failure of the BGC to provide public records to the City within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of this Lease by the City, in addition to any other remedies available under the Contract or by law.
- e) IF THE BGC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BGC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CITY CLERK, WHO IS THE CITY'S CUSTODIAN OF PUBLIC RECORDS, AT:

Office of the City Clerk
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401
561-822-1210
CityClerk@wpb.org

19.17 **Governing Law; Jurisdiction; Venue; Litigation.** This Lease shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The City and BGC submit to the jurisdiction of Florida

courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Agreement shall be Palm Beach County, Florida, or the Federal Southern District of Florida. BGC agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*.

19.18 **Waiver of Jury Trial.** THE CITY AND BGC HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY, AND NO PARTY NOR ANY ASSIGNEE, SUCCESSOR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS LEASE OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THIS LEASE. THE PARTIES ALSO WAIVE ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER AND SHALL BE SUBJECT TO NO EXCEPTION. NEITHER THE CITY NOR THE BGC HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER OR ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

19.19 **Time of Essence; Good Faith.** Time is of the essence with respect to the performance of each and every provision of this Lease where a time is specified for performance. The parties shall act in good faith in performing their obligations hereunder.

19.20 **No Third Party Beneficiary.** Nothing in this Lease shall confer upon any person or entity, other than the City and the BGC, any rights or remedies by reason of this Lease.

19.21 **Successors and Assigns.** All rights and obligations granted or imposed by this Lease, and each and every provision hereof, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective successors and any permitted assigns.

19.22 **Survival.** The following provisions of this Lease shall survive its termination or expiration: Sections 4.3, 4.4, 5.11, 9.1, 9.2, Articles 13, 14, 16, and 19 (as applicable) and any other provision which by its terms is intended to survive.

19.23 **Construction.** No party shall be considered the author of this Lease since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Lease shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

19.24 **Waiver.** No waiver of any provision of this Lease shall be effective against any party hereto unless it is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

19.25 **Amendments.** This Lease may not be amended or modified in any respect whatsoever

except by an instrument in writing signed by City and BGC by their duly authorized representatives.

19.26 **Interpretation.** Each of the parties hereto acknowledges that they have been represented by their own counsel throughout the negotiations and drafting of this Lease and therefore none of the parties hereto shall claim or assert that any provisions of this Lease should be construed against the drafter of this Lease.

19.27 **Headings.** The paragraph headings or captions appearing in this Lease are for convenience only, are not part of this Lease, and are not to be considered in interpreting this Lease.

19.28 **Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

19.29 **Counterparts; Electronic Signatures.** This Lease may be executed in two (2) or more counterparts, each of which shall be considered to be an original, and all collectively deemed an instrument. The delivery by email of an executed copy of this Lease shall be deemed valid as if an original signature was delivered. No contract shall be formed between BGC and the City until the City signs this Lease. A facsimile or electronic transmission of this Lease with a signature on behalf of a party will be legal and binding on such party.

19.30 **Recording.** The Parties agree that a memorandum of this Lease, specifying the no lien provisions, shall be recorded by the City in the Official Records of Palm Beach County.

19.31 **Integrated Lease.** This Lease Agreement and the Exhibits attached hereto and forming a part hereof, constitute the entire understanding and agreement between the City and BGC concerning the Leased Property, and there are no covenants, promises, representations, conditions or understandings by any party or the agent of any party hereto, either oral or written, between the parties or relied upon by the parties, other than are herein set forth. All exhibits are incorporated into this Lease by this reference. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement, including, but not limited to, the 1995 Lease and the 2010 Lease, are expressly and superseded by this Agreement.

Exhibits:
A- Leased Property – Improvements
B- Leased Property – Legal Description
C- BGC Uses

[Signatures on following pages.]

IN WITNESS WHEREOF, City and BGC have caused this Lease Agreement to be executed as of the date indicated below.

**THE BOYS AND GIRLS CLUBS OF PALM
BEACH COUNTY, INC.**

a Florida not-for-profit corporation

WITNESS:

By: _____

Jaene Miranda
President & CEO

Print Name: _____

Print Name: _____

[illegible]

On this _____ day of _____, 2024, the foregoing Lease was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, by

_____, as _____,
(Name of person acknowledging) (position, type of authority, officer)

for The Boys and Girls Clubs of Palm Beach County, Inc..

☐ Personally Known OR
☐ Produced Identification – Type of Identification Produced

[SEAL]

Notary Public Signature

Print Name: _____

Commission number: _____

Signature page –BGC Dreher Lease

ATTEST:

CITY OF WEST PALM BEACH, FLORIDA
a municipal corporation

City Clerk

By: _____
Keith A. James, Mayor

City Attorney's Office
Approved as to form and legality

Date: _____, 2024

By: _____

EXHIBIT A
LEASED PROPERTY / IMPROVEMENTS

EXHIBIT B

LEASED PROPERTY – LEGAL DESCRIPTION

An area of 1.65 acres, more or less, being a portion of the Northwest 1/4 of Government Lot 3, less the Northerly 177.35 feet of the Easterly 203.10 feet.

Being a portion of the property with an address of 1150 Southern Boulevard, West Palm Beach, Florida.

PCN No. 74-43-44-04-00-003-0020

EXHIBIT C
BOYS AND GIRLS CLUB USES

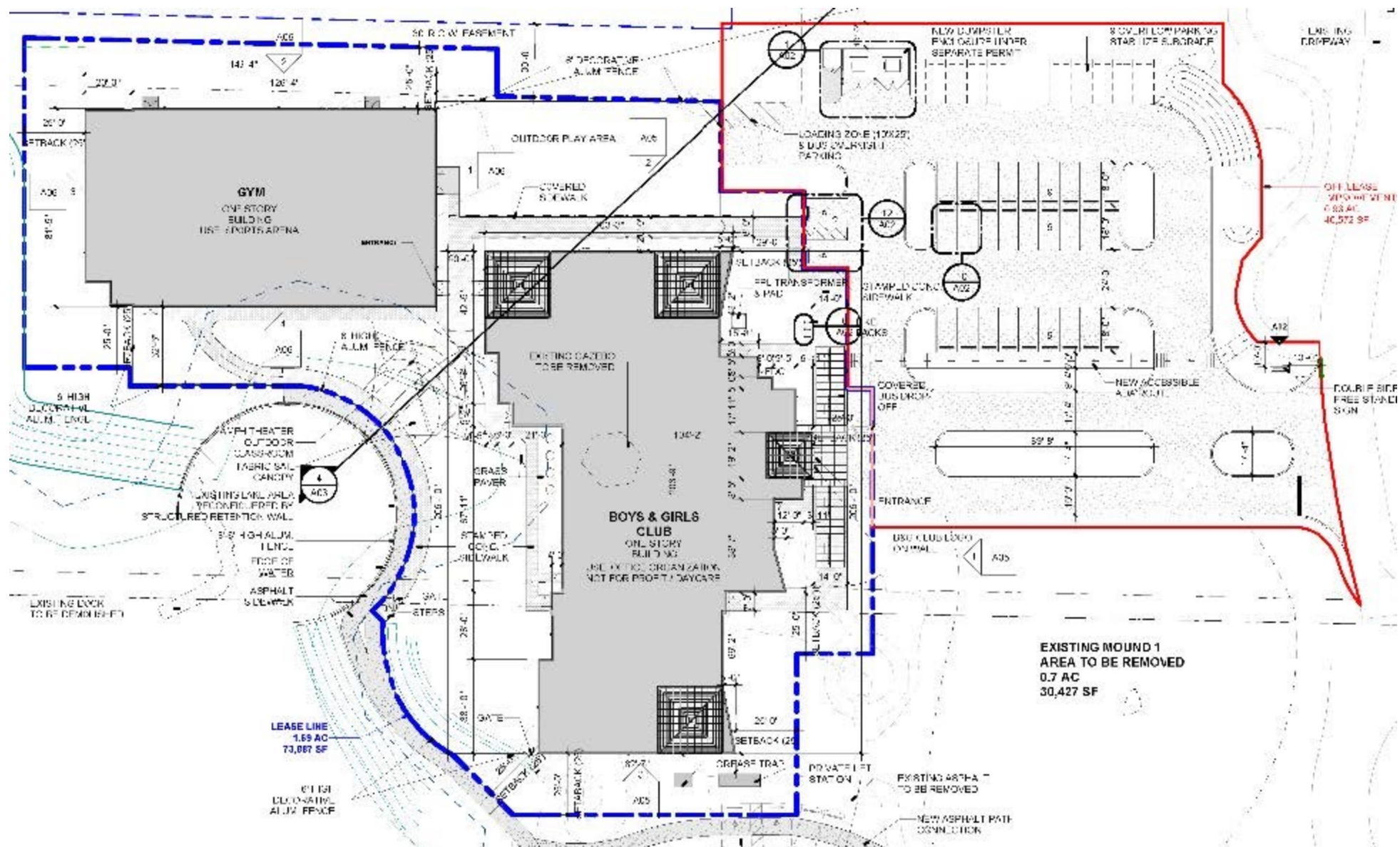


Exhibit C
Permitted Uses

The mission of the Boys & Girls Clubs of Palm Beach County is to inspire and assist all young people, especially those who need us most, to realize their full potential as caring, productive and responsible adults. The organization achieves this by offering youth from ages six to 18 with a safe, educational and fun haven during those critical hours when they are not in school. The organization provides a wide variety of youth development programs. A brief overview of specific programs, which are offered in age appropriate groups, is as follows.

	SPORTS, FITNESS & RECREATION
School Break and Summer Camp programs from 7:30AM to 6:00PM Special events such as family fun days, holiday parties, talent shows, recitals, field trips, networking opportunities Special Programs on Weekends Snack and dinner each day after school and breakfast, lunch, and snack during full day programs	League and individual sports including, but not limited to, coaching, soccer, basketball, golf, gymnastics, cheerleading, whiffle ball, flag football, martial arts, aerobics, outdoor play, pool tournaments, foosball, board and computer games, gym equipment, socialization activities, bingo, and trivia games
EDUCATION	HEALTH & WELLNESS
Homework help and tutoring with certified teachers	Nutrition and cooking programs
STEM (Science, Technology, Engineering, and Math) programs	Health Screenings and Health Fairs Trauma Informed Care
Reading and English assistance programs	Mental Health referrals
Cultural Awareness Programs	Healthy lifestyle programs
Financial Literacy Programs	Drug & Alcohol prevention education
Adult mentors	Daily meal and snack program – family food programs
	Gardening – Farm to Table programs
THE ARTS	CHARACTER & LEADERSHIP DEVELOPMENT
Visual and Performance Arts: Music, drama, dance, painting, crafts, and photography	Torch (elementary school aged) & Keystone Clubs (middle and high school aged), are clubs much like a Rotary to involve youth in developing programs to learn governance and to build civic engagement
WORKFORCE READINESS/TEEN AND YOUNG ADULTS PROGRAMMING	Youth designed and youth run community outreach and Volunteer Opportunities
Academic Assistance with certified teachers	Youth mentoring opportunities AmeriCorps
Teen socialization activities	Daily, weekly, and monthly recognition programs
SAT prep, College prep and application assistance	Age-appropriate social discussion groups
Annual Youth of the Year Competition, based on academic performance, service to Club and Community, and college scholarships	PARENT & ADULT EDUCATION PROGRAM – Parenting and adult financial literacy programs, home ownership education, parent/guardian family socialization activities, Fatherhood program, nutrition education and youth educational support programs.
Job readiness training, job search prep and first job opportunities	Volunteer opportunities for parents, community members and youth
Training on the use of equipment and software including but not limited to: CAD, Python, 3-D printers, Glowforce Laser Cutters, sewing machines, high end camera equipment, drones, and sound studio equipment.	Partnerships with numerous community organizations and other youth serving organizations.
Career guest speakers and internship opportunities	Facility rentals and community meeting space opportunities
Workforce exploration and readiness in careers in fields such as Robotics, the Culinary Arts, Hospitality, Makerspace Digital Recording and Media production, Technology, Fashion Design, Architectural Design and Model Creation.	Community Advisory Board Opportunity

EXHIBIT B

PRELIMINARY DESIGN FOR:
BOYS & GIRLS CLUB
DREHER PARK



INDEX

SHEET #	DESCRIPTION
A00	COVER SHEET
A01	ARCHITECTURAL SITE PLAN
A02	GENERAL NOTES
A03	SECTIONS
A04	FLOOR PLAN
A05	LANDSCAPE PLAN
A06	BUILDING ELEVATIONS - CIVIL
TOTAL NUMBER OF SHEETS IN SET: 7	

10/05/23

21-162



CHRISTOPHER J. P.
PROFESSIONAL ENGINEER
STATE OF FLORIDA
LICENSE NO. 12543
MECHANICAL ENGINEERING



LOCATION MAP
SCALE 1/4"

PB 1969 – 31

LICENSE FOR ENTRY

WPB No. 28686

This Agreement is made between:

CITY OF WEST PALM BEACH, having an address of 401 Clematis Street, West Palm Beach, Florida 33401 (“**City**”); and

THE BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY, INC., a Florida Not for Profit corporation, with a principal address of 800 Northpoint Parkway, #204, West Palm Beach, FL 33407 (“**Licensee**”).

WHEREAS, it is anticipated that the City will approve a Ground Lease for a Portion of Dreher Park (“**Property**”) with Licensee for development of a Boys and Girls Club; and

WHEREAS, the City Commission desires to grant a license to Licensee to access the Property to the extent necessary to carry out due diligence activities;

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, City and Licensee agree as follows:

1. LICENSE

1.1 *Grant.* City hereby grants to Licensee, its employees, agents, contractors, sub-contractors, employees, invitees, and licensees (collectively “agents or sub-contractors”) a license to enter upon, occupy, and use that portion of Dreher Park to be leased under the Ground Lease, subject to all the terms and conditions set forth herein (the “License”).

1.2 *Limitation of Purpose.* Licensee may enter upon, occupy, or use the Property or any portion thereof for the purpose of conducting due diligence investigations such as surveys, Phase I environmental site assessments, geotechnical analysis and related engineering studies, and root pruning. Licensee shall not bring onto the Property any material which would be in violation of any applicable environmental law, rule, ordinance or regulation. The rights granted hereby shall be referred to herein as the “Right of Entry.” The Right of Entry shall include access, egress, and ingress to and across the Property.

1.3 All work done in exercising the Right of Entry shall be done at Licensee’s sole expense, and Licensee hereby indemnifies and holds City harmless from and against any claims made for services rendered or liens which may be placed on the Property resulting or occurring by reason of Licensee’s activities under this License.

1.4 Upon completion of any due diligence investigations by Licensee which involved the disturbance of any physical conditions, Licensee will restore the surface of the Property to substantially the same condition as existed at the commencement of this License.

1.5 This Right of Entry does not convey any property rights nor any other rights and privileges to Licensee other than those specified herein.

1.6 Upon request by the City, Licensee shall provide the City with (i) a description of the inspections, tests, sampling or other activities conducted at the Property, (ii) a list of the individuals and firms that accessed the Property under Licensee's authorization, and (iii) the dates and times during which such access was undertaken. Licensee shall provide the City with copies of all reports regarding the physical condition of the Property, and shall restore the Property to its pre-existing condition, unless waived in writing by the City; however, there shall be no waiver of the requirement to mitigate any safety hazards that may have been created by Licensee.

2. DURATION AND TERMINATION

2.1 Term. The Right of Entry shall begin upon execution and delivery of this License by the City and continue until the Effective Date of the Ground Lease.

2.2 Termination. Notwithstanding provisions of Section 2.1 above, the City reserves the right to terminate this License at any time prior to the Effective Date of the Ground Lease.

3. INSURANCE AND INDEMNIFICATION.

3.1 Insurance. Licensee agrees to obtain and keep in force at all times during the Term of this License, the following policy or policies of insurance protecting the City of West Palm Beach, its officers, agents and employees, against any and all liability due to death, injury or damage to property arising out of, or any way incidental to the Access.

- a) Commercial General Liability. General commercial liability insurance covering any occurrence on the Property resulting from activity associated with this Right of Entry covering Premises damage, bodily injury or death, in an amount of not less than Two Million Dollars (\$2,000,000) (aggregate) and One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and Premises damage. The insurance policy must include coverage that is no more restrictive than the latest edition of the commercial general liability policy, without restrictive endorsements and the policy must include coverage for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form Premises damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the employee and contractual exclusions removed. City shall have the right to require reasonable increases in such amounts of insurance to reflect customary and usual coverages required of similar operations in the State of Florida.
- b) Umbrella or Excess Liability Insurance: The minimum liability limits required above may be satisfied under an Umbrella or Excess Liability policy.
- c) Workers' Compensation. Licensee shall maintain, or cause to be maintained Workers' Compensation and Employer's Liability Insurance with limits of Employer's Liability

Insurance not less than One Million Dollars (\$1,000,000) "each accident," One Million Dollars (\$1,000,000) "disease policy limit," and One Million Dollars (\$1,000,000) "disease each employee" or in such amounts not less than the statutorily required amounts.

3.2 Self-insurance shall not be acceptable. All insurance policies shall be issued by companies that (a) are authorized to transact business in the State of Florida, (b) have agents upon whom service of process may be made in Palm Beach County, Florida, and (c) have a best's rating of A+ or better.

3.3 Contractor. License shall cause its contractor(s) or other firms performing services for Licensee under this License to maintain comprehensive general public liability insurance as required in Section 3.1.

3.4 Additional Insured: All liability insurance policies shall name and endorse the following as additional insured(s): the "City of West Palm Beach and its commissioners, officers, employees and agents".

3.5 Certificate of Insurance: Licensee shall provide the City's Risk Manager with a copy of the Certificate of Insurance and endorsements evidencing the types of Insurance and coverage required prior to the Access. It is the Licensee's responsibility to ensure that the City's Risk Manager has a current Insurance Certificate and endorsements at all times.

3.5 Indemnification. Licensee agrees to indemnify, defend, save and hold harmless the City of West Palm Beach and its officials, agents and employees from any claim, demand, suit, loss, cost or expense or any damages which may be asserted, claimed or recovered against or from the City of West Palm Beach or its officials, agents and employees by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way related to, caused by or occurring in connection with Licensee's inspections of or concerning the Property, under this License. This indemnification includes, but is not limited to, the operations and use of the Property and rights of way or any act or omission of Licensee, its respective agents, servants, contractors, patrons, guests or invitees, and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claims or the investigation thereof. Nothing in this License shall be deemed to affect the rights, privileges and sovereign immunities of the City as set forth in Section 768.28, Florida Statutes. This paragraph shall not be construed to require Licensee to indemnify the City for its own negligence, or intentional acts of the City, its agents or employees. This clause shall survive the expiration or termination of this Acknowledgment.

4. GENERAL TERMS

4.1 Governing Law. This License shall be governed by and construed in accordance with the laws of the State of Florida.

4.2 Representations/Warranties. No representations or warranties are made or have been relied upon by either party other than those expressly set forth herein.

4.3 Amendment. No agent, employee, or other representative of either party is empowered to alter or amend any of the terms of this Agreement, unless such alteration and/or amendment is in writing and has been signed by an authorized representative of each of the parties. This provision cannot be orally waived.

4.4 Paragraph Headings. The paragraph headings appearing herein are for the convenience of the parties and are not to be used or construed so as to modify the terms and conditions of this Agreement in any fashion.

4.5 Entire Agreement. This License contains the entire agreement between the parties concerning its subject matter, and supersedes and replaces all prior agreements and understandings with respect to Licensee's access to the Property.

[Signatures on following page.]

The duly authorized representatives of the Parties hereby execute this License for Entry of the Property in Dreher Park.

ATTEST:

CITY OF WEST PALM BEACH

By: _____
City Clerk

By: _____
Keith A. James, Mayor

City Attorney's Office
Approved as to form and legality
By: _____

Date: _____, 2024

WITNESS:

**THE BOYS AND GIRLS CLUBS OF PALM BEACH
COUNTY, INC.**
a Florida not-for-profit corporation

Print Name: _____

By: _____
Jaene Miranda
President & CEO