

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, CONTINUING TO FIND THE PROPERTY AT 4105 PINWOOD AVENUE NOT NEEDED FOR CITY PURPOSES; APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE BOYS AND GIRLS CLUBS OF PALM BEACH COUNTY, INC., FOR THE FOR THE FLORENCE DE GEORGES BOYS AND GIRLS CLUB LOCATED AT 4105 PINWOOD AVENUE; AUTHORIZING EXPANSION OF THE LEASE AREA; APPROVING EXECUTION OF THE LEASE AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THESE PURPOSES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\* \* \* \* \*

**WHEREAS**, the Boys and Girls Clubs 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 and Girls Clubs of Palm Beach County, Inc., in 1999, executed a lease with the City of West Palm Beach (the “1999 Lease”) for the property at 4105 Pinewood Avenue (the “Property”), known as the Florence De Georges Boys and Girls Club, which has served the youth in the community; and

**WHEREAS**, the 1999 Lease will expire in 2024; and

**WHEREAS**, the Boys and Girls Clubs of Palm Beach County, Inc., desire to continue to lease the Property to continue to provide services in the community, and desire to expand the lease area, which will allow the Boys and Girls Club to provide additional services; and

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

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 Twenty-Five (25) years with a renewal option for an two (2) additional terms of ten (10) years each.

Lease Area: The lease area will be expanded to include the two City-owned parcels between the Club and Pinewood Park to the South and will incorporate the following three parcels:

4105 Pinewood Avenue, West Palm Beach, FL  
PCN # 74-43-43-04-05-032-0130

4017 Pinewood Avenue, West Palm Beach, FL  
PCN # 74-43-43-09-05-055-0200

**ORDINANCE NO. 5100-24**

3923 Pinewood Avenue, West Palm Beach, FL  
PCN# 74-43-43-09-05-055-0190

Rent. Annual rent of \$100.00 per year.

Maintenance.

The Boys & Girls Club will be responsible for all operating and maintenance costs for the Club facilities, including the HVAC, plumbing, electrical fire sprinklers, alarm and other building systems, building-mounted lighting, building-mounted signage. BGC will be responsible for sod and landscape replacement for the Recreational Field located North of the Club, when required.

City will maintain the splash pad, any non-building mounted exterior lighting, non-building mounted signage, and the irrigation system. City will provide landscape services, including mowing and trimming for the sod and landscaping for the Recreational Field located North of the Club.

**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; and

**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 Pinewood / Northwood neighborhoods, benefits the general welfare and serves a public purpose.

**SECTION 2:** The City Commission hereby determines that the property located at 4105 Pinewood Avenue, West Palm Beach has been leased by the Boys and Girls Club for the past 25 years and that parcel, along with 4017 Pinewood Avenue and 3923 Pinewood Avenue, are not needed for City purposes and hereby declares such Property to be surplus.

**SECTION 3:** The City Commission hereby approves the lease of 4105 Pinewood Avenue, 4017 Pinewood Avenue and 3923 Pinewood Avenue, pursuant to the terms of the lease, with a lease term of twenty-five (25) years with two renewal options of ten (10) years each.

**ORDINANCE NO. 5100-24**

**SECTION 4:** The City Commission hereby approves that Lease Agreement with the Boys and Girls Clubs of Palm Beach County, Inc., for the Florence De Georges Boys and Girls Club, in form and substance similar to that attached hereto as Exhibit A (the “Lease”).

**SECTION 5:** 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 any Memoranda of Lease, required under or necessary for the operation of the Lease.

**SECTION 6:** One fully-executed original of the Lease shall be retained by the City Clerk as a public record. 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 7:** 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 8:** This Ordinance shall take effect 31 days after final passage and shall be subject to the initiative process set forth in the City Charter.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED 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



**LEASE AGREEMENT  
DeGeorge Club**

WPB No. 31918

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 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, the Boys & Girls Clubs of Palm Beach County, Inc., leased premises from the City for a Boys and Girls Club in the Pinewood neighborhood pursuant to that Lease dated November 29, 1999 (the “1999 Lease”); and

WHEREAS, the 1999 Lease will expire in November 2024; and

WHEREAS, rather than extend the 1999 Lease, BGC desires to amend the Lease to extend the Leased Premises, along with other amendments; and

WHEREAS, this Lease is intended to replace the 1999 Lease;

NOW, THEREFORE, the City and BGC agree to the lease of premises for the Florence De George Boys and Girls Club, in accordance with the terms and conditions of this Lease;

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## ARTICLE 1 DEFINED TERMS

- a) **“Additional Rent”** is described in Section 8.3.
- b) **“Agreement” or “Lease”** shall mean this Lease Agreement.
- c) **“Alterations”** are defined in Section 5.12
- d) **“Bond Rights”** are referenced in Sections 6.4.
- e) **“City”** shall mean the City of West Palm Beach, Florida.
- f) **“Club”** shall mean the Florence De George Boys and Girls Club to be operated on the Leased Premises, as described in Section 5.1.
- g) **“Continuous Operation”** is defined in Section 5.7.
- h) **“Default”** is defined in Article 12.
- i) **“Effective Date”** is defined in Section 3.1.
- j) **“Force majeure”** is defined in Section 15.4.
- k) **“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.
- l) **“Leased Premises”** shall mean that certain parcel of real property owned by the City identified in Section 4.1, and as shown in Exhibit A-1 and legally described in Exhibit A-2.
- m) **“Rent”** is defined in Section 8.1.
- n) **“Small / Minority Woman Business”** participation is addressed in Section 6.11.
- o) **“Term”** is defined in Section 3.3 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 **1999 Lease.** As of the Effective Date, the 1999 Lease shall be terminated and be of no further force or effect.

3.3 **Term.**

a) Term. The term of this Lease shall be twenty-five (25) 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 PREMISES**

4.1 **Leased Premises.** The real property subject to this Lease includes the following three properties, legally described in **Exhibit A-1** and shown in **Exhibit A-2**.

4105 Pinewood Avenue, West Palm Beach, FL  
PCN # 74-43-43-04-05-032-0130

4017 Pinewood Avenue, West Palm Beach, FL  
PCN # 74-43-43-09-05-055-0200

3923 Pinewood West Palm Beach, FL  
PCN# 74-43-43-09-05-055-0190

(the “**Leased Premises**”).

4.2 **Lease.** City hereby leases to BGC and BGC does take and lease from City, the Leased Premises, 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 Premises in its existing condition "**AS IS, WHERE IS, AND WITH ALL FAULTS**" with respect to all facts, circumstances, conditions and defects; (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 Premises as to all risk of adverse conditions, except as otherwise provided in this Lease; (iv) BGC has previously occupied most of the Leased Premises and has undertaken all such inspections and investigations of the Leased Premises as BGC deems necessary or appropriate under the circumstances as to the condition of the Leased Premises and the suitability of the Leased Premises 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 Premises 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 Premises.

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 PREMISES OR ITS STRUCTURAL ELEMENTS, SYSTEMS, EQUIPMENT, APPLIANCES, UTILITIES, OR FIXTURES RELATED TO THE LEASED PREMISES; 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 PREMISES CREATED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS LEASE. BGC FURTHER ACKNOWLEDGES THAT BGC IS LEASING THE LEASED PREMISES "**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 PREMISES, 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 Premises.** 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 Premises.

## **ARTICLE 5**

### **USE OF LEASED PREMISES**

#### **5.1 Use of Leased Premises.**

- a) **Permitted Use.** BGC shall have the exclusive use of the Leased Premises 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, which may include one or more of the activities listed in **Exhibit B**, 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) **Compliance with Laws.** BGC shall conform its use and occupancy of the Leased Premises 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 Premises including those of City.
- c) **Consistent with Standards.** BGC shall be responsible to ensure that the Leased Premises 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 boys and girls clubs, subject to the terms and conditions of this Lease.
- d) **No Commercial Use.** No commercial activities shall be permitted on the Leased Premises 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 Premises, in accordance with BGC's use of the Leased Premises, 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) **No Subletting.** BGC shall not sub-lease any portion of the Leased Premises. 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 Premises pursuant to BGC policies and consistent with this Lease, provided such licenses are short term and are not sub-leases.

- f) Alcoholic Beverages. BGC shall be authorized to sell and serve alcohol at fundraising and special events held on the Leased Premises.

**5.2 Nondiscriminatory Services Requirement.** BGC shall ensure that use of the Leased Premises 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.** 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. BGC shall utilize the Leased Premises 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 Premises 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 Premises 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 Premises 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 15. 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 Premises, (b) to

complete repairs necessitated by a casualty event (in which event the terms of Article 11 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 Premises; (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 Premises.

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

**5.9 No Nuisance.** BGC shall not operate or use the Leased Premises in a manner that arises to a nuisance. BGC shall not use, or allow the use of, any portion of the Leased Premises 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 Premises 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 Premises; (c) subjects the City to any liability or responsibility for injury to any person or Leased Premises (beyond that which is covered by insurance or an indemnification) by reason of BGC's operations on the Leased Premises; 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 Premises, or take any act which may adversely affect City's interest in the Leased Premises.

**5.11 No Hazardous Materials.** During the Term, BGC shall neither cause nor permit the Leased Premises 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 Premises, or any other Leased Premises, 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 Premises, 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 Premises 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 Premises, 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 Premises, 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 Premises. 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.

**5.12 New Construction / Expansion.** The parties acknowledge BGC's continued review of the needs of the community and ways that services and programs can be improved or expanded. BGC acknowledges that any Alteration, modification or expansion of the Club facility will require the City's approval and amendment of the Lease, along with compliance with all regulatory requirements in effect at that time. The City may require community outreach prior to consideration of any such Alteration, modification or expansion.

## **ARTICLE 6**

### **OPERATION AND MAINTENANCE OF LEASED PREMISES**

**6.1 Operation.** BGC shall operate and maintain the Leased Premises 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.

**6.2 Utilities.**

a) Service Charges. BGC shall be solely responsible for and promptly pay directly to the utility company or the provider of such service all charges and assessments for electric, gas, telephone, cable TV, security system, water, sewer, and trash collection or any other utility installed by BGCs and used or consumed on the Leased Premises during 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.

**6.3 BGC Maintenance and Repair Responsibilities.** BGC shall be responsible to keep the Leased Premises and all improvements thereon in safe condition and good repair, and shall maintain, repair and replace the Club facilities, at BGC expense, including but not limited to, HVAC, plumbing, electrical, fire sprinklers, alarm and other building systems, building-mounted lighting, building-mounted signage. BGC will be responsible for sod and landscape replacement for the Recreational Field located North of the Club, when required, and without the need for notice from the City. Should the City provide notice to BGC of needed maintenance or repair, within thirty (30) days of such notice, BGC shall make such repair or provide the City with a repair plan detailing the scope of work, the cost to complete the work and the estimated timeframe to complete such repair. The City shall have ten (10) days to review the plan presented by BGC and advise as to its acceptance, with or without conditions. Notwithstanding the foregoing, BGC shall take immediate action to prevent damage until necessary repairs can be made. In the event that BGC fails or refuses to maintain the Leased Premises and has not provided a reasonable plan to the City for the required maintenance and/or repair, and said failure continues for a period of thirty (30)

days following notice from the City of the need for such repair, the City shall have the right, but not the obligation, to perform any required repairs and BGC shall, within thirty (30) days, reimburse the City for all costs and expenses incurred in performing such maintenance.

6.3.1 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 Premises are conducted.

6.3.2 Maintenance Services. BGC shall retain services for janitorial, security services, extermination, sod/landscape replacement, and other services, as needed.

6.4 **Payment Bond(s)**. In the event that BGC enters into any contract for repairs to the Leased Property with a value of \$200,000 or more, BGC shall ensure that payment bond(s) providing security for the claims of contractors, sub-contractors, and suppliers performing services for the Leased Premises, 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 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 work by such contractor. BGC acknowledges that no payment may be made to its contractor for work at the Leased Premises 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.

6.5 **Small Business and MWBE Participation**. BGC shall, and shall require its contractors and subcontractors under contract for repairs or maintenance of the Leased Property, to use their best commercially reasonable efforts 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. The goal for such small business and MWBE participation shall be eighteen percent (18%) of the value of the contract. BGC shall provide the information regarding such Small Business and MWBE participation to the City's Office of Small and Minority Business Programs.

6.6 **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 Premises, its buildings, fixtures, 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 Premises 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 Premises. Exterior painting and other landscape modifications will require City approval.

**6.7 Security of Premises.** BGC acknowledges and accepts full responsibility for the security and protection of the Leased Premises, including BGC's equipment, and personal property now existing or hereafter placed on or installed in or upon the Leased Premises, and for the prevention of unauthorized access to the BGC buildings and facilities; and expressly acknowledges that any special security measures deemed necessary or desirable by the BGC for additional protection of the Leased Premises and BGC personal property, shall be the sole responsibility of the BGC and shall involve no cost to City.

**6.8 Parking.** City and BGC acknowledge that the 1999 Lease provided that parking for the existing Club facility will be accommodated with the designated on-street parking spaces.

**6.9 Keys and Lock.** City shall furnish BGC with four (4) sets of keys to the Leased Premises. BGC acknowledges that City retains keys to the Leased Premises. At the end of the Lease term, BGC shall return all keys to the Leased Premises in its possession to the City. BGC shall not change the locks or lock combinations to the Leased Premises without written permission of the City and shall provide the City with four (4) sets of keys or the combination numbers for every changed lock.

**6.10 City Maintenance Responsibilities.**

6.10.1 City will maintain any non-building mounted exterior lighting and non-building mounted signage on the Leased Premises, as well as the splash pad, and the irrigation system. In the event that City fails or refuses to perform the City's maintenance responsibilities for the Leased Premises and said failure continues for a period of thirty (30) days following notice from the BGC of the need for such repair, the BGC shall have the right to perform any required repairs and City shall, within thirty (30) days, reimburse BGC all costs and expenses incurred in performing such maintenance.

6.10.2 Recreational Field Maintenance. City will provide landscape services, including mowing and trimming, for the sod and landscaping for the Recreational Field located North of the Club. Such landscape maintenance services shall be provided at the same level and frequency as the City provides for its City parks.

**6.11 Access and Right of Entry by City.** City and City's agents shall have the right to enter the Leased Premises 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 Premises. 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 Premises, 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 Premises 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 for the care, maintenance, or repair of the Leased Premises, which is the responsibility of BGC under this Lease.

6.12 **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 Premises, the public, patrons and employees, in the event of an emergency (natural disaster or other emergency).

## **ARTICLE 7**

### **REPORTING**

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

- a) **Accountings.** BGC shall, no later than March 1<sup>st</sup> of each calendar year provide to City the annual financial report for the Boys and Girls Club 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.
- b) **Services.** BGC shall, no later than March 1<sup>st</sup> 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. BGC shall not provide to the City any personal information regarding any of the youth who participated in Club services.

## **ARTICLE 8**

### **RENT**

8.1 **Rent.** BGC shall pay rent in the amount of One Hundred Dollars (\$100.00) per year ("**Rent**") for the Lease Term.

8.2 **Triple Net Lease.** This Lease shall be deemed to be a net lease. BGC shall pay all costs and expenses of every kind and nature arising out of or in connection with the Leased Premises 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 Premises, as provided in this Lease. In the event that the City must make any such payment in order to protect its ownership interest in the Leased Premises, or make necessary repairs which are the responsibility of BGC, BGC shall reimburse the City for such costs, payable as Additional Rent.

8.3 **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 Leased Premises, or any repair or maintenance costs for which BGC is responsible but for which the City has paid on behalf of BGC to protect the City's ownership interest in and/or the maintenance of the Leased Premises.

## **ARTICLE 9**

### **TAXES**

9.1 **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 Premises, the buildings thereon, BGC's personal property, sales tax, and operations on the Leased Premises, BGC's leasehold interest, or against City by reason of its ownership of the Leased Premises.

9.2 **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 Premises 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 Premises. 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 Premises. In the event of failure of BGC to pay and real property taxes or assessments levied on the Leased Premises, and the City makes such payment due to protect its ownership interests in the Leased Premises, BGC shall reimburse such payments made by the City as Additional Rent

9.3 **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 Premises or BGC's personal property, during the Term, and shall, upon written request, provide City with proof of payment prior to delinquency.

9.4 **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.

9.5 **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 Premises, or upon the business conducted on the Leased Premises, 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 Premises 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.

**9.6 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 Premises, 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 Premises, 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.

**9.7 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 Premises. BGC may also be required to obtain a City Certificate of Use.

**9.8 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 Premises.

## **ARTICLE 10**

### **PROTECTION AGAINST MECHANICS' LIENS AND CLAIMS**

**10.1 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 Premises. The right, title and interest of the City in the Leased Premises, or any portion thereof, shall not be subject to liens or claims of liens for the any work performed for BGC on the Leased Premises. 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 Premises, 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 Premises, or any part thereof, or against assets of the City,, 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.

**10.2 BGC's Duty to Keep Leased Premises Free of Liens.** BGC shall pay when due all costs for work performed and materials supplied to the Leased Premises. BGC shall keep the Leased Premises 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 Premises 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.

**10.3 Contesting Liens.** If a mechanic's, laborer's, vendor's, materialman's or other similar statutory lien is recorded against any City property, including the Leased Premises as a result of a claim of BGC's failure to make payment, 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 Premises free of liens.

## **ARTICLE 11**

### **INSURANCE; INDEMNIFICATION**

**11.1 BGC Obligation to Maintain Insurance During Term.** 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) Commercial General Liability. General commercial liability insurance covering any occurrence on the Leased Premises and the intended operation and use of the Leased Premises covering Leased 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 Leased 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 Leased Premises 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.

- b) Automobile Liability. Proof of automobile coverage to be provided for automobiles owned, hired or leased by B&G Clubs.
- c) Umbrella or Excess Liability Insurance: The minimum liability limits required above may be satisfied under an Umbrella or Excess Liability policy.
- d) Workers' Compensation. BGC shall maintain, or cause to be maintained by any employer operating on the Leased Premises, 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.

**11.2 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 11.3.

**11.3 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.

**11.4 Certificate of Insurance.** BGC shall provide to City, not less than ten (10) calendar days prior to the Effective Date of this Lease, certificates of such applicable insurance evidencing the insurance coverage as specified in this Article, and specifying the additional insured. Renewal certificates of insurance shall be furnished ten (10) calendar days prior to the date of their expiration. Liability insurance shall not be canceled, modified, or restricted, without thirty (30) calendar days' prior written notice to City.

**11.5 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.

**11.6 Insurance Limits' Personal Property.** 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. BGC shall insure its own personal property at its own cost and in such amounts as it determines in its sole discretion. 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.

**11.7 City Responsibility to Insure.**

- a) Property Insurance. City shall insure the Leased Premises in the same manner as it insures City real property. City shall have no obligation to insure any personal property of BGC.
- b) City Use. 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.

**11.8 Casualty.**

a) Damage. The rights and obligations of the parties under this Lease shall not be modified or terminated if the Leased Premises are damaged or destroyed in whole or in material part rendering the remainder of the Leased Premises 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 Leased Premises are restored. In case of damage to or destruction of any portion of the Leased Premises, City shall file a claim for insurance coverage within thirty (30) days after the occurrence of damage, and shall provide a copy to BGC.

b) Determination. If fifty percent (50%) or more of the Leased Premises shall be damaged by fire or other casualty so as to be uninhabitable/unusable, then City shall have the option, to be exercised within 90 days after such casualty event, to: (a) elect to repair or restore the Leased Premises using its insurance proceeds; or (b) propose that the BGC develop a reconstruction plan ("**Reconstruction Plan**") to reconstruct the Leased Premises and facilities using the City's insurance proceeds as partial funding toward that Reconstruction Plan. The Reconstruction Plan shall outline the scope of work required for restoration, the estimated cost and estimated timeframe to complete restoration. The BGC shall have 120 days after receipt of the City's election to develop the Reconstruction Plan for consideration by the City. If a mutually agreeable Reconstruction Plan is not reached within 90 days of presentation by the BGC, the Parties may agree to an extension or the BGC may terminate the Lease and 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 City elects to repair or restore the Leased Premises, the insurance proceeds shall be applied to the restoration or repair of the Leased Premises. Within one hundred twenty (120) days after receipt of the applicable insurance proceeds, subject to force majeure, receipt of all governmental approvals including building permits, and compliance with all applicable procurement ordinances, City shall promptly repair and restore the Leased Premises and facilities to a condition as good or better than that which existed prior to the damage or destruction. In no event shall City be required to repair or replace BGC's fixtures, furnishings, equipment or personal property. BGC shall be responsible for the repair or replacement of its furnishing, equipment, and personal property.

**11.9 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 Premises, 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.

**11.10 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 Premises, and (b) damage to or destruction of any property, occurring in, on or about the Leased Premises; attributable to or resulting from the condition, use or occupancy of the Leased Premises 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. 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.

**11.11 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 Premises 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.

**11.12 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 PREMISES, 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 PREMISES PURSUANT TO THIS LEASE.

11.13 **Duty to Notify.** BCG shall, within five (5) 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 Premises, and (ii) notices or other communications sent by relating to environmental laws or hazardous substances on the Leased Premises.

## **ARTICLE 12**

### **EMINENT DOMAIN**

12.1 **Condemnation.** It is understood and agreed that if at any time during the Term of this Lease the Leased Premises 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 Premises 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 Premises 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 13**

### **DEFAULT**

13.1 **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. Repeated use of the Leased Premises in violation of Article 5 (two such violations in any 2-year period);
- c. Failure to comply with the Continuous Operation requirements of Section 5.7, subject to force majeure;
- d. Repeated failure to maintain the Leased Premises in compliance with Article 6 (three such violations in any 2-year period);
- e. Failure to pay taxes or other assessments, pursuant to Article 9;
- f. Any failure by BGC to discharge any lien or encumbrance placed on the Leased Premises in default of Article 10;
- g. Repeated failures to comply with the insurance requirements of Article 11 of this Lease (two such violations in any two-year period);
- h. BGC allows a nuisance or other annoyance on the Leased Premises in breach of Section 5.9, (three or more times in any three-month period);
- i. Waste or environmental violation is committed to the Leased Premises in violation of Section 5.10 or Section 5.11;
- j. BGC vacates or abandons all or any portion of the Leased Premises;
- k. There is an assignment or sub-lease of the Leased Premises in violation of Section 5.1(e);
- l. Repeated failure by BGC to timely submit reports, as required by Article 7, resulting in late submittal of reports for three reporting periods in any four-year period, subject to force majeure;
- m. 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;
- n. 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 Premises or Improvements (the “**Bankruptcy Event**”); Leased Premises

**13.2 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.

**13.3 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 any remedy specified in this Lease;
- (iii) Terminate this Lease pursuant to Section 13.4; 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 Premises. City shall use commercially reasonable efforts to mitigate any damages as a result of BGC's default.

**13.4 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.

**13.5 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 Premises; (ii) in maintaining, repairing, preserving, restoring, cleaning, altering, remodeling, rehabilitating or demolishing the Leased Premises or any buildings and Improvements; (iii) in carrying the Leased Premises, 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.

**13.6 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.

**13.7 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 Premises 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.

**13.8 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. 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 City's default.

**13.9 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.

**13.10 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.

**13.11 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 14**

### **NON-ASSIGNABLE**

**14.1 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 Premises or any part thereof, or permit the use of the Leased Premises 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.

**14.2 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.

**14.3 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 15**

### **EXPIRATION & TERMINATION**

15.1 **Surrender.** Upon the expiration or termination of this Lease, the Leased Premises 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 Premises. Any notice to quit or notice of City's intention to reenter the Leased Premises is hereby expressly waived by BGC. Upon the termination of this Lease, BGC shall surrender possession and vacate the Leased Premises, and remove BGC's personal property. If BGC does not timely vacate the Leased Premises, City may proceed to recover possession of the Leased Premises.

15.2 **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 Premises 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.

14.3 **Holdover Tenancy.** If BGC shall holdover after expiration of the Term, BGC may, at City's option, be deemed to be occupying the Leased Premises 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 Premises, 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 16**

### **ADDITIONAL TERMS**

16.1 **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 Premises 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.

**16.2 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 Premises (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 Premises, including, without limitation, structural, utility system and life safety system changes necessitated by BGC's acts, use of the Leased Premises or by improvements made by or for BGC.

**16.3 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.

**16.4 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 Leased Premises for not less than five (5) years (10 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.

**16.5 Force Majeure.** Either party shall be excused from performing any of its respective obligations or undertakings provided in this Lease, (except: i) 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 Premises), 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.

**16.6 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.

**16.7 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.

**16.8 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.

**16.9 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.

**16.10 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.

**16.11 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 Premises 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.

**16.12 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.

**16.13 Public Entities Crimes.** BGC certifies that BGC and its contractor(s), suppliers, subcontractors and consultants who will perform construction work at the Leased Premises 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.

**16.14 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.

**16.15 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.

**16.16 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 Beach County Public Health Unit.

**16.17 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 Premises. A request to inspect or copy public records relating to the operation and maintenance of the Leased Premises 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 Premises. 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

**16.18 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*.

**16.19 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.

**16.20 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.

**16.21 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.

**16.22 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.

**16.23 Survival.** The following provisions of this Lease shall survive its termination or expiration: Sections 4.3, 4.4, 4.5, 4.6, 5.11, 6.2, 6.4, Articles 9, 10, 11, 13, 15, and 16 (as applicable) and any other provision which by its terms is intended to survive.

**16.24 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.

16.25 **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.

16.26 **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.

16.27 **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.

16.28 **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.

16.29 **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.

16.30 **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.

16.31 **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.

16.32 **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 Premises, 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 1999 Lease, are expressly and superseded by this Agreement.

[Signatures on following pages.]

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

Jaene Miranda  
President & CEO

Print Name: \_\_\_\_\_

[illegible]

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

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

\_\_\_\_\_  
Notary Public Signature

Commission number: \_\_\_\_\_

*Signature page –BGC De George Lease*

ATTEST:

**CITY OF WEST PALM BEACH, FLORIDA**  
a municipal corporation

\_\_\_\_\_  
City Clerk

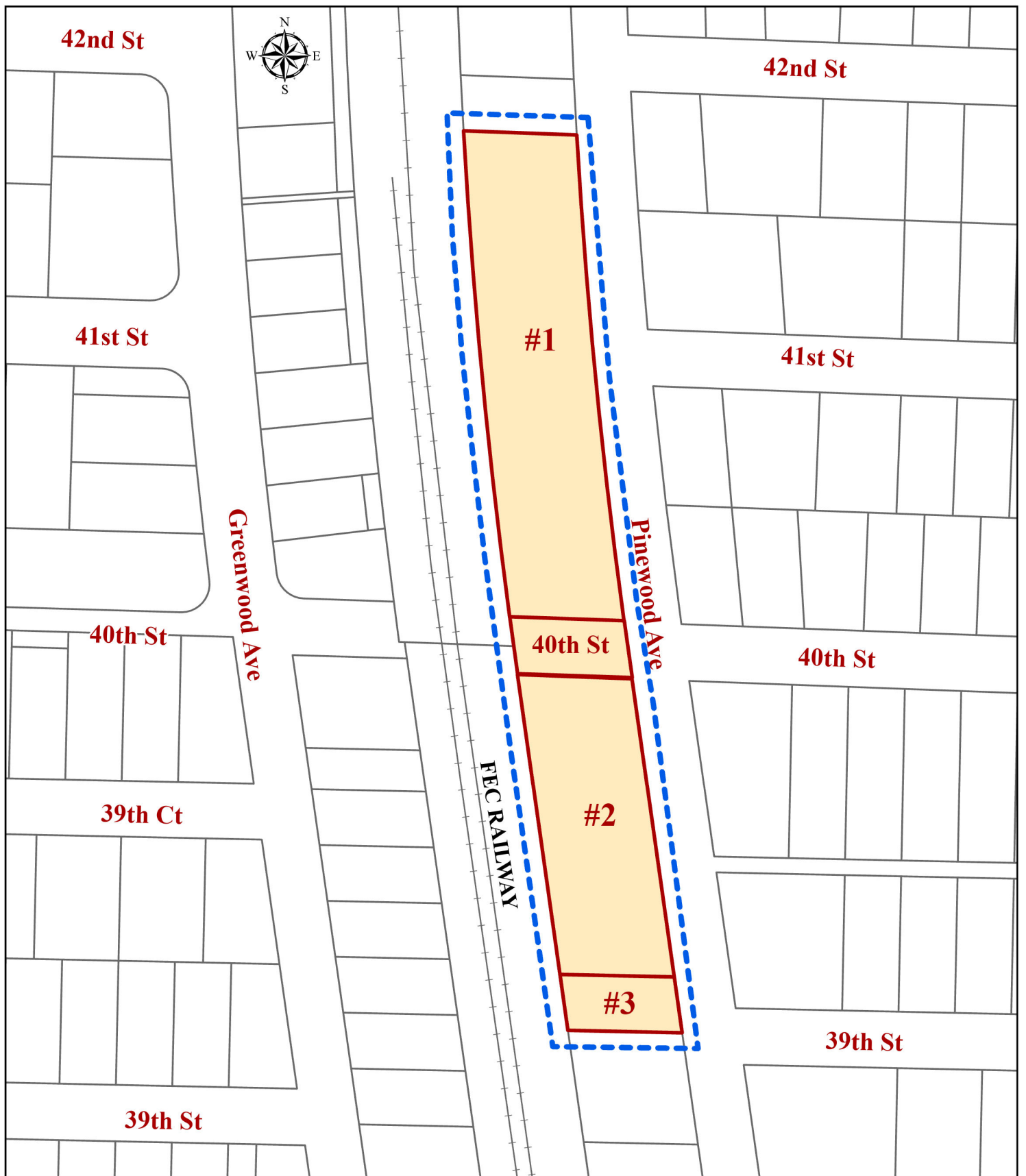
By: \_\_\_\_\_  
Keith A. James, Mayor

City Attorney's Office  
Approved as to form and legality

Date: \_\_\_\_\_, 2024

By: \_\_\_\_\_

**EXHIBIT A-1**  
**LEASED PREMISES BOUNDARY**



Florence De George  
Boys & Girls Club

## **EXHIBIT A-2**

### **LEASED PREMISES / LEGAL DESCRIPTION**

The Leased Property includes the following parcels:

1. 4105 Pinewood Avenue, West Palm Beach, FL  
PCN # 74-43-43-04-05-032-0130

Legal Description: Lots 13 to 29, Block 32 as shown on NORTH PALM BEACH PLAT NO. 2, in Plat Book 6, Page 89 of the Public Records of Palm Beach County, Florida.

2. 4017 Pinewood Avenue, West Palm Beach, FL  
PCN # 74-43-43-09-05-055-0200

Legal Description: Lots 20 & 21, Block 55 of the NORTHWOOD ADDITION to West Palm Beach as shown in Plat Book 11, Page 18 of the Public Records of Palm Beach County, Florida.

3. 3923 Pinewood West Palm Beach, FL  
PCN# 74-43-43-09-05-055-0190

Legal Description: Lot 19, Block 55 of the NORTHWOOD ADDITION to West Palm Beach as shown in Plat Book 11, Page 18 of the Public Records of Palm Beach County, Florida.

**Exhibit B**  
**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.

	<b>SPORTS, FITNESS &amp; RECREATION</b>
<b>School Break and Summer Camp programs from 7:30AM to 6:00PM</b>  <b>Special events such as family fun days, holiday parties, talent shows, recitals, field trips, networking opportunities</b>  <b>Special Programs on Weekends</b>  <b>Snack and dinner each day after school and breakfast, lunch, and snack during full day programs</b>	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
<b>EDUCATION</b>	<b>HEALTH &amp; WELLNESS</b>
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
<b>THE ARTS</b>	<b>CHARACTER &amp; LEADERSHIP DEVELOPMENT</b>
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
<b>WORKFORCE READINESS/TEEN AND YOUNG ADULTS PROGRAMMING</b>	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	<b>PARENT &amp; ADULT EDUCATION PROGRAM</b> – 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