COGDILL RECREATION CENTER
LEASE AGREEMENT

THIS Lease Agreement ("Lease") is entered into this 1st, day of July, 2012, by and between the City of Flagstaff, an Arizona municipal corporation ("Lessor"), and the Boys & Girls Club of Flagstaff, an Arizona nonprofit corporation ("Lessee"), with offices located at 2736 Rio de Flag, Flagstaff, Arizona.

RECITALS

A. The City seeks services from a non-profit community-based organization, through a Lease Agreement for the Cogdill Recreation Center, to provide and enhance youth-related recreational programs within the Flagstaff community;

B. Lessee is a non-profit community-based organization dedicated to developing, coordinating and providing programs offered in the following five (5) core areas that have been determined, through significant community outreach, to meet the specific needs of the Flagstaff Community: sports, fitness and recreation, health and life skills, and arts, education and character and leadership development;

C. The City will obtain a significant public benefit through this Lease by decreasing expenditures related to recreational staffing, minor building maintenance, and recreational administration while ensuring that high quality recreational programming is provided to Flagstaff residents.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth below, the Lessor and Lessee agree as follows:

1. Lease of the Premises and Possession.

1.1. Lease of Premises. The Lessor leases to the Lessee and the Lessee leases from the Lessor the real property and improvements situated at 301 S. Paseo Del Flag, City of Flagstaff, Coconino County, Arizona, (the "Premises" or "Cogdill Recreation Center") in accordance with the terms and conditions of this Lease.

1.2. Condition of Premises. The Lessor makes no representations or warranties regarding the condition or tenant ability of the Premises. The Premises are leased to the Lessee "AS IS, AND WITH ALL DEFECTS, LATENT OR PATENT."

1.3. Term and Commencement Date. The term of this Lease shall commence on July 1, 2012 ("Commencement Date") and shall end at midnight on June 30, 2017, unless terminated earlier as provided in Section 8 ("Termination of Lease").

1.4. Required Use. The Lessee's required use under this Lease is to operate the Cogdill Recreation Center and develop, coordinate and provide recreational programs serving youths in the City of Flagstaff, offered in five (5) core areas: sports, fitness and recreation, health and life skills, the arts, education and character/leadership development ("Required Use") as described in the Project Description/Scope of Work Section of City of Flagstaff Request For Proposals No. 2012-18, incorporated by reference in this Lease. Lessee shall not charge public housing residents a membership fee, or shall cover the membership fee for such residents through scholarships or other arrangements that result in no cost to public housing residents for access to the Premises. The Head Start Program will remain housed at the Premises and the Lessee shall work collaboratively with that program, both in terms of schedule/facility space but also in support of joint programming when possible. The Lessee shall identify and engage community

organizations to develop and/or deliver programs, including but not limited to Flagstaff Unified School District ("FUSD"), YMCA, other nonprofit entities, and law enforcement agencies.

1.5. Base Rent. The Lessee shall pay the annual rent of Twelve Dollars ($12.00) (the "Base Rent").

2. Possession.

2.1. Possession of Premises. The Lessor shall deliver possession of the Premises to the Lessee on the Commencement Date. The Lessor covenants on behalf of itself, and its successors and assigns, not to disturb the quiet enjoyment, possession or Required Use of the Lessee during the Term of this Lease, subject to the Lessor's rights set forth in this Lease.

2.2. Early Possession. If the Lessee occupies the Premises prior to the Commencement Date, then (i) such occupancy shall be subject to all provisions of this Lease, (ii) such occupancy shall not change the termination date, and (iii) the Lessee shall pay rent for such occupancy.

3. Rent.

3.1. Time of Payment. The Base Rent shall be due and payable annually in advance on the Commencement Date of this Lease and on the anniversary of the Commencement Date for each subsequent year of this Lease.

3.2. Late Charges. The Lessee shall pay to the Lessor a late payment charge equal to five percent (5%) of any amount due and owing for any rental payment not paid within seven (7) days of the due date thereof. Any late payments not paid as described above shall bear interest until paid at the lesser of two percent (2%) per month or the highest rate permitted by law.

3.3. Form and Payment of Rent. The Lessee shall pay rent in the form of cash, a check or money order made payable to the Lessor. The Lessee shall deliver the payment to the Lessor at the Lessor's address set forth in Section 9.1 on or before the due date for the rent payment.

3.4. Taxes. The Lessor shall pay, as the same become due and payable, all general real estate taxes and all special assessments levied upon or assessed against, or which become due and payable in connection with, the Premises. In addition, the Lessee shall be liable for and shall pay before the same shall be past due all taxes levied against its trade fixtures and equipment and other personal property placed upon, or owned by the Lessee in, on or about the Premises, plus those levied against the personal property, if any, being leased to the Lessee under this Lease.

3.5. Start-up Costs. The City agrees to provide start-up costs to Lessee that shall be phased over a three (3) year period ("Start-up Costs"). The City will pay Start-up Costs of up to One Hundred Thousand Dollars ("$100,000") for Year 1 (July 1, 2012 – June 30, 2013), up to Fifty Thousand Dollars ("$50,000") for Year 2 (July 1, 2013 – June 30, 2014), and up to Twenty-Five Thousand Dollars ("$25,000") for Year 3 (July 1, 2014 – June 30, 2015). Acceptable Start-up Costs for which the City would provide reimbursement would include hiring of an executive director, hiring additional staff, marketing and advertising costs, matching grant funds as needed, or any other necessary costs associated with the successful operation and programming of the Cogdill Recreation Center. The City shall make all payments on a reimbursement basis upon presentation by Lessee of documentation of costs satisfactory to the Purchasing Director. Lessee shall make its books and records available to Lessor for inspection upon request and shall retain records with regard to the Start-up Costs for five (5) years from the date any Start-up Costs were incurred.

4. Representations, Warranties and Covenants of Lessee.

4.1. Use of Premises. The Lessee shall occupy and use the Premises for the Required Use as outlined in the Project Description/Scope of Work Section of City of Flagstaff Request For Proposals No. 2012-18, and no other purpose, and the Lessee shall occupy the entire Premises during the Term of this Lease and any renewal thereof. The Lessee shall conduct no industrial, manufacturing or processing activity on the Premises. Lessee shall not (i) cause or permit any auction, fire, closing out or bankruptcy sales in or about the Premises; (ii) make or permit any noise or odor objectionable to the public to emit from the Premises; (iii) create, maintain or permit a nuisance in or about the Premises; (iv) permit or do anything that is contrary to any law or regulation of any federal , state or local governmental body or agency; or (v) permit or do anything that is contrary to any covenant, condition or restriction affecting the Premises.

4.2. Hazardous Material. The Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by the Lessee, its agents, employees, contractors or invitees, without the prior written consent of the Lessee, which consent may be withheld for any reason or for no reason.

> 4.2.1. Hazardous Material Indemnity. The Lessee shall indemnify, defend and hold the Lessee, its officers, officials, employees and agents, harmless from and against any and all claims, judgements, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, sums paid in settlement of claims and attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of (i) the Lessee's breach of the obligations stated in this Section 4.2, or (ii) the presence of Hazardous Material on the Premises caused or permitted by the Lessee. This indemnification of the Lessor by the Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil on or groundwater under or within the Premises caused or permitted by the Lessee results in any contamination of the Premises or elsewhere, the Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises.
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> 4.2.2. Definitions. As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of Arizona or the United States. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under applicable law, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6903, (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 or (vii) defined as a "regulated substance" pursuant to Section 9001, Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. Section 6991.

4.3. Alterations, Improvements and Additions. The Lessee shall not make any alteration, improvement or addition to the Premises without the prior written consent of the Lessor, which consent shall not be

unreasonably withheld. Notwithstanding the foregoing, the Lessor consents to, and the Lessee shall be responsible for any alteration, improvement or addition to the Premises mandated by the Americans With Disabilities Act of 1990, as amended, and applicable rules and regulations as promulgated from time to time. All alterations, improvements and additions (i) shall be performed at the sole cost and expense of the Lessee in compliance with all applicable laws and regulations of any federal, state or local governmental body or agency, and (ii) shall become and remain the property of the Lessor. In contracting for the performance of any alterations, improvements or additions, the Lessee shall not act as the agent of the Lessor.

4.4. Covenant Against Liens. The Lessee covenants and agrees not to suffer or permit any lien (including, but not limited to, tax liens, mechanics' liens and material men's liens) to be placed against the Premises. If a lien is placed against the Premises that is directly or indirectly related to an act or failure to act of the Lessee, the Lessee agrees to pay off and remove such lien within five (5) days' of receipt by the Lessee of notice thereof, irrespective of whether the Lessee contests the validity of the lien. The Lessee has no authority or power to cause or permit any lien or other encumbrance created by act of the Lessee, operation of law, or otherwise, to attach to or be placed upon the Lessor's title or interest in the Premises. Any such lien or encumbrance shall attach, if at all, only to the Lessee's leasehold interest in the Premises.

4.5. Waiver of Claims. Exclusive of direct or consequential damages caused by the gross negligence or willful misconduct of the Lessor, its officers, officials, employees or agents, the Lessee agrees that the Lessor, its officers, officials, employees or agents, shall not be liable for any direct or consequential damages (including damage claimed for actual or constructive eviction) either to persons or property sustained by the Lessee, or its officers, directors, employees, agents, invitees, licensees or contractors due to (i) any part of the Premises not being in repair or (ii) the happening of any incident on the Premises. This provision shall include, but not be limited to, damage caused by water, snow, frost, sewage, gas or malfunction of any electrical, heating, cooling or ventilation systems or installations on the Premises.

4.6. Indemnification. The Lessee agrees to indemnify, defend, save and hold harmless the Lessor, its, officers, officials, agents and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (collectively referred to as "Claims") for personal injury (including death) or property damage caused, in whole or in part, by the acts, errors, omissions, negligence, or alleged negligence of Lessee or any of Lessee's directors, officers, agents and employees. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Lessee to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Lessee from and against any and all Claims. It is agreed that Lessee will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

4.6.1 The foregoing indemnity by the Lessee shall extend, but not be limited, to:

4.6.1.1 construction by or through the Lessee of any improvements or any other work or thing done in, on or about the Premises or any part thereof;

4.6.1.2 any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises and improvements, areas adjacent thereto or improvements thereon by or through the Lessee, or any nuisance made or suffered thereon or any failure by the Lessee to keep the Premises or any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof in a safe condition;

4.6.1.3 any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises and improvements, areas adjacent thereto or improvements thereon or any part thereof or in, on or about any street, alley, parking area or facility, sidewalk, curb, vault, passageway, gutter, tunnel, bridge or space comprising a part thereof;

4.6.1.4 any lien or claim which may be alleged to have arisen against or on the Premises or improvements thereon or any part thereof or any of the assets of, or funds appropriated to, the Lessor or any liability which may be asserted against the Lessor with respect thereto;

4.6.1.5 any acts of the Lessee or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

4.6.1.6 any failure on the part of Lessee to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by the Lessor of any remedy provided in this Lease with respect thereto;

4.6.1.7 any failure on the part of Lessee to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the improvements or any part thereof, on Lessee's part to be kept, observed or performed;

4.6.1.8 any tax which Lessee is obligated to pay or cause to be paid, including any tax attributable to the execution, delivery or recording of this Lease.

4.6.2 The foregoing provisions shall survive the expiration or earlier termination of this Lease to the extent the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

4.6.3 The Lessee will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at the sole risk of Lessee, and, to the extent set forth above, save the Lessor harmless from any loss or damage thereto by any cause whatsoever.

4.6.4 The obligations of Lessee under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the project.

4.6.5 If any claim, action or proceeding is made or brought against the Lessor by reason of any event, specified or unspecified, which is the subject of the Lessee's foregoing indemnity, then, upon demand by the Lessor, the Lessee, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Lessor's name. Notwithstanding the foregoing, the Lessor may engage its own attorneys to defend it or to assist in its defense and Lessee shall pay the reasonable fees and disbursements of such attorneys.

4.7. Waiver of Notice. The Lessee expressly waives the service of any demand for payment of rent or for possession.

4.8. Acceptance of Premises and Disclaimer of Representations. The Lessee is fully familiar with the condition of the Premises and accepts the Premises in their present condition "AS IS, AND WITH ALL DEFECTS, LATENT OR PATENT."

4.9. Subordination and Attornment.

4.9.1. Subordination . The Lessee agrees that this Lease is and shall remain subordinate to any existing or subsequent mortgage or deed of trust covering the fee title to the Premises, together with any renewals, modifications or extensions of such existing or subsequent mortgages or deeds of trust. Upon the request of the Lessor, the Lessee shall execute such instruments as are reasonably required to subordinate this Lease to mortgages or deeds of trust made by the Lessor.

4.9.2. Attornment. The Lessee shall attorn to, and recognize as successor Lessor under this Lease, any person that purchases or obtains title to the Premises pursuant to (i) foreclosure proceedings, (ii) exercise of the power of sale under a deed of trust or (iii) a deed in lieu of foreclosure or similar transfer.

5. Services, Repairs and Maintenance.

5.1. Services to be Provided by the Lessor. Lessor shall provide, at its own expense, all reasonably necessary services for the Premises, including electricity, water, sewer, garbage disposal and snow removal in an amount up to Twenty Thousand Dollars ($20,000) annually; Lessee shall be responsible for any amounts above Twenty Thousand Dollars ($20,000) for these services, to be reconciled annually. During snow events, Lessor shall plow the Cogdill Recreation Center site twice during the day starting at approximately 7:00 a.m. at the latest, depending on Public Work's start time for any given day with snow accumulation. Lessee shall be responsible for snow removal on the sidewalks. The Lessee is not obligated to supply or maintain any service or equipment to the Premises. The Lessor shall put, keep and maintain all portions of the Premises, including sidewalks, curbs and passageways adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and obstructions.

5.2. Repairs and Maintenance. The Lessee shall provide and pay for minor maintenance and repair work on the Premises, at minimum, in a condition not less than the condition of the Premises existing as of the Commencement Date, normal wear and tear excepted. The parties agree that the exception for "normal wear and tear" shall not relieve the Lessee of the obligations to maintain in good working order and provide and pay for minor repairs for the roof, paved parking areas and the heating, ventilating, air conditioning, plumbing, electrical and telecommunication systems and to operate the Premises as a high grade and reputable facility. All repairs made by the Lessee shall be at least equal to the original work in class and quality. If the Lessee fails to provide and pay for such maintenance or repairs, the Lessor or its agents may, but shall not be required to, enter the Premises at all reasonable times to make such maintenance or repairs, and the Lessee shall pay to the Lessor the cost of such maintenance or repairs

within five (5) days of receipt of a bill for such maintenance or repairs.

6. Insurance

6.1. Insurance. The Lessee shall procure and maintain for the duration of this Lease insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Lease by the Lessee, Lessee's agents, representatives, employees, volunteers, or contractors. The insurance requirements herein are minimum requirements for this Lease and in no way limit the inderrmity covenants contained herein. The Lessor does not represent or warrant that the minimum limits set forth herein are sufficient to protect the Lessee from liabilities that might arise out of this Lease, and Lessee is free to purchase such additional insurance as Lessee may determine is necessary.

6.1.1 Minimum Scope and Limits of Insurance. Lessee shall provide coverage at least as broad and with limits not less than those stated below.

(i) Commercial General Liability- Occurrence Form *(Form CG 0001, ed. 10/93 or any replacement thereof)*
General Aggregate -- $1,000,000
Personal and Advertising Injury -- $1,000,000
Each Occurrence -- $1,000,000
Fire Damage (any one fire) -- $50,000
Medical Expense (any one person) -- Optional

(ii) Commercial Property Insurance
Building -- Replacement Cost
Loss of Rents -- Per Lease
(Broad Form, 90% coinsurance -- to be placed in force upon completion of building prior to occupancy)

6.1.2 Self-insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by the Lessor.

6.1.3 Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

6.1.3.1 Commercial General Liability and Automobile Liability Coverages.

6.1.3.1.1 The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease and activities performed by or on behalf of the Lessee, including products and completed operations of the Lessee; and automobiles owned, leased, hired or borrowed by the Lessee.

6.1.3.1.2 The Lessee's insurance shall contain broad form contractual liability coverage.

6.1.3.1.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Lessee even if those limits of liability are in excess of those required by this Lease.

6.1.3.1.4 The Lessee's insurance coverage shall be primary insurance with respect to the Lessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Lessor, its officers, officials, agents and employees, shall be in excess to the coverage of the Lessee's insurance and shall not contribute to it.

6.1.3.1.5 The Lessee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.1.3.1.6 Coverage provided by the Lessee shall not be limited to the liability assumed under the indemnification provisions of this Lease.

6.1.3.1.7 The policies shall contain a waiver of subrogation against the Lessor, its officers, officials, agents and employees for losses arising from Lessee's operations, occupancy and use of the Premises subject to this Lease.

6.2 Property Insurance. The City of Flagstaff shall be named as loss payee as its interests may appear. The Lessee may carry any insurance required to be maintained under this Section 6.1 under a "blanket policy" covering other properties of the Lessee and/or its Affiliates.

6.3 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Lessor. Such notice shall be sent directly to the City of Flagstaff's Risk Manager, in care of the Purchasing Director, at the address provided in Section 9 herein.

6.4 Acceptability of Insurers. Lessee shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than 6.5 The Lessor does not represent or warrant that the above required minimum insurer rating is sufficient to provide the Lessee from potential insurer insolvency.

6.5 Verification of Coverage. The Lessee shall furnish the Lessor with certificates of insurance *(ACORD form)* as required by this Lease. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. The Lessor must receive and approve all certificates of insurance before the Lessee takes possession of the Premises. The Lessee's failure to maintain the insurance policies as required by this Lease or to provide timely evidence of renewal will be considered a material breach of this Lease. All certificates of insurance shall be sent directly to the City of Flagstaff's Risk Manager at the address set forth in Section 9 hereof. A description of the Premises shall be noted on the certificates of insurance. The Lessor reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Lease at any time.

6.6 Approval. Any modification or variation from the insurance requirements in this Lease must have the prior approval of the Lessor's Risk Manager. Such action will not require a formal lease amendment but may be made by administrative action.

6.7 Policy Review and Adjustment. Such policies of insurance shall be subject to review and adjustment on the fifth (5th) anniversary of the effective date of this Lease and on each subsequent fifth (5th) anniversary during the term hereof in order to determine the adequacy of the insurance amounts in light of the then existing circumstances.

6.8 Failure to Maintain Insurance. If the Lessee fails or refuses to provide copies of the renewal insurance policies, together with evidence of payment of premiums therefore, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, the Lessor shall have the right, at the Lessor's election, and upon five (5) days' notice to the Lessee, to procure and maintain such insurance. Any premiums paid by the Lessor hereunder shall be due and payable by the Lessee to the Lessor on the first day of the month following the date on which the premiums were paid. The Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s).

7. Default.

7.1. Default by Lessee. The Lessee shall be in default under this Lease if any of the following occurs: (i) Lessee fails to pay when due any monthly rental amount or other payment required to be paid by the Lessee under this Lease in accordance with Section 3 hereof; (ii) the Lessee fails to perform or observe any other covenant, agreement or condition which the Lessee is required to perform or observe and such failure shall not be cured within thirty (30) days after delivery of written notice to the Lessee of such failure; (iii) the Lessee is named as a debtor in any voluntary or involuntary bankruptcy proceeding; (iv) substantially all of the Lessee's assets are placed in receivership or are subjected to attachment or other judiciary seizure; (v) the Lessee makes or suffers a general assignment for the benefit of creditors; (vi) the Lessee vacates or abandons the Premises; or (vii) the Lessee breaches any other provision of this Lease.

7.2. Lessor's Remedies. In the event of Lessee's default hereunder, the Lessor shall have available the remedies set forth in this Section 7.2. Except as expressly, otherwise, provided in this Lease, and to the extent permitted by law, the Lessor's remedies shall be cumulative and not alternative remedies.

7.2.1. Legal and Equitable Remedies. The Lessor shall have all remedies available at law or in equity.

7.2.2. Advances. In the event of any breach of this Lease by the Lessee, the Lessor may remedy such breach for the account of and at the expense of the Lessee. If the Lessor at any time, by reason of such breach, is compelled to pay, or elects to pay, any sum of money or perform any act, which will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting or processing any action or proceeding to enforce the Lessor's rights under this Lease, the sum or sums so paid by the Lessor, with interest from the date of payment, shall be deemed to be additional rental and shall be due from the Lessee to the Lessor on the first day of the month following such payment.

7.2.3. Definition of Rent. For purposes of this Section 7, the term "rent" shall include any Base Rent, additional rent or other existing or future amounts payable by the Lessee to the Lessor under this Lease if default had not occurred.

7.3. Lessor's Default. The Lessor shall be in default under this Lease if the Lessor fails to perform or observe any covenant, agreement or condition, which the Lessor is required to perform or observe and such failure is not cured within thirty (30) days after delivery of written notice to the Lessor of such failure.

7.4. Lessee's Remedies. In the event of the Lessor's default hereunder, the Lessee shall have all remedies available at law or in equity; provided, however, the Lessee hereby expressly waives any right to abatement or withholding of rent or other amounts payable to the Lessor under this Lease.

8. Termination of Lease.

8.1 Events of Termination. The Lease shall terminate upon the occurrence of one or more of the following events: (i) by written agreement between the Lessor and Lessee; (ii) by the Lessor pursuant to this Lease; (iii) by the Lessee pursuant to this Lease; (iv) upon lapse of the Term of the Lease; or (v) by reason of Sections 9.6 or 9.7 relating to destruction or condemnation of the Premises.

8.2. Surrender of Possession. Upon termination of this Lease, the Lessee shall immediately surrender possession of the Premises to the Lessor. If the Lessee does not surrender possession immediately, the Lessor may re-enter and repossess the Premises and remove all persons or property using such force as may be necessary without being deemed guilty of, or liable for, any trespass, forcible entry, detainer or damage to persons or property.

8.3. Condition of Premises Upon Termination or Abandonment. The Lessee, upon termination or abandonment of this Lease or termination of the Lessee's right of possession, covenants and agrees as follows:

8.3.1. Removal of Property. The Lessee shall not remove any alterations, improvements or additions made to the Premises by the Lessee or others without the prior written consent of the Lessor, which consent may be withheld for any reason or for no reason. The Lessee shall immediately remove, in a good and workmanlike manner, all personal property of the Lessee, and such alterations, improvements and additions made to the Premises by the Lessee during the Term as the Lessor may request in writing to be removed. All damage occasioned by such removal shall be promptly repaired by the Lessee in a good and workmanlike manner. If the Lessee fails to remove any such property, the Lessor may accept the title to such property without credit or compensation to the Lessee or remove and store such property, at the Lessee's expense, in any reasonable manner that the Lessor may choose.

8.3.2. Restoration of the Premises. The Lessee shall restore the Premises to the condition existing on the Commencement Date, with the exception of ordinary wear and tear, and alterations, improvements and additions which the Lessor has not directed the Lessee in writing to remove.

8.4. Holding Over. If the Lessee fails to deliver actual possession of the Premises to the Lessor upon termination of this Lease, the Lessor shall have all remedies available at law or in equity to a Lessor of commercial real property in the State of Arizona.

9. General Provisions.

9.1 Notices. All notices or other communications under this Lease shall be in writing and shall be deemed to be delivered on the date of delivery if delivered in person or on the date of receipt indicated on the return receipt if delivered by U.S. Mail, certified or registered, return receipt requested, postage prepaid and addressed, or to such other address as a party may provide to the other by written notice, as follows:

If to Lessor:

Elizabeth Anderson, Enrichment Services Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 86001

If to Lessee:

Don Lindner, Steering Committee Chair
Boys & Girls Club of Flagstaff
2736 Rio de Flag
Flagstaff, Arizona 86004

With a copy to:
Purchasing Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, Arizona 8600 l

9.2. Successors and Assigns. This Lease shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and the Lessee.

9.3. Assignment and Subletting.

9.3.1. Prohibition Without Written Consent. The Lessee shall not, without the prior written consent of the Lessor, (i) assign this Lease or any interest therein; (ii) permit or suffer any assignment of this Lease by operation of law; (iii) sublet all or any portion of the Premises; or (iv) permit the use of the Premises by any party other than the Lessee and its officers and employees.

9.3.2. Standards for Consent. The Lessor's consent to any proposed assignment or subletting may be withheld for any reason or no reason unless the credit history, financial strength and reputation of the subtenant or assignee and the proposed uses of the Premises by the subtenant or assignee are acceptable to the Lessor.

9.3.3. No Release of Lessee. No assignment or subletting shall release the Lessee from any of the obligations set forth in this Lease.

9.4. Nonwaiver of Remedies. A waiver of any condition expressed in this Lease shall not be implied by any failure of the Lessor or Lessee to enforce any remedy available by reason of the failure to observe or perform such condition. A waive·r by the Lessor or the Lessee shall not affect any condition other than the one specified in such waiver and a waiver shall waive a special condition only for the time and in the manner specifically stated in the waiver. The acceptance by the Lessor of any rent or other money from the Lessee, after termination of the Lessee's right of possession, after the occurrence of a default by the Lessee or after institution of any remedy by the Lessor shall not alter, diminish, affect or waive such lease termination, termination of possession, default or remedy.

9.5. Rights Cumulative. Except as expressly provided in this Lease, and to the extent permitted by law, the Lessor's or Lessee's remedies described in this Lease are cumulative and not alternative remedies.

9.6. Fire and Casualty.

9.6.1. Termination or Repair. If all or a portion of the Premises are damaged or destroyed by fire or other casualty, the Lessor shall deliver to the Lessee written notice thereof within thirty (30) days of such damage or destruction stating whether the construction work for repairing or rebuilding the damaged or destroyed portion of the Premises to the same condition as existed immediately prior to such damage can be completed within one hundred eighty (180) days of such damage or destruction. In the event that any part of the Premises is damaged by fire or other casualty, the Lessor shall have no obligation to expend more in repairing, restoring or rebuilding than the proceeds of insurance available for such purposes after any amount required to be paid to any mortgagee of the Lessor has been paid. If, in the Lessor's opinion, the permit and construction work for repairing and rebuilding the damaged or destroyed portion of the Premises can be completed within such period with the available insurance proceeds, the Lessor shall

promptly proceed to repair or rebuild the damaged or destroyed portion of the Premises. If, in the Lessor's opinion, the permit and construction work for repairing and rebuilding the damaged or destroyed portion of the Premises cannot be completed within such period with the available insurance proceeds, either the Lessor or the Lessee may terminate this Lease upon thirty (30) days' written notice to the other party.

9.6.2. Abatement of Apportionment of Rent. If the Lease is not terminated and if the damage or destruction to the Premises is not caused by the act or failure to act of the Lessee, its officers, employees, agents, guests or invitees, then a just portion of the rent shall abate as of the date of the damage or destruction until the Premises are repaired or rebuilt. If the Lease is terminated, the rent shall be apportioned as of the date of the damage or destruction.

9.6.3. Alterations, Improvements and Additions. With respect to any damage or destruction of alterations, improvements or additions made to the Premises by the Lessee, (i) this Section 9.6 shall be inapplicable; (ii) no abatement of rent shall occur; and (iii) the Lessor shall not be obligated to repair or rebuild such alterations, improvements or additions.

9.7. Condemnation. If all of the Premises are taken or condemned by any authority for any use or purpose, this Lease shall terminate upon, and the rent shall be apportioned as of the date when actual possession of the Premises is required for such use or purpose. If less than all of the Premises are taken or condemned by any authority for any use or purpose, then (i) the Lessor may terminate this Lease upon thirty (30) days' written notice thereof, or (ii) the Lessor may continue the Lease and a just portion of the rent will abate as of the date when actual possession of such portion of the Premises is required for such use or purpose. The Lessor reserves all rights to damages to the Premises for any taking or condemnation of all or any portion of the Premises, provided that the taking authority is an entity other than the Lessor. The Lessee hereby assigns to the Lessor any right that the Lessee may have to such award or damages. The Lessee shall have the right to claim and recover from the condemning authority compensation for any loss for moving expenses and for interruption of or damage to the Lessee's business only if such award or damages are awarded separately and not as part of the award or damages recoverable by the Lessor.

9.8. Effect of Lessor's Insurance on Lessee's Obligations. From time to time and without obligation to do so, the Lessor may purchase insurance against damage or liability arising out of or related to the Premises. The purchase or failure to purchase such insurance shall not release or waive the obligations of the Lessee set forth in this Lease. The Lessee waives all claims on insurance purchased by the Lessor.

9.9. Attorneys' Fees and Costs. If either party brings an action to enforce the terms of this Lease or declare rights hereunder, the prevailing party in such action, at trial or on appeal, shall be entitled to its reasonable attorneys' fees and costs as may be determined by the court.

9.10. Governing Law, Jurisdiction and Forum. This Lease shall be construed and interpreted in accordance with the laws of the State of Arizona. The parties agree that the courts of Arizona shall have exclusive jurisdiction and that Coconino County shall be the proper venue.

9.11. Estoppel Certificate. The Lessee agrees that, from time to time upon not less than ten (10) days' prior written request by the Lessor, the Lessee will deliver to the Lessor a statement in writing certifying (i) that the Lease is unmodified and in full force and effect (or that the Lease as modified is in full force and effect, describing the modifications), (ii) that the rents and other charges have been paid to date without any prepayments or defaults (or if any prepayments or defaults, the nature of such prepayments or defaults), and (iii) that the Lessor is not in default under any provision of this Lease (or, if in default, the nature of the default). The certificate may be relied on by a mortgagee, assignee of a mortgage or a

purchaser of the Lessor's interest in the Premises. If the Lessee shall fail to respond within ten (10) days of receipt by the Lessee of a written request from the Lessor as herein provided, the Lessee shall be deemed to have given such certificate as provided above without modification.

9.12. Relationship of the Parties. Nothing contained in this Lease shall be construed as creating the relationship of principal or agent or of partnership or joint venture. Neither the method of computation of rent nor any other provision of this Lease, nor any act of the parties, shall be deemed to create any relationship other than that of landlord or tenant.

9.13. Effect of Conveyance. If, during the term of this Lease, the Lessor should sell its interest in the Premises, then from and after the effective date of such sale, the Lessor shall be released and discharged from any and all further obligations and responsibilities under this Lease (except those already accrued) upon written assumption by the buyer of the Lessor's liabilities under this Lease.

9.14. Time of the Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

9.15. Severability. The invalidity of any portion of this Lease, as determined by a court of competent jurisdiction, shall not affect the validity of any other portion of this Lease.

9.16. Cancellation Notice. The Lessee acknowledges that the Lessor is an Arizona municipal corporation and a political subdivision of the State of Arizona, and, as such, is required by Arizona Revised Statutes Section 38-511 to include notice in this Lease that this Lease is subject to cancellation under said statute if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of the City is at any time while the Lease is in effect an employee or agent or consultant of the Lessee with respect to the subject matter of this Lease. (See A.R.S. Section 38-511 for further details.)

9.17 Effective Date. This Lease shall become effective on the date the Internal Revenue Service of the United States Department of the Treasury issues a determination letter to Lessee which recognizes tax exempt status for Boys & Girls Club of Flagstaff.

9.18 Background Checks. Lessee will check all its employees/volunteers for criminal records to ensure that all laws and that City of Flagstaff policies and regulations concerning contact with minors, older adults or the disabled in recreational programs are enforced.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Lease to be executed by their duly authorized representatives on the signature page immediately following.

City of Flagstaff, Lessor

Kevin Burke, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney

Boys & Girls Club of Flagstaff, Lessee

Don Lindner, Steering Committee Chair

I hereby attest that Don Lindner, Steering Committee Chair, is authorized by resolution of the Board of Directors for Boys & Girls Club of Flagstaff (BGCF), dated 3/29/12, to execute this Lease on behalf of BGCF.