

LEASE AGREEMENT

by and between the

CITY OF SOUTH SAN FRANCISCO

and

THE BOYS AND GIRLS CLUB OF THE PENINSULA

October _____, 2022

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Exhibit A Property Description
Exhibit B Depiction of the Premises

This LEASE AGREEMENT (this “**Lease**” or this “**Agreement**”), dated as of October ____, 2022 (the “**Effective Date**”), is entered into by and between the City of South San Francisco, a California municipal corporation (the “**City**”) and the Boys and Girls Club of the Peninsula, a California nonprofit Corporation (“**BGC**”). The City and BGC are hereafter each referred to as a “**Party**” and collectively referred to as the “**Parties.**”

RECITALS

A. The City is the owner of fee title to real property located at 201 West Orange Avenue, known as Assessor Parcel No. _____, City of South San Francisco (the “**Property**”), as depicted in Exhibit A attached hereto and incorporated herein by this reference.

B. There is an approximately 21,000 square foot building located on the Property (the “**Building**”) that is owned by BGC.

C. The Building is not a part of the Property, and the City has no possessory interest in, or maintenance responsibility for, the Building.

D. BGC, or its predecessors, have been using a portion of the Property (the “**Premises**”), as more particularly depicted on Exhibit B attached hereto and incorporated by this reference, pursuant to a permit originally approved by the City and County of San Francisco and assigned to the City in 2008.

E. The City parking lots adjacent to the Premises are specifically excluded from this Lease, may not be exclusively used by BGC and shall remain open for the general public’s use.

F. The City has agreed to lease the Premises to BGC and BGC desires to lease the Premises to operate a community membership club for youth six to eighteen years of age, offering programs in character and leadership development, education and career development, health and life skills, the arts, sports, recreation and fitness (the “**Permitted Use**”), as set forth in this Agreement.

G. The City has determined that this Agreement is consistent with the General Plan and will be of benefit to the health and welfare of the citizens of the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and BGC hereby agree as of the Effective Date as follows:

ARTICLE I
DEFINITIONS; DEMISE OF PROPERTY

1.1 Definitions. For purposes of this Agreement, the following terms have the meanings set forth in this Section. Additional definitions are set forth in the Recitals and the text of this Agreement.

- (a) “**Applicable Laws**” is defined in Section 6.5.
- (b) “**Rent**” is defined in Section 2.2.
- (c) “**Claims**” is defined in Section 3.2.
- (d) “**Commencement Date**” is defined in Section 2.1.
- (e) “**Expiration Date**” is defined in Section 2.1.
- (f) “**Fixtures**” is defined in Article IV.
- (g) “**Force Majeure**” is defined in Section 15.1.
- (h) “**Hazardous Materials**” is defined in Section 7.4.1.
- (i) “**Hazardous Materials Claims**” is defined in Section 7.2(c).
- (j) “**Hazardous Materials Laws**” is defined in Section 7.4.2.
- (k) “**Impositions**” is defined in Section 3.1.
- (l) “**Improvements**” is defined in Section 5.1.
- (m) “**Indemnitees**” is defined in Section 3.2.
- (n) “**Lease Termination**” is defined in Section 2.1.
- (o) “**Property**” is defined in Recital A.
- (p) “**Remedial Work**” is defined in Section 7.2(e).
- (q) “**Renewal Term**” is defined in Section 2.5.
- (r) “**Permitted Use**” is defined in Recital E and Article IV.
- (s) “**Term**” is defined in Section 2.1.

1.2 Incorporation of Recitals. The Parties acknowledge the truth of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.

1.3 Creation of Lease. The City hereby leases to BGC, and BGC hereby leases from the City, the Premises for the Term subject to the terms and conditions and for the purposes set forth in this Agreement.

ARTICLE II TERM OF LEASE; RENT

2.1 Term of Lease, Extension of Term.

2.1.1 Term. The term of this Agreement (the “**Term**”) shall commence on October ____, 2022 (the “**Commencement Date**”), and unless terminated earlier pursuant to the provisions hereof, shall expire on the third (3rd) annual anniversary of the Commencement Date (the “**Expiration Date**”).

2.1.2 Extension of Term. Provided BGC is not in default under this Agreement, BGC shall have the right to request an extension of the Term up to three (3) times for a period of one (1) year each (each, a “**Renewal Term**”) upon the same terms and conditions set forth herein upon written request to City and approval of a Renewal Term by City. BGC shall request an extension by delivering a written notice to the City by no later than ninety (90) days prior to the expiration of the Term or subsequent Renewal Term. The City has the right to accept or deny the request for a Renewal Term in its sole but reasonable discretion.

2.1.3 Expiration of Term or Renewal Term. The expiration of the Term, the Renewal Term or the sooner termination of this Agreement shall be referred to as “**Lease Termination**.”

2.1.4 Surrender. Upon the expiration of the Term or final Renewal Term, or the earlier termination of this Lease, BGC shall remove the Building and deliver the Premises to the City free and clear of the Building and any debris related to the Building or use of the Premises. In the event that BGC does not remove the Building from the Premises, the City has the right to demolish and remove the Building from the Premises and to charge BGC for the costs of demolition and removal. BGC will promptly reimburse the City for the costs of demolition and removal within thirty (30) days of receipt of an invoice for the costs. Costs to be reimbursed shall include costs incurred by internal staff as well as any outside contractors.

2.2 Rent. On the Commencement Date, and on each anniversary of the Commencement Date during the Term, and any extension of the Term, BGC shall pay to the City rent for the Property (“**Rent**”) in the amount of One Dollar (\$1.00).

2.3 Additional Rent. As additional Rent, BGC shall pay and discharge when due, all Impositions described in Article III, including but not limited to all taxes, insurance

premiums, utility costs, and all other liabilities and obligations which BGC assumes or agrees to pay or undertake pursuant to this Agreement.

2.4 Triple Net Lease. This is a triple net lease to BGC. It is the intent of the Parties that the Rent shall be an absolutely net return to the City and that BGC shall pay all costs and expenses relating to the Premises of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, or paid or incurred in connection with, the ownership, operation, repair, restoration, maintenance and management of the Premises; real property taxes; rent taxes; gross receipt taxes (whether assessed against the City or assessed against BGC and collected by the City, or both); water and sewer charges; insurance premiums; utilities; refuse disposal; lighting (including outside lighting); fire detection systems including monitoring, maintenance and repair; security; janitorial services; labor; air-conditioning and heating; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; costs of landscaping; maintenance and repair of playground equipment; and all other costs and expenses paid or incurred with respect to the Premises. Notwithstanding anything to the contrary in this Section 2.4, costs of repairs and maintenance actually reimbursed to the City by any other party will not be the responsibility of BGC.

ARTICLE III TAXES, ASSESSMENTS AND OTHER CHARGES

3.1 Impositions. Throughout the Term, BGC shall pay prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Premises or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge in lieu of or in substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Premises or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the rent or income received by BGC from subtenants or licensees, (c) any use or occupancy of the Property or part thereof, or (d) this transaction or any document to which BGC is a party creating or transferring an estate or interest in the Premises or part thereof. All of the foregoing are hereinafter referred to as “**Impositions**.” Impositions shall not include business professional, occupational and license taxes, federal, state or local income taxes, franchise, gift, transfer, excise, capital stock, estate, succession, or inheritance taxes.

3.1.1 Installments. If by law any Imposition is payable, or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), BGC may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only

partially included in the Term of this Agreement shall be prorated between BGC and the City.

3.1.2 Evidence of Payment. Upon request by the City, BGC shall furnish, in form satisfactory to the City, evidence of payment prior to delinquency of all Impositions payable by BGC.

3.2 BGC Right to Contest. BGC shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending BGC's covenant to pay any such Imposition at the time and in the manner required by law. Any such contest shall be conducted in accordance with and subject to the requirements of all Applicable Laws and otherwise in a manner that does not subject the City's title to the Property to foreclosure or forfeiture. BGC shall indemnify, defend, and hold the City and its board members, employees, agents and representatives (all of the foregoing, collectively the "**Indemnitees**") harmless from and against all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys' fees and court costs)(all of the foregoing, collectively "**Losses**") arising as a result of or in connection with any such contest brought by BGC. During any contest of an Imposition, BGC shall (by payment of disputed sums, if necessary) prevent any advertisement of tax sale, foreclosure of, or any divesting of the City's title, reversion or other interest in the Property. Upon final determination of the amount or validity of any Imposition contested pursuant to this Section 3.2, BGC shall immediately pay such Imposition and all costs and expenses relating to such challenge.

3.3 BGC Duty to File. BGC shall have the duty of making or filing any declaration, statement or report which may be necessary or advisable in connection with the determination, equalization, reduction or payment of any Imposition which is or which may become payable by BGC under the provisions of this Article III, and shall notify the City in writing upon making such filing, declaration, statement or report, and the City shall not be responsible for the contents of any such declaration, statement or report; provided however, the City shall cooperate with BGC in connection with the foregoing, including joinder in any application pertaining thereto to the extent required under Applicable Law, all at no cost to the City.

ARTICLE IV USE OF PROPERTY

4.1 Permitted Use. BGC is only permitted to use the Premises for the provision of youth related programs in compliance with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to such use and such use shall be conducted in a manner that does not negatively impact the surrounding neighborhood with respect to parking and/or noise. For purposes of this Agreement, the provision of youth related programs means BGC's provision of programs that serve the youth of the

community and promote juvenile health, wellness and life skills and shall not include activities such as Events as that term is defined in San Francisco Municipal Code section 6.48.010(c) (the “**Permitted Use**”). Use of the Premises for Events shall require BGC to obtain an Event permit from the City pursuant to Chapter 6.48 of the South San Francisco Municipal Code. The fact that the Parties have entered into this Lease does not guaranty City approval for any Event permit application.

4.2 Prohibited Uses. BGC shall not use the Property or the Building for any use that is not a Permitted Use including, but not limited to: (i) drug rehabilitation programs; (ii) homeless shelter or for any other overnight occupation; (iii) use by any other entity other than BGC except as permitted herein.

ARTICLE V ALTERATIONS AND NEW CONSTRUCTION

5.1 Changes and Alterations. All changes, alterations and/or additions to the Premises (collectively, the “**Improvements**”) must receive prior written approval from the City. The Improvements shall be made at BGC’s sole cost and expense and shall comply with all of the following:

(a) The Improvements, if and when completed, shall not materially impair the value of the Property.

(b) The Improvements shall be necessary or desirable for the Permitted Use.

(c) The Improvements shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(d) During the construction of any Improvements in, to or of, the Premises, or the permitted demolition or new construction or any restoration, BGC shall comply with the insurance requirements set forth in Section 9.2, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Property.

(e) For minor construction, change, alteration or repair, BGC shall deliver to the City not later than ten (10) business days written notice of the proposed work, a general description of the proposed work and sufficient information to permit the City to post a notice of nonresponsibility on the Premises.

(f) For major construction or reconstruction and alteration of the Premises, BGC shall go through the planning processes required under the South San Francisco Municipal Code. The fact that the Parties have entered into this Lease does not guaranty City approval for any proposed project to be constructed on the Premises.

5.2 Right to Demolish. Notwithstanding any other provisions of this Article V, BGC has the right to remove the Building located on the Property, subject to the obligation of BGC to construct or reconstruct new Improvements that will permit BGC to provide the Permitted Use.

5.3 Compliance with Laws. BGC shall carry out the construction of the Improvements in conformity with all local, state and federal rules, regulations, orders and decrees which are applicable to such construction.

5.4 Construction Indemnification. At its sole discretion, the City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve BGC of any obligation imposed by this Agreement. The City shall notify BGC promptly of any Claim, action or proceeding and cooperate fully in its defense.

The City agrees to defend, indemnify and hold harmless BGC and BGC Parties from any claim, action or proceeding against BGC Parties arising solely out of the gross negligence or willful misconduct of the City in the performance of this Agreement. At its sole discretion, BGC may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the City of any obligation imposed by this Agreement. BGC shall notify the City promptly of any claim, action or proceeding and cooperate fully in the defense.

5.5 Mechanic's Liens. Subject to the right to contest the same prior to payment, BGC shall keep the Property free and clear of all mechanics' liens and other liens on account of work done by BGC. BGC shall indemnify, defend (with counsel reasonably acceptable to City) and hold such the Indemnitees harmless from and against all liability, loss, damages, costs and expenses (including reasonable attorney's fees) incurred by or brought against the Indemnitees for claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to BGC or persons claiming under it. In the event any lien is recorded, BGC shall, within twenty (20) days following such recordation, cause such lien to be removed of record by bonding or otherwise.

5.6 Ownership of Improvements. All Improvements constructed on the Property immediately become the property of the City and shall remain on the Property upon termination of this Agreement. For the avoidance of doubt, the Building shall remain the property of BGC.

ARTICLE VI NONDISCRIMINATION, MAINTENANCE

6.1 Uses. BGC may use the Premises for the Permitted Use as described herein and for no other purposes without the prior written consent of the City. BGC shall not use or permit the Property or the Building to be used in whole or in part during the Term for any purpose other than as permitted pursuant to this Agreement.

6.2 Nondiscrimination. BGC herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased.

6.3 Easements; Reservation of Rights. The City reserves the right to locate and construct its own utilities and to grant nonexclusive easements across the Property for utility and other purposes including the installation, maintenance, repair and replacement of utilities; provided that the exercise of such rights do not unreasonably interfere with BGC's use of the Premises for the purposes set forth herein.

6.4 Maintenance. At BGC's sole cost and expense throughout the Term, BGC shall operate, maintain and manage the Premises including all walls, windows, roofs, outdoor playground equipment, landscaping, including but not limited to the landscaped area along Orange Avenue located between the street and the Building, and improvements thereon in good order and repair and in neat, clean sanitary and safe condition in compliance with all local, state and federal laws, rules, regulations, orders and decrees relating to the use, occupancy or operation of the Premises. BGC shall ensure that the Property is served by adequate lighting in accordance with applicable building codes. BGC shall keep and maintain all portions of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. If graffiti or accumulation of dirt and/or rubbish occurs on the Premises or adjacent to the Building, it shall be BGC's sole responsibility to timely remove it at its sole cost and expense. The City has no responsibility for any maintenance of any part of the Property or the Building under this Lease.

6.5 Compliance with All Applicable Law. BGC shall conduct the Permitted Use and occupy and use the Premises in compliance with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to BGC, the Property and the Premises including without limitation, all environmental, health and safety, employment laws and maximum occupancy limits as specified by the South San Francisco Fire Department ("**Applicable Law**").

6.6 BGC Right to Contest. BGC shall have the right to contest by appropriate proceedings, in the name of BGC, and without cost or expense to the City, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed pending the prosecution of any such proceeding without the incurrance of any lien, charge or liability against the Property or City's interest therein, and without subjecting BGC or the City to any liability, civil or criminal, for failure so to comply therewith, BGC may delay compliance therewith until the final determination of such

proceeding. BGC shall indemnify, defend (with counsel approved by the City), protect and hold the Indemnitees harmless from and against all Claims arising in connection with any such contest brought by BGC. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

ARTICLE VII CONDITION OF THE PREMISES; ENVIRONMENTAL MATTERS

7.1 Condition of the Premises.

7.1.1 AS-IS Condition. BGC will lease the Premises in its "AS IS" condition as such condition exists as of the Commencement Date. BGC is responsible for ensuring that the Premises meet the requirements of all Applicable Laws including, but not limited to, all requirements of the Americans with Disabilities Act.

7.1.2 No Representations. BGC acknowledges that except as expressly set forth herein, the City makes no representations or warranties expressed or implied regarding the condition of the Premises or the fitness or suitability thereof for BGC's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Property shall affect the rights of BGC or the City hereunder. BGC shall rely solely on its own independent investigation and judgment as to all matters relating to the Property. BGC acknowledges and agrees that prior to the Effective Date it has made such investigations of the Property, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as City deemed necessary to determine the condition of the Property, and has approved all such characteristics and conditions and shall lease the Property in its condition as of the Effective Date "AS-IS" "WHERE-IS" AND WITH ALL FAULTS. BGC further acknowledges that the City has made available all data and information on the Property available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information, except as otherwise set forth in this Agreement.

7.2 BGC's Covenants. BGC hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and BGC shall not cause or permit the Property, the Premises or any portion thereof to be in violation of any Hazardous Materials Laws.

(b) BGC shall not permit the Property, the Premises, or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall BGC permit the presence or release of Hazardous Materials in, on, under, about or from the Property or the Premises with the exception of materials customarily used in construction, operation, use or maintenance

of childcare facilities, provided such materials are used, stored and disposed of in compliance with Hazardous Materials Laws.

(c) Upon receiving knowledge of the same, BGC shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against BGC, the Premises or the Property pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against BGC, the Premises or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises; or (iv) BGC's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Premises pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims.**" The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim, and to have its reasonable attorney's fees in connection therewith paid by BGC.

(d) Without the City's prior written consent, which shall not be unreasonably withheld, BGC shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Building or the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

(e) If the presence of any Hazardous Material in the Building or on the Property due to any of the occurrences specified in Section 7.3 (Environmental Indemnity) results in any contamination of the Property in violation of Hazardous Materials Laws, BGC shall promptly take all actions at its sole expense as are necessary to remediate the Property as required by law; provided that the City's approval of such actions shall first be obtained, which approval may be withheld in the City's reasonable discretion. All costs and expenses of any Remedial Work shall be paid by BGC, it being understood that the City shall incur no cost, expense or liability in connection with any Remedial Work. The City shall have the right, but no obligation, to join and participate in, as a party if it so elects at the City's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims. For purposes of this Agreement, "**Remedial Work**" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action required by (i) any Hazardous Materials Laws, (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise

with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Hazardous Materials Laws or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Hazardous Materials Laws or the presence or release of any Hazardous Material in, on, under or from the Building or the Property.

7.3 Environmental Indemnity. BGC shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against all Claims arising during the Term and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Property during the Term, (ii) the failure of BGC, BGC's employees, agents, contractors, subcontractors, licensees, permittees, or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws, or (iii) the breach by BGC of any of its covenants contained in this Article VII. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws and shall include, without limitation, any Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. Notwithstanding anything to the contrary contained herein, nothing in this Section 7.3 shall be construed to make BGC responsible for any Hazardous Materials which migrate onto the Property through air, water, or soil through no fault of BGC, or are introduced by any third party not under BGC's control. This Section 7.3 shall survive the expiration or earlier termination of this Agreement.

7.4 Definitions.

7.4.1 Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated

biphenyls; (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

7.4.2 Hazardous Materials Laws. As used herein “**Hazardous Materials Laws**” means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section 7.4.1, as any of the foregoing may be amended from time to time.

ARTICLE VIII [RESERVED]

ARTICLE IX INDEMNITY AND INSURANCE

9.1 Indemnity. BGC shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) BGC’s (including its employees, agents, representatives, guests, invitees, contractors, and consultants) (collectively, the “**BGC Parties**”) operation or management of the Premises, (ii) any work or thing done on or in the Property by the BGC Parties, (iii) any condition of any alteration or addition constructed by the BGC Parties on the Property, (iv) any breach or default by the BGC Parties in the performance of any covenant or agreement to be performed by BGC pursuant to the terms of this Agreement, (v) any gross negligence of the BGC Parties, (vi) any accident, injury or damage caused to any person and occurring during the Term in or on the Premises, and (vii) the furnishing of labor or materials by the BGC Parties. In the event any such action or proceeding is brought against the City by reason of any such Claim, BGC, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. If an insurer under insurance required to be maintained by BGC hereunder shall undertake to defend the City under a reservation of rights with respect to ultimate coverage and the City shall reasonably deem it necessary to retain independent counsel with respect to such matter, BGC shall pay the reasonable fees of such counsel. The obligations of BGC under this Article IX shall not apply to any Claim or other matter to the extent such arises as a result of the gross negligence or willful misconduct of the Indemnitees. This Section shall survive the expiration or earlier termination of this Agreement.

9.2 Insurance Requirements. BGC shall procure, at its sole expense, and maintain in full force and effect during the Term, the following insurance naming the City as additional insured and/or loss payee:

a. Comprehensive General Liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Property with a policy limit of at least Two Million Dollars (\$2,000,000) per occurrence.

b. BGC shall maintain property insurance covering all risks of loss including flood (if required) for 100% of the replacement value of the Building, the Property and any Improvements, naming the City as loss payee as its interests may appear.

c. Workers' compensation insurance that complies with the statutory requirements of the state of California.

d. Automobile liability insurance for owned, hired and non-owned vehicles, with a combined single limit of at least One Million Dollars (\$1,000,000).

If BGC undertakes the construction of the Improvements pursuant to Article V, BGC shall ensure that its general contractor carries liability, property damage, workers' compensation, and builder's risk insurance throughout construction of the Improvements, naming the Indemnitees as additional insureds and otherwise in compliance with all requirements set forth in this Section 9.2.

ARTICLE X DAMAGE AND DESTRUCTION

10.1 Damage or Destruction. In the event of any damage to or destruction of the Property during the Term, BGC shall elect by written notice delivered to the City within one hundred eighty (180) days following the date of the occurrence of the damage to either terminate this Agreement or restore and rebuild the Building or the Property to be useable for the Permitted Use, subject to any restrictions imposed by changes in any Applicable Law. If BGC elects to restore the Building or the Property or any improvements thereon, BGC shall commence diligently and continuously to carry out such rebuilding to full completion as soon as possible and shall commence reconstruction of the Building or the Property by the date upon which insurance proceeds are made available for such work, or such reasonable period of time that is necessary to design a new Building and to get such approvals and permits that are necessary to construct the new Building. BGC shall not be required to expend more than the insurance proceeds in the restoration or rebuilding of the Building or Property.

If BGC does not elect to restore the Building or the Property to be useable for the Permitted Use the City may exercise its right to terminate this Agreement pursuant to Section 14.3. This Agreement shall terminate upon delivery of written notice of

Termination by the City to BGC. If this Agreement is terminated pursuant to this paragraph on or before the Expiration Date, BGC shall promptly remove the Building from the Property and vacate the Property.

10.2 Notice Required. In the event of material damage to or destruction of the Building, the Property, or any part thereof, BGC shall promptly give the City notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article X, damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds One Hundred Thousand Dollars (\$100,000).

ARTICLE XI THE CITY'S RIGHT TO PERFORM BGC'S COVENANTS

If BGC shall at any time fail to pay any Imposition or other charge payable by BGC to a third party as required by this Agreement, or to comply with the requirements set forth in Section 9.2 pertaining to insurance, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Agreement, then the City, after thirty (30) days' written notice to BGC and without waiving or releasing BGC from any obligation of BGC hereunder, may (but shall not be required to): (i) pay such Imposition or other charge payable by BGC; (ii) pay for and maintain the insurance policies required pursuant to this Agreement, or (iii) make such other payment or perform such other act on BGC's part to be made or performed under this Agreement; and the City may enter upon the Property upon no less than 48 hours' written notice for such purpose and take all such action thereon as may be reasonably necessary therefor.

All costs and expenses actually incurred by the City, including but not limited to internal staff costs, in connection with any such payment or the performance of any such act shall constitute additional Rent payable by BGC under this Agreement and shall be paid by BGC to the City on demand.

ARTICLE XII MORTGAGES

12.1 Non-Subordination of Fee. Nothing in this Agreement shall be construed as an agreement by the City to subordinate its fee interest in the Property or its right to rent payments hereunder or any other right of the City herein.

ARTICLE XIII ASSIGNMENT, TRANSFER, SUBLETTING; NONDISTURBANCE AND ATTORNMENT

13.1 Restrictions on Transfer. BGC shall not sublease or otherwise convey ("**Transfer**") its leasehold interest hereunder or any portion of its interest in the Property. BGC may

transfer the Building, with City's consent, upon the termination of this Agreement; provided that the Building will continue to be used for the Permitted Use.

13.2 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to the City an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes such obligations as arise and/or accrue at any time after such Transfer takes place; and whereby such transferee assumes liability for the obligations of this Agreement.

13.3 Nondisturbance. Provided that BGC is not in default under this Agreement, BGC's possession, use and enjoyment of the Property shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of the City, or any exercise of any remedies under this Agreement. BGC shall also ensure that its possession, uses and enjoyment of the Property does not interfere with, disturb or diminish or otherwise affect in any manner any other tenants on the Property.

ARTICLE XIV DEFAULT, REMEDIES AND TERMINATION

14.1 Event of Default. BGC shall be in default under this Agreement upon the continuation of any of the following for ninety (90) days after the City gives BGC a written Notice of Default (as defined in Section 14.2.1); provided however, if the default is of a nature that it cannot be cured within ninety (90) days, an Event of Default shall not arise hereunder if BGC commences to cure the default within ninety (90) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion ("**Events of Default**"):

(a) Monetary Obligation. BGC at any time is in default hereunder as to any obligation (including without limitation, BGC's obligation to pay taxes and assessments due on the Property or part thereof, subject to BGC's rights to contest such charges pursuant to Section 3.2);

(b) Insurance. BGC fails to obtain and maintain any insurance required pursuant to Section 9.2 of this Agreement;

(c) Abandonment. BGC abandons the Property and ceases to use it for the Permitted Use for a period of ninety (90) days or more or as established pursuant to Section 1951.3 of the California Civil Code except (i) when prevented by Force Majeure or (ii) in the event that BGC determines and provides notice to the City that it is in the best interest of BGC to demolish the Building and construct new Improvements that will best permit BGC to provide the Permitted Use to the citizens in the community and construction of those Improvements will take longer than 90 days;

(d) Permitted Use. If BGC uses the Property or the Building for a purpose other than the Permitted Use; or

(e) Liens. BGC's failure to satisfy the requirements of Section 5.6 hereof within the time periods specified therein.

14.2 Notice and Opportunity to Cure.

14.2.1 Notice of Default. Upon the occurrence of a default hereunder, the non-defaulting party shall deliver a notice to the nonperforming party (the "**Notice of Default**"), stating the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

14.2.2 Failure to Give Notice; No Waiver. Failure to give, or delay in giving, the Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. No failure or delay by either party in asserting any rights and remedies as to any breach shall operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

14.3 The City's Remedies. Upon the occurrence of any Event of Default, following BGC's opportunity to cure set forth in Section 14.2.1, and in addition to any and all other rights or remedies of the City hereunder and/or provided by law, the City shall have the right to terminate this Agreement and/or BGC's possessory rights hereunder, in accordance with applicable law to re-enter the Property and take possession thereof. The City's re-entry or taking of possession of the Premises shall not be construed as an election on the City's part to terminate this Agreement unless the City gives written notice of such intention to BGC.

14.4 Remedies Cumulative. No remedy shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder.

14.5 Reserved.

14.6 Survival of Obligations. Nothing herein shall be deemed to affect the right of the City under Article IX of this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, nor shall anything herein be deemed to affect the right of the City to equitable relief where such relief is appropriate. No expiration or termination of the Term by operation of law, or otherwise, and no repossession of the Improvements or any part thereof shall relieve BGC of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

ARTICLE XV GENERAL PROVISIONS

15.1 Force Majeure; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the Parties which shall not excuse delay in performance), or any other cause beyond the affected Party's reasonable control (all of the foregoing "**Force Majeure**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City (acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to City Council) and BGC. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

15.2 Reserved.

15.3 The City's Right to Enter the Property. The City and its agents may enter the Property from time to time with 14 days' notice to ensure that the Property is being used or improved in compliance with the Permitted Use.

15.4 Representations of the City and BGC.

15.4.1 BGC hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) BGC has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of BGC, enforceable against BGC in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon BGC or any provision of any indenture, agreement or other instrument to which BGC is a party or

may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to BGC.

15.4.2 The City hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) The City has taken all requisite action in connection with the execution of this Agreement and the undertaking of the obligations set forth herein. This Agreement constitutes the legally valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(b) The execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the City or any provision of any indenture, agreement or other instrument to which the City is a party or may be bound. Neither the entry into nor the performance of this Agreement will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to the City.

15.5 Miscellaneous.

15.5.1 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

15.5.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or

(iv) electronic transmission, in which case notice shall be deemed delivered upon transmittal, provided that a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery. Any notice given electronically shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City of South San Francisco
P.O. Box 711
South San Francisco, CA 94083
Attn: City Manager
Telephone: (650) 829-6620

BGC: Boys and Girls Club of the Peninsula
401 Pierce Road.
Menlo Park, CA 94025
Attn: Chief Administrative Officer
Telephone: _____

15.5.3 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

15.5.4 Successors and Assigns. Subject to the restrictions on transfer set forth in Article XV, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

15.5.5 Reserved.

15.5.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

15.5.7 Attorneys' Fees. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, the prevailing party shall be entitled to recover from the other Party reasonable counsel fees, costs and necessary disbursements, as determined by the court having jurisdiction over the action.

15.5.8 Indemnity Includes Defense Costs. In any case where either Party is obligated under an express provision of this Agreement, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

15.5.9 No Third-Party Beneficiaries; Disclaimer of Partnership, Lender/Borrower Relationship. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the parties under this Agreement is solely that of the landlord and tenant, and it is expressly understood and agreed that the City does not as a result of this Agreement in any way nor for any purpose become a partner of BGC or a joint venturer with BGC in the conduct of BGC's business or otherwise. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the City and BGC. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the City does not, solely as a result of this Agreement, become a lender to BGC.

15.5.10 Entire Agreement. This Agreement, together with Exhibits A and B, which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

15.5.11 Waiver; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

15.5.12 Time is of the Essence. Time is of the essence of this Agreement and of each provision hereof.

15.5.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

15.5.14 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of BGC shall be personally liable to City or its successors in interest in the event of any default or breach by BGC or for any amount which may become due from BGC or BGC's permitted successors in interest pursuant to this Agreement.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the Effective Date.

TENANT:
**BOYS AND GIRLS CLUB OF
THE PENINSULA**

By: _____
Its:

CITY:
CITY OF SOUTH SAN FRANCISCO

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM

City Attorney

Exhibit A

PROPERTY DESCRIPTION

[TO BE PROVIDED]

Exhibit B

DEPICTION OF PREMISES

[TO BE PROVIDED]