

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), dated as of _____, 2019, is entered into by and between GREENWOOD COUNTY, SOUTH CAROLINA ("County"), and BOYS & GIRLS CLUBS OF THE CRESCENT REGION, a South Carolina Non-Profit Corporation ("Boys & Girls Clubs").

WHEREAS, County desires to lease to Boys & Girls Clubs, and Boys & Girls Clubs desires to lease from County, the land and improvements located at 927 E Cambridge Ave, Greenwood, SC 29646 as more particularly described on Exhibit A attached hereto and made a part hereof (together with all rights-of-way or use, easements, servitudes, licenses, tenements, driveways, approaches, pavements, hereditaments, curbs and street front privileges and appurtenances thereunto belonging, the "Premises").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** County hereby leases and rents to Boys & Girls Clubs, and Boys & Girls Clubs hereby leases and rents from County, the Premises, together with all of County's interest in the Premises.

2. **Term.** The term of this Lease ("Term") shall commence on August 1, 2019 (hereinafter referred to as the "Commencement Date"), and continue for a period of ten (10) years. Both the County and Boys & Girls Clubs shall have the option to extend this Lease beyond the Term for additional terms of five (5) years each (the "Renewal Terms"), said Renewal Terms to be automatic, unless either the County or Boys & Girls Clubs gives County notice in writing of its intention not to extend on or before ninety (90) days prior to the expiration of the then present Term or Renewal Term.

3. **Rent.** Boys & Girls Clubs shall pay to County, at the notice address set forth herein, annual rent in the amount of One and 00/100 Dollar (\$1.00), payable in advance on the 10th day of August beginning on August 10, 2019, and continuing on the 10th day of August annually thereafter.

4. **Future Improvements.** Throughout the Term and all Renewal Terms, Boys & Girls Clubs shall have the right, at its sole cost and expense, to construct additional improvements, ancillary or complementary to the existing community center facility, together with parking, driveways, sidewalks, lighting, landscaping, entranceways and other related facilities. Additionally, Boys & Girls Clubs shall have the right to construct, or cause to be constructed, improvements for uses that are unrelated to the existing community center facility, provided the same do not unreasonably interfere with the existing community center facility use. (Any improvements constructed pursuant to the first two sentences of this Section 4 shall be collectively referred to as the "Future Improvements"). Any Future Improvements constructed within the Premises (including any rooftop equipment) shall be constructed in accordance with applicable governmental regulations and in accordance with plans and specifications reviewed and approved in writing in advance by County. Boys & Girls Clubs shall submit its proposed construction plans and drawings for the improvements, including elevations, a site plan, photometric plans and specifications and a narrative description of the Future Improvements and other amenities which will be constructed (collectively, "Boys & Girls Clubs' Plans") to County for review and approval at least thirty (30) days prior to the commencement of construction of any Future Improvements. Any Future Improvements shall be constructed in accordance with the approved Boys & Girls Clubs' Plans and any substantial changes or modifications therefrom must be approved by County in writing. Boys & Girls Clubs' Plans shall be approved or disapproved within a reasonable amount of time not to exceed thirty

(30) days. No construction or site work shall begin until County has issued its written approval, regardless of the timing of such approval.

5. **Maintenance; Repairs; Alterations; Reconstruction.** Throughout the Term and any Renewal Terms, County shall be responsible for all capital repair and replacement costs as well as maintenance and/or repair costs when the maintenance and/or repair relates to normal deterioration due to age. "Capital" repairs shall be defined as any repairs to the structural, electrical, or mechanical systems of the building affecting the building's structural integrity and/or habitability, including but not limited to repairs to the roof, foundation, outer walls and/or HVAC system. Boys and Girls Club shall be responsible for any signage or painting to the exterior or interior of the Premises and be responsible for regular maintenance both interior and exterior including replacing window glass, doors, windows, screens, awnings, locks, keys, weather stripping, thresholds, as well interior walls, floors, ceilings and floor coverings, as well as daily cleaning and maintenance and repairs relating to use of the Premises (i.e. damage due to intentional acts, clogged toilets, changing lightbulbs, etc.). Any repairs and/or replacements shall be in accordance with all applicable laws, rules, ordinances, orders and regulations of (i) federal, state, county, municipal and other governmental agencies and bodies having or claiming jurisdiction thereof, and (ii) all insurance companies insuring all or any part of the Premises or improvements or both.

If the improvements constructed on the Premises are damaged by fire or other casualty, County shall, to the extent of then-existing insurance coverage only, (i) cause such damage to be repaired without unreasonable delay and the improvements substantially restored to their original condition, or (ii) cause new improvements to be constructed on the Premises of equal or greater value than the improvements that existed on the Premises prior to such casualty. Notwithstanding the foregoing, if such damage shall occur within the last two (2) years of the Term or any Renewal Term of this Lease, then either party shall have the right to terminate this Lease as of the date of such damage by giving written notice of termination to the other party within thirty (30) days after the date of such damage.

The County shall be responsible for the maintenance and upkeep of the exterior landscaping, as well as the Brewer Community Center fields located across University Street North from the Brewer Community Center.

6. **Ownership of Future Improvements.** All Future Improvements constructed on the Premises by Boys & Girls Clubs as permitted by this Lease shall be owned by Boys & Girls Clubs until expiration of the Term or any Renewal Term or sooner termination of this Lease. All Future Improvements on the Premises at the expiration of the Term or sooner termination of this Lease shall, without compensation to Boys & Girls Clubs, then become County's property free and clear of all claims to or against such Future Improvements by Boys & Girls Clubs or any third person in possession of the Premises, and Boys & Girls Clubs shall defend, indemnify and hold County harmless against all liabilities and loss arising from such claims or from County's exercise of the rights conferred by this Section.

7. **Use.** As long as this Lease is active, Boys & Girls Clubs may use the Premises for the continued operation of a community center facility in accordance with the Operating Guidelines, as the same may be amended, supplemented, or modified from time to time, attached hereto as **Exhibit B** and made a part hereof, and other ancillary or complementary uses. Related uses of the Future Improvements shall be permissible.

The Clemson Extension Service shall have unrestricted access to and use of the parking lot.

The Premises shall continue to house the Brewer Alumni Center in its current location. The Brewer Alumni shall pay \$600 rent annually to the Boys and Girls Clubs. The Brewer Alumni shall have the right

to rent the facility for special events for a rental fee of \$500, plus the cost for janitorial services following their event(s).

The County shall have the right to use the gym space from December 1st until March 1st annually for the County's basketball program. The County shall provide the Boys and Girls Clubs with a schedule each year by August 1st specifying the dates and times the County will use the facility. The Boys and Girls Clubs may schedule events in the gym from December 1st through March 1st, provided that these events do not interfere with the County's use.

The Boys and Girls Clubs shall allow reasonable public access to and use of the Brewer fields. "Reasonable public access" is defined as the same level of public accessibility in place at similar County-owned recreational fields.

Prior to Boys and Girls Clubs assuming possession of the Premises, the parties shall conduct a walk-through and inventory of the Premises. The parties shall use videography to document the condition of the Premises and County property remaining with the Premises for use by Boys and Girls Clubs. Boys and Girls Clubs agrees to return all County property at the termination of this Agreement in the same condition as it was received at the beginning of the Agreement, and to replace any property which becomes damaged or destroyed through use by Boys and Girls Clubs.

8. **Taxes.** During the term of this Lease, County shall pay, satisfy and discharge as the same become due and payable, all assessments, real estate taxes, ad valorem taxes of any sort, as well as any governmental charges, penalties and interest levied or imposed upon or against the Premises, and the improvements thereon, related to the payment of any tax.

9. **Utility Charges.** All utility payments, including, but not limited to, gas, sewer, water, electricity, and refuse removal shall be paid by the County, in an amount not to exceed a cap of \$24,500 annually. The cap on utility payments shall increase by 5% each year the lease is in effect, beginning in the second year. Thus, the County's portion of the utility payments will not exceed \$24,500 in lease year 1, \$25,725 in lease year 2, and so forth. Boys and Girls Clubs shall not be entitled to receive the difference between the cap and the actual amount paid in the event the actual amounts paid are less than the cap. Boys and Girls Clubs shall be responsible for the payment of any Utility Charges over and above the said cap as it is determined for each year.

10. **Compliance with Laws and Ordinances.** Boys & Girls Clubs will comply with all federal, state, county and city laws, ordinances and regulations of any duly constituted authority affecting the Premises.

11. **County's Access to Premises.** County will have access to the Premises, at its own risk and expense, at any and all reasonable times during the term of this Lease for the purpose of examining and inspecting same, and maintaining the improvements and Future Improvements as referenced in Section 4.

12. **Environmental.** County warrants and represents to the best of its actual knowledge without independent investigation, that no use, storage, treatment, or transportation of toxic or hazardous wastes, materials, or substances, or any other substance that is prohibited, limited or regulated by any governmental or quasi-governmental authority or that, even if not so regulated, could or does pose a hazard to health and safety of the occupants of the building or surrounding property (collectively "**Hazardous Substances**") has occurred in or on the Premises during the County's ownership of the Premises. The County is informed and believes that asbestos-materials were used in construction, and that these materials are currently contained. Additionally, due to the age of the Premises, it is likely that

lead-based paint is present. The County makes no warranties and/or guarantees as to the presence or absence of asbestos and/or lead-based paint, and makes no warranties and/or guarantees as to their potential impact, if any, on health/safety. Boys & Girls Clubs acknowledges that it has been provided with the opportunity to review a 1988 report from Davis & Floyd regarding asbestos in the building, and that it was given the opportunity to inspect the building with the County Engineer prior to the execution of this lease.

The Premises shall not be used for the treatment, storage, transportation to or from, use or disposal of Hazardous Substances, and Boys & Girls Clubs shall not use, generate, manufacture, produce, store, dispose or permit the escape on, under or about the Premises, or any part thereof of any Hazardous Substances (except for the use and storage of general office and cleaning supplies used in the ordinary course of Boys & Girls Clubs' business). Boys & Girls Clubs shall be liable for, and shall indemnify and hold County harmless from, all costs, damages and expenses (including reasonable attorney's fees) incurred in connection with: (i) the discharge or other release in or from the Premises of any Hazardous Substances by Boys & Girls Clubs or its agents, employees, contractors or invitees occurring at any time after the Delivery Date, (ii) the use, storage, discharge or disposal of any Hazardous Substances by Boys & Girls Clubs or its agents, employees, contractors or invitees, and (iii) Boys & Girls Clubs' failure to comply with any applicable law relating to Hazardous Substances.

13. **Notices.** Any notice, consent or approval provided for herein shall be deemed duly given by the sender thereof to the addressee thereof only if in writing and mailed to such addressee at the "**Notice Address**" of such addressee (as set forth below) by registered or certified mail, postage prepaid, return receipt requested, or by Federal Express or other overnight courier service which delivers upon signed receipt of the addressee. The time of the giving of any such notice given in the manner required above shall be the time of receipt thereof by the addressee or any agent of the addressee, except that if the addressee or such agent of the addressee shall refuse to receive any such notice given in the manner required or if there shall be no person available at the time of delivery thereof to receive such notice, the time of the giving of such notice shall be the time of such refusal or the time of such attempted delivery, as the case may be.

The Notice Address of Boys & Girls Clubs shall be:

Boys & Girls Clubs of the Crescent Region.
500 Gracern Road
Columbia, South Carolina 29210
Attn: Carter H. Clark
Fax #: 803.252.9413

with a copy to:

Wesley M. Graybill, Esquire
Graybill Lansche & Vinzani, LLC
2721 Devine Street
Columbia, South Carolina 29205
Fax #: 803-404-5701

The Notice Address of County shall be:

Greenwood County
Attn: County Manager
600 Monument Street, Box P-103
Greenwood, South Carolina 29646
Fax #: 864-842-8566

with a copy to:

Greenwood County
Attn: County Attorney
600 Monument Street, Box P-103
Greenwood, South Carolina 29646
Fax #: 864-942-8566

14. **Covenants and Representations of County.** County covenants, warrants and represents (a) that it owns a valid fee simple interest in the Premises and has full right and authority to lease the same upon the terms and conditions herein set forth; and (b) that Boys & Girls Clubs shall peacefully and

quietly hold and enjoy the Premises safe from any claims arising by, through or under County for the full Term hereof so long as Boys & Girls Clubs does not default in the performance of any of its covenants hereunder.

15. **Liens.** Boys & Girls Clubs shall not permit any mechanics', laborers' or materialmen's liens or the claims thereof to stand against the Premises by reason of any cause whatsoever.

16. **Indemnification.** Boys & Girls Clubs agrees to indemnify and hold County harmless from any and all claims, demands and actions, and all reasonable costs and expenses relating thereto (including reasonable attorneys' fees), for damage, injury, death, disability or illness of or to any persons or property, arising out of, or as a result of Boys & Girls Clubs' possession of the Premises, construction, reconstruction or demolition of improvements, or Boys & Girls Clubs' use of the Premises or any breach or default of Boys & Girls Clubs in the performance of any of its covenants hereunder.

17. **Insurance.** During the Term of this Lease, County, at its sole cost and expense, shall keep, or cause to be kept, insured all improvements now or hereafter located on or appurtenant to the Premises against loss or damage by fire and such other risks as are now or hereafter included in extended coverage endorsements, including vandalism, explosion and malicious mischief coverages for improvements of comparable size and quality. The amount of such insurance coverage shall be sufficient to prevent either Boys & Girls Clubs or County from becoming a co-insurer under the provisions of the policies, but in no event shall the amount be less than one hundred percent (100%) of the agreed-upon replacement cost of all improvements without deduction for depreciation.

Throughout the Term of this Lease, County, at its sole cost and expense, shall keep, or cause to be kept, in force comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, misuse or condition of the Premises, the improvements located thereon and adjoining areas or ways, providing, at the date hereof, protection in such amounts as are customary for similar facilities in Greenwood, South Carolina, but in no event less than One Million Dollars (\$1,000,000) combined single-limit coverage for bodily injury or property damage.

18. **Events of Default.** Any one or more of the following events shall be deemed an "**Event of Default**":

(a) If Boys & Girls Clubs shall default in the payment of any rent or any other sum of money specified hereunder to be paid by Boys & Girls Clubs within five (5) days after same becomes due; or

(b) If Boys & Girls Clubs shall default in the performance of any other of the terms, conditions or covenants contained in this Lease to be performed or observed by it, and Boys & Girls Clubs does not remedy such default within thirty (30) days after receipt of written notice thereof or, if such default cannot be remedied in such period, does not within said thirty- (30) day period commence with diligence and dispatch such act or acts as shall be necessary to remedy the default and shall not complete such act or acts within a reasonable time; or

(c) If Boys & Girls Clubs shall become bankrupt or insolvent, or file or have filed against it in any court pursuant to any statute, either of the United States or any State, a petition in bankruptcy or insolvency or for reorganization, or file or have filed against it a petition for the appointment of a receiver or trustee for all or substantially all of the assets of Boys & Girls Clubs and such appointment shall not be vacated or set

aside within sixty (60) days from the date of such appointment, or if Boys & Girls Clubs makes an assignment for the benefit of creditors, petitions for or enters into an arrangement, or admits its inability to pay its debts as they become due; or

In the event of any Event of Default by Boys & Girls Clubs, County may at any time thereafter, in its sole discretion, with or without additional notice or demand and without limiting County in the exercise of a right or remedy which County may have by reason of such default or breach:

(a) Terminate this Lease or Boys & Girls Clubs' right of possession (but Boys & Girls Clubs shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity.

(b) Maintain Boys & Girls Clubs' right to possession, in which case this Lease shall continue in effect whether or not Boys & Girls Clubs shall have abandoned the Premises. In such event, County shall be entitled to enforce all of County's rights and remedies under this Lease, including the right to recover the rent and any other charges and adjustments as may become due hereunder. Neither efforts by County to mitigate damages caused by a default by Boys & Girls Clubs nor the acceptance of any rentals (as hereinafter defined) shall constitute a waiver by County of any of County's rights or remedies; or

(c) Pursue any other remedy now or hereafter available to County under the laws or judicial decisions of the State of South Carolina.

It is further agreed that the rights and remedies given to County in this Lease are distinct, separate and cumulative remedies, and that no one of them, whether or not exercised by County, shall be deemed to be in exclusion of any of the others.

19. **County Default.** In the event of any default by County under this Lease, Boys & Girls Clubs will give County written notice specifying such default with particularity, and County shall thereupon have thirty (30) days (or such longer period as may be required in the exercise of due diligence) in which to cure any such default.

20. **Transfer of County's Interest.** In the event of the sale, assignment or transfer by County of its interest in the Premises and in this Lease to a successor in interest, County shall be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Boys & Girls Clubs agrees to look solely to such successor in interest of County for performance of such obligations. Boys & Girls Clubs shall thereafter attorn and look solely to such assignee, as County, provided Boys & Girls Clubs has first received written notice of such assignment of County's interest. For all purposes of this Lease, the word "**County**" shall mean said assignee(s) following said transfer.

21. **Holding Over.** If Boys & Girls Clubs remains in possession of the Premises or any part thereof after the expiration of the Term of this Lease with County's acquiescence and without any written agreement between the parties, Boys & Girls Clubs shall be only a tenant at will and there shall be no renewal of this Lease; provided, however, Boys & Girls Clubs shall be obligated to pay rent for such holdover period at a rate equal to one hundred fifty percent (150%) of the rent payable for the immediately preceding lease year and shall remain primarily liable for any consequential damages suffered by County as a result of said holdover.

22. **Quiet Enjoyment.** County does hereby agree with Boys & Girls Clubs that, so long as Boys & Girls Clubs complies with the terms, conditions and covenants of this Lease and performs its obligations under this Lease, County will take no action which will interfere with or disturb Boys & Girls Clubs' possession or lawful use of the Premises or other rights under this Lease.

23. **Successors in Interest / Assignment.** Except as otherwise provided herein, all provisions of this Lease shall be binding upon, inure to the benefit of, and be enforceable by and against, the respective successors and permitted assigns of any party to this Lease. Boys and Girls Clubs may not assign, transfer, or otherwise convey any portion of this lease without the express written permission of Greenwood County.

24. **Waiver.** Any consent to or waiver of any provision hereof shall not be deemed or construed to be a consent to or waiver of any other provision of this Lease. Failure on the part of any party to complain of any act or failure to act of any other party, irrespective of the duration of such failure, shall not constitute a waiver or modification of rights hereunder. No waiver or modification hereunder shall be effective unless the same is in writing and signed by the party against whom it is sought. Any term or condition of this Lease may be waived in writing at any time by the party entitled to the benefit of same.

25. **Severability.** If any provision of this Lease shall, in whole or in part, prove to be invalid for any reason, such invalidity shall affect only the portion of such provision that shall be invalid, and in all other respects, this Lease shall stand as if such invalid provision, or other invalid portion thereof, had not been a part hereof. The parties agree that this Lease shall be enforced to the fullest extent permitted by law. Accordingly, if, in any judicial proceeding, a court shall determine that any provision is invalid or unenforceable as written, the parties consent to an interpretation by the court that will provide enforcement to the maximum extent permitted by law.

26. **Entire Agreement; Amendment.** This Lease constitutes the sole and entire agreement and understanding of the parties with respect to its specific subject matter. All prior agreements, representations or understandings, whether written or oral, shall be merged herein and shall not be construed to change, amend, alter, repeal or invalidate this Lease. This Lease may be amended only by a written instrument executed by all of the parties.

27. **Governing Law and Jurisdiction.** This Lease has been executed and delivered in the State of South Carolina, and its validity, interpretation, performance and enforcement, and all matters relating thereto, shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina. For purposes of any litigation arising from or related to this Lease, the parties hereby submit to the jurisdiction and venue of the appropriate state or federal court located in Greenwood, South Carolina.

28. **No Adverse Presumption.** The parties acknowledge that this Lease arose as the result of arm's-length negotiations between them and that this Lease is the product of input by both parties. Accordingly, any ambiguity or uncertainty is not to be construed against either party.

29. **Counterparts; Scanned, Facsimile or Photocopies.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In addition, this Lease may contain more than one counterpart of the signature page(s), all of which signature page(s) may be attached to one copy of this Lease to constitute the entire executed Lease. Scanned, facsimile, or photocopies of the executed Lease may be relied upon as if the original.

[SIGNATURE PAGES ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE]

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES and AERIAL MAP

TMS# 6856-459-223 and 6856-517-231

EXHIBIT B
OPERATING GUIDELINES

OPERATING GUIDELINES

- Subject to the exceptions set forth in Section 7 of the Lease Agreement, Boys & Girls Clubs shall have use of the facility for youth development programs and have responsibility for member participants during the following dates/times:

School Year: (August – May)
Monday – Friday, 2:00 p.m. – 9:00 p.m.
(6:00 p.m. – 9:00 p.m. is teen-focused programs)

Summer: (June – August)
Monday – Friday, 7:30 a.m. – 6:30 p.m.

When Greenwood County has a holiday or closing in their schedule, the Boys & Girls Clubs program will be open from 7:30 a.m. – 6:00 p.m. All other hours will adhere to County’s schedule.

- Public access to the rest room and water fountain facilities will remain open during the time of operation. A Drop-In Program will be managed by Boys & Girls Clubs;
- Boys & Girls Clubs agrees to actively promote the program to the neighborhood surrounding the community and encourage involvement by neighborhood youth;
- Boys & Girls Clubs agrees to limit participation to the program standards set forth by Boys & Girls Clubs of America and the safety standards set forth by the fire department.
- A staff ratio of 1 staff to 15 members must be maintained, all staff must be 18 years or older;
- Boys & Girls Clubs will provide County with an up-to-date list of members, including emergency information;
- All operations and programming will be governed by the Lease Agreement with County. Hours of operation may be altered or extended to meet the needs of the community, and in some instances, program times may be altered. This will be done with the approval of the Director of Parks and Recreation and Boys & Girls Clubs’ Executive Director, or their designees;
- The Boys & Girls Clubs program will serve youth ages 6 to 18 during agreed-upon hours;
- All youth must abide by Boys & Girls Clubs’ rules and regulations when involved in any program during operation hours. All youth service providers must use the same guidance and discipline policies and procedures when supervising youth;
- All youth involved in the Boys & Girls Clubs program must have a membership/information sheet completed and signed by a parent or guardian;
- Boys & Girls Clubs must maintain a controlled environment during agreed-upon hours by the following procedures:

- * Check-in desk monitored by professional staff;
 - * Children enrolled in program must sign in and out of facility;
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- Background checks will be required of all adults involved with the Boys & Girls Clubs program, whether an employee or volunteer;
 - Boys & Girls Clubs may use existing equipment including game room equipment, outdoor equipment, tables and chairs;
 - Boys & Girls Clubs representatives may tour the facility during operating hours. Boys & Girls Clubs may reserve space for meetings and training as the schedule permits with advance notice.