

## SITE LEASE

THIS LEASE made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Gillette, Wyoming, a municipal corporation and a City of the First Class, hereinafter CITY, of 201 East Fifth Street, P.O. Box 3003 Gillette, Wyoming, 82717-3003, (hereinafter referred to as "Landlord" or "CITY") and Boys and Girls Club Of Campbell County, a Wyoming non-profit corporation, 410 Lakeside Drive, Gillette Wyoming 82716 (hereinafter CLUB, or Tenant). The Landlord and the Tenant may be referred to collectively as the "Parties".

### WITNESSETH:

WHEREAS, the CITY owns a tract of land within the City of Gillette Wyoming which is known as the Lakeview school site, consisting of all buildings and land within the school site (hereinafter the Facility), at 410 Lakeside Drive, Gillette, Wyoming, legally described in the Warranty Deed filed with the Campbell County Clerk and recorded at page 520 and 521 of Book 92 of Photos, and which tract shall be referred to hereinafter as the LAND; and

WHEREAS, the Tenant desires to lease the LAND and the Facility as more particularly hereinafter described on the terms and conditions contained herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants, promises and conditions contained herein, the parties hereto agree as follows:

1. Lease Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord for the term and upon the terms and conditions set forth in this Lease the LAND and the Facility.

2. Term and Rental. This agreement shall begin on the date of execution and shall be in full force and effect for five (5) years thereafter. At the end of the initial term or any successive renewal term, the lease shall automatically renew for additional terms of 5 years, unless the Lakeview School is deeded to the CLUB. At the end of the initial 5 year term, or at any time thereafter, the CITY may deed the Lakeview School to the CLUB pursuant to W.S. 15-1-112 (b)(i) (D),

upon the payment to the CITY of one dollar (\$1.00), if not inconsistent with Wyoming Business Council rules and regulations. It is the intention of the PARTIES that this is a long term lease.

3. Utilities and Taxes. The Tenant shall be responsible for all utility charges attributable to the leased premises and shall pay for all taxes levied on any of its personal property. City shall pay any real estate property taxes against the leased property.

4. Improvements. The CITY on behalf of the CLUB has received a Community Facilities Grant Program Grant in the amount of \$867,670 to be used to remodel the Lakeview School to allow its use as the Gillette Youth Learning Center. The CITY shall manage the construction of the improvements authorized by the grant from the Wyoming Business Council. Tenant agrees to hold Landlord harmless from claims of any contractors or third-parties as a result of said improvements. Landlord shall have the right to review and approve the plans and specifications of such improvements prior to construction. Upon expiration of this lease all improvements shall remain on the premises and become the property of the Landlord upon termination of the Lease other than trade fixtures. Tenant shall be responsible for all building permit, sign permits, Plant Investment Fees, and any other fees and charges associated with the construction of its facility. All improvements shall be constructed in accordance with all applicable municipal, state or federal regulations. The City is not bound by this agreement to approve the site plan application or any other applications for any other permit.

5. Use of Premises. The Tenant shall utilize the leased premises to preserve an existing school building and to repurpose it as the Gillette Youth Learning Center to house human service programs benefitting youth. Tenant may not operate any business or other operation on the LAND in violation of the relevant zoning classification. The PARTIES acknowledge that other similar human services agencies may be appropriate for this area, but agree that any additional agencies or their facilities must be approved in advance by the CITY, which approval shall not be unreasonably withheld.

6. Lease Payments. Tenant shall pay Landlord an annual rental of One Dollar (\$1.00) per year, due on the anniversary of the execution of this Lease.

7. Repairs. The Tenant shall keep the LAND and all improvements thereon in proper repair. Tenant will surrender the demised premises at the expiration or earlier termination of this Lease in as good condition as when received.

8. Management of the Gillette Youth Learning Center; authority to sublease . At all times during the lease with the CITY, CLUB shall operate the entire facility and pay all costs associated with its regular operations including utilities and general maintenance, upkeep and housekeeping, as well as exterior maintenance of the parking lot, landscaping and/or future park areas on the property.

The CITY is responsible to the Wyoming Business Council for compliance with the grant regulations and relevant State Statutes and Administrative rules and for that reason must be consulted for potential subleases. In addition the CITY may have an additional responsibility to agencies for which it has partnered for grant opportunities, including those for whom the CITY acts as a fiscal agent. CLUB shall be entitled to sublease parts of the facility to human service programs benefitting youth on mutually satisfactory terms subject to the approval of the CITY, which shall be required both to approve new tenants and to terminate subleases. The CLUB shall prepare a space utilization plan for the building and adjoining land, showing which spaces are for common use and which are not and how they intend to manage the leased spaces. The CLUB shall submit the plan to the City within 60 days of the start of this lease, for discussion and approval, which shall not be unreasonably withheld. The CLUB will manage its facilities to make the gym and playground area available for use by all subject to the requirements of its own Boys and Girls Club programs and with sensitivity to the legal requirements of their sublessees.

9. Affirmative Covenants of Tenant. Tenant shall:

(a) Comply with any and all requirements of any of the constituted public authorities, and with the terms of any State or Federal statute or local ordinance or regulation applicable to Tenant or its use of the demised premises, and save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to do so.

(b) Give to the Landlord prompt written notice of any accident, fire or damage occurring on or to the demised premises.

(c) The Tenant shall promptly comply with all statutes, ordinances, roles, orders, regulations, and requirements of the Federal, State, and municipal government, and of any and all of their departments and bureaus applicable to said premises for the correction, prevention, or abatement of nuisances or other grievances in, upon or connected with said premises during the term. Tenant shall keep the property clear of all nuisances such as weeds, liter, and garbage, junk of any other materials that would make said property unsightly and a nuisance to the City.

(d) Tenant shall not create or permit to be created or to remain, and shall discharge any lien, encumbrance or charge levied on account of any mechanic's, laborer's or materialman's lien which might become a lien, encumbrance or charge upon Tenant's interest in the LAND.

10. Rights of Landlord. At all reasonable times, Landlord may, by itself or its duly authorized agents, employees and contractors to go upon and inspect the demised premises and every part thereof, to enforce or carry out the provisions of this Lease.

11. Environmental Compliance: Tenant shall conduct its operations on the property in compliance with, and shall not permit the property to be in violation of any applicable local, state, or federal environmental laws. Tenant shall obtain and maintain in effect all permits required by any environmental laws for the property, and its uses, and shall furnish to Lessor copies of the permits upon request.

12. Indemnification and Insurance.

Indemnification.

The Tenant shall indemnify and hold the City and its employees harmless from and defend it or them against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the City or any employee, or officer thereof may become subject, arising out of, or in connection with Tenant's use of the above-described lands, and shall reimburse the City and any such employee and officer for any legal or other expenses reasonably incurred by the City or any such employee or officer in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as

such expenses are incurred.

#### Fire and Casualty Insurance.

During the Lease Term, Tenant, at its sole expense, shall keep the building and any other improvements now or hereafter located upon the Leased Premises insured against loss by fire, vandalism, malicious mischief and normal extended coverage risks, with an insurance company acceptable to the Lessor in an amount not less than Two Million Dollars (\$2,000,000.00) without deduction for depreciation,, and shall name Lessor as loss payee.

Tenant shall at all times during the Lease Term procure and maintain at Tenant's expense fire insurance with an extended coverage endorsement insuring the fixtures, merchandise and other personal property owned or installed in the Leased Premises by the Tenant, in an amount not less than Two Million Dollars (\$2,000,000.00) without deduction for depreciation.

In case Tenant shall at any time fail, neglect or refuse to insure the building and improvements and to keep the Leased Premises as hereinabove provided, then Lessor may, at its election, procure or renew such insurance. Tenant shall reimburse Lessor for any amounts paid therefor by Lessor no later than the first day of the next calendar month after any such payment.

#### Liability Insurance.

CLUB shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work by CLUB under this project, or in connection with the operation of a Boys and Girls Club in the property. The City specifically does not waive and specifically reserve any and all immunities granted by the Wyoming Governmental Claims Act, W.S. 1-39-101 et seq., unless specifically waived herein.

#### ***MINIMUM SCOPE AND LIMIT OF INSURANCE***

*Coverage shall be at least as broad as:*

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including

products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of Wyoming with Statutory Limits.

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### ***Additional Insured Status***

The City and its officers, officials, employees, and volunteers are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CLUB including materials, parts, or equipment furnished in connection with such work or operations.

##### ***Primary Coverage***

For any claims related to this contract, CLUB's insurance coverage shall be primary insurance as respects the City and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of CLUB's insurance and shall not contribute with it.

##### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

##### ***Waiver of Subrogation***

CLUB hereby grants to the City a waiver of any right to subrogation which any insurer of CLUB may acquire against the City by virtue of the payment of any loss under such insurance. CLUB agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not CLUB has received a waiver of subrogation endorsement from the insurer.

### ***Employers Liability/Stop Gap Coverage***

The CGL policy shall be endorsed to contain Employers Liability/Stop Gap Coverage

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require CLUB to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

### ***Verification of Coverage***

CLUB shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before the project commences. However, failure to obtain the required documents prior to the beginning of the project shall not waive the CLUB's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

CITY will also ensure that the appropriate builders risk insurance is carried during the course of the construction project, at the cost of the CLUB.

### **13. DAMAGE OR DESTRUCTION OF Premises:**

(a) In the event of damage to the Premises, or destruction of the whole or any part thereof, by fire, tornado or other casualty, LESSEE shall deliver written notice of TENANT'S intent to rebuild or not to rebuild (in the event the insurance proceeds are inadequate to fully rebuild or restore the Premises to its pre-existing condition) within thirty (30) days from the date of written notification by TENANT to LESSOR of the occurrence of such damage. LESSOR shall likewise notify TENANT in writing as to its agreement or disagreement with TENANT's decision. The rights and obligations of LESSOR and TENANT in the event of such casualty are hereinafter described. In the event that casualty insurance proceeds are paid and available to rebuild or restore the Premises to its pre-existing, tenantable condition, the LESSOR and TENANT agree that such

proceeds shall be so applied towards the rebuilding or restoration of the Premises to its pre-existing, tenantable condition to the full extent of such insurance proceeds.

(i) Total Destruction: If the Premises should be so damaged by fire, tornado or other casualty that rebuilding or repairs cannot, in the opinion of LESSOR, be completed within three hundred sixty-five (365) working days after the occurrence of the damage, this Lease shall terminate and the rent shall be abated for the unexpired portion of the term of this Lease, effective as of the date of the destruction. It is specifically provided, however, that LESSOR and TENANT may agree in writing to rebuild the Premises, and should LESSOR and TENANT so agree, then TENANT shall, at TENANT'S sole risk and expense, proceed with reasonable diligence to rebuild or repair the Premises as it existed prior to such destruction. In such event the rent shall be abated during the time that the Premises are untenable provided work is progressing.

(ii) Partial Destruction: If the Premises should be damaged by fire, tornado, or other casualty but not to such an extent that rebuilding or repairs cannot in the opinion of LESSOR be reasonably completed within two hundred forty (240) working days from the date of the occurrence of the damage, this Lease shall not terminate, but TENANT shall at TENANT'S sole risk and expense proceed with reasonable diligence to rebuild or repair the Premises to substantially the condition in which the Premises existed prior to such damage. If the Premises are to be repaired and are untenable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenable shall be adjusted to such extent as may be fair and reasonable under all of the circumstances, provided that no rent shall be due for the period of time commencing on the date of the destruction and ending on the date of completion of reconstruction should the Premises be wholly untenable for such period of time provided work is progressing. In the event that TENANT should fail to complete such repairs or rebuilding within two hundred forty (240) working days from the date of delivery of written notification by TENANT to LESSOR of the occurrence of the damage so that the Premises are in substantially the same condition as existed prior to such damage, LESSOR may, at LESSOR'S option, terminate this Lease by delivering written notice of termination to TENANT, whereupon all rights and obligations thereafter accruing hereunder shall cease. Delays in rebuilding due to force majeure shall not be included in the preceding 240 working day period. TENANT shall notify LESSOR as soon as is reasonably possible (but



in any event within 90 days of casualty) as to the length of time repairs to the Premises will require.

(b) If, in the event of a partial or total destruction of the Premises, TENANT is required or elects to repair or restore the Premises, TENANT shall not be obligated to expend for such repair or restoration any amount in excess of the casualty insurance proceeds actually received by TENANT as the result of such partial or total destruction. In the event that TENANT decides not to repair or restore the Premises due only to an insufficiency in insurance proceeds received so as to be unable to fully rebuild or restore the Premises, TENANT shall deliver written notice of such decision to LESSOR, whereupon this Lease shall terminate effective: in the case of total destruction, upon the date of such total destruction; and in the case of a partial destruction, upon the date of delivery of written notice to LESSOR of TENANT'S election not to repair or restore the Premises.

14. Waiver of Claims. In the event the demised premises or its contents are damaged or destroyed by fire or other insured casualty, the rights, if any, of either party hereto against the other with respect to such damage or destruction are waived; and all policies of fire and/or extended coverage or other insurance shall not be prejudiced nor have the insureds waived the right or recovery from any person or persons prior to the day and time of loss or damage, if any.

15. Assigning, Mortgaging and Subletting. Tenant shall not assign, mortgage, pledge or encumber this Lease, in whole or in part, nor sublet the whole or any part of the demised premises, or permit the use of the whole or any part of the demised premises by any license or concessionaire, without first obtaining the written consent of Landlord. This prohibition shall be construed to include a prohibition against any assignment or subletting by operation of law. In the event of any such assignment, subletting, licensing or granting of concession made with the written consent of the Landlord as aforesaid, Tenant will nevertheless remain liable for the performance of all terms, conditions, and covenants of this Lease. Any permitted assignment or subletting shall be by agreement in form and content acceptable to Landlord. Any assignment without the advance written permission of the Landlord shall be void.

16. Surrender and Holding Over. Tenant, upon expiration or termination of this Lease, either by lapse of time or otherwise shall peaceably render to Landlord

the premises in broom-clean condition. If Tenant remains in possession of the premises with Landlord's consent, but without a new lease reduced to writing and duly executed, Tenant shall be deemed to be occupying the premises as a Tenant at will, subject to all the covenants, conditions and agreement of the Lease.

17. Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or forwarded by Certified Mail, Return Receipt Requested, postage pre-paid, addressed as follows:

To Landlord:

City of Gillette  
City Clerk  
Box 3003  
Gillette, Wyoming 82717-3003

To Tenant:

Boys and Girls Club Of Campbell County,  
a Wyoming non-profit corporation  
410 Lakeside Drive  
Gillette, Wyoming 82716

Such addresses may be changed from time to time by either party by serving a written notice as above provided.

18. Default. The occurrence of any of the following shall constitute an event of default hereunder.

(i) The filing of a petition by or against Tenant for adjudication as a bankruptcy or insolvent, or for its reorganization or for the appointment of a receiver or Trustee of Tenant's property or an assignment by Tenant for the benefit of creditors; or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of Tenant.

(ii) Failure of Tenant to pay when due or within fifteen (15) days thereafter any installment of rent hereunder or any other sum herein required to be paid by Tenant.

(iii) Tenant's failure to perform any other covenant or condition of this Lease within twenty (20) days after written notice and demand, unless the failure is of such a character as to require more than twenty (20) days to cure, in which event Tenant's failure to proceed diligently to cure such failure shall constitute an event of default.

19. Rights of Landlord Upon Default by Tenant. In the event of occurrence of an event of default hereunder:

(i) This Lease may be immediately terminated, at the option of Landlord, at least sixty (60) days advanced notice and without any obligations whatsoever to Tenant.

(ii) Upon said termination Landlord may immediately re-enter the premises and distrain for rent due or remove therefrom any property, without liability of any kind to Tenant.

(iii) Landlord shall have a lien on the leasehold estate hereby created and on all property kept or used in the lease premises, whether the same is exempt from execution or not, to secure payment of any and all monies then due or thereafter becoming due to Landlord under the terms and conditions of this Lease, and to secure the prompt performance and fulfillment by Tenant of each and every one of said terms and conditions.

(iv) It is expressly understood:

(1) that time shall be of the essence;

(2) that the failure of Landlord to exercise any right hereunder shall not constitute a waiver of any other or further default of Tenant, including any other or further default in the payment of rent then due; and

(3) that the enumeration herein of express rights, options and privileges shall not limit Landlord thereto nor deprive Landlord of any other remedy or action or cause of action by reason of any default of Tenant, including the right to recover from Tenant any deficiency upon re-renting.

20. Custom and Usage. Any law, usage or custom to the contrary

notwithstanding, Landlord shall have the right at all times to enforce the covenants and conditions of this Lease in strict accordance with the terms hereof and notwithstanding any conduct or custom on the part of the Landlord in refraining from so doing at any time or times. The failure of Landlord at any time or times to enforce its rights under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to specific terms, provisions and covenants of this Lease or as having modified or waived the same.

21. Scope and Interpretation of the Agreement. This Lease shall be considered to be the only agreement between the parties hereto pertaining to the demised premises. All negotiations and oral agreements acceptable to both parties are included herein. The laws of the State of Wyoming shall govern the validity, interpretation, performance and enforcement of this Lease.

22. Captions. Any headings preceding the text of the several paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease, nor shall they effect its meaning, constructions or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above-written.

**LANDLORD:**

\_\_\_\_\_  
John Opseth, Mayor

( S E A L )  
ATTEST:

\_\_\_\_\_  
Karlene Abelseth, City Clerk

**Tenant:**

\_\_\_\_\_  
by, \_\_\_\_\_, President  
Boys and Girls Club Of Campbell County, a  
Wyoming non-profit corporation

\_\_\_\_\_  
by: \_\_\_\_\_, Secretary

STATE OF WYOMING )  
 ) ss.  
County of Campbell )

The above and foregoing instrument was acknowledged before me by John Opseth, Mayor and Karlene Abelseth, City Clerk this \_\_\_\_ day of \_\_\_\_\_ 2014.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_

STATE OF WYOMING )  
 ) ss.  
County of Campbell )

The above and foregoing instrument was acknowledged before me by \_\_\_\_\_, President and \_\_\_\_\_, Secretary on behalf of Boys and Girls Club of Campbell County, a Wyoming not for profit corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_