

**DEED OF LEASE**

**THIS DEED OF LEASE** (hereafter the "Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the ALBEMARLE COUNTY SCHOOL BOARD (hereafter the "Board") and the BOYS AND GIRLS CLUB OF CENTRAL VIRGINIA, (hereafter "Lessee").

**1. Leased Property.**

The Board, as the title holder of the subject property, and in its official care and authority over the subject property, in consideration of the rents and covenants to be paid and performed by the Lessee, leases to the Lessee and the Lessee leases from the Board a certain parcel of real property located in the County of Albemarle, Commonwealth of Virginia described on Exhibit A, attached hereto and incorporated herein by reference, (hereafter the "Leased Property").

**2. Title to Leased Property.**

The Board represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the Board under this Lease.

**3. Condition of Leased Property.**

The Leased Property currently consists of both vacant land and improvements, which improvements (the "Improvements") are owned and operated by the Board. The Board has not made any representations or warranties as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Lease. The Lessee agrees to accept the Leased Property "as is" on the effective commencement date herein. The Board agrees to cooperate with the Lessee in planning for and implementing future demolition, excavation, and disposal of Improvements in connection with the construction referenced in the next paragraph at the sole expense of Lessee.

The parties to this Lease further agree to work cooperatively to execute a subsequent coordination agreement as to the responsibilities of the parties during the demolition of any of the Improvements and the construction of the Lessee's planned improvements. The Board's responsibilities of cooperation during and prior to demolition and construction by Lessee on the Leased Property shall be completed such that the Lessee may commence construction in a timely manner under the terms set forth within this Agreement. Any delay caused by the Board shall constitute grounds for the Lessee to seek and obtain a good cause extension on the construction commencement date and/or completion date under paragraph 8 hereof.

**4. Term.**

- a. The initial term of this Lease shall be for a period of forty (40) years, which shall begin on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and continuing thereafter throughout the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- b. Provided that the Lease is in full force and effect and Lessee is not in default under any of the terms and conditions of the Lease at the time of notification or commencement, and subject to the Board's approval, such approval not to be unreasonably withheld, Lessee shall have one

(1) option to extend this Lease for a term of ten (10) years as of the date the extension term is to commence, on the same terms and conditions set forth in the Lease. If Lessee elects to exercise this option, then Lessee shall provide the Board with written notice no earlier than the date which is thirty-six (36) months prior to the expiration of the term of the Lease, but no later than the date which is twelve (12) months prior to the expiration of the term of the Lease. If Tenant fails to provide such notice, Lessee shall have no further or additional right to extend or renew the term of the Lease.

This option is not transferable; the parties hereto acknowledge and agree that they intend that the aforesaid option to extend this Lease shall be “personal” to Lessee as set forth above and that in no event will any assignee or sublessee have any rights to exercise the aforesaid option to extend. Lessee shall have no further right to extend the term of the Lease.

## **5. Rent.**

The Lessee shall pay to the Board nominal rent at the rate of One (\$1.00) Dollar per year, the receipt of which is hereby acknowledged for the entirety of the initial term.

## **6. Use.**

Subject to the Lessee’s compliance with all applicable laws, the Board hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing and operating a youth activities and education center of approximately 20,000 to 35,000 square feet, with primary spaces including a gymnasium, classrooms, computer lab(s), art room, game room, multipurpose rooms, lobby, restrooms, staff offices, outdoor recreation spaces, parking, and other spaces as the Lessee elects (hereafter the “Facility”). The specific elements of Lessee’s programs that will be provided in the Facility and the minimum number of students to be served during the school year and summer recess are set forth in Exhibit B to this Lease.

## **7. Enrollment.**

Unless otherwise agreed by the parties, students of the Albemarle County Public Schools (“ACPS”) and former ACPS students who have relocated to the City of Charlottesville and attend schools in that school division shall initially have priority in enrolling in the Lessee’s programs. If additional spaces remain after the enrollment of ACPS and former ACPS students, youth residing within the greater community, but outside of the County of Albemarle will be permitted to enroll in the Facility’s programs; provided, however, that ACPS students will have priority on the waitlist for enrolling in the Lessee’s programs when an opening becomes available. The Facility shall make reasonable efforts to serve as many as 300 students on a daily basis. The Facility shall serve no fewer than an average of 200 students daily for any consecutive twenty-four (24) month period during the term of this Lease unless the reduction in service is caused by events outside Lessee’s control, such as a natural disaster, health crisis, or destruction of the Facility by fire or other hazard.

## **8. Construction Commencement and Completion.**

If construction is not commenced within thirty-six (36) months of the execution of this Lease, this Lease shall terminate unless an extension of time is requested by the Lessee for good cause and agreed to by the Board. Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the Facility and obtain a Certificate of Occupancy within

twenty-four (24) months of the beginning of construction, unless an extension of time is requested by the Lessee for good cause and agreed to by the Board. All construction shall be conducted: (a) in accordance with Supplemental General Conditions attached hereto as Exhibit C; and (b) in such a way as to not disrupt the operations of the schools owned by the Board and located on property adjacent to the Leased Property (the "Schools"). The Board shall assign a project manager as its representative during the design and construction of the Facility who may inspect the Facility upon reasonable notice to Lessee and participate in project meetings. In addition, the Board shall have the right to approve the project schedule. The parties shall negotiate a coordination agreement prior to the commencement of construction work to minimize disruption to the operations of the adjacent schools, assure the safety of the school populations and public at large, and enhance schedule performance and the productivity of field operations. Upon completion of construction, Exhibit A may be replaced with a map showing the exact coordinates for the location of the leased parcel and improvements made by Lessee as mutually agreed by the Board and Lessee.

## **9. Quiet Enjoyment.**

The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease on its part to be kept, shall quietly have and enjoy the Leased Property and the Facility during the Lease term.

## **10. Joint Use of Leased Property; Representatives.**

A. The Lessee shall use the Leased Property only within the scope of all applicable federal, state, and local laws, local ordinances, and regulations, and policies that are specifically applicable to Lessee. Lessee represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Lease prior to the initiation of work.

B. The parties contemplate shared use of their respective facilities. The parties hereby expressly state their mutual intent to endeavor to reach such agreements when and if the need arises. To that end, the Lessee and the Board shall each appoint a representative to act on their behalf to facilitate such shared use. The representatives also shall, within appropriate limitations, act on behalf of the parties to facilitate any other negotiations in connection with the Leased Property and Facility.

C. The Lessee's hours of operation for youth services shall be outside of normal School hours. The Lessee may operate at other times for purposes such as administration, staff training, or other community services. The Lessee will cooperate with the Board to minimize interference with School or neighborhood activities.

D. Title to the ground shall remain in the name of the Board. Title to the Facility constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property and the Facility shall not be encumbered by any mortgage, lien (mechanic's lien, materialmen's lien or other lien), pledge or other encumbrance during the term of the Lease, and any such lien will be promptly removed by the Lessee. The Lessee acknowledges that the Board is under no obligation under this Lease to provide any funding to construct, equip or operate the Facility.

E. The Lessee and its invitees and guests shall have access to the outdoor School facilities, subject to the policies, conditions and schedules established by the Board or its designee.

## **11. Architect, Engineer and Other Professionals.**

The Lessee shall, at its own expense, engage licensed architects, engineers and other professionals as necessary to conduct all necessary site evaluations and surveys pertinent to the Facility, including, but not necessarily limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. The Lessee shall produce for approval, as set forth in paragraph 15 below, design plans and construction documents, to include specifications, site, building, traffic, roadway and parking plans.

## **12. School Expansion.**

The Lessee shall cooperate with the Board to plan for and accommodate reasonable future expansions of School facilities on property adjacent to the Leased Property.

## **13. Existing Recreation or Parking Facilities.**

Lessee's construction shall in no way reduce or restrict the Board's existing recreational or parking amenities located adjacent to the Leased Property; provided, however, that said parties may agree on certain site or use restrictions during the construction period. The Lessee shall provide adequate parking and roadway improvements to accommodate the construction and operation of the Facility.

## **14. Outdoor Improvements.**

As part of the overall development, the Lessee agrees to make certain improvements or additions to outdoor recreational amenities as may be required for its operation. The nature and extent of such improvements or additions shall be agreed to by the Lessee and the Board prior to commencement of any construction.

## **15. Approvals.**

The preliminary drawings and design plan for the entire Facility shall be approved by the Board and, as applicable, the Virginia Department of Education, prior to commencement of any construction. . Such consideration and approval by the Board shall not be unreasonably delayed. Additionally, a site plan may need to be approved by the Albemarle County Planning Commission prior to the commencement of any construction.

## **16. Governmental Obligations; Virginia Department of Education.**

The Lessee shall obtain all governmental approvals for the construction of the contemplated Facility, and the facility shall be constructed in accordance with the applicable Virginia Department of Education Guidelines, if applicable. The Lessee shall assist the Board, as necessary and appropriate; in obtaining written confirmation from the Virginia Department of Education that the certification of the Schools on property adjacent to the Leased Property to operate as public Schools will in no way be affected by the construction or operation of the Facility. To the extent the Facility threatens said certification in the future, whether in whole, in part or temporarily, the Lessee shall use all reasonable efforts to immediately rectify or modify the condition, circumstance or operation causing such threat. During the term of this Lease, the Lessee, at its sole cost and expense, shall comply with all of the requirements of all local, state, federal and other applicable governmental authorities, relating to the Leased Property or Facility.

## **17. Financial Assurances.**

Prior to the commencement of any construction in or upon the Leased Property, the Lessee shall: (1) enter into a written contract with a licensed and bonded Class A general contractor; (2) secure a performance bond for the entire amount of the contract or other contractual arrangements acceptable to the Board that provide assurance that the construction will be completed; and (3) establish an Escrow Account in a national bank, deposit therein funds sufficient to construct the Facility, and appoint an Escrow Agent who shall hold and disburse funds from the Escrow Account pursuant to instructions to be negotiated between the Board and Lessee. Additionally, prior to the commencement of construction, the Lessee shall present (a) to the Albemarle County Superintendent of Schools for his/her review and concurrence a capital financial plan containing adequate assurance of the Lessee's ability to finance the construction of the Facility and (b) to the Board a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the Facility.

## **18. Maintenance / Operational Expenses.**

The Lessee shall maintain the Leased Property and the Facility in a reasonably clean, attractive, and safe condition for its employees, members, guests, and invitees and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee shall be responsible for all costs associated with the maintenance and operation of the Facility, including, but not limited to the entire building and roof, electric, gas, water, sewer, custodial, repairs, sidewalk repairs and landscaping and appropriate capital improvements to the foregoing, as needed. The Board shall be responsible for snow removal, grass cutting, weed-eating, and leaf removal.

## **19. Utilities and Services.**

The Lessee shall be responsible for and pay all costs and charges for utilities and services in connection with the Lessee's occupancy of the Leased Property including, but not limited to, permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. All of the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the Board shall not have any responsibility whatsoever for the furnishing or cost of the same.

## **20. Taxes and Assessments.**

Lessee shall be responsible for and pay real property taxes or related fees against the Facility, assessments imposed upon any personal property located in or upon the Leased Property, license fees and all other similar charges, if any.

## **21. Easements.**

The Lessee shall have the right of access (ingress and egress) and utility easements for the Leased Property as necessary.

## **22. Adequate Supervision.**

The Lessee shall be responsible for the well-being and safety of its employees and members while participating in events sponsored by the Lessee while on the Leased Property and the School grounds generally, and shall, at all times, provide reasonable and customary supervision.

**23. Damage or Destruction of the Leased Property.**

The Lessee shall be responsible for any damage caused to the facilities of the Board resulting from the action of any employee or member of the Lessee while participating in Lessee sponsored events, beyond normal wear and tear. The Board shall be responsible for any damage caused to the Facility resulting from the actions of any student or employee of the Schools or the Board while participating in School sponsored events, beyond normal wear and tear. The Lessee agrees that all property of every kind and description kept, stored or placed in the Facility shall be at the Lessee's sole risk and hazard and that the Board shall not be responsible for any loss or damage to any of such property caused by, but not limited to, fire, explosion, water, steam, gas, electricity, terrorism, the elements or otherwise, whether or not originating in the Facility and whether or not caused by or from leaks or defects in or breakdown of plumbing, piping, wiring, heating or any other facility, equipment or fixtures or any other similar cause or act.

**24. Indemnification.**

Except as provided in the last sentence of this paragraph, the Lessee shall indemnify, defend and hold the Board harmless from and against any and all liability, loss, claim, suit, damage, charge or expense suffered, sustained, incurred or in any way be subjected to, on account of death of or injury to any person and for damage to, loss of and destruction of any property whatsoever, which arises out of, results from, or is in any way connected with actions taken in the performance of the Lessee's obligations under this Lease, or which occurs as a consequence of any negligence, omission or misconduct of the Lessee and any subcontractors, agents or employees of the Lessee in the performance of the Lessee's obligations under this Lease. The Board, to the extent permitted by law, shall be responsible for the negligent acts, omissions or misconduct of its agents or employees.

**25. Assignment.**

The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the Board, such approval not to be unreasonably withheld or delayed. In the event of assignment, the Lessee shall remain fully liable and responsible for all of the obligations imposed by this Lease unless it is otherwise agreed, in writing by the Board.

**26. Sublease.**

The Lessee may sublet the premises subject to approval by the Board, such approval not to be unreasonably withheld or delayed. The operations of any tenant under such a sublease arrangement must be compatible with the operations of the Lessee and the intent of this Lease. Any sublease must incorporate the terms of all contracts and agreements then in existence between the parties in connection with the Facility including the terms of this Lease.

**27. Nondiscrimination.**

During the term of this Lease, the Lessee agrees that it will not discriminate against any person because of race, religion, color, sex, sexual orientation, national origin, disability or any other basis prohibited by law.

## **28. Drug-Free Workplace.**

During term of this Lease, the Lessee agrees to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

## **29. Insurance**

A. Insurance to be Purchased and Maintained by Lessee's Contractors and Consultants during Construction and/or Maintenance of the Facility: Lessee agrees to require these contractors to purchase and maintain, at their sole expense, and from a company or companies authorized to do business within the Commonwealth of Virginia, insurance policies containing the following types of coverages and minimum limits, protecting from claims which may arise out of or result from the contractors' performance or non-performance of services at any time during the term of this Lease:

### **1. Policies**

- a. Workers' Compensation: Statutory requirements and benefits. Coverage is compulsory for employers of three (3) or more employees, to include the employer. Businesses who hire subcontractors who will perform the same trade or are hired to fulfill contract requirements must include the subcontractor's employees when determining the total number of employees for workers compensation. A waiver of subrogation in favor of Lessor and its officers, employees, agents, and volunteers must be endorsed on the workers compensation policy. Contractors must notify the Lessee of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of their contracts with Lessor. This policy shall specifically list Virginia as a covered state.
- b. Employer's Liability: \$1,000,000 each accident/\$1,000,000 each disease-policy limit/\$1,000,000 each disease-each employee. This policy shall specifically list Virginia as a covered state.
- c. Commercial General Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate limit, and a per project aggregate limit of \$2,000,000. CGL form CG 2010 11/85 edition or its equivalent shall be endorsed to the commercial general liability policy. Commercial General Liability is to include bodily injury and property damage; personal injury; advertising injury; contractual liability; premises, operations and products; and completed operations coverage. Lessor and its officers, employees, agents, and volunteers must be named as additional insureds and be so endorsed on the policy on a primary and non-contributory basis. CG 20 01 04 13 or its equivalent is required to be endorsed to the commercial general liability policy. A waiver of subrogation in favor of Lessor is required on the commercial general liability policy.
- d. Automobile Liability: \$1,000,000 per accident. Coverage is to include hired, owned, non-owned, temporary, and leased vehicles. An additional insured endorsement in favor of Lessor and its officers, employees, agents and volunteers is required on the Commercial auto policy on a primary and non-contributory basis. CA 04 49 11 16 or its equivalent is required to be endorsed to the commercial auto policy. A waiver of subrogation naming

Lessor and its officers, employees, agents and volunteers is also required on the commercial auto policy.

- e. Umbrella Liability Coverage: Minimum coverage of \$5,000,000 or greater; must be follow form and go over the underlying general liability, commercial auto and employers liability policies. Lessor and its officers, employees, agents and volunteers must be named as additional insureds and be so endorsed on the umbrella policy on a primary and non-contributory basis. A waiver of subrogation naming Lessor and its officers, employees, agents and volunteers is also required on the umbrella policy.
  - f. Builder's Risk: One-hundred (100%) percent of insurable value of entire structure or structures on which construction work is to be performed.
  - g. Professional (E&O) Liability Insurance: Minimum coverage of \$1,000,000.
2. All insurance coverages:
- a. Shall be issued by an insurance carrier authorized to do business within the Commonwealth of Virginia and rated A – VIII or better, by A. M. Best Company or equivalent rating from an alternate recognized ratings agency, and otherwise acceptable to the Lessor;
  - b. Shall be kept in force throughout performance of services;
  - c. Shall be an occurrence based policy; professional liability may be claims made basis;
  - d. Shall include completed operations coverage;
  - e. Shall contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insured shall be primary and non-contributory, and all other insurance carried by the additional insureds shall be excess insurance; and
  - f. Where additional insured required, such policy shall not have a restriction on the limits of coverage provided to Lessor as an additional insured. Lessor shall be entitled to protection up to the full limits of the contractors' policies regardless of the minimum requirements specified in this Lease.
3. Proof of Insurance: Prior to performance of any services, Lessee shall assure that its contractors: (i) have all required insurance coverages in effect; (ii) Lessee shall deliver to Lessor certificates of insurance for all lines of coverage. Lessee shall to responsible to assure that coverages set forth herein and evidenced in the applicable certificates of insurance shall not be substantially modified or canceled without thirty (30) days prior written notice to Lessor; and (iii) Lessee shall deliver to Lessor endorsements to the policies which require Lessor and its officials, officers, employees, agents and volunteers be named as "additional insureds." Policies that require this endorsement include: Commercial General Liability, Automobile Liability and, umbrella or excess liability coverage as detailed below. Such endorsements must be approved by Lessor, and (iv) upon the request of Lessor, Lessee shall provide any other documentation satisfactory to Lessor in its sole discretion, evidencing the required insurance coverage, including but not limited to a copy of the insurance policy and evidence of payment of policy premiums. Lessee shall require that the subcontractors and subconsultants of each of its contractors and consultants to have coverages per the requirements herein in effect, prior to the performance of any services by such subcontractors and subconsultants. Further, the Lessee shall ensure that all required insurance coverages of its contractors' subcontractors are and remain in effect during performance of their service. Lessor shall have no responsibility to verify compliance by



the Lessee, its contractors and consultants, and their respective subcontractors and subconsultants.

4. **Effect of Insurance:** Compliance with insurance requirements shall not relieve Lessee of any responsibility to indemnify Lessor for any liability to Lessor, as specified in any other provision of this Lease. Indemnity obligations specified elsewhere in this Lease shall not be negated or reduced by virtue of any insurance carrier's denial of insurance coverage for the occurrence or event which is the subject matter of the claim, or by any insurance carrier's refusal to defend any named insured.
5. **Sovereign Immunity:** Nothing contained herein shall affect, or shall be deemed to affect, a waiver of Lessor's sovereign immunity under law.
6. **Umbrella/Excess Liability Coverage** shall provide additional coverage limits over the underlying commercial general liability, commercial automobile, and employer's liability insurance with the broadest coverage available between the umbrella or excess liability policy and the underlying policies. This insurance shall name Lessor and its officials, officers, and employees and agents as "additional insureds" by endorsement to the Umbrella or Excess Liability policy on a primary and non-contributory basis. Such policy shall not have a restriction on the limits of coverage provided to Lessor as an additional insured. Lessor shall be entitled to protection up to the full limits of the insurance policies described herein regardless of the minimum requirements specified in this contract.
7. **Professional Liability Insurance:** Prior to commencing any activities under this Lease, Lessee shall require its design, architectural, and engineering consultants and subconsultants to secure professional liability insurance covering any damages caused by their negligent or wrongful acts or omissions, with coverage in an amount not less than \$1,000,000 per claim/\$2,000,000 aggregate ("Required Insurance"). Lessee shall require such consultants and subconsultants to maintain the Required Insurance in effect throughout the term of any project to be undertaken by Lessee pursuant to this Lease and for a period of three (3) years following final acceptance of such work by Lessee. Lessee shall provide Lessor with a certificate of insurance, or other written documentation satisfactory to Lessor in its sole discretion, issued by the insurance companies for Lessee's consultants confirming the Required Insurance and the beginning and ending date(s) of such policy(ies). Upon receipt of any notice, verbal or written, that the Required Insurance is subject to cancellation, Lessee shall immediately (within three (3) business days) notify Lessor.
8. **Builder's Risk Insurance:** Lessee's contractors, at its cost, shall obtain and maintain in the name of Lessee builder's risk insurance which shall be written on a special forms basis upon the entire structure or structures on which the construction work is to be performed, and upon all material in or adjacent thereto which is intended for use thereon, to one hundred (100%) percent of the insurable value thereof, including the costs of excavations, backfills, foundations, underground utilities, and site work.

B. **Insurance to be Purchased and Maintained by Lessee:** Lessee agrees to purchase and maintain in full force and effect at all times during the term of this lease the following policies of insurance:

1. Policies:
  - a. Workers' Compensation: Statutory requirements and benefits. Coverage is compulsory for employers of three (3) or more employees, to include the employer. Businesses who hire subcontractors who will perform the same trade or are hired to fulfill contract requirements must include the subcontractor's employees when determining the total number of employees for workers compensation. A waiver of subrogation in favor of Lessor and its officers, employees, agents, and volunteers must be endorsed on the workers compensation policy. Contractors must notify the Lessee of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of their contracts with Lessor. This policy shall specifically list Virginia as a covered state.
  - b. Employer's Liability: \$1,000,000 each accident/\$1,000,000 each disease-policy limit/ \$1,000,000 each disease-each employee. This policy shall specifically list Virginia as a covered state.
  - c. Commercial General Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate limit, and a per project aggregate limit of \$2,000,000. Commercial General Liability is to include bodily injury and property damage; personal injury; sexual molestation and abuse; advertising injury; contractual liability; premises, operations, and products; and completed operations coverage. Lessor and its officers, employees, agents, and volunteers must be named as additional insureds and be so endorsed on the policy on a primary and non- contributory basis. CG 20 01 04 13 or its equivalent is required to be endorsed to the commercial general liability policy. A waiver of subrogation in favor of Lessor is required on the commercial general liability policy.
  - d. Automobile Liability: \$1,000,000 per accident. Coverage is to include hired, owned, non-owned, temporary, and leased vehicles. An additional insured endorsement in favor of Lessor and its officers, employees, agents and volunteers is required on the Commercial auto policy on a primary and non-contributory basis. CA 04 49 11 16 or its equivalent is required to be endorsed to the commercial auto policy. A waiver of subrogation naming Lessor and its officers, employees, agents and volunteers is also required on the commercial auto policy.
  - e. Umbrella/Excess Liability Coverage: Minimum coverage of \$5,000,000 or greater; must be follow form and go over the underlying general liability, commercial auto and employers liability policies. Lessor and its officers, employees, agents and volunteers must be named as additional insureds and be so endorsed on the umbrella policy on a primary and non-contributory basis. A waiver of subrogation naming Lessor and its officers, employees, agents and volunteers is also required on the umbrella policy.
2. All insurance coverages:
  - a. Shall be issued by an insurance carrier authorized to do business within the Commonwealth of Virginia and rated A – VIII or better, by A. M. Best Company or equivalent rating from an alternate recognized ratings agency, and otherwise acceptable to the Lessor;

- b. Shall be kept in force throughout performance of services;
  - c. Shall be an occurrence based policy; professional liability may be claims made basis;
  - d. Shall include completed operations coverage;
  - e. Shall contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insured shall be primary and non-contributory, and all other insurance carried by the additional insureds shall be excess insurance; and
  - f. Where additional insured required, such policy shall not have a restriction on the limits of coverage provided to Lessor as an additional insured. Lessor shall be entitled to protection up to the full limits of the Lessee's policies regardless of the minimum requirements specified in this Lease.
3. Proof of Insurance: Prior to performance of any services under this Lease, Lessee shall: (i) have all required insurance coverages in effect; (ii) Lessee shall deliver to Lessor certificates of insurance for all lines of coverage. Lessee shall be responsible to assure that coverages set forth herein and evidenced in the applicable certificates of insurance shall not be substantially modified or canceled without thirty (30) days prior written notice to Lessor; and (iii) Lessee shall deliver to Lessor endorsements to the policies which require Lessor and its officials, officers, employees, agents and volunteers be named as "additional insureds." Policies that require this endorsement include: Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability coverage as detailed below. Such endorsements must be approved by Lessor, and (iv) upon the request of Lessor, Lessee shall provide any other documentation satisfactory to Lessor in its sole discretion, evidencing the required insurance coverage, including but not limited to a copy of the insurance policy and evidence of payment of policy premiums.
4. Effect of Insurance: Compliance with insurance requirements shall not relieve Lessee of any responsibility to indemnify Lessor for any liability to Lessor, as specified in any other provision of this Lease. Indemnity obligations specified elsewhere in this Lease shall not be negated or reduced by virtue of any insurance carrier's denial of insurance coverage for the occurrence or event which is the subject matter of the claim, or by any insurance carrier's refusal to defend any named insured.
5. Sovereign Immunity: Nothing contained herein shall affect, or shall be deemed to affect, a waiver of Lessor's sovereign immunity under law.
6. Umbrella/Excess Liability Coverage shall provide additional coverage limits over the underlying commercial general liability, commercial automobile, and employer's liability insurance with the broadest coverage available between the umbrella or excess liability policy and the underlying policies. This insurance shall name Lessor and its officials, officers, and employees and agents as "additional insureds" by endorsement to the Umbrella/Excess Liability policy on a primary and non-contributory basis. Such policy shall not have a restriction on the limits of coverage provided to Lessor as an additional insured. Lessor shall be entitled to protection up to the full limits of the insurance policies described herein regardless of the minimum requirements specified in this contract.

### **30. Annual Report; Financial Records.**

The Lessee shall prepare an annual report for presentation to the Board upon the anniversary of the Commencement Date of this Lease or at such time as otherwise agreed, including an operational plan and budget with at least a five year projection. The Lessee shall also report on circumstances within its knowledge that have occurred or are, potentially, likely to occur that could adversely impact the Lessee's 501(c)(3) tax-exempt status or otherwise affect the Lessee's legal ability to construct or operate the Facility. In accordance with generally accepted accounting procedures, the Lessee shall maintain books and records pertaining to the Leased Property and Facility and amounts expended by it in connection with this Lease. Upon request, the Board shall be entitled, at its own expense, to obtain an audit of such books and records. Upon receipt of notice that the Board desires an audit, the Lessee shall make its books and records available to the Board and its auditor(s), and the Lessee shall cooperate with the audit.

### **31. Default.**

Each of the following occurrences relative to the Lessee shall constitute default:

A. Failure or refusal by the Lessee to make the timely payment of rent under this Lease when and as the same shall become due and payable, provided the Board has given the Lessee fifteen (15) days written notice of the same;

B. The filing or execution or occurrence of an insolvency proceeding by or against the Lessee not stayed within sixty (60) days; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee;

C. Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, which failure continues uncured for a period of sixty (60) days after written notice from the Board to the Lessee specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period, such sixty (60) day period shall be extended for so long as the Lessee is making diligent efforts and reasonable progress is being made to cure such default; provided, however, that such cure period does not exceed 180 days in total.

D. Failure by Lessee to substantially complete the Facility within the timeframe set forth in paragraph 8 above or the discontinuance or willful abandonment of its use of the Facility for the purposes as set forth in this Lease for a period of at least six (6) months;

E. Knowing violation of the certification required in Paragraph 44 unless cured within two (2) business days of notice by Lessor to Lessee; provided, however, that Lessee shall remove a person furnishing services in the Facility as soon as practicable after Lessee becomes aware that such person does not meet the certification requirements of Virginia Code Section 22.1-296.1.

F. An incompatible change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501(c)(3) tax-exempt status or a change, incompatible

with the purpose of this Lease, in the nature of the services provided to children and youth at the inception of the Lease), provided any such change is not cured within sixty (60) days of written notice of default to Lessee by the Board;

G. Effect of default.

In the event of default as defined in this paragraph, title to the Facility shall, at the option of the Board exercised by notice to Lessee, revert automatically to the Board, and the Lessee shall surrender the Facility as provided in paragraph 32 and execute all documents deemed necessary by the Board to convey title to the Facility. Further, upon a default under this paragraph and until any claim or claims by the Board for damages relating to such default have been satisfied, no funds will be distributed from the Escrow Account other than: (i) to satisfy such claim or claims for damages as determined in a settlement agreement or final judgment; or (ii) as mutually agreed upon by the Board and Lessee in writing.

**32. Eminent Domain.**

In the event of termination due to any taking by eminent domain, partial or total, the Board shall be entitled to receive that part of the total condemnation award or compensation for the taking which is equal or attributable to the value of the land taken, and the Lessee shall be entitled to receive the part of the award or compensation which is equal or attributable to the value of the Facility thereupon. If the taking is such that sufficient area remains for the Lessee to continue its normal operations, then the Lease shall terminate as to the part of the premises and Facility so taken, but shall remain in effect with respect to the part of the premises not taken.

**33. Surrender.**

Upon termination of the Lease, unless the Lease is renewed or a new Lease is granted to the Lessee pursuant to the requirements of state law, the Lessee shall quit and surrender to the Board the Leased Property and the Facility in good order and condition, except for ordinary wear and tear, provided that the Lessee shall remove from the premises any personal property belonging to the Lessee or third parties, which can be so removed without material damage to the Leased Property and the Facility, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the Board, which may thereafter remove the property and dispose of it. On the termination of this Lease, the Board may without further notice enter on, reenter, possess and repossess the Leased Property and the Facility by any necessary means, and may remove the Lessee and all other persons, and may have, hold and enjoy the Leased Property and the Facility and the right to receive all rental and other income of and from the same. The surrender of this Lease shall not work a merger and shall, at the option of the Board, terminate all or any existing subleases or may, at the option of the Board, operate as an assignment to it of any or all such subleases.

**34. Right of Entry.**

At any time during the term of the Lease, the Board shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property and the Facility at all reasonable times for the purposes of inspecting the Leased Property and the Facility to ensure compliance with the terms of this Lease. Notwithstanding the Board's right to inspect the Leased Property, the Board shall have no obligation to inspect the same. The Board's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

**35. Waiver.**

No failure on the part of the Board to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the Board of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the Board of any rights hereunder.

**36. Identity of Interest.**

The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the Board any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

**37. Notice.**

The Board's designated representative to receive all communications, claims and correspondence regarding this Lease is Superintendent for the Albemarle County Public Schools, at the following address: 401 McIntire Road, Charlottesville, Virginia 22902. The Lessee's designated representative to receive all communications, claims and correspondence regarding this Lease is CEO, Boys and Girls Club of Charlottesville/Albemarle, at the following address: P.O. Box 707, Charlottesville, Virginia 22902. Notices may be (i) hand delivered with delivery acknowledged in writing, (ii) sent by a delivery service such as UPS or Fedex or (iii) mailed by USPS return receipt requested. Notices shall be deemed given when received.

**38. Modification or Amendment.**

Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Lease, which is subject to Va. Code section 15.2-2105) shall be binding only if approved by the Lessee and the Board, and evidenced in a writing signed by each.

**39. Faith-based Organizations**

School Board does not discriminate against faith-based organizations in accordance with Code of Virginia §2.2-4343.1.

**40. Nondiscrimination**

During the performance of this contract, Lessee agrees as follows:

A. Lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Lessee. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Nondiscrimination clause.

B. Lessee, in all solicitations or advertisements for employees placed by or on behalf of Lessee, will state that Lessee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. Lessee shall include the provisions of the foregoing paragraphs A, B, and C in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **41. Drug-Free Workplace**

During the term of this Lease, pursuant to Virginia Code Section § 2.2-4312, Lessee agrees to:

A. Provide a drug-free workplace for Lessee's employees.

B. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Lessee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

C. State in all solicitations or advertisements for employees placed by or on behalf of Lessee that Lessee maintains a drug-free workplace.

D. Include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **42. Compliance with Immigration Laws**

Lessee agrees that it does not and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, in accordance with the Code of Virginia, §2.2-4311.1.

#### **43. Business Entity Registration**

Pursuant to Virginia Code § 2.2-4311.2, Lessee shall be registered and authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Lessee shall submit proof of such registration to the School Board. Additionally, Lessee shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or canceled at any time during the term of the Agreement.

#### **44. Business License Requirement**

If Lessee is a business located in Albemarle County, Virginia or at any time during the performance of this Agreement obtains situs for purposes of business license taxes, it shall be unlawful for such business to conduct or engage in such business, trade, or occupation without having first obtained the proper license from the Albemarle County Department of Finance. Lessee covenants that it has a

business license where one is required to perform this Agreement.

**45. School Contractor Certification**

Pursuant to Virginia Code Section 22.1-296.1, Lessee agrees and certifies by its signature below that any and all persons who will provide services for or on behalf of the Lessee on public school property and have direct contact with students have not been convicted of a felony; any offense involving the sexual molestation, physical or sexual abuse or rape of a child; or any offense for which registration is required as defined in Virginia Code Section 9.1-902. Lessee hereby agrees that this Certification shall be binding throughout the contract term and that it will provide immediate notice to the County of Albemarle and the Board of any event that renders this certification untrue.

**46. Time of the Essence.**

Unless specifically provided herein to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

**47. Cooperation.**

The Board and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease.

**48. Persons Bound.**

The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

**49. Entire Agreement.**

This Lease, together with the schedules, riders and exhibits, if any, attached, contains the entire agreement between the Board and the Lessee. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

**50. Recording.**

Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form, but excluding detailed provisions of this Lease.

**51. Headings.**

The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

**52. Interpretation.**

In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or



attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

**53. Severability.**

In the event that any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

**54. Governing Law.**

This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the County of Albemarle, Virginia.

We agree to be bound by this Lease and its terms and conditions.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

WITNESS THE FOLLOWING SIGNATURE(S) AND SEAL(S):

**ALBEMARLE COUNTY SCHOOL BOARD**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who ( is personally known to me) or ( has produced \_\_\_\_\_ as identification) and who ( did) or ( did not) take an oath, and who signed this document in his capacity as \_\_\_\_\_ of the **Albemarle County School Board**.

My commission expires: \_\_\_\_\_

My commission number: \_\_\_\_\_

[NOTARIAL SEAL]

\_\_\_\_\_

signature

\_\_\_\_\_, Notary Public

printed name

WITNESS THE FOLLOWING SIGNATURE(S) AND SEAL(S):

**BOYS AND GIRLS CLUB OF CENTRAL VIRGINIA**

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who ( is personally known to me) or ( has produced \_\_\_\_\_ as identification) and who ( did) or ( did not) take an oath, and who signed this document in his capacity as \_\_\_\_\_ of the **Boys and Girls Club of Central Virginia**.

My commission expires: \_\_\_\_\_

My commission number: \_\_\_\_\_

[NOTARIAL SEAL]

\_\_\_\_\_

signature

\_\_\_\_\_, Notary Public

printed name