

AMENDMENT TO LEASE AGREEMENT BETWEEN BOY'S  
& GIRL'S CLUB OF THE HARBOR AREA, INC. AND THE  
CITY OF COSTA MESA.

The City of Costa Mesa, a municipal corporation, hereinafter referred to as "City" and Boy's & Girl's Club of the Harbor Area, Inc., hereinafter referred to as "Boy's & Girl's Club" and formerly known as the Boy's Club of the Harbor Area, Inc. hereby enter into this Amendment to the Lease Agreement entered into on April 19<sup>th</sup>, 1965 as set forth herein.

WHEREAS, the initial Lease Agreement was entered into on April 19<sup>th</sup>, 1965 between the Boy's and Girl's Club of the Harbor Area, Inc. ("Boy's & Girl's Club") and the City of Costa Mesa ("City");

WHEREAS, Boy's and Girl's Club wishes to construct a multi-use sports court which was not originally contemplated when the parties entered into the fifty (50) year lease agreement in 1965;

WHEREAS, additional provisions related to the construction of the multi-use sports court along with other provisions are reflected in this Amendment;

NOW, THEREFORE, for and in consideration of the covenants contained herein, the parties hereto agree as follows:

- 1.) The Lease Agreement entered into between City and Boy's Club remains in full force and effort except as set forth herein.
- 2.) Wherever the term "boys" appears in the Lease Agreement, it shall refer to both boys and girls.
- 3.) Wherever the term "Boy's Club of the Harbor Area, Inc." appears, it shall be amended to refer to "Boy's and Girl's Club of the Harbor Area, Inc."
- 4.) Attached hereto and marked as Exhibit "A" is a plot plan describing and setting forth the multi-use sports court to be added to the existing Demised Premises, which said exhibits sets forth plan dimensions, location and existing structures, and which is by this reference made a part hereof.
- 5.) Boy's and Girl's Club may construct the multiuse sport facility set forth in Exhibit A subject to City approval of all plans and specifications for the construction of the multiuse sports facility to be constructed on the leased premises, and the Boy's and Girl's Club agrees not to undertake construction or to let contracts until such time as City has approved said plans and specifications.
- 6.) Boy's and Girl's Club shall defend, indemnify, save and hold harmless City, its officials, officers, agents, employees, and volunteers from and against any and all damages to the Demised Premises or injuries or death of any person or persons,

including officials, officers, agents, employees, and volunteers, relating to the Demised Premises of City, and shall defend, indemnify, save and hold harmless City, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, worker's compensation claims, resulting from, arising out of, or in any way related to the acts, errors or omissions of Boy's and Girl's Club, its employees, agents, or subcontractors related to Boy's & Girl's Club occupancy and use of the Demised Premises, except where such claim or cause of action arises from the sole active negligence or willful misconduct of City, its officials, officers, agents, employees or volunteers.

The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Boy's and Girl's Club, its employees, agents, or subcontractors, but shall be required whenever any claim, demands, suits, actions or proceedings of any kind or nature asserts liability against City, its officials, officers, agents, employees, and/or volunteers based upon the work performed by Boy's and Girl's Club, its employees, agents, or subcontractors related to Boy's and Girl's Club occupancy and use of the Demised Premises, whether or not Boy's and Girl's Club, its employees, agents, or subcontractors are specifically named or otherwise asserted to be liable.

7.) Section V and VI of the original Lease Agreement titled "Public Liability Insurance" shall be deleted and replaced with the following:

- 7.1. Minimum Scope and Limits of Insurance. Boy's & Girl's Club shall obtain and maintain for the during of the original Lease Agreement and any subsequent Amendments all of the following insurance coverages:
- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
  - (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
  - (c) Workers' compensation insurance as required by the State of California.
  - (d) All Risk Property Insurance. Including coverage for Boy's & Girl's Club improvements or betterments with a minimum limit equal to the full replacement cost as approved by the City of the demised premises and with no coinsurance penalty provision.

- 7.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:
- (a) Additional insureds: “The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City.”
  - (b) Notice: “Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City.”
  - (c) Other insurance: “Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- 7.3. Certificates of Insurance: Boy’s & Girl’s Club shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.
- 7.4. Non-limiting: Nothing in this Section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Boy’s & Girl’s Club may be held responsible for payments of damages to persons or property.
- 8.) Section XVI titled “Real Estate Taxes” shall be deleted and replaced with the following:
- The original Lease and any subsequent Amendments may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Demised Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of Boy’s & Girl’s Club such that Boy’s & Girl’s Club shall cause said taxes and assessments to be paid promptly.
- 9.) Boy’s & Girl’s Club agrees no improvements shall be erected, placed upon, operated, nor maintained within the Demised Premises, nor any business or activities conducted or carried on therein or therefrom, in violation of the terms of the original Lease Agreement or subsequent Amendments or of any federal, state or local law or regulation.
- 10.) As used herein the term “Hazardous Material” means any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including without limitation, City acting in its

governmental capacity, the State of California or the United States Government.

- 10.1 Boy's & Girl's Club shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Demised Premises, except as may specifically authorized by City in writing. Any such authorization by City shall not alter or reduce Boy's & Girl's Club obligations under this section, including but not limited to its duty to indemnify and defend City, for any contaminations which may occur as a result of Boy's & Girl's Club use of the authorized material.
  - 10.2 If Boy's & Girl's Club breaches the obligations stated herein, or if contamination of the Demised Premises by Hazardous Materials otherwise occurs for which Boy's & Girl's Club is legally liable to City for damage resulting therefrom, then Boy's & Girl's Club shall indemnify, defend and hold City harmless from any and all claims, judgments, clean up costs, remediation orders, damages, penalties, fines, costs, liabilities or losses (including without limitation, diminution in value of the Demised Premises, damages for the loss or restriction on use of rentable or usable space or any amenity of the Demised Premises, damages arising from any adverse impact on marketing of space in the Demised Premises or portion of any building of which the Demised Premises is a part, and sums paid in settlement of claims, attorneys fees, consultant fees and expert witness fees) which arise during or after the term as a result of such contamination.
  - 10.3 This indemnification includes without limitation, costs incurred by City in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any federal, state or local governmental entity because of Hazardous Material being present in the soil or ground water or under the Demised Premises. Boy's & Girl's Club shall promptly take all actions at its sole cost and expense as are necessary to clean, remove and restore the Demised Premises to its condition prior to the introduction of such Hazardous Material by Boy's & Girl's Club, provided Boy's & Girl's Club shall first have obtained City's approval and the approval of any necessary governmental entities.
- 11.) Boy's & Girl's Club shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with its occupancy or construction on the Demised Premises, or in connection with any improvements it may construct on the Demised Premises. No permit approval or consent given hereunder by City in its governmental capacity shall affect or limit Boy's & Girl's Club's obligations hereunder, nor shall

**ATTACHMENT 1**

any approvals or consents given by City, as a party to the original Lease Agreement or subsequent Amendments be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules or regulations.

IN WITNESSETH WHEREOF, the undersigned have caused this Amendment to the Lease Agreement to be executed and attested to by their proper officers hereunto duly authorized on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BOY'S AND GIRL'S CLUB

CITY OF COSTA MESA

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

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

President

Mayor

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

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

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

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

Secretary

City Clerk

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

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

APPROVED AS TO FORM:  
COSTA MESA CITY ATTORNEY

\_\_\_\_\_  
Kimberly Hall Barlow

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

**Exhibit A**