

AN ORDINANCE **2016-12-15-0993**

AUTHORIZING EXECUTION OF ASSIGNMENT, ASSUMPTION AND AMENDMENT OF GROUND LEASE AND SUBLEASE AGREEMENT WITH THE BOYS AND GIRLS CLUBS OF SAN ANTONIO, AUTHORIZING THE ASSIGNMENT TO A NEWLY CREATED AFFILIATED NON-PROFIT CORPORATION FOR PURPOSES OF SECURING NEW MARKET TAX CREDITS FINANCING FOR THE LONE STAR RECREATIONAL FACILITY LOCATED IN COUNCIL DISTRICT 5, A 2012-2017 BOND PROJECT, AND APPROVING RELATED DOCUMENTS.

* * * * *

WHEREAS, the Boys and Girls Clubs of San Antonio (TBGC-SA) is a non-profit organization which originally opened as the Boys Club in San Antonio in 1939 on Dolorosa Street; and

WHEREAS, the mission of the TBGC-SA is to enhance the educational, social, and moral development of San Antonio's youth ages 6-18, especially those most disadvantaged by providing a fun, safe place full of age appropriate activities and opportunities; and

WHEREAS, today, TBGC-SA serves more than 8,300 club members annually and operates six branch locations as well as on-site programs in 46 locations in Harlandale, Judson and San Antonio Independent School Districts; and

WHEREAS, TBGC-SA is requesting a lease amendment prior to the end of the year to facilitate New Market Tax Credits financing associated with their Lone Star Recreational Center, a 2012-2017 Bond Project, which is under construction on property owned by TBGC-SA and is expected to open to the public by Summer 2017; and

WHEREAS, in March 2015, the new \$4.8 Million facility received \$1.85 Million in City bond funds through a Funding Agreement approved by City Council; and

WHEREAS, through the same Council action, the City entered into a Ground Lease Agreement with TBGC-SA to fulfill the bond program's requirement for securing the City's long term interest in the project and in turn the City executed a lease-back of the same property to TBGC-SA for construction and operation of the facility for a 20-year term; and

WHEREAS, in order for TBGC-SA to secure New Market Tax Credits financing, TBGC-SA will transfer ownership of the property they own to its newly created non-profit affiliate; and

WHEREAS, as a result, the Ground Lease and Sublease Agreement between TBGC-SA and the City must be amended accordingly; and

WHEREAS, as part of the transaction, the new entity will then enter into a sublease agreement with TBGC-SA for their operation of the Lone Star Recreational Facility; and

WHEREAS, the City will not be obligated for any costs associated with these actions or the New Market Tax Credits Program financing; **NOW THEREFORE:**

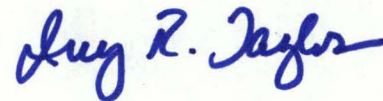
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute an Assignment, Assumption and Amendment of Ground Lease and Sublease Agreement with The Boys and Girls Clubs of San Antonio, authorizing the assignment to a newly created affiliated non-profit corporation for purposes of securing New Market Tax Credits financing for the Lone Star Recreational Facility located in Council District 5, a 2012-2017 Bond Project, and approving related documents. A copy of the Assignment, Assumption and Amendment of Ground Lease and Sublease Agreement, in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

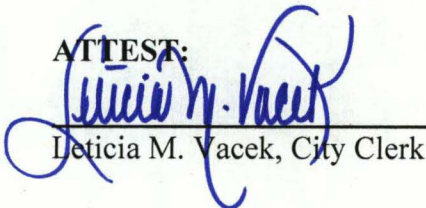
SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 15th day of December, 2016.



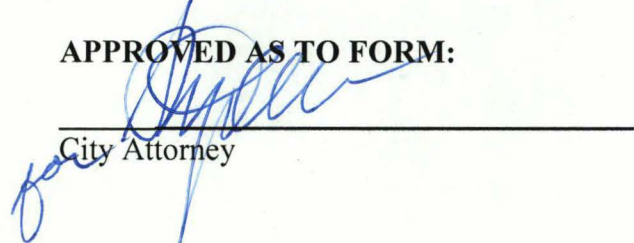
M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



City Attorney

Agenda Item:	15 (in consent vote: 4, 5, 6, 8, 9, 10, 12A, 12B, 12C, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27, 30A, 30B)						
Date:	12/15/2016						
Time:	09:27:16 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing execution of Assignment, Assumption and Amendment of Ground Lease and Sublease Agreement with The Boys and Girls Clubs of San Antonio, authorizing the assignment to a newly created affiliated non-profit corporation for purposes of securing New Market Tax Credits financing for the Lone Star Recreational Facility located in Council District 5, a 2012-2017 Bond Project, and approving related documents. [María Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks and Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**ASSIGNMENT, ASSUMPTION AND AMENDMENT OF GROUND LEASE
AND SUBLEASE**

THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT OF GROUND LEASE AND SUBLEASE (the "**Agreement**") is made and entered into effective as of December ____, 2016 (the "**Effective Date**"), among **BOYS & GIRLS CLUBS OF SAN ANTONIO, INC.**, a Texas nonprofit corporation ("**BGCSA**"), **BGCSA MAYS BRANCH, INC.**, a Texas nonprofit corporation ("**Assignee**"), and the City of San Antonio, Texas (the "**City**").

PRELIMINARY STATEMENT

BGCSA owns certain land located in San Antonio, Texas and legally described on the attached **Exhibit A** (the "**Land**") and certain improvement located thereon (the "**Improvements**"). BGCSA leases the Land to the City pursuant to that certain ground lease dated effective as of March 27, 2015 between BGCSA, as landlord, and the City, as tenant ("**Ground Lease**").

The City and BGCSA are parties to a sublease dated effective as of March 27, 2015 pursuant to which City, as tenant, subleased the Land to BGCSA, as subtenant (as amended, the "**Sublease**").

BGCSA and Assignee contemplate participating in a new markets tax credit financing with Capital One, National Association, a national banking association, as the tax credit investor, and New Markets Investment 102, LLC, a Delaware limited liability company, and its successors or assigns (collectively, the "**NMTC Lender**"), as the lender, to assist with the construction of the May's Family Clubhouse on the Land (the "**NMTC Financing**"). In order to participate in the NMTC Financing, BGCSA will be required to transfer ownership of the Land and the Improvements along with its interest in the Ground Lease and the Sublease to the Assignee.

BGCSA, Assignee, and the City agree as follows:

AGREEMENT

1. **Assignment and Assumption of Ground Lease.** BGCSA assigns, transfers and conveys to Assignee all of BGCSA's right, title, interest, obligations, duties and liabilities in, to and under the Ground Lease arising or accruing from and after the Effective Date. Assignee assumes from BGCSA all of BGCSA's right, title, interest, obligations and duties in, to and under the Ground Lease arising or accruing from and after the Effective Date.

2. **Amendment of Ground Lease.** From and after the Effective Date, the Ground Lease is amended as follows:

(a) All references in the Ground Lease to "Landlord" shall mean Assignee and Assignee's successors and assigns.

(b) On page 1 of the Ground Lease, the address for the Landlord is amended to provide the following address for Assignee:

<u>Landlord's Address for Notices and Rent Payments:</u>	BGCSA Mays Branch, Inc. 600 S.W. 19 th Street San Antonio, TX 78207 Attention: President
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(c) The first sentence of Section 6.01 of the Ground Lease is amended and revised to reflect the following: "Following final completion of the improvements and so long as no Tenant default exists

hereunder, Tenant shall have the right to use the Premises for City activities and events for up to ten (10) days in any calendar year during the term of this Agreement ("City Days")."

(d) The title of Section 9 of the Ground Lease is amended and revised in its entirety to reflect "**Mechanic's Liens and Encumbrance of Leasehold Estate.**"

(e) Section 9 of the Ground Lease is amended to add the following at the end of the section: "Notwithstanding anything to the contrary herein, Tenant may not encumber its leasehold interest."

(f) Section 10 of the Ground Lease is amended to add the following new Section 10.05:

Subordination to NMTC Lender

10.05. Tenant's right to receive proceeds of a condemnation award shall be subordinate to NMTC Lender's right to such proceeds.

(g) The last sentence of Section 12.02 of the Ground Lease is amended and revised to reflect the following: "Any such termination for Landlord default during any period in which there is outstanding debt owed by Tenant for bonds issued for the financing of the construction of improvements on the Premises shall result in BGCSA owing Tenant an amount equal to such outstanding debt."

(h) Section 12.04 of the Ground Lease is amended and revised to change "this lease" to reflect "the Sublease".

(i) Section 12 of the Ground Lease is amended to add the following as new Section 12.05:

NMTC Lender Notice and Cure

12.05. If Tenant is required under the terms of the Ground Lease to send a notice of default to the Landlord, Tenant shall concurrently send a copy of such notice to the NMTC Lender at:

New Markets Investment 102, LLC
c/o New Markets Support Company, LLC
10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attention: Matthew Huber, CFO

Notwithstanding anything to the contrary herein, NMTC Lender shall have the right, but not the obligation, to cure any default under the Ground Lease which right must be exercised within sixty (60) days after receipt by the NMTC Lender of written notice of default.

3. **Ratification of Ground Lease; Release.** Except as otherwise expressly provided in this Agreement, the Ground Lease is ratified and affirmed in all respects. Except as otherwise expressly set forth in this Agreement, the Ground Lease is unmodified and in full force and effect. In consideration for the execution and delivery of this Agreement by Assignee and BGCSA, the City releases and discharges (i) BGCSA from all obligations, claims and liabilities arising or accruing under the Ground Lease from and after the Effective Date; and (ii) Assignee from all obligations, claims and liabilities arising or accruing under the Ground Lease prior to the Effective Date.

4. **Assignment and Assumption of Sublease.** BGCSA assigns, transfers and conveys to Assignee all of BGCSA's right, title, interest, obligations, duties and liabilities in, to and under the Sublease arising or accruing from and after the Effective Date. Assignee assumes from BGCSA all of BGCSA's right, title, interest, obligations and duties in, to and under the Sublease arising or accruing from and after the Effective Date.

5. **Amendment of Sublease.** From and after the Effective Date, the Sublease is amended as follows:

(a) All references in the Sublease to "Subtenant" shall mean Assignee and Assignee's successors and assigns.

(b) The third and fourth sentences of Section 7.01 *Specific Conditions* are amended and revised to replace all references to "Subtenant" with "The Boys and Girls Clubs of San Antonio, Inc."

(c) Section 8.01 of the Sublease is amended and revised in its entirety to reflect the following:

8.01. Subtenant may not encumber its leasehold interest except as required to facilitate the NMTC Financing.

(d) Section 12 of the Sublease is amended to add the following new Section 12.11:

Subordination to NMTC Lender

12.11. Any rights granted to Tenant pursuant to this section shall be subordinate to NMTC Lender's rights pursuant to the NMTC Financing documents.

(e) Section 14.01 of the Sublease is amended to add the following at the end of the section: "Tenant hereby consents to Subtenant's subletting of the Premises to BGCSA pursuant to a certain Premises Lease entered into in conjunction with the NMTC Financing or to any other subtenant that will use the Premises for a Permitted Use."

(f) Section 15 of the Sublease is amended to add the following as new Section 15.03:

NMTC Lender Notice and Cure

15.03. If Tenant is required under the terms of the Sublease to send a notice of default to the Subtenant, Tenant shall concurrently send a copy of such notice to the NMTC Lender at:

New Markets Investment 102, LLC
c/o New Markets Support Company, LLC
10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606

Notwithstanding anything to the contrary herein, NMTC Lender shall have the right, but not the obligation, to cure any default under the Sublease and the City shall accept such performance by or at the instance of the NMTC Lender as if the same had been made by the Subtenant. Such right must be exercised within sixty (60) days after receipt by the NMTC Lender of written notice of default.

(g) Section 15 of the Sublease is amended to add the following as new Section 15.04:

Mortgagee Provisions

15.04. Notwithstanding anything to the contrary contained in this Sublease, the following terms, conditions and provisions shall apply to this Sublease, and to the extent that any one or more terms, conditions and/or provisions contained elsewhere in this Sublease violate, are inconsistent with and/or are contrary to any one or more of such following terms, conditions and provisions, such following terms conditions and provisions shall control and be applicable and such violative, inconsistent and/or contrary terms, conditions and/or provisions shall be void and of no force or effect.

- a. **Right to Mortgage.** Subtenant shall have the right to mortgage and pledge its leasehold interest in the Premises the NMTC Lender, in connection with the NMTC Financing (the "***Leasehold Mortgage***"). The City hereby consents to the provision by Subtenant of the Leasehold Mortgage and the pledge of this Lease to the NMTC Lender in accordance with the documents which evidence the NMTC Financing. The execution of the Leasehold Mortgage in connection with the NMTC Financing and any entry or foreclosure and sale by NMTC Lender will not constitute a breach of any provision in this Sublease and does not impose on NMTC Lender the status of an assignee for purposes of this Sublease or any liability thereunder. A purchaser of the Subtenant's leasehold estate through foreclosure or deed in lieu thereof, bankruptcy, sale or otherwise and any person or entity acquiring such estate directly or indirectly through such purchaser, has the right to sell, sublet and assign the estate.
- b. **NMTC Lender's Cure.** Tenant agrees that in the event that Subtenant shall not cure or remedy any default or breach of covenant by Subtenant under this Sublease within the curative period provided for such cure or remedy in this Sublease, then NMTC Lender shall have the right, at its sole option, to exercise any one or more of the following rights, and Tenant shall not terminate this Sublease, or commence eviction proceedings during the curative periods extended to NMTC Lender as set forth below:
 - i. to cure or remedy, or cause to be cured or remedied, for an additional period following the "***Lender Curative Commencement Date***" (as hereinafter defined), such default or breach of covenant, and Tenant shall accept such cure or remedy; it being agreed that NMTC Lender shall have sixty (60) days following the Lender Curative Commencement Date in which to cure such default, provided that if such default is of a non-monetary nature and cannot reasonably be cured within such sixty (60) day period and that NMTC Lender has commenced efforts to cure such default (or efforts to exercise remedies to enable it to cure such default) within sixty (60) days following the Lender Curative Commencement Date, Lender shall have an additional reasonable period of time following the end of such sixty (60) day period within which to cure such default, and so long as NMTC Lender shall be diligently pursuing its efforts to cure, Tenant shall accept such cure or remedy when effected.
 - ii. to acquire pursuant to any foreclosure the Subtenant's rights and interests under this Sublease, and in such event, Tenant shall not exercise its right of termination with respect to such default, provided that upon such acquisition, NMTC Lender shall be entitled to cure any and defaults within the curative periods provided above.
 - iii. As used herein, "***Lender Curative Commencement Date***" shall mean (a) in the case of defaults for which no curative period is provided under this Sublease, the date of NMTC Lender's receipt of notice of such default, or (b) in the case of any defaults for which a curative period is provided

under this Sublease, when both the following have occurred: (x) NMTC Lender's receipt of notice of such default, and (y) receipt of written notice from Tenant of Subtenant's failure to cure such default within the applicable curative period provided in this Sublease.

- c. **Successor Subtenant.** Any party which is the successful bidder at a foreclosure sale under the Leasehold Mortgage (including NMTC Lender or its designee) or the grantee under a deed in lieu of foreclosure, or any assignee thereof (collectively, a "**Purchaser**"), shall be entitled to become the lessee of and acquire any and all interest in the Premises and this Sublease pursuant to such foreclosure and sale. Tenant will recognize any Purchaser as the successor Subtenant under this Sublease on the same terms and provisions and with all of the rights and privileges of Subtenant, provided such Purchaser agrees to cause the Premises to be used for a Permitted Use.
- d. **Limited Liability of Successor Subtenant.** If NMTC Lender, or any purchaser of Subtenant's interest in the Premises (collectively, and "**Successor Tenant**"), shall succeed to the interest of Subtenant under this Sublease, such Successor Subtenant shall not: (a) be liable to the City for any past act, omission or default on the part of any prior subtenant (including Subtenant) and City shall have no right to assert the same or any damages arising therefrom as an offset, defense or deficiency against a Successor Subtenant; (b) be liable for or subject to any offsets or defenses which the City might have against any prior subtenant (including Subtenant); or (c) be bound by any amendment or modification to the Sublease to which NMTC Lender has not consented in writing, and any such amendment or modification shall be null and void and of no force and effect; (d) be bound by any warranty, representation or indemnity of any nature whatsoever made by any prior subtenant (including Subtenant) under the Sublease, including any warranties, representations or indemnities regarding any work required to be performed under the Sublease, use, compliance with zoning, hazardous wastes or environmental laws, habitability, fitness for purpose, title or possession; or (e) be bound by any obligation to repair, replace, rebuild or restore the Premises, or any part thereof, in the event of damage, to the extent that the insurance or condemnation proceeds, as applicable, are insufficient to pay for such restoration.
- e. **Amendments to Sublease.** No agreement between the City and Subtenant canceling or surrendering this Sublease or modifying the terms of the Sublease shall be effective without the prior written consent of NMTC Lender.
- f. **No Merger of Interests.** No union of the interests of the City and the Subtenant herein shall result in a merger of this Sublease in the fee interest.
- g. **Bankruptcy.** Subtenant covenants it will not treat the lease as terminated by any election made under Section 365(h) of the United States Bankruptcy Code of 1978 or under any similar law or right of any nature, and hereby assigns to NMTC Lender any right to acquiesce in any such termination. In the event that the Tenant shall become subject to any bankruptcy or insolvency proceeding, any rights, elections, or actions available to Subtenant therein shall be subject to the rights of NMTC Lender under the Leasehold Mortgage to consent to, or to exercise on behalf of Subtenant, such rights, elections, or actions. Without limiting the foregoing, no consent or acquiescence by Subtenant to any rejection of this Sublease by Tenant or any successor or trustee in such proceeding shall be binding or effective without the prior, written consent thereto by the NMTC Lender, and the rights, liens, and claims of the NMTC Lender shall extend to,

encumber, and include all rights to damages for any such rejection and all rights to continued possession of the Premises.

- h. **No Further Subordination.** Subtenant agrees for the benefit of NMTC Lender that, so long as the Leasehold Mortgage shall remain a lien on the Subtenant's interest in the Premises, Subtenant will not subordinate this Sublease to any mortgage or other lien or encumbrance on the Premises (other than the Leasehold Mortgage) that may now exist or hereinafter be placed on the fee estate or any part thereof, without the prior, written consent of the NMTC Lender.
- i. **Liability of NMTC Lender.** In no event shall NMTC Lender have or be deemed to assume any personal liability under this Sublease or any personal liability for performance of any of Subtenant's obligations under this Sublease, it being agreed that (i) NMTC Lender's commencement of any foreclosure or other proceedings and any efforts to cure any default under this Sublease shall be for its own protection and shall not by itself constitute and assumption of the Sublease nor obligate NMTC Lender to complete any such proceedings or cure, (ii) upon completion of any foreclosure or acceptance of any deed or assignment in lieu of foreclosure, the liability of NMTC Lender under any assumption of this Sublease shall be limited to its investment in the Leasehold Interest and Improvements, and (iii) in the event NMTC Lender or any affiliate or nominee thereof shall have acquired the rights and interests of Subtenant hereunder, upon any subsequent assignment of this Sublease, NMTC Lender or such any affiliate or nominee shall be released from any further liability under this Sublease accruing after the date of such assignment.
- j. **Casualty and Condemnation.** In the event of any casualty or condemnation affecting the Premises, and notwithstanding any other provision of this Sublease to the contrary, (i) any proceeds of insurance or condemnation that are required to be applied to restoration of the Premises or any improvements thereon shall be payable to the NMTC Lender and administered by the NMTC Lender for application to such restoration in accordance with the provisions of the Leasehold Mortgage, (ii) in any case in which any such proceeds are not required to be applied to restoration of the Premises or such improvements, all such proceeds shall be payable first to the NMTC Lender until the indebtedness and obligations under the Leasehold Mortgage have been paid and satisfied in full, after which they shall be paid to or apportioned between Tenant and/or Subtenant as provided under the other provisions of this Sublease, and (iii) no election by Subtenant to terminate this Sublease upon any such casualty or condemnation shall be effective without the prior written consent of the NMTC Lender.
- k. **New Lease.** In the event that, for any reason, this Sublease terminates prior to satisfaction of all indebtedness and obligations secured or intended to be secured by the Leasehold Mortgage, the holder(s) of any such Leasehold Mortgage shall be entitled to enter into a new lease with Tenant, for the balance of the term of this Sublease (including rights to all extension or renewal options that have not been exercised), and on no less favorable terms as set forth in this Sublease (a "*New Lease*"). Such right shall be exercisable by NMTC Lender within sixty (60) days following written notice by Tenant to NMTC Lender of the termination of this Sublease. Upon exercise of such right, Tenant and the NMTC Lender (or an affiliate or nominee of the NMTC Lender, as the NMTC Lender may elect) shall enter into the New Lease within sixty (60) days thereafter. Upon execution of any such New Lease, the subtenant thereunder shall be required to cure outstanding defaults of the Subtenant under this

Sublease in the same manner, and within the same time period, as required under the provisions of this Section.

- I. NMTC Lender's rights under this Section 15.04, to include the rights to enter into a New Lease permitted above, shall be contingent on the Premises being used for a Permitted Use.

6. **Confirmations.** Assignee, BGCSA, and the City acknowledge, agree and consent to the following: (i) all requirements and conditions of BGCSA under the Sublease that were required to be met prior to the date hereof were satisfied or have been irrevocably waived; (ii) fee ownership in the Land and Improvements will be conveyed from BGCSA to Assignee as of the date hereof; and (iii) the fee interest in the Land and Improvements will be pledged as collateral by Assignee to the NMTC Lender and a lien will be placed on the Land and Improvements pursuant to a mortgage or deed of trust as part of the NMTC Financing.

7. **Termination of Sublease.** Notwithstanding anything to the contrary contained in the Sublease, the City shall not exercise any right to terminate the Sublease so long as any cure to Sublease defaults are being pursued in compliance with Section 15.04 of the Sublease or so long as the Premises continues to be used for a Permitted Use as defined in the Sublease.

8. **Remedies Upon Default Under Ground Lease and Sublease.** Notwithstanding anything to the contrary contained in the Ground Lease, in the Sublease, or herein, if the City is entitled to seek repayment for any outstanding debt owed by the City for bonds issued for the financing of the construction of the Improvements after defaults under the Ground Lease or the Sublease, the City may only seek such repayments from BGCSA. Upon repayment of any outstanding debt owed by the City for bonds issued for the financing of the construction of the Improvements, the City's interests in the Ground Lease and the Sublease shall automatically terminate.

9. **Obligations to Pay City Debt.** Notwithstanding anything to the contrary contained in the Ground Lease and the Sublease, BGCSA, and more specifically not the Assignee, shall be the only party obligated to reimburse the City pursuant to the terms of the Ground Lease or the Sublease for any outstanding debt owed by the City for bonds issued for the financing of the construction of the Improvements.

10. **Funding Agreement Interpretation.** On March 27, 2015, BGCSA and the City entered into that certain Funding Agreement related to the grant of proceeds to BGCSA for construction of the Improvements (the "**Funding Agreement**"). The Funding Agreement shall heretofore be construed in light of the relationships, rights and obligations set forth herein.

11. **Completion of Improvements.** Notwithstanding anything to the contrary contained in the Funding Agreement, the Ground Lease or the Sublease, June 30, 2017 shall be the date by which the Improvements must be completed.

12. **Permitted Use.** The parties hereto agree that the term "**Permitted Use**", as used in the Ground Lease, the Sublease and this Agreement, shall mean use of the Premises as a community recreational facility and ancillary uses related thereto, to include nonprofit or commercial business uses providing for such a facility.

13. **Representations and Warranties.** Each of Assignee, BGCSA, and the City represents and warrants to each other as follows: (i) it is duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of formation, with all power and authority necessary to own, lease and operate its properties and carry on its business as now conducted and execute, deliver and perform this Agreement; (ii) all necessary organizational action has been taken by it to authorize the execution, delivery and performance of this Agreement and this Agreement has been duly executed and delivered by it; (iii) there are no suits, actions, proceedings or investigations pending or, to the best of its knowledge, threatened against or involving it before any court, arbitrator or administrative or governmental body which would prohibit or restrict it from executing, delivering and performing this Agreement; (iv) the authorization, execution, delivery and performance of this Agreement will not result in any breach or default under any other document, instrument or agreement to which it is a party or by which it is subject or bound; (v) the authorization, execution, delivery and performance of this Agreement will not violate

any applicable law, statute, regulation, rule, ordinance, code or order applicable to it; (vi) this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by any applicable bankruptcy, reorganization, insolvency or other laws affecting creditors' rights and by general principles of equity; and (vii) no consent, license, permit, approval or authorization of any person, entity or governmental authority, is required in connection with its execution, delivery or performance of this Agreement and the consummation of the transactions contemplated by this Agreement. All representations and warranties of Assignee, BGCSA and the City made in this Agreement shall survive the execution and delivery of this Agreement.

14. **Further Assurances.** The City, BGCSA, and Assignee agree to execute or procure any additional documents reasonably required to carry out the terms and conditions of this Agreement.

15. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the City, Assignee, BGCSA, and their respective successors and assigns.

16. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

17. **Governing Law.** The laws of the State of Texas (without giving effect to its conflicts of laws principles) shall govern all matters arising out of, in connection with or relating to this Agreement, including its validity, interpretation, construction, performance and enforcement.

18. **Entire Agreement.** This Agreement sets forth all terms, conditions and understandings among Assignee, BGCSA, and the City with respect to the subject matter of this Agreement, and there are no terms, conditions or understandings either oral or written between the parties to this Agreement with regard to such subject matter other than as set forth in this Agreement.

19. **Modification of Agreement; Waivers.** None of the terms and provisions of this Agreement may be amended, extended, renewed, terminated, or supplemented unless in writing and signed by all of the parties to this Agreement. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

20. **WAIVER OF JURY TRIAL.** BGCSA, THE CITY, AND ASSIGNEE, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT AND ANY TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.



BGCSA:

BOYS & GIRLS CLUBS OF SAN ANTONIO, INC., a Texas nonprofit corporation

By Angie Mock
Angie Mock, CEO

Signature Date: 12/16/16

ASSIGNEE:

BGCSA MAYS BRANCH, INC., a Texas nonprofit corporation

By Leticia Mond
Leticia Mond, President

Signature Date: 12/16/16

APPROVED AS TO FORM

[Signature]
CITY ATTORNEY

CITY OF SAN ANTONIO:

By: Harmer Garza III
Name: Harmer Garza III, Interim Asst. Director for
Title: City Engineer/Director, TCI Parks and Recreation Director

Signature Date: 12-19-16

Attest:

[Signature]
City Clerk

~~By: _____
Name: _____
Title: Board Chairman
Signature Date: _____~~

[Signature Page to Assignment, Assumption and Amendment to Ground Lease and Sublease]

EXHIBIT A

LEGAL DESCRIPTION OF LAND

Real property in San Antonio, Texas, described as follows:

Lot 50, New City Block 3127, Lonestar Boys & Girls Club, IDZ, in the City of San Antonio Bexar County, Texas according to plat thereof recorded in Volume 9695, Page 118, Deed and Plat Records, Bexar County, Texas.