ORDINANCE 12-40

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND THE BOYS AND GIRLS CLUB OF ST. LUCIE COUNTY, INC. FOR THE PROPERTY LOCATED AT 2000 SE VILLAGE GREEN DRIVE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into the Lease Agreement between the City of Port St. Lucie and the Boys & Girls Club of St. Lucie County, Inc., a Florida non-profit corporation, said Lease Agreement consisting of Tract M-1 FIRST REPLAT OF PORT ST. LUCIE SECTION SIXTY-ONE, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of St. Lucie County, Florida, to be substantially in the form of that certain Lease Agreement attached hereto and incorporated herein by reference.

Section 2. This Ordinance shall become effective immediately upon its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this _____ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM: _____
Roger G. Orr, City Attorney

REPLACEMENT PAGE #1

COUNCIL ITEM 10F
DATE 7/23/12

LEASE AGREEMENT

This agreement is made and entered into this _____ day of _____, 2012, by and between the **CITY OF PORT ST. LUCIE, a Florida municipal corporation** ("Lessor") and **BOYS & GIRLS CLUB OF ST. LUCIE COUNTY, INC.**, ("Lessee"). Lessor leases to Lessee the Premises located at 2000 SE Village Green, Port St. Lucie, Florida 34952 and more particularly described as follows:

Tract M-1 FIRST REPLAT OF PORT ST. LUCIE SECTION SIXTY-ONE, according to the Plat thereof, recorded in Plat Book 24, Page 10, of the Public Records of St. Lucie County, Florida;

together with all appurtenances, ("Premises"), for the terms and upon the conditions and agreements hereinafter set forth in this Lease Agreement ("Lease").

1. TERM. The term of this Lease is for a period of one (1) year and shall begin on August 14, 2012, and except as otherwise provided or extended upon mutual agreement of the parties, and end on August 13, 2013 at midnight.

Thereafter, extension of occupancy, if any, will be determined on a month-to-month basis.

2. PERSONAL PROPERTY INCLUDED IN RENTAL. None.

3. RENT. Lessees shall pay to Lessor rent in the amount One Hundred Dollars ($100.00) per month, in advance, without notice on demand, with the first installment being due on August 14, 2012, and on the 1st day of each month thereafter. Payments may be mailed to the following address:

City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, Florida 34984-5099
ATTN: City Attorney's Office

If payments are not received by the 10th of the month an additional Fifty and 00/100 Dollars ($50.00) late fee shall be added to the monthly payment due.

4. DISABLED INDIVIDUALS

Lessee understands, recognizes, and warrants to the best of its knowledge that all common areas are, and shall at all times be maintained, in accordance with the requirements for disabled individuals contained in the Americans with Disabilities Act of 1990 (the "ADA") and Section 553.501 et seq. of the Florida Statutes, as presently written and as may be hereafter amended.

Lessee further warrants that the Leased Premises and access thereto, including but not limited to rest rooms, hallways, entryways to the street, and accessible parking, if parking is provided under the Lease Agreement, shall be in compliance with the accessibility standards for government programs contained in the ADA and all requirements of Section 553.501 et seq. of the Florida Statutes. Lessee covenants and agrees that the Leased Premises and access thereto shall at all times be maintained in accordance with the requirements of Section 255.21 of the Florida Statutes at Lessee's cost and expense.

Lessee agrees to correct any and all violations of the obligations of Lessee under this Article within ninety (90) days of written notice by Lessor of the existence of the same, provided that, if such violations cannot feasibly be corrected within said ninety (90) day period, then Lessee agrees to commence such repairs within said ninety (90) day period and to diligently pursue the completion of same within a reasonably period thereafter.

Lessor recognizes and agrees that throughout the term of the Lease Agreement, Lessee may in its discretion change its employees or programs which operate from the Leased Premises. Lessor agrees that Lessee may, at Lessee's expense and subject to Lessor's prior reasonable written approval, make such changes to the Leased premises or the access thereto as may be required by Lessee to accommodate disabled individuals or to provide program accessibility in connection with any such change in Lessee's programs or work force.

5. TERMINATION. Lessee or Lessor may terminate this Agreement upon written notice to the other not later than 60 days prior to the expiration of the term stated herein.

6. INSURANCE. Lessee shall, at Lessee's expense, procure and maintain in force during the term of the lease and any extension thereof, public liability insurance

through insurers approved by the Lessor. Said insurance coverage shall name and include the City of Port St. Lucie, a political subdivision of the State of Florida, its officers, agents, and employees, as additional insured. Such insurance coverage shall be adequate to protect against liability for damage claims through public use of, or arising out of accidents occurring on or within the Premises in a minimum amount of One Million and 00/100 Dollars ($1,000,000.00) for each person injured, One Million and 00/100 Dollars ($1,000,000.00) for any one accident, and One Million and 00/100 Dollars ($1,000,000.00) for property damage. The policy shall be delivered to the City for safekeeping and updated as needed to continue for the term of this lease and any extension thereof. Lessee shall obtain a written obligation from the insurers to notify Lessor in writing at least thirty (30) days prior to the cancellation or refusal to renew any policy. If the insurance policy is not kept in force during the term of this Lease or any extension thereof, Lessor may procure the necessary insurance and pay the premium and Lessee shall repay the premium to Lessor as an additional rent installment.

7. PEACEFUL ENJOYMENT. Lessor covenants that, on paying the rent and performing the covenants contained herein, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises for the agreed term.

8. USE AND OCCUPANCY. Lessee shall use the Premises as an administrative location for the Boys & Girls Club of St. Lucie County. Lessee acknowledges that the premise is also being leased to the Boys and Girls Club of St. Lucie County, for the furtherance of community and civic goals. Lessee shall restrict its use to such purposes and shall not permit the use of the Premises for any other purpose without the written consent of the City, provided, however, such consent shall not be unreasonably withheld.

Lessee is given the right to refer to the Premises owned by the City as the Boys & Girls Club of St. Lucie County. In addition, Lessee may erect or otherwise place a sign upon the premises, which identifies the Premises as the Boys & Girls Club of St. Lucie County, Inc., so long as such sign is approved by the City and complies with all applicable ordinances, codes, rules, laws, or other regulations.

As a further condition of this Lease, Lessee shall not, in the use or occupation of the Premises or in the conduct of the Boys and Girls Club activities, discriminate against any

worker, employee, applicant, participant, or any member of the public because of race, creed, color, religion, age, sex, or national origin, nor otherwise commit a discriminatory act. Lessee shall not use the Premises for any illegal, immoral, or exceedingly hazardous activities, nor allow any waste or nuisance on the premises.

9. ASSIGNABILITY AND RENEWAL. Lessee shall not assign this Lease, nor let or sublet the whole or any part of the Premises without the express written permission of Lessor. The Lease may be renewed at the discretion of Lessor, for such period of time as may be decided by the parties, provided that Lessee shall give the City, prior to the expiration of the Lease, two (2) months notice in writing of its desire to renew the lease.

10. LIABILITY FOR ABANDONING PREMISES. If at any time during the term of this Lease, Lessee abandons the Premises or any part of the Premises, Lessor shall have the right to immediate possession of the Premises without becoming liable to Lessee for damages or for any payment of any kind whatsoever. If Lessor's right of reentry is exercised following abandonment of the Premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the Premises to also have been abandoned, in which case Lessor may dispose of all the personal property in any manner Lessor shall deem proper and is relieved of all liability for doing so.

11. LIABILITY FOR DAMAGE OR INJURY. Lessor shall not be liable for any damage or injury, which may be sustained by any party or persons on the leased Premises or connected in any way with Lessee's occupation of the leased Premises, or relating to Lessee's construction, improvement, maintenance, or operation of the leased Premises, including but not limited to those damages or losses occurring on the sidewalks or parking area within or adjacent to the leased Premises during the term of this lease or any extension thereof, incurred as a result of any negligent act or omission by Lessee. Lessee shall indemnify the City from all liability, loss, or other damage claims or obligations resulting from any injuries or losses caused by the negligence or intentional act of Lessee, its agents, employees, guests, invitees, licensees, or assigns.

12. UTILITIES. Lessee shall pay all charges a pro-rated amount for collection for telephone, electricity, garbage collection, water, gas, sewer, cable, grounds maintenance, or any other maintenance service used during the term of this Lease or any renewal of this

Lease. Lessee's pro-rated share of utility charges shall be calculated based upon Lessee's leased percentage of the leased facility overall square footage. For example, if Lessee is leasing 60% of the overall leased facility, then Lessee shall be responsible for 60% of the overall utility expenses.

13. IMPROVEMENTS. Lessee shall have the right, at its own expense, during the term of the lease, to improve or alter the Premises. Lessee covenants that any such improvements and alterations shall be made in a workmanlike manner and in compliance with all applicable federal, state, and municipal laws, and regulations.

14. USE AND MAINTENANCE OF SURROUNDING GROUNDS. Boys and Girls Club of St. Lucie County Inc., agrees to keep the grounds in neat order and condition, including but not limited to regular lawn maintenance and to permit no waste or injury to the trees or shrubbery.

15. REPAIRS AND MAINTENANCE BY LESSEE. Lessor does not warrant the condition of the Premises nor does Lessor warrant that the Premises are fit for a particular use. Lessee hereby accepts the Premises "as is" and, at its own expense, shall have the sole responsibility of repairing and ensuring that the Premises are safe for the use of the Public. In addition, Lessee shall, at its own expense, maintain the premises in a sanitary and habitable condition during the time of occupancy. Lessee shall be responsible for all maintenance and all repairs of any kind or condition, no matter the cause. The Lessee is strictly liable for any and all maintenance, repairs, or damage. The Lessor shall not be responsible for maintenance or repairs, under any condition, including but not limited to damage caused by fire, storm, flood, or accident.

16. COMPLIANCE WITH LAW. Lessee shall comply with all state and local laws, ordinances, and rules, and all orders of the board of health or other authorities affecting the occupancy and preservation of the Premises during the term of this Lease.

17. NO LIENS CREATED. Lessee covenants and agrees that it has no power to incur any indebtedness giving a right to a lien of any kind or character upon the right, title, and interest of Lessor in and to the property or the building, and that no third person shall ever be entitled to any lien, directly or indirectly derived through or under the other party, or its agents or servants, or on account of any act or omission of any other party. All persons

contracting with Lessee, or furnishing materials or labor to Lessee, or to its agents or servants, as well as all persons whomsoever, shall be bound by this provision of the Lease.

18. HAZARDOUS MATERIALS. Lessee shall not keep or have on the Premises any article or thing of a dangerous, inflammable, or explosive character that might increase the chance of eruption of fire on the Premises, or that, ordinarily, would be considered "hazardous" or "extra hazardous" by any responsible insurance company.

19. LESSOR'S RIGHT OF ENTRY FOR INSPECTION AND REPAIRS. Lessor or Lessor's agents shall have the right to enter the Premises at all reasonable hours with reasonable notice to Lessee during the term of the Lease for the purpose of inspection as may be necessary for the preservation of the Premises in a safe and sanitary condition.

20. EFFECT OF LOSS OR DESTRUCTION OF PREMISES. Should the premises be damaged to the extent that the premises or any portion thereof, is uninhabitable, the Lessor will not repair or remedy such damage, or subsequent inconvenience to the Lessee.

21. SURRENDER OF POSSESSION AT TERMINATION OF LEASE. Lessee agrees to surrender to Lessor at the end of the term of this Lease Agreement, or any extension thereof, said Leased Premises in as good condition as said Leased Premises were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted

21. DEFAULT. The failure of Lessee to comply with each and every term or condition of this Lease shall constitute a breach of this lease. Lessee shall have thirty (30) days after the date of written notice of any breach to correct the condition specified in the notice or, if the corrections cannot be made within the thirty (30) day period, Lessee shall have a reasonable time to correct the default if action is commenced within fifteen (15) days after receipt of notice.

22. BINDING ON SUCCESSORS AND ASSIGNS. The covenants and conditions contained in this Lease shall apply to and bind all successors, assigns, and legal representatives of the parties to this Lease, and all covenants are to be construed as conditions.

23. REMEDIES. Any and all remedies available to Lessor are cumulative and non-exclusive, and Lessor shall be entitled to pursue either the rights enumerated in this Lease or remedies authorized by law, or both. Should any party be required to bring legal action to enforce the terms and provisions of this lease agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

24. NOTICES. Any notice required or permitted to be given hereunder shall be in writing and may be given by hand-delivery and shall be deemed given on the date of delivery; registered or certified mail and shall be deemed given the third day following the date of mailing; or overnight delivery and shall be deemed given the following day.

All notices to Lessee shall be addressed to Lessee at the premises, and the Lessor at the following address:

City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, Florida 34984-5099
ATTN: City Attorney
Phone No: 772-871-5294

Boys and Girls Club of St. Lucie County, Inc.
Norman H. Penner, Jr., Executive Director
607 North 7th Street, Suite #1
Fort Pierce, Florida 34950
Phone No: 772-873-1640

25. PARTIAL INVALIDITY. It is agreed if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto if any provision of this Lease is capable of two constructions, one of which render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

26. MODIFICATION OF LEASE. This Lease may be modified only by mutual written agreement of all parties.

27. GOVERNING LAW. The laws of the State of Florida shall govern the validity, performance and enforcement of this Lease. Should any party institute legal action to

be in St. Lucie County, Florida; and both parties hereby waive any defenses to the contrary. Although Lessor drew the printed provisions of this Lease, this Lease shall not be construed either for or against Lessee or Lessor, but shall be interpreted in accord with the general tenor of this language.

28. MISCELLANEOUS PROVISIONS.

1. Time is of the essence of this Lease.

2. The laws of the State of Florida shall govern this Lease.

3. No waiver by Lessor of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act of Lessee, whether or not similar to the act so consented to or approved. The subsequent acceptance of rent shall not be deemed a waiver of any preceding breach by Lessee of any term, covenant or condition of the Lease, other than the failure of Lessee to pay the particular rent so accepted.

[SIGNATURES CONTINUE ON NEXT PAGE]

In witness whereof, the undersigned parties have executed this Lease Agreement on the day and year first written above.

Signed in the presence of:

BOYS & GIRLS CLUB OF ST. LUCIE COUNTY, INC., a Florida non-profit Corporation

_____

Print Name:_____

By:_____
Norman H. Penner, Jr., President
Board of Directors
(Lessee)

_____

Print Name:_____

STATE OF FLORIDA)
)SS:
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012 by NORMAN H. PENNER, JR., President, Board of Directors, on behalf of the Boys & Girls Club of St. Lucie County, Inc., a Florida non-profit corporation. He is personally known to me [____] or has produced _____ as identification.

_____

Notary Public

Print Name:_____

My Commission Expires:_____

Signed in the presence of:

CITY OF PORT ST. LUCIE, a Florida municipal corporation

_____

Print Name:_____

By:_____
Gregory J. Oravec, City Manager
(Lessor)

_____

Print Name:_____

STATE OF FLORIDA)
)SS:
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by GREGORY J. ORAVEC, as City Manager of the City of Port St. Lucie, a Florida municipality, on behalf of the City of Port St. Lucie, Florida. He is personally known to me.

_____
Notary Public
Print Name:_____
My Commission Expires:_____

APPROVED AS TO FORM
AND CORRECTNESS

_____
Pam E. Booker, Senior Assistant City Attorney

H:\denise\contracts, agmts, lease agmts, interlocals\Lease Agreements\Boys & Girls Club-Village Green Dr..doc

MEMORANDUM

TO: GREGORY J. ORAVEC, CITY MANAGER

FROM: PAM E. BOOKER, SENIOR ASSISTANT CITY ATTORNEY

DATE: JULY 17, 2012

SUBJECT: BOYS & GIRLS CLUB LEASE AGREEMENT

Attached please find the Lease Agreement and corresponding Ordinance authorizing the City Manager to enter into a Lease Agreement with the Boys & Girls Club of St. Lucie County, Inc. The Lease Agreement is for review and approval by the City Council.

The attached Agreement is for the property located at 2000 SE Village Green Drive, in Port St. Lucie. The monthly rent is One Hundred Dollars. The Lessee will pay for all expenses associated with the Lease of the property including, but not limited to utilities, garbage collection, lawn and property maintenance, and any improvements or alterations to the premises. Please place this item on the July 23, 2012, City Council agenda. Should you have any questions or need additional information, please contact me at 871-5165

PB/liw
Attach.

RECEIVED

JUN 17 2012

City Manager's Office

H:\denise\pam\memos\boys & girls club lease -2012-2013- memo to city mgr.doc