Agreement

This Agreement is between Boys & Girls Clubs of the Olympic Peninsula, a Washington not-for-profit corporation (“BGCOP”), and Sequim School District No. 323, a municipal corporation (the “District”). The term of this Agreement begins on the first day of the School Year (as defined below) and ends on the last day of such School Year.

Pursuant to a Lease Agreement dated June 30, 1998 (the “Lease”), BGCOP leases from the District the land upon which BGCOP’s Carroll C. Kendall facility, 400 W. Fir Street, Sequim, Washington (the “Facility”), is situated. The Lease provides, among other things, that the District is entitled to use certain areas of the Facility for District purposes during normal school hours if BGCOP is not using them at the time desired by the District.

The Facility includes among other areas a gymnasium (the “Gym”), which is one of the areas referred to in the Lease. BGCOP does not currently use the Gym during normal school hours.

The District has notified BGCOP that during the 2016/2017 school year (including any snow make-up days, the “School Year”) it will be using the Gym during normal school hours for physical education classes conducted by Helen Haller Elementary School (the “School”).

This Agreement sets forth the terms of such use, to which terms BGCOP and the District hereby agree. To the extent the terms of this Agreement conflict with the terms of the Lease, the terms of this Agreement shall govern.

During the School Year, from 8:00 a.m. to 2:30 p.m. on each Monday through Friday on which both the Facility and the Gym are open, BGCOP shall make the Gym available to: (i) one or more of the School’s physical education instructors for the conduct of physical education programs that are part of the School’s regular curriculum; and (ii) the students enrolled in such programs (collectively with such instructors, the “Gym Users”), provided that at least one of such instructors is present whenever any of such students is present.

It is understood that the Facility will not be open on federal or Washington holidays, that the Facility may occasionally be closed for maintenance or event-preparation activities, and that even when the Facility is open the Gym may occasionally be closed for a similar reason. BGCOP shall use its best efforts to provide the District with reasonable advance notice of any such closing other than one on a federal or Washington holiday.

Gym Users may enter the Facility using either the south (front) entrance or the east entrance. Gym Users who are adults must sign in at the front desk upon arrival, as must District personnel who are not Gym Users when they visit the Facility. Gym Users who are students need not check in at the front desk, but must report to the School and then transit from there to the Facility. The District shall notify the parents (or guardians) of student Gym Users that the Facility is not to be used by them as a drop-off or pick-up location.

The Gym Users may use areas of the Facility other than the Gym solely for (i) passage through the Facility to and from the Gym, and (ii) passage through the Facility to and from, and use of, those restrooms located in the Facility that they are permitted to use: in the case of adults, the two restrooms near the east entrance to the Facility, and in the case of students, the restrooms across from the Unit Director’s office. Such passage shall be direct and shall not include wandering about the Facility. It is expressly understood that this Agreement does not entitle the District or any of the Gym Users to any of the benefits of membership in BGCOP.

 Notwithstanding the preceding paragraphs, nothing in this Agreement shall constitute a grant of access to any part of the Facility to any child endangerer (as defined below).

The District shall conduct its activities at the Facility in compliance with all applicable laws, rules and regulations of any federal, state or city governmental authority.

While in or in the vicinity of the Facility, Gym Users shall comply with all such laws, rules and regulations, shall conduct themselves in an orderly fashion, shall act with respect and civility, and (whether or not required by any of the foregoing) shall not possess alcoholic beverages, illegal drugs, marijuana, firearms or knives, or use tobacco. Nor shall Gym Users bring pets or animals other than service dogs to the Facility. BGCOP may deny a Gym User who fails to comply with the foregoing any further access to the Facility.

 The District shall be responsible for the safety of the Gym Users. Without limiting the generality of the previous sentence, the District shall perform all supervisory duties for its activities in or in the vicinity of the Facility, shall see that all student Gym Users in transit from the School to the Facility or from the Facility to the School are accompanied by an adult Gym User, shall see that the doors at each of the Facility’s entrances are closed and locked immediately after Gym Users’ transits through them, and shall see that the doors from the Gym to the outside are kept closed and secured during the District’s use of the Gym.

It is understood that at such times as the Gym is not made available to the District pursuant to this Agreement, the Gym may be used by BGCOP for its activities. The District shall be responsible for cleanup of the Gym at the conclusion of each day’s use thereof by the District, as well as for cleanup at that time of any other area of the Facility necessitated as a result of an act of a Gym User during that day. And at the conclusion of each day’s use of the Gym Area by the District, the District shall restore the Gym to its condition immediately preceding the beginning of such use that day, and shall restore the configuration of the contents of the Gym to the configuration existing immediately preceding the beginning of such use that day. BGCOP shall be responsible for cleanup of the Gym at the conclusion of each day’s subsequent use thereof by BGCOP, but shall not be required to reconfigure the contents thereof to suit the District’s purpose.

 Neither the Gym nor any other area of the Facility may be used for the storage of District or Gym User equipment, materials, supplies or other items unless and until otherwise agreed by BGCOP in writing. All items stored at the Facility with such agreement shall be stored at the sole risk of the District or the Gym User, as applicable. BGCOP shall not be responsible for, or for the condition of, any property of the District or any Gym User.

The District shall promptly repair any damage to the Gym or any other area of the Facility caused by a Gym User, ordinary wear and tear excepted.

 The District acknowleges that its right pursuant to the Lease to use certain areas of the Facility does not include the right of it or any Gym User to use any of BGCOP’s equipment, furnishings, supplies or other items, and that the District’s use of the Gym will result in additional depreciation of the Facility and necessitate more cleanup than would otherwise be needed. Accordingly, the District agrees that it will be responsible for cleaning the Gym floor three times each week.

Although the Lease contemplates that the District will reimburse BGCOP for BGCOP’s costs of utilities for heat and light necessitated by the District’s use of the Gym, BGCOP waives its right to such reimbursement for such costs during the School Year.

 The District shall be responsible for the acts and omissions of Gym Users in or in the vicinity of the Facility, including without limitation for any death of or injury to person or damage to or destruction of property resulting from any such act or omission. The District shall hold harmless BGCOP, its directors, officers, employees, agents and volunteers, from and against any claim, demand, loss, damage, judgment, cost of investigation or defense, or other payment or expense of any nature or description (including without limitation any of the foregoing in connection with any suit, action, proceeding or appeal) arising from any act or omission of any of the Gym Users in or in the vicinity of the Facility or the allegation of any such act or omission.

The District confirms that at all times during the term of this Agreement the liability insurance it carries will apply to the acts and omissions of Gym Users in or in the vicinity of the Facility, with BGCOP, its directors, officers, employees, agents and volunteers, named as additional insureds. A certificate of insurance confirming the coverage required of it shall be provided to BGCOP by the District upon BGCOP’s request.

 The District acknowledges BGCOP’s intent that no child endangerer (as defined below) be present in or in the vicinity of the Facility. The District represents that it bars child endangerers from employment by it and from serving as volunteers in its activities. The District agrees to promptly inform BGCOP in the event it becomes aware that a Gym User is a child endangerer.

For purposes of this Agreement, a “child endangerer” is a person who either (i) is registered or required to register as a sex offender under the laws of the State of Washington, or under a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child, or (ii) who has been convicted of, or has admitted to, a sex offense against a child. Sex offenses against a child include but are not limited to rape, sexual assault, child molestation, criminal sexual conduct, enticing a child into a motor vehicle, structure or isolated area, child pornography, and lewdness.

Neither this Agreement nor any of the rights or obligations of either party under this Agreement may be assigned without the prior written consent of the other party.

This Agreement is scheduled to terminate as provided in its first paragraph. This Agreement may be terminated prior to its scheduled termination (i) by mutual agreement of BGCOP and the District, (ii) by the Distict in its sole discretion or (iii) by BGCOP by giving written notice to the District in the event the District or any of the Gym Users has breached this Agreement in any material respect or the District and the Gym Users considered as a whole have repeatedly breached this Agreement in any respect. In the event this Agreement is terminated, either as scheduled or pursuant to this paragraph, each party shall remain liable for any breach of this Agreement by it that has occurred prior to such termination. If such party is the District, it shall also remain liable for any breach of this Agreement by any of the Gym Users that has occurred prior to such termination and responsible for, and obligated to perform its hold harmless undertakings related to, acts or omissions of Gym Users in or in the vicinity of the Facility that have occurred prior to such termination.

This Agreement sets forth the entire agreement and understanding of the parties with respect to its subject matter. This Agreement may be modified or amended only by a writing signed by both of the parties.

Nothing in this Agreement is intended to create nor shall create an agency, partnership or joint venture agreement, arrangement or relationship between the parties, nor shall anything in this Agreement constitute an endorsement by either party of the other party or of any philosophy or policy of the other party.

 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any suit or action in any form brought by either party to enforce any provision of this Agreement shall be brought only in Clallam County, Washington. In any such suit or action, the prevailing party shall be entitled to recover all reasonable costs, including reasonable attorneys’ fees, incurred by it.

 IN WITNESS WHEREOF, the parties have executed this Agreement.

Boys & Girls Clubs of the Olympic Peninsula Sequim School District No. 323

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mary L. Budke, Gary Neal,

 Executive Director Superintendent of Sequim School District