

NATATORIUM LEASE AND USE AGREEMENT

This Natatorium Lease and Use Agreement (the “Lease” or “Agreement”) is made and entered into as of the Effective Date (as hereinafter defined) by and between the Clements Boys and Girls Club, Inc., a Texas non-profit corporation (“Landlord” or the “Club”) and Killeen Independent School District, a political subdivision of the State of Texas (the “Tenant”, “KISD” or the “District”). The Tenant and Landlord are referred to herein collectively as the “Parties” and individually as a “Party.” As used herein, the term “Effective Date” shall mean September 29, 2026.

RECITALS

WHEREAS, Landlord owns and operates a facility located at 5100 Trimmier Rd., Killeen, Texas 76542 (“Facility”), which Facility contains a natatorium (“Natatorium”). The District desires to continue to lease and utilize the Natatorium for its students, coaches, and District personnel;

WHEREAS, the parties terminated all prior agreements and entered a new two-year lease agreement related to the Natatorium on or about August 14, 2024, which agreement is now expired; and

WHEREAS, the Parties wish to enter into a new lease agreement under the terms stated herein.

NOW THEREFORE, in consideration of the mutual covenants herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Club and District agree as follows:

AGREEMENT

In consideration of the mutual covenants, agreements, and benefits to both Parties, it is agreed as follows:

1. PREMISES

Landlord agrees to rent and lease the Premises to Tenant. The Premises shall include the Natatorium portion of the Facility located at 5100 Trimmier Rd., Killeen, Texas 76542. The Premises and Natatorium are further depicted on Exhibit A, attached hereto and incorporated herein. Tenant shall have the exclusive right to occupy and use the Natatorium as set forth herein during the term of this Agreement, and any extensions thereof, subject to further terms set forth herein. Specifically, the Club authorizes the District to utilize the Natatorium as set forth in paragraph 1.2, below. Attendant to the Tenant’s lease and use of the Premises, Tenant may use any common area such as sidewalks; common corridors; vending areas; lobby areas; and restrooms (the “Common Areas”).

1.1. Use by KISD.

- 1.1.1. Natatorium. KISD shall have the exclusive right of occupancy and use of the Natatorium for all swim team, swim classes, swim practices, competitions, and other KISD uses at any and all times as determined by KISD. For such periods of time, KISD's right to occupy and use the Natatorium shall be exclusive unless KISD consents in writing to another person or entities' use of the Natatorium during such time.
- 1.1.2. Storage. KISD shall have the exclusive right to store materials and equipment related to swim team, swim classes, swim practices, and competitions at the Natatorium during the term of this Agreement in a secure location.
- 1.1.3. Use of Parking Lot. Without limiting any forgoing provisions, KISD, including its employees, students, contractors and guests, shall have the non-exclusive, priority right of access and use the Natatorium parking lot for KISD sponsored events and meetings. Any other use by the Club during such events shall be limited to any extent same interferes with KISD's use. KISD shall have further use to the extent KISD's use does not interfere with the Club's use of the Natatorium parking lot.
- 1.2. Concessions. The District shall have the exclusive right to operate all concessions at the Natatorium during any District event and shall be entitled to keep all proceeds.
- 1.3. Operation and Maintenance. Subject to the terms herein, KISD shall be solely responsible for the maintenance and operation of the Natatorium during the Term of this Agreement. During periods of KISD use, KISD shall provide staffing sufficient for supervision and all other maintenance, including but not limited to lifeguards and staffing trained and responsible for ensuring the Natatorium is safe, clean, and in an acceptable condition for swim related uses.
 - 1.3.1. During the Term of this Lease, Landlord will, at its own expense, perform the following:
 - a. Pay directly to all providers when due the costs of water, sewer, electric, and gas services for the Facility.
 - b. Provide for utilities to the Natatorium and Common Areas at all times the Natatorium is being used by the District.
 - c. Use reasonable efforts to keep other tenants and persons from blocking or obstructing the hallways, restroom doorways, stairways, lobby and entrances of the Natatorium except in the event of repairs, renovations, or other work that are necessary for maintenance of the Facility.

- d. Provide janitorial services for the Facility, including common areas, subject to additional terms below regarding the District's responsibilities for the Natatorium.
 - e. Comply with all requirements of the Americans with Disabilities Act, the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations, and other requirements, now or hereafter in force for the general use of the Facility, including the Natatorium.
- 1.3.2. As rent and consideration for the District's rights herein, the District agrees to the following, in addition to the other covenants:
- f. Tenant Utilities Costs. Tenant shall be responsible for the following utilities costs: (1) full amount of separately metered costs for electricity to the Natatorium, (2) Seventy Percent (70%) of costs for water to the Natatorium (2) Sixty-Five Percent (65%) of costs for gas to the Natatorium. Such amounts shall be due by District within thirty (30) days of Landlord's presentation of the contracted utility service invoices to the District.
 - g. Routine Pool Service. The District shall be responsible for paying annually for the cost of routine pool service. Payments by Tenant shall be due within thirty (30) days of Landlord's presentation of the contracted service invoices to the District, until such time as the not-to-exceed amount has been exhausted for the then current year.
 - h. Ongoing Pool Maintenance and Repairs. The District shall be responsible for costs not to exceed Two-Hundred Thousand Dollars and No Cents (\$200,000.00) annually for maintenance and repairs to the Natatorium pool, provided that upon exhaustion of such amount annually, the parties must negotiate in good faith to determine any further amounts that may be paid by the District for such maintenance or repairs, and upon failure to resolve such negotiation within thirty (30) days of either party providing notice to the other party of the need for such maintenance or repairs, either party may terminate this Agreement upon an additional thirty (30) days written notice. Such payments by the District up to the maximum annual amount shall be due thirty (30) days upon presentation of an invoice for such costs incurred by Landlord.
 - i. HVAC. The District shall be responsible for the costs for HVAC maintenance to the Natatorium for an annual amount not to exceed Sixty Thousand Dollars and No cents (\$60,000.00). Additionally, in the event such costs exceed Sixty Thousand Dollars and No cents (\$60,000.00) annually, the District shall be responsible for Fifty Percent (50%) of such additional costs. Such amounts shall be due

within thirty (30) days of Landlord's presentation of the contracted service invoices to the District.

- j. The District shall be responsible for providing janitorial services for the Natatorium.

2. CRIMINAL HISTORY BACKGROUND CHECKS

The Club shall conduct a national criminal history record information review on those employees or applicants for employment and any subcontractor who has or will have continuing duties related to this Agreement and those employees or applicants who have or will have direct contact with KISD students as provided by Texas Education Code §22.083 and provide all necessary certifications to KISD as specified by that section. The Club shall prevent persons from providing services to KISD or having contact with KISD students if the employee, applicant, or subcontractor has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code §22.085. In the event the Club is unable to perform the statutorily required background check on any such person, the Club shall provide or cause to be provided all necessary information or fingerprints to the District to allow it to conduct the check.

3. TERM AND TERMINATION

- 3.1. The term of this Agreement shall commence on the Effective Date and shall continue until May 31, 2027 ("Term"), and upon the expiration of such Term, the Lease shall terminate and the Parties shall have no further obligations to one another.
- 3.2. The District may terminate this Agreement, without penalty, with or without cause, upon sixty (60) days written notice, and upon the effective date of such termination, the parties shall have no further obligations to one another.
- 3.3 Should the property or facility become unusable for the tenant's purposes, the tenant reserves the right to terminate the agreement effective immediately.

4. FIXTURES

All fixtures and all personal property created or placed in, on, or at the Facility by Tenant shall remain the personal property of Tenant and may be removed by Tenant at Tenant's discretion at the expiration or earlier termination of this Lease even though the same may be attached to the Facility.

5. NOTICES

All notices, demands, and requests and other communications required or permitted hereunder shall be in writing, shall be sent by certified mail, return receipt requested; by courier; by electronic communications, including email and facsimile and shall be deemed to be delivered (i) upon first attempted delivery if sent by mail or courier; and (ii) upon transmittal if sent by electronic communications. Notices shall be sent as follows:

If to the Landlord:

Clements Boys & Girls Club, Inc.
Attn: Ann Ferris, President
703 N. 8th St.
Killeen, Texas 76541
Telephone: (254) 699-5808

If to the Tenant:

Killeen Independent School District
Attn: Scott Hequembourg,
Deputy Superintendent of Operations
200 N WS Young Drive
Killeen, Bell County, TX 76543
Telephone: (254) 336-2780
Email: Scott.Hequembourg@killeenisd.org

With copy to:

Adam Rich,
Assistant Superintendent for Facilities Services
Email: adam.rich@killeenisd.org

These addresses may be changed upon giving prior written notice in the manner set forth for notices herein.

6. INSURANCE

During the Term, both Parties will maintain in full force and effect commercial general liability insurance in a commercially reasonable amount. Landlord shall further carry commercially reasonable property insurance for an amount not below the current value of the Facility.

7. CASUALTY

In the event the Facility is damaged by fire or other casualty in a manner that materially alters the District's ability to use the Natatorium, as determined by the District, either Landlord or Tenant may terminate this Lease by notifying the other Party in writing.

8. CONDEMNATION

In the event that all or any portion of the Facility should be appropriated or taken by any public or quasi-public authority under the power of eminent domain, Landlord shall notify Tenant within fourteen (14) days of receiving notice from the condemning authority. After receiving notice of condemnation, Tenant, may terminate this Lease by giving thirty (30) days written notice to Landlord.

9. AVAILABLE GRANT FUNDS. The Parties shall work together in good faith during the Term of the Lease to seek and obtain any available grant funds to help pay for the costs of maintenance and repairs to the Natatorium. Should such funds become available and are actually

received by Landlord, any amounts owed under this Lease by Tenant for maintenance or repairs shall be reduced proportionately.

10. LANDLORD'S RECOURSE FOR DEFAULT

Except as otherwise set forth herein, Landlord agrees not to take any action or recourse against the Tenant for any default in the performance of Tenant's obligations, or any breach of this Lease by Tenant, until thirty (30) days after Landlord has given Tenant written notice setting out in detail the type and nature of the default or breach. In the event that the Tenant fails to cure any such breach or default within the 30-day time period, Landlord may terminate this Lease immediately thereafter and take any other action permitted by law or in equity for such breach.

11. TENANT'S RECOURSE FOR DEFAULT AND NON-APPROPRIATION

11.1. Except as otherwise set forth herein, in the event that Landlord has failed to perform any obligation specifically required of the Landlord herein, Tenant shall provide written notice to Landlord setting out in detail the type and nature of the default or breach and Landlord shall have thirty (30) days to cure the breach. In the event that the Landlord fails to cure any such breach or default within the 30-day time period, Tenant may terminate this Lease immediately thereafter and take any other action permitted by law or in equity for such breach.

11.2. Non-Appropriation by Tenant. The Landlord acknowledges and agrees that the obligations for payment for any of the services and other responsibilities of Tenant under this Lease constitutes a commitment of current revenues only and does not create an impermissible debt. In the event that Tenant's governing body fails to obtain and appropriate funds for the purposes of Tenant's obligations under the Lease for any fiscal year during the Term, then an Event of Non-Appropriation shall be deemed to have occurred. If a Non-Appropriation occurs, then: (i) Tenant will provide immediate notice of such Non-Appropriation and provide written notice of such failure at least 45 days prior to the end of the then current fiscal year or if Non-Appropriation has not occurred by such date, immediately upon Non-Appropriation; and (ii) this Lease shall terminate on the last day of the fiscal year for which funds were appropriated without penalty or expense to Tenant and Tenant shall not be obligated to pay for any Rent, services or perform any other obligations under this Lease. An Event of Non-Appropriation and the resulting termination of the Lease shall not be considered or deemed to be an event of default under this Lease.

12. PEACEFUL AND QUIET OCCUPANCY

Provided that Tenant is not in default of payment of Rent and in continued performance of the covenants and agreements herein contained, Tenant may peacefully and quietly enjoy the Natatorium and Common Areas for the Term herein set forth without interference by Landlord.

13. GOVERNING LAWS

This Lease shall be governed by the laws of the State of Texas. The exclusive venue for any cause of action or claim arising out of this Lease is in a state or federal court of competent jurisdiction in Bell County, Texas.

14. WAIVER

Waiver by either Party of a breach or violation of any provision of this Lease is not a waiver of any subsequent breach.

15. TEXAS PUBLIC INFORMATION ACT

The Parties expressly acknowledge that this Lease is subject to the Texas Public Information Act, Tex. Gov't Code Ann. §§ 552.001 *et seq.*, as amended (the "Act"). Each Party expressly understands and agrees that the other Party shall release any and all information necessary to comply with Texas law without the prior written consent of the other Party except as may be permitted or required under Section 552.305 of the Act or other applicable provisions that protect the rights of third parties.

16. NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY

Nothing in the Lease is construed as creating any personal liability on the part of any officer, director, or employee of either the Landlord or the Tenant, and the Parties expressly agree that the execution of the Lease does not create any personal liability on the part of any officer, director, employee, or agent of either the Landlord nor the Tenant. The Parties agree that no provision of this Lease extends the Tenant's or the Landlord's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas. Neither the execution of this Lease nor any other conduct of either Party relating to this Lease shall be considered a waiver by the Tenant of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas. Likewise, neither the execution of this Lease nor any other conduct of either Party relating to this Lease shall be considered a waiver by the Landlord of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas. The Parties do not agree to binding arbitration, nor does either Party waive its right to a jury trial.

17. NO THIRD-PARTY BENEFICIARIES

This Lease is made for the sole benefit of Landlord and the Tenant and their respective successors and permitted assigns, if any. Nothing in this Lease will create or be deemed to create a relationship between the Parties to this Lease and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

18. INDEPENDENT PARTIES

This Lease is not intended to create and shall not constitute a partnership or joint venture between the Parties. Landlord shall have and retain the exclusive right of control over employment, firing, discipline, compensation, insurance, and benefits of its employees in accordance with the applicable laws of the State of Texas. Tenant shall have and retain the exclusive right of control

over employment, firing, discipline, compensation, insurance, and benefits of its employees in accordance with the applicable laws of the State of Texas. Neither Party shall have the right to bind the other Party by contract or otherwise except as expressly set forth in this Lease. Nothing contained herein shall establish an agency, employee-employer relationship, partnership, joint enterprise, joint employer, or joint venture relationship by or between the Tenant and Landlord.

19. ENTIRE AGREEMENT AND MODIFICATION

This Lease contains the entire agreement between the Parties with respect to the subject matter contained herein. Without limitation to the forgoing, the parties explicitly terminate the 2002 Agreement, the 2014 Agreement and the 2019 Agreement. Upon expiration of the Term of this Agreement without further action to extend this Agreement or otherwise enter into a new Agreement, the parties will have no further obligation to one another. Any amendments or modifications concerning this Lease shall have no force and effect unless in writing and executed by both Parties.

20. ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

Pursuant to Texas Government Code Chapter 2271, the Club represents and warrants to the KISD that the Club does not boycott Israel and will not boycott Israel during the term of this Agreement. The Club verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If the Club has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement. The Club represents and warrants to the KISD that the Club does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement. The Club represents and warrants to the KISD that lessor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

21. FORM 1295

Prior to the Parties executing this Agreement, the Club will file an appropriate Form 1295 with the Texas Ethics Commission.

22. COUNTERPARTS; ELECTRONIC SIGNATURES AND TRANSMISSION

The Parties agree that this Lease may be executed in identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one document; provided each of the Parties hereto executes at least one counterpart. A facsimile or other electronic signature may be used to execute a Party's counterpart to the Lease and the other Party shall accept such signature as an original. The Parties consent to the transmission of copies of this Lease and any documents related to this Lease by electronic means.

EXECUTED as of the dates indicated below.

CLEMENTS BOYS & GIRLS CLUB, INC., a Texas Nonprofit Corporation

BY: Ann Farris

Ann Farris

President, Board of Directors

Date: 9/15/26

KILLEEN INDEPENDENT SCHOOL DISTRICT

By: _____

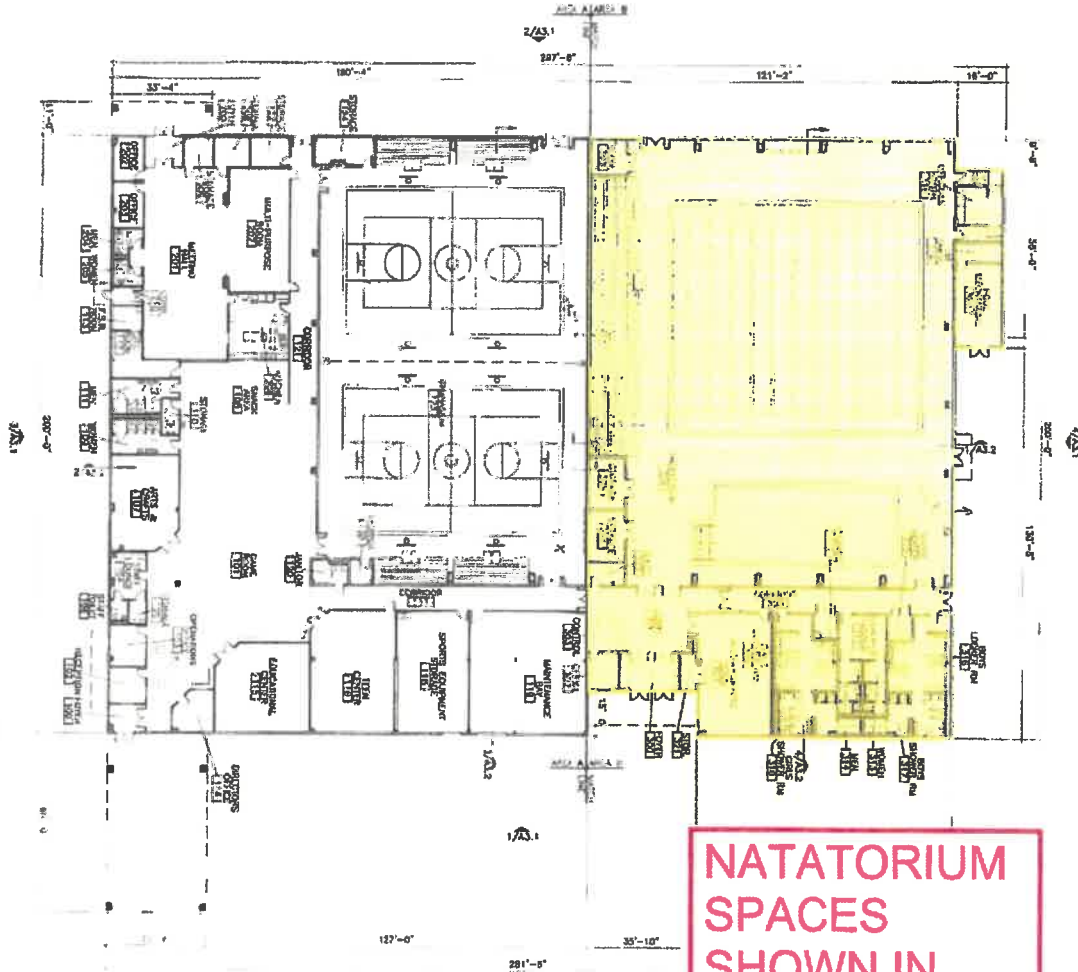
Brett E. Williams

President, Board of Trustees

Date: _____

EXHIBIT A

1 OVERALL FLOOR PLAN
1/8" = 1'-0"



NATATORIUM
SPACES
SHOWN IN
YELLOW

GENERAL NOTES
1. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS.
2. THE ARCHITECT SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF THE BUILDING.
3. THE OWNER SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE BUILDING.

NEW RECREATION CENTER AND NATATORIUM FOR
CLEMENTS BOYS AND GIRLS CLUB, INC.

ARCHITECTURE
OVERALL FLOOR PLAN

BEST
15215 S SR. 35
Dallas, TX 75247
(214) 963-8843

FRANK R. NICHOLS
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(214) 963-8843