

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

Napa County
1195 Third Street, Suite 301
Napa, CA 94559
Attn: Clerk of the Board

Exempt from recording fees: Gov Code §27383
Exempt from documentary transfer tax:
Rev & Tax Code §11922

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Access and Utilities Easement Agreement

Property Name: Napa County Fairgrounds Driveway Access and Utilities Easement
for Boys & Girls Club of St. Helena and Calistoga Clubhouse and
City of Calistoga Parks & Recreation Building
Date: January __, 2016

This Access and Utilities Easement Agreement (“AUE Agreement”) is entered into as of the date first written above by and between the Boys & Girls Club of St. Helena and Calistoga, a Section 501(c)3 non-profit corporation (“BGC”), and the City of Calistoga, a Municipal Corporation (the “City”), on the one hand, and Napa County, a subdivision of the State of California (“Grantor”), on the other hand. BGC, the City and Grantor shall from time to time hereinafter be referred to individually as “Party” or collectively as “Parties.” BGC and the City shall from time to time hereinafter be referred to individually as “Grantee” or together as “Grantees.”

RECITALS

WHEREAS, Grantor is the owner of that certain real property described and depicted by the legal description and diagram attached hereto and incorporated herein by this reference as Exhibit A (the “AUE Property”), which is a portion of Grantor’s Napa County Fairgrounds Property that is managed, operated and maintained on behalf of Grantor by the Napa County Fair Association (“NCFA”), a California Nonprofit Public Benefit Corporation; and

WHEREAS, beginning in or about June, 2016, BGC will begin construction of a new BGC Clubhouse that is to be located on a parcel of real property consisting of approximately 1.09 acres, which is owned by the City, which property is commonly identified as _____(street address) and as Napa County Assessor’s Parcel No. _____ (the “Clubhouse Property”), and which is located immediately adjacent and generally to the west of the AUE Property; and

WHEREAS, BGC has entered into, or will, prior to construction of the Clubhouse on the Clubhouse Property, enter into a 55-year Ground Lease with the City (the “55-Year Ground Lease”), a true and correct copy of which is attached hereto and incorporated herein by this reference as Exhibit B, whereby BGC will acquire or has acquired the right from the City to occupy and use the Clubhouse Property, subject to the City’s right to occupy and use a portion of the Clubhouse Property for a City Parks & Recreation Department building (the “City Building”); and

WHEREAS, concurrently with the execution of this AUE Agreement, Grantor, on the one hand, and BGC, on the other hand, are entering into a Temporary Construction Easement Agreement (the “TCE Agreement”) in order to give BGC the temporary rights for staging and storage of construction vehicles, machinery, equipment, and materials on an adjacent area of the Fairground Property and for ingress and egress across, and construction activities upon, the AUE Property, which temporary rights it needs to carry out its (a) construction of the new BGC Clubhouse and other facilities on the Clubhouse Property, (b) installation of utility lines, conduits and pipes under the surface of the AUE Property as allowed by this AUE Agreement, and (c) improvement of the AUE Property to a finished state as a safe, stable, usable and paved driveway along the entire length and width of the AUE Property, as required below,

NOW, THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged by the parties, Grantor, BGC and the City agree as follows:

1. Incorporation of Recitals. The facts and definitions set forth in the “Whereas” recitals above are incorporated herein by this reference.
2. Grant of Access and Utilities Easement. In consideration of and in exchange for the promises and agreements contained herein and the performance by BGC of its obligations hereunder, Grantor grants Grantees, and Grantees accept from Grantor, a nonexclusive Access and Utilities Easement (“AUE”) on, across, over, upon, and under the AUE Property for the following specific purposes and no others:
 - a. The right to pass and repass over the AUE Property in order to gain access to and from the Clubhouse Property, including the BGC Clubhouse and the City Building; and
 - b. The right to install, construct, and lay – and to promptly repair and maintain, as and if necessary – underground utility lines, conduits, wires, cables, and pipes beneath the surface of the AUE property for the purpose of providing utility services to the Clubhouse Property, including the BGC Clubhouse and the City Building; and
 - c. The right and obligation promptly to maintain, repair, restore, and repave, as necessary, the driveway surface and paving of the AUE Property, including without limitation the right and obligation to repair and restore promptly the surface and paving of the driveway when and if any potholing or excavation is necessary to maintain or gain access to utilities running under the driveway and promptly to restore the condition of the driveway to that required by Paragraph 4 below.

3. Duration of the AUE. The AUE will exist and benefit Grantees during the following period of time: beginning from the completion of the construction of and improvements to the driveway covering the length and width of the AUE Property as required by Paragraph 4 below, until the end of the initial term of the 55-Year Ground Lease, unless the AUE is later extended by the parties by written amendment.
4. BGC's Obligation to Construct and Pave an Asphalt Driveway. BGC shall, prior to the effectiveness of its or the City's acquisition of any long-term access rights to the Clubhouse Property using the AUE Property, and, within a reasonably prompt period of time following completion of construction of the BGC Clubhouse, construct, improve and pave an asphalt driveway upon the entire length and width of the AUE Property to a finished state as a safe, stable, usable and paved driveway. BGC shall, prior to beginning construction of the driveway on the AUE Property, submit to the Grantor's Public Works Director proposed plans and specifications, stamped by appropriate licensed professionals, for construction of the driveway for Grantor's approval, which approval shall not be unreasonably delayed or withheld. BGC and the City will take responsibility for compliance with the California Environmental Quality Act in connection with both construction on the Clubhouse Property and use of and improvements to the AUE Property.
5. Permits and Entitlements. It shall be the sole responsibility of Grantees (with Grantor's reasonable cooperation if necessary) to obtain any and all necessary governmental permits, entitlements, or consents necessary for their use or the use by their invitees or by the public of the Clubhouse Property, the BGC Clubhouse, the City Building, or the driveway over and across the AUE Property for access to the Clubhouse Property or any portion thereof.
6. Efforts to Avoid Disturbance of Activities on Grantor's Property. In conducting their activities as permitted or required hereunder on the AUE Property, Grantees shall make their best efforts to conduct their activities, and to monitor and regulate activities of all of those who use the AUE Property to gain access to the Clubhouse Property, in such a way as to prevent disturbance or interference with the use by Grantor, NCFCA, and other permitted users of the Grantor's adjacent Fairgrounds property. Grantor reserves the right to use the AUE Property for purposes which will not interfere with Grantee's full enjoyment of the rights granted under this AUE Agreement.
7. Prevailing Wages. Grantees acknowledge that any construction, alteration, demolition, installation, maintenance, and repair work required by this AUE Agreement or done within the AUE Property by either Grantee or their agents or contractors is a public work within the meaning of Labor Code Section 1720, and Grantees will comply with the requirements of California's prevailing wage law, Labor Code Section 1771, et. seq. Grantees will keep all documentation relative to compliance with Labor Code Sections 1720 et seq., including but not limited to (i) requiring their contractors and subcontractors to submit certified copies of payroll records to Grantees; (ii) maintaining complete copies of such certified payroll records; and (iii) making such records available to Grantor and its designees for inspection and copying during regular business hours at the Grantees' addresses listed below.

8. Free from Liens. Grantees covenant and agree that in performing all permitted or required activities upon the AUE Property, they shall take all steps necessary to pay promptly and when due all labor, equipment rental, subcontractor, and material supplier bills and shall keep the AUE Property free and clear of any and all liens and encumbrances.

9. Grantees' Standard of Care; Waiver and Release; Indemnification. Grantees and their agents and contractors shall use due care in the exercise of Grantees' rights hereunder. Grantees bear and accept any and all risks of loss (including, without limitation, the loss of personal property, equipment, supplies and materials), liability, damage, injury, or fatality in connection with the entry upon or use of the AUE Property by Grantees, their invitees, or members of the public for any of the purposes allowed or required by this AUE Agreement ("Covered Matters"). Grantees will indemnify, defend (with counsel to be chosen by Grantor), protect, and hold harmless Grantor and its agents, officers, Board members, and employees against all actions, claims, demands, suits, liabilities, losses, damages, injury, fatality, costs and expenses (including court costs and attorneys' fees), related to such Covered Matters.

10. Insurance.

(a) General Liability. Grantees shall obtain and maintain in full force and effect during the term of this AUE Agreement commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000.00) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance, or by a combination thereof, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of the Grantees under this AUE Agreement except for acts or omissions performed in strict compliance with express direction by the Owner. Grantees shall cause Grantor to be named as an additional insured.

(b) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Grantees' use of the AUE Property and access to and use of the Clubhouse Property of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence.

(c) Certificates of Insurance. Prior to entering AUE Property, and not less than thirty (30) days prior to expiration of any policy thereafter, Grantees shall furnish to Grantor a certificate of insurance reflecting that the insurance required by this AUE Agreement is in force, accompanied by an endorsement showing the required additional insured provision, subject to the approval of all required insurance documentation by the Grantor's Risk Manager, which approval shall not be unreasonably withheld. Such approval will be a condition and prerequisite to Grantees' right to enter upon or use the AUE Property under this AUE Agreement.

11. Recordation. This AUE Agreement shall be recorded in the Official Records of Napa County. Upon expiration of the AUE hereunder, Grantees shall execute and record a quitclaim deed (or similar notice) evidencing expiration and cessation of Grantees' rights under the AUE and releasing any and all interests in the AUE Property.

12. Assignment. This AUE Agreement shall not be assigned by Grantees to any other party except as provided herein without the express written consent of Grantor, which consent shall not be unreasonably withheld.

13. Binding Effect. The AUE established by this AUE Agreement shall run with the land, and inure to the benefit of and be binding upon the parties to this AUE Agreement and their successors, transferees and assigns, except as otherwise provided in this AUE Agreement.

14. Attorneys' Fees. In the event of any controversy, claim or dispute relating to this AUE Agreement or its breach, the prevailing party(ies) shall be entitled to recover from the non-prevailing party(ies), in addition to any other relief that may be granted, its or their reasonable expenses, attorneys' fees and costs.

15. Notices. Any notification required under this AUE Agreement shall be provided to the parties at the following addresses or at such other addresses as either party may subsequently designate by written notice:

GRANTOR:

BGC:

Kerry Whitney, Risk Manager
Napa County
1195 Third Street, Suite B-20
Napa, California 94559

CITY:

16. Captions. The captions in this CE Agreement are for convenience only and are not part of this AUE Agreement. The captions do not in any form limit or amplify the provisions of this AUE Agreement and shall not affect the construction or interpretation of any of its provisions.

17. Further Assurances. The parties shall execute further documents and perform such further actions as may be necessary or desirable to effect the purposes of this AUE Agreement.

18. Partial Invalidity. If any term, covenant or condition of this AUE Agreement or its application to any persons or circumstances shall be held to be invalid or unenforceable, the remainder of this AUE Agreement and the application of such term or provision to other persons or circumstances shall not be affected, and each term hereof shall be valid and enforceable to the fullest extent permitted by law.

19. Counterparts. This AUE Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, binding on all parties.

20. Amendments. This AUE Agreement may only be amended in writing signed by both parties.

21. Authority. Each of the individuals executing this AUE Agreement on behalf of a party individually represents and warrants that he or she has been authorized to do so and has the power to bind the party for whom he or she is signing.

22. Governing Law. This AUE Agreement will be construed and interpreted in accordance with the laws (excluding conflict of laws principles) of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this AUE Agreement as of the date first written above.

Boys & Girls Club of St. Helena and Calistoga

By: _____
(Print name:) _____
(Print title:) _____

By: _____
(Print name:) _____
(Print title:) _____

CITY OF CALISTOGA, a Municipal Corporation

By: _____
(Print name:) _____
(Print title:) _____

NAPA COUNTY, a political subdivision of the State of California

By _____
DIANE DILLON, Chair
Napa County Board of Supervisors

| | | |
|--|--|--|
| <p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ County Counsel</p> <p>Date: _____</p> | <p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p> | <p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p> |
|--|--|--|

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Napa) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO**

Napa County
1195 Third Street, Suite 301
Napa, CA 94559
Attn: Clerk of the Board

Exempt from recording fees: Gov Code §27383
Exempt from documentary transfer tax:
Rev & Tax Code §11922

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Temporary Construction Easement Agreement

Property Name: Napa County Fairgrounds Temporary Easement for Construction of a Clubhouse
for the Boys & Girls Club of St. Helena and Calistoga
Date: January __, 2016

This Temporary Construction Easement Agreement (“TCE Agreement”) is entered into as of the date first written above by and between the Boys & Girls Club of St. Helena and Calistoga, a Section 501(c)3 non-profit corporation (“Grantee”), on the one hand, and Napa County, a subdivision of the State of California (“Grantor”), on the other hand. All references herein to “Grantee” shall include Grantee and each and all of Grantee’s officers, agents, employees, volunteers, contractors, subcontractors and other third parties performing work or conducting activities on behalf of Grantee under this TCE Agreement. Grantor and Grantee may hereinafter be referred to at times as “party” or “parties.”

RECITALS

WHEREAS, Grantor is the owner of that certain real property described by the legal description attached hereto and incorporated herein by this reference as Exhibit A (the “TCE Property”), which is a portion of Grantor’s Napa County Fairgrounds Property that is managed, operated and maintained on behalf of Grantor by the Napa County Fair Association (“NCFA”), a California Nonprofit Public Benefit Corporation; and

WHEREAS, beginning in or about June, 2016, Grantee will begin construction of a new Clubhouse that is to be located on a parcel of real property consisting of approximately 1.09 acres, which is owned by the City of Calistoga (the “City”), which property is commonly identified as _____(street address) and as Napa County Assessor’s Parcel No. _____ (the “Clubhouse Property”), and which is located immediately adjacent and to the south of the TCE Property; and

WHEREAS, Grantee has entered into, or will, prior to construction of the Clubhouse on the Clubhouse Property, enter into a 55-year Ground Lease with the City (the “Ground Lease”)

whereby Grantee will acquire or has acquired the right from the City to occupy and use the Clubhouse Property, subject to the City's right to occupy and use a portion of the Clubhouse Property for a City Parks & Recreation Department building (the "City Building"); and

WHEREAS, concurrently with the execution of this TCE Agreement, Grantor, on the one hand, and Grantee and the City, on the other hand, are entering into an Access and Utilities Easement Agreement (the "AUE Agreement") to provide Grantee with access and utility line rights needed by Grantee and the City for their respective use and occupancy of the Clubhouse Property and the City Building; and

WHEREAS, pursuant to the AUE Agreement, Grantee and the City are acquiring from Grantor the right – for the duration of Grantee's Ground Lease interest in the Clubhouse Property – certain easement rights for ingress, egress and utility lines on, in, over and under that certain real property owned by Grantor (another portion of the Fairgrounds Property), which is legally described and depicted by Exhibit B, which is attached hereto and incorporated herein by this reference (the "AUE Property"); and

WHEREAS, in order to carry out and facilitate Grantee's (a) construction of the Clubhouse and other facilities on the Clubhouse Property, (b) installation of utility lines, conduits and pipes under the surface of the AUE Property as allowed by the AUE Agreement, and (c) improvement of the AUE Property to a finished state as a safe, stable, usable and paved driveway from the current gravel driveway's beginning at North Oak Street, Calistoga, northwesterly to the northeast corner of the TCE Property, as required in the AUE Agreement, it is necessary for Grantee to acquire temporary rights from Grantor for staging and storage of construction vehicles, machinery, equipment, and materials on the TCE Property, and for ingress and egress across, and construction activities upon, the AUE Property,

NOW, THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged by the parties, Grantor and Grantee agree as follows:

1. Incorporation of Recitals. The facts and definitions set forth in the "Whereas" recitals above are incorporated herein by this reference.
2. Grant of Temporary Construction Easement and Right of Entry. In consideration of and in exchange for the promises and agreements contained herein and the performance by Grantee of its obligations under the AUE Agreement, Grantor grants to Grantee, and Grantee accepts from Grantor, a nonexclusive a temporary easement for construction purposes (the "TCE") on, in, over, and across the TCE Property and the AUE Property for the purposes described in Paragraph 3 of this TCE Agreement, below.
3. Character, Use and Description of the TCE. This TCE is an easement in gross in favor of Grantee, which consists of a temporary right to use, occupy and enter upon the TCE Property and the AUE Property for the purpose of facilitating Grantee's construction of the Clubhouse and other facilities on the Clubhouse Property and for the purpose of Grantee's improvements to the AUE Property as required by the AUE Agreement (which is incorporated herein by this reference for the sole purpose of defining the scope and extent of the activities required of

Grantee in order to carry out its obligations on the AUE Property thereunder), including the rights to enter upon, to pass and repass upon, and to place, stage, and/or store construction tools, machinery, vehicles, storage containers, temporary offices, implements and other construction-related equipment and materials on the TCE Property, and the rights to enter upon, to pass and repass over, to deliver construction materials and equipment, and to conduct utility installation under, and grading and paving of, the AUE Property. BGC and the City will take responsibility for compliance with the California Environmental Quality Act in connection with both construction on the Clubhouse Property and use of the AUE Property and TCE Property for purposes of such construction.

4. Duration of the TCE. The TCE will exist and benefit Grantee during the following period of time: beginning exactly two weeks after Grantee's delivery to Grantor of a minimum of two week's advance written notice of the date of Grantee's commencement of construction activities on the Clubhouse Property and/or on the AUE Property (whichever construction activities begin first) and continuing for a maximum period of one year and two weeks after delivery of such written notice of commencement of construction or until Grantee gives Grantor written notice of completion of construction, whichever occurs first. If the TCE is needed by BGC for a longer period of time, BGC shall provide at least 60 days' written notice to Grantor of this need prior to the expiration of the TCE in order to allow the parties sufficient time to discuss, document and seek decision maker approval of any amendment to extend the duration of the TCE.

5. Permits and Entitlements. It shall be the sole responsibility of Grantee (with Grantor's reasonable cooperation if necessary) to obtain any and all necessary governmental permits, entitlements, or consents necessary to conduct any and all construction, storage, staging, utility installation, grading and/or paving activities on the Clubhouse Property, TCE Property and/or AUE Property.

6. Efforts to Avoid Disturbance of Activities on Grantor's Property. In conducting its activities as permitted hereunder on the TCE Property and the AUE Property, Grantee shall make its best efforts to conduct its activities in such a way as to disturb or interfere with the use by Grantor, NCFCA, and other permitted users of the Grantor's adjacent Fairgrounds property to the smallest extent possible. Grantor reserves the right to use the TCE Property and the AUE Property for purposes which will not interfere with Grantee's full enjoyment of the rights granted under this TCE Agreement.

7. Prevailing Wages. Grantee acknowledges that any construction, alteration, demolition, installation, maintenance, and repair work required by this TCE Agreement or done by Grantee or its agents or contractors within the TCE Property or AUE Property is a public work within the meaning of Labor Code Section 1720, and Grantee will comply with the requirements of California's prevailing wage law, Labor Code Section 1771, et. seq. Grantee will keep all documentation relative to compliance with Labor Code Sections 1720 et seq., including but not limited to (i) requiring its contractors and subcontractors to submit certified copies of payroll records to Grantee; (ii) maintaining complete copies of such certified payroll records; and (iii) making such records available to Grantor and its designees for inspection and copying during regular business hours at the Grantee's address listed below.

8. Free from Liens. Grantee covenants and agrees that in performing all activities upon the TCE Property and AUE Property, it shall take all steps necessary to pay promptly and when due all labor, equipment rental, subcontractor, and material supplier bills and shall keep the TCE Property and AUE Property free and clear of any and all liens and encumbrances.

9. Condition of the TCE Property. Promptly upon the completion of Grantee's activities upon the TCE Property, Grantee shall repair and restore it to the condition it was in immediately prior to Grantee's first entry upon and use of the TCE Property pursuant to this TCE Agreement.

10. Condition of the AUE Property. Promptly upon the completion of Grantee's activities upon the AUE Property, Grantee shall leave the AUE in the state and condition required by the AUE Agreement.

11. Grantee's Standard of Care; Waiver and Release; Indemnification. Grantee and its agents shall use due care in the exercise of Grantee's rights hereunder and shall promptly repair any damage to Grantor's property, improvements, or facilities that result from the Grantee's activities in connection with construction of the Clubhouse and/or the use of the TCE Property or AUE Property hereunder. Grantee bears and accepts any and all risks of loss (including, without limitation, the loss of personal property, equipment, supplies and materials), liability, damage, injury, or fatality in connection with Grantee's entry or activities on the TCE Property and/or AUE Property and will indemnify, defend (with counsel to be chosen by Grantor), protect, and hold harmless Grantor and its agents, officers, Board members, and employees against all actions, claims, demands, suits, liabilities, losses, damages, injury, fatality, costs and expenses (including court costs and attorneys' fees), related to Grantee's activities and entry on the TCE Property and/or AUE Property.

12. Insurance.

(a) General Liability. Grantee shall obtain and maintain in full force and effect during the term of this TCE Agreement commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000.00) combined single limit per occurrence, either issued by a company admitted to do business in the State of California and having an A.M. Best Rating of no less than A:VII or by self-insurance, or by a combination thereof, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of the Grantees under this TCE Agreement except for acts or omissions performed in strict compliance with express direction by the Grantor. Grantee shall cause Grantor to be named as an additional insured.

(b) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Grantee's use of the TCE Property and the AUE Property for the purposes covered by this TCE Agreement of not less than ONE-MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence.

(c) Certificates of Insurance. Prior to entering the TCE Property and/or AUE Property, and not less than thirty (30) days prior to expiration of any policy thereafter, Grantee shall furnish to Grantor a certificate of insurance reflecting that the insurance required by this

TCE Agreement is in force, accompanied by an endorsement showing the required additional insured provision, subject to the approval of all required insurance documentation by the Grantor's Risk Manager, which approval shall not be unreasonably withheld. Such approval will be a condition and prerequisite to Grantee's right to enter upon or use the TCE Property and/or AUE Property under this TCE Agreement.

13. Recordation. This TCE Agreement shall be recorded in the Official Records of Napa County. Upon expiration of the TCE hereunder, Grantee shall execute and record a quitclaim deed (or similar notice) evidencing expiration and cessation of Grantee's rights under the TCE and releasing any and all interests in the TCE Property and, except to the extent the AUE Agreement provides otherwise, in the AUE Property.

14. Assignment. This TCE Agreement shall not be assigned by Grantee to any other party except as provided herein without the express written consent of Grantor, which consent shall not be unreasonably withheld.

15. Binding Effect. The TCE established by this TCE Agreement shall run with the land, and inure to the benefit of and be binding upon the parties to this TCE Agreement and their successors, transferees and assigns, except as otherwise provided in this TCE Agreement.

16. Attorneys' Fees. In the event of any controversy, claim or dispute relating to this TCE Agreement or its breach, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other relief that may be granted, its reasonable expenses, attorneys' fees and costs.

17. Notices. Any notification required under this TCE Agreement shall be provided to the parties at the following addresses or at such other addresses as either party may subsequently designate by written notice:

GRANTOR:

Kerry Whitney, Risk Manager
Napa County
1195 Third Street, Suite B-20
Napa, California 94559

GRANTEE:

18. Captions. The captions in this TCE Agreement are for convenience only and are not part of this TCE Agreement. The captions do not in any form limit or amplify the provisions of this TCE Agreement and shall not affect the construction or interpretation of any of its provisions.

19. Further Assurances. The parties shall execute further documents and perform such further actions as may be necessary or desirable to effect the purposes of this TCE Agreement.

20. Partial Invalidity. If any term, covenant or condition of this TCE Agreement or its application to any persons or circumstances shall be held to be invalid or unenforceable, the remainder of this TCE Agreement and the application of such term or provision to other persons

or circumstances shall not be affected, and each term hereof shall be valid and enforceable to the fullest extent permitted by law.

21. Counterparts. This TCE Agreement may be executed in any number of original counterparts, all of which evidence only one agreement, binding on all parties.

22. Amendments. This TCE Agreement may only be amended in writing signed by both parties.

23. Authority. Each of the individuals executing this TCE Agreement on behalf of a party individually represents and warrants that he or she has been authorized to do so and has the power to bind the party for whom he or she is signing.

24. Governing Law. This TCE Agreement will be construed and interpreted in accordance with the laws (excluding conflict of laws principles) of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this TCE Agreement as of the date first written above.

Boys & Girls Club of St. Helena and Calistoga

By: _____
 (Print name:) _____
 (Print title:) _____

By: _____
 (Print name:) _____
 (Print title:) _____

NAPA COUNTY, a political subdivision of the State of California

By _____
 DIANE DILLON, Chair
 Napa County Board of Supervisors

| | | |
|--|--|--|
| <p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: _____ County Counsel</p> <p>Date: _____</p> | <p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p> | <p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p> |
|--|--|--|

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Napa) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature