

**DULUTH HERITAGE SPORTS CENTER –
DULUTH SCHOOL DISTRICT AMENDED AND RESTATED PROGRAM
AGREEMENT**

This Amended and Restated Program Agreement (“**Agreement**”) is between Duluth Heritage Sports Center, a Minnesota nonprofit corporation (the “**Center**”) and Independent School District 709, Duluth, Minnesota (the “**District**”).

RECITALS

A. Under date of June 28, 2007, the Center and the District entered into a Program Agreement, which was subsequently amended by a First Addendum dated June 28, 2007 and by a Second Addendum dated September 1, 2012, whereby the District contracted to use the hockey arenas owned by the Center and located at 120 South 30th Avenue West, Duluth, Minnesota and now commonly known as Sill Arena and Seitz Arena together with the ancillary facilities (i.e., locker rooms, common areas, etc.) on a part time basis. For purposes of this Agreement, Sill Arena and Seitz Arena are referred to as the “**Arena Facilities**,” the ancillary facilities are referred to as the “**Ancillary Facilities**” and the Arena Facilities and the Ancillary Facilities are collectively referred to as the “**Center Facilities**.”

B. The parties now desire to further amend and restate the Program Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises set forth below and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree to further amend, and to restated in its entirety, the Program Agreement as previously amended, to read as follows:

1. Use Hours. For each Fiscal Year (as defined below) during the term of this Agreement, the Center agrees to permit the District to use the Arena Facilities, and the District agrees to use the Arena Facilities, for a minimum of 586 hours (the “**Use Hours**”). For purposes of this Agreement, the term “**Fiscal Year**” shall mean a twelve month period beginning July 1 and ending on the following June 30. It is specifically understood that only those hours that are scheduled by the District and paid for by the District shall be credited towards the fulfillment of the 586 hours that the District has agreed to use.

The number of Use Hours may be modified for a particular fiscal year by mutual agreement of the parties.

2. Term. Unless earlier terminated under sections 17, 18 or 19 below, the term of this Agreement shall continue until the first June 30 which is at least 60 months after the date when either party has given the other written notice of termination.

3. Annual Use Schedule. During the months of May and June of each Fiscal Year, the parties agree to use their best efforts to negotiate, in good faith, a schedule (the “**Use Schedule**”) of the specific dates and time of the District’s Use Hours for each of the Arena Facilities that will be applicable for the following Fiscal Year. During the dates and times during which the District shall be entitled to use of the Arena Facilities, the District and its invitees shall also be entitled to the use of those locker rooms associated with the Arena Facility or Facilities being used and the non-exclusive use of the other Ancillary Facilities. The District shall not interfere in any way with the use by others of the Ancillary Facilities at any time.

The District acknowledges and understands that the Center has entered into a program agreement with Duluth Amateur Hockey Association, Inc., a Minnesota non-profit corporation (“**DAHA**”) whereby DAHA has agreed to use the Arena Facilities for certain minimum hours during each Fiscal Year and that the Center will be permitting the City of Duluth, Minnesota (the “**City**”) to use the Arena Facilities on a regular basis. Each annual Use Schedule will need to accommodate the anticipated needs of the District as well as DAHA and the City.

If by June 30 of a year the chief operating officer of the Center, the District and DAHA are able to agree on a Use Schedule for the next following Fiscal Year, the Center, the District and DAHA shall sign the Use Schedule and it shall then be applicable for that next following Fiscal Year. If by June 30 of a year the chief operating officer of the Center, the District and DAHA are not able to agree on a Use Schedule for the next following Fiscal Year, the conflicting uses shall be resolved by the District and DAHA each being entitled to select a single conflicting Event (as defined below) in priority over the other party in turn, with the District choosing first in even numbered years and DAHA choosing first in odd numbered years, and continuing in this manner until all conflicting hours of use are resolved. For this purpose, an “**Event**” can be a single hour of use, multiple consecutive hours of use in one day (e.g., a hockey game that will last several hours or multiple games that will last several hours), a use occurring over a period of several consecutive days (e.g., a weekend tournament) or a use occurring over a period of several weeks at the same day or days of the week (e.g., a league).

Notwithstanding the foregoing, the District understands that the City may be entitled to certain use hours pursuant to that certain Program Agreement between the Center and the City and that such use hours of the City will have priority over any needs of either the District or DAHA.

Of the 586 Use Hours for the District, the District shall be provided scheduling priority for the following Use Hours from October 1 of each year through March 31 of the following year:

(a) Practices:

(1) 3:45 o’clock p.m. to 6:30 o’clock p.m. on each weekday, Monday through Friday for Sill Arena and 4:00 o’clock p.m. to 6:45 o’clock p.m. on each weekday, Monday through Friday, for Seitz Arena.

(2) 7:00 o'clock p.m. to 9:45 o'clock p.m. on each weekday, Monday through Friday. This is for use of either Sill Arena or Seitz Arena but not for concurrent use of both Arenas. Assignment of the Arena to be used will be made by the Center.

(3) 6:00 o'clock a.m. to 9:00 o'clock a.m. on each Saturday. This is for concurrent use of Sill Arena and Seitz Arena except on those Saturdays when the District has games scheduled in Sill Arena. When such games are scheduled, the use of the practice hours defined in this section (a) (3) is limited to Seitz Arena only.

(b) Games:

(1) 5:30 o'clock p.m. to 9:30 o'clock p.m. or from 6:00 o'clock p.m. to 10:00 o'clock p.m. on selected Tuesdays and Thursdays. This applies to concurrent use of both Sill Arena and Seitz Arena.

(2) 5:30 o'clock p.m. to 9:30 o'clock p.m. or from 6:00 o'clock p.m. to 10:00 o'clock p.m. on selected Fridays for high school hockey games. This applies to concurrent use of both Sill Arena and Seitz Arena except as otherwise stipulated in section (c) below.

(3) 12:00 o'clock p.m. to 4:00 o'clock p.m. or from 1:00 o'clock p.m. to 5:00 o'clock p.m. on selected Saturdays for high school hockey games. This applies to concurrent use of both Sill Arena and Seitz Arena except as otherwise stipulated in section (c) below.

(c) Notwithstanding the foregoing, the District's usage for games scheduled on Fridays or Saturdays shall be limited to the use of Sill Arena during the following invitational tournaments held by DAHA:

(1) The "Spirit of Duluth" invitational tournament held on the second weekend in December, and

(2) The "IceBreaker's Invitational" invitational tournament held on the weekend prior to Martin Luther King Day.

(d) Notwithstanding the foregoing, the District agrees to use its best efforts to avoid scheduling the concurrent use of both Sill Arena and Seitz Arena for any Friday and/or Saturday games.

4. Use Fees. The District agrees to pay for its Use Hours the standard hourly rates as established, from time to time, by the Center, for use of the Center Facilities by the District and DAHA. The Center shall have the right to change the standard hourly rates, provided, however, that the hourly rates shall not be increased to the extent the rates will not be competitive with other similar facilities in Duluth, Minnesota and the surrounding area.

5. Fee Payments. All fees shall be billed to the District on a regular schedule agreed upon by the Center and the District, in accordance with the Center's payment policies then in effect at the time the Center's facilities are used. If the District has not used and paid for the minimum 586 Use Hours by May 31 of any Fiscal Year, then the District shall pay for the unused Use Hours by June 30 of that Fiscal Year.

6. Additional Use Hours. In the event the District desires to use the Arena Facilities during additional hours of use that are then available and the District does not desire to exchange any of its Use Hours for such additional hours of use, the District must make separate arrangements with the Center and pay the Center for such additional use at the same rates then in effect for its Use Hours.

7. Included Services. Use of the Center Facilities by the District under this Agreement includes only the normal services, utilities and equipment customarily provided by the Center on a routine basis and does not include items such as crowd control personnel, security services or devices, police and firefighters, etc. Any services, utilities or equipment not customarily provided by the Center on a routine basis must be provided by the District at its expense. If the Center provides such additional services (including overtime hours of its employees), utilities or equipment at the request of the District, the District shall promptly reimburse the Center for the actual cost of providing such additional services, utilities or equipment.

The Center shall not be liable for damages, nor shall fees be abated nor shall the District be relieved from performance of its obligations for interruption of any utilities or other services or for the failure of Center to furnish any facilities for any cause or causes beyond the reasonable control of the Center.

8. Use and Compliance with Laws, Rules and Regulations. The District shall not use the Center Facilities in any manner that is contrary to, or in violation of, the purposes for which the facilities are constructed and maintained. When using the Center Facilities, the District shall observe all reasonable rules and regulations as from time to time may be put into effect by the Center for the general safety, security, comfort and convenience of all the occupants and users of the Center Facilities and shall not use the Center Facilities in any way that will conflict with applicable federal, state or local laws, rules, ordinances and regulations or in any way that will disparage the Center Facilities.

Further, the District will not use the Center Facilities in any manner that will jeopardize the Center's status as a charitable organization under United States Internal Revenue Code Section 501(c)(3)

9. Signs, etc. No signs, banners, decorations or equipment shall be placed in or on the Center Facilities by the District without the prior written consent of the Center. The District shall, at its expense, repair any damages to the Center Facilities caused by the placing of any signs, banners, decorations or equipment in or on the Center Facilities, even if placed with the consent of the Center.

The District shall not cover, move, remove or otherwise tamper with any signs, banners, decorations or equipment in or on the Center Facilities without the prior written consent of the Center. The District shall, at its expense, repair any damages to the Center Facilities caused by the covering, moving, removing or otherwise tampering with any signs, banners, decorations or equipment in or on the Center Facilities, even if done with the consent of the Center.

The Center reserves the right to sell advertising space in the Center Facilities to third parties and to have those advertisements displayed during the use of the Center Facilities by the District; provided, however, that no advertising for alcohol or tobacco products shall be displayed during the District's Use Hours. The District may not have any other advertisements displayed during the use of the Center Facilities unless in compliance with uniform policies adopted, from time to time, by the Board of Directors of the Center. The Center intends to adopt and, from time to time, revise policies to allow users of the Center facilities to have some limited advertising during the user's use of the Center Facilities and to retain any fees paid by advertisers for such limited advertising.

The Center shall adopt reasonable rules for the temporary display of banners and other displays by the District during the Use Hours of the District. The temporary banners and other displays by the District shall be temporary only and shall not be permanently affixed and shall not include advertising.

10. Concession Services. The District shall not sell, give away, or otherwise bring or provide any food or beverages to, at or in the Center Facilities at any time without the written consent of the Center, which consent may be withheld for any reason or no reason. The District shall not allow its agents, employees or invitees to sell or give away any food or beverages at or in the Center Facilities at any time without the written consent of the Center, which consent may be withheld for any reason or no reason. The District's team members, coaches and trainers shall be allowed to bring food and beverages for their consumption use during the District's Use Hours. The District shall inform its other agents, employees and invitees that the Center's rules prohibit bringing, providing or selling food or beverages at the Center Facilities without the written consent of the Center.

The District shall not sell any other goods or services at or in the Center Facilities at any time without the written consent of the Center, which consent may be withheld for any reason or no reason. The District shall not allow its agents, employees or invitees to sell any other goods or services at or in the Center Facilities at any time without the written consent of the Center, which consent may be withheld for any reason or no reason. The Center shall adopt reasonable rules for the sale by the District of related (i.e., logo) merchandise for sale only during the District's Use Hours.

11. Broadcast Rights. The District shall not allow any activities in the Center Facilities to be broadcast over radio, television, the Internet (streaming) or other means of communication unless in compliance with broadcast policies adopted by the Center without the written consent of the Center, which consent may be withheld for any reason or no reason. The Center shall not allow any activities in the Arena Facilities being used by the District during the

District's Use Hours to be broadcast over radio, television, the Internet (streaming) or other communication means unless in compliance with broadcast policies adopted by the Center and communicated to the District without the written consent of the District, which consent may be withheld for any reason or for no reason. The Center intends to adopt and, from time to time, revise policies regarding radio and television broadcasting from the Center Facilities.

12. Assignment, Sub-Leases and Exchanges. The District may not assign its rights or obligations under this Agreement without the consent of the Center, which consent may be withheld for any reason or no reason.

The District may not sub-lease any of its Use Hours without the consent of the Center, but the Center may not unreasonably withhold consent. If the District does sub-lease any of its Use Hours, any compensation or fees obtained by the District in excess of the rates then established by the Center for use of its facilities by persons other than the District or DAHA shall be paid to the Center as additional fees. Notwithstanding the foregoing, the District may sub-lease any of its Use Hours to DAHA without the consent of the Center and any compensation or fees received by the District from DAHA do not need to be paid to the Center.

Further, the District may, at its discretion, charge an admission fee to the Arena Facilities, or either of them, during the District's Use Hours and retain all such admission fees.

The District may exchange any of its Use Hours as set forth on the Use Schedule for other hours of use that are then available (i.e., that are not use hours of DAHA and are not then reserved by the City or others). The District may exchange any of its Use Hours as set forth on the Use Schedule for use hours of DAHA or for other hours of use that are then reserved by the City or others with the consent of DAHA, the City or other person who has reserved the hours, as applicable, and the Center agrees to coordinate and cooperate with any such exchanges.

The Center shall have the right at any time to collaterally assign, mortgage, pledge, encumber or in any other manner transfer its interest in this Agreement as security for any financial obligations of the Center.

13. Damage to Property. The Center shall not be responsible for any loss or damages to equipment or other property of the District or its agents, employees or invitees caused by theft, fire, riots, acts of God or any other cause of whatever kind or nature.

The District shall be responsible and liable for, and shall reimburse the Center for, any and all loss of, disappearance of and damages to the Arena Facilities arising out of the use of the Arena Facilities by the District and its invitees during the District's Use Hours; however, the District is only liable for damages caused by its invitees in its exclusive use areas.

The Center recommends that the District obtain its own liability and property damages insurance.

The Center shall maintain liability insurance for property damage and the District's liability is limited to any claims or amounts not covered by the Center's insurance. See also numbered paragraph 15 of this Agreement.

14. Personal Injuries. The District hereby releases the Center and agrees to indemnify the Center from any and all liability or responsibility for any and all liabilities, obligations, costs, damages or causes of action, including attorney's fees, resulting from any personal injuries or loss of life caused by the District, its agents, employees or invitees arising out of the use of the Arena Facilities by the District and its agents, employees or invitees during the District's Use Hours. This covenant shall survive the expiration or termination of this Agreement for any reason; however, the District is only liable for injuries caused by its invitees in its exclusive use areas. The Center shall maintain liability insurance for personal injuries and the District's liability is limited to any claims or amounts not covered by the Center's insurance. See also paragraph 15 of this Agreement.

15. Subrogation. Notwithstanding anything to the contrary in this Agreement, each party hereby releases the other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise, but only so long as this will not prejudice any actual insurance coverage) for any loss or damage that is covered by casualty insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

16. Non-Discrimination. Attached is the Center's non-discrimination policy. The District shall not use the Center Facilities in any manner that would be in violation of this non-discrimination policy.

17. Damage or Destruction of Center Facilities. In the case of damage or destruction by fire or other casualty to all or any portion of the Center Facilities, the Center shall cause the damage to be repaired and the facilities to be restored with all reasonable dispatch, subject to delays beyond the reasonable control of the Center. The District shall be relieved of its obligation to pay use fees during any period of time that the Center Facilities are not usable and being repaired because of damage by fire or other casualty.

The Center shall not be liable for damages for failure to provide facilities during periods of repair or restoration.

Notwithstanding, if the Center Facilities are totally destroyed by fire or other casualty or if the damage shall be so extensive that 75% or more of Sill Arena or 75% or more of Seitz Arena is destroyed and if the Center decides not to repair or restore, the Center shall have the option to terminate this Agreement.

18. Condemnation. If the whole or any part of Center Facilities shall be taken under the power of eminent domain or by purchase or other acquisition in lieu of condemnation, this Agreement shall terminate with respect to the part so taken on the date ("**Taking Date**") the Center is required to yield possession thereof to the condemning authority. If the amount of any portion of the Center Facilities so taken substantially impairs the usefulness of the remaining

portion of the facilities for use by the District, the District may, by notice to Center delivered at least sixty (60) days prior to the Taking Date, terminate this Agreement as of the Taking Date.

All compensation or damages awarded under the power of eminent domain, whether for the whole or a part of the Center Facilities, shall be the property of the Center, whether such damages shall be awarded as compensation for diminution in value of the leasehold or to the fee of the facilities.

19. Default and Remedies. In the event of any default by the District and if the default has not been cured within fifteen (15) days after written notice thereof by the Center to the District, then the Center may, in addition to the other rights and remedies, terminate this Agreement or terminate the District's right to use of all or any of the Center Facilities without terminating this Agreement. Should the Center elect to terminate the District's right to use the Center Facilities without terminating this Agreement, the Center may allow others to use the Center Facilities during the District's Use Hours for such terms and conditions and at such fees as the Center in its sole reasonable discretion may deem advisable and recover from the District the fees provided for in this Agreement less any actual fees collected by allowing others to use the Center Facilities during the District's Use Hours. No remedy of the Center provided for herein shall be exclusive of any other remedy provided by law, and the pursuit of one remedy shall not bar the Center from thereafter pursuing any other lawful remedy.

In the event of any default by the Center and if the default has not been cured within fifteen (15) days after written notice thereof by the District to the Center, then the District may, in addition to other rights and remedies, terminate this Agreement or reduce the District's Use Hours without terminating this Agreement. No remedy of the District provided for herein shall be exclusive of any other remedy provided by law, and the pursuit of one remedy shall not bar the District from thereafter pursuing any other lawful remedy.

20. Resolution of Disputes. Any dispute relating to this Agreement or its termination that the parties cannot resolve through good faith negotiations shall be subject to the following resolution procedures; provided, that, either party may seek injunctive relief pending resolution of the dispute:

(a) Negotiations. The dispute or question shall first be submitted for resolution through the good faith negotiations to the Chair of the Board of the Center and the Superintendent of the District.

(b) Mediation. Any disputes that cannot be resolved by negotiations as provided in (a) above shall be subject to mediation.

(1) The mediation shall be conducted by one mediator who shall be selected jointly by the parties to the dispute within ten (10) days after any party to the dispute requests mediation. If the parties to the dispute are unable to agree upon the mediator, the mediator shall be appointed, upon the request of any party to the dispute, by the chief judge of the District Court of St. Louis County, Minnesota.

(2) The mediation shall be non-binding and shall commence within ten (10) days after the selection or appointment of the mediator. Each party to the dispute shall attend the mediation through one or more persons who have the authority to settle the dispute.

(3) The expenses of the mediation shall be shared equally by the parties to the dispute. The mediation shall continue until the dispute is settled or the mediator declares by written notice to the parties to the dispute that the parties to the dispute are at an impasse and not all disputes can be resolved, but in no event shall the mediation extend beyond sixty (60) days, unless the parties mutually so agree.

(4) In all other respects, the mediation shall be conducted as determined by the mediator or as determined by the mutual agreement of the parties to the dispute.

(c) Arbitration. Any disputes that cannot be resolved by negotiations as provided in (a) above or mediation as provided in (b) above shall be subject to arbitration. The arbitration proceedings shall be governed by the following, unless otherwise agreed by the parties to the dispute.

(1) All arbitration hearings shall be held in Duluth, Minnesota.

(2) Any and all arbitration proceedings and any arbitration decision, unless it is necessary that a judgment on the decision be entered, shall be confidential.

(3) Any party to the dispute shall have the right to specifically enforce any arbitration award by appropriate proceedings under Minnesota law.

(4) The dispute controversy shall be submitted to a panel of three neutral arbitrators, all of whom shall be selected in accordance with the Minnesota version of the Uniform Arbitration Act (currently codified in Minnesota Statutes, Chapter 572B), as existing at the time arbitration is invoked. Unless otherwise ordered by the arbitrators, the cost of the arbitrators shall be shared equally by the parties to the dispute.

(5) The arbitrator or arbitrators shall have the right to award the prevailing party its costs and expenses incurred in connection with the arbitration proceedings, including reasonable attorneys' fees and expenses.

(6) The parties hereby waive any legal or equitable rights to avoid arbitration or to seek a remedy at law or in equity as an alternative to arbitration.

(7) So long as not in conflict with the above, the Minnesota version of the Uniform Arbitration Act as existing at the time arbitration is invoked, shall govern the arbitration proceedings and award.

(8) Any arbitration proceeding hereunder must be demanded within one (1) year after the claim or controversy arose. Failure to demand arbitration within such

period shall constitute an absolute bar to the institution of any proceedings with respect to such controversy or claim, and a waiver thereof.

(9) A party may, but shall not be obligated to, resort to arbitration in connection with a claim for which an action in equity is appropriate, such as specific performance or injunctive relief.

21. Miscellaneous.

(a) Recording. This Agreement shall not be recorded but at the request of the District, the Center agrees to execute a short form or memorandum of this Agreement in a manner sufficient to enable it to be recorded in the governmental office in which there would be recorded a deed covering Center Facilities, which short form or memorandum of Agreement will set forth the use rights of the District and term of this Agreement.

(b) Legal Fees. If either party is compelled to take legal action to enforce any provisions of this Agreement, the prevailing party shall be entitled to recover its costs and expenses incurred in connection with such legal action, including reasonable attorney's fees and expenses.

(c) Venue. In the event any of the parties shall resort to legal proceedings to enforce any of the terms of this Agreement, such proceeding shall be venued in St. Louis County, Minnesota.

(d) Captions. The table of contents, headings and captions are inserted for convenience of reference only and are not to be considered in the construction of the provisions hereof.

(e) Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.

(f) Waiver. The receipt of use fees by the Center, with knowledge of any breach of this Agreement by the District or of any default on the part of the District in the observation or performance of any of the terms, covenants or conditions of this Agreement, shall not be deemed to be a waiver of any provision of this Agreement.

(g) Agents. Neither party has taken any action or non-action which could result in a claim by any third person for any commission, brokerage fee, finder's fee or other payments based upon this Agreement.

(h) Constructions. Any and all words used herein in the singular form shall include the plural form where applicable and vice versa, and any and all terms and words used herein in the neuter or masculine form shall include the other and the feminine form where applicable, and vice versa.

Although this Agreement may have been drafted by counsel for one of the parties, this Agreement has been subject to negotiation and modification prior to final execution and, accordingly, is not to be construed for or against either the Center or the District but is to be construed as if mutually drawn according to the general tenor of the language.

(i) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never constituted a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a legal, valid and enforceable provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible.

(j) No Partnership/Joint Venture. Any intention to create a joint venture, partnership or agency relation between the parties is expressly disclaimed.

(k) Estoppel Certificate. The District agrees that at any time and from time to time at reasonable intervals, within ten (10) days after written request by the Center, the District will execute, acknowledge and deliver to the Center, the Center's mortgagee, or others designated by the Center, an estoppel certificate in a form as may from time to time be provided, ratifying this Agreement and certifying the status of this Agreement.

(l) Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given: when received, if delivered by hand; or when deposited, if placed in the mails for delivery by certified mail, postage prepaid, return receipt requested, addressed to the chief executive officer of the appropriate party to the addresses set forth on the signature pages. Addresses may be changed by written notice given pursuant to this provision; however, any such notice shall not be effective, if mailed, until three (3) business days after depositing in the mails or when actually received, whichever occurs first.

(m) Expenses. Except as otherwise provided herein, each party shall bear and pay for its own costs and expenses including, without limitation, all fees and disbursements of attorneys, accountants and financial consultants.

(n) Entire Agreement. This Agreement and the exhibits now or hereafter attached, represents the only agreement between the parties concerning the subject matter hereof and supersedes all prior agreements whether written or oral, relating thereto.

(o) Modification and Waiver. No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in a written document signed by both parties (in the case of amendments or modifications) or by the party to be changed hereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

(p) Binding Effect. The terms, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns and shall run with Center Facilities.

(q) Legal Opinion. Attached is a letter from the District's legal counsel addressed to the Center representing that this Agreement is the valid and binding obligation of the District, enforceable against it in accordance with its terms.

22. Definitions. The following capitalized terms used in this Agreement are defined in this Agreement at the following locations:

- Agreement – first paragraph
- Center – first paragraph
- District – first paragraph
- Arena Facilities – Recital A
- Ancillary Facilities – Recital A
- Center Facilities – Recital A
- Use Hours – Section 1
- Fiscal Year – Section 1
- Use Schedule – Section 3
- DAHA – Section 3
- City – Section 3
- Event – Section 3
- Taking Date – Section 18

Dated this ____ day of _____, 2018.

Independent School District 709
Duluth, Minnesota

Duluth Heritage Sports Center, Inc.

By: _____
Its School Board Chair

By: _____
Its President

Address: 215 North First Avenue East
Duluth, MN 55802

Address: 120 South 30th Avenue West
Duluth, MN 55806