

**FACILITY USE AGREEMENT**

**THIS FACILITY USE AGREEMENT**, made this first day of August, 2011, by and between **LIVONIA PUBLIC SCHOOLS** (hereinafter referred to as the "School District"), a Michigan general powers school district, whose address is 15125 Farmington Road, Livonia, Michigan 48154 and **LIVONIA JUNIOR ATHLETIC LEAGUE** (hereinafter referred to as "User"), a Michigan non-profit corporation, whose address is 16380 Aldrich Court, Livonia, Michigan 48154.

**RECITALS**

**WHEREAS**, Livonia Public Schools may permit use of its facilities by responsible organizations or groups of citizens, provided such use does not infringe upon the necessary purpose of the facility or interfere with the School District's educational programs;

**WHEREAS**, all users of facilities are required to either complete a Facility Use Application and agree to abide by the Terms and Conditions of Use on the reverse side of the Application or enter into a Facility Use Agreement with the School District; and

**WHEREAS**, if such use is approved by the School District, all users/groups must satisfy all conditions or requirements of any such approval prior to commencing such approved use.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Facility Use Agreement and for other good and valuable consideration, the School District and User agree as follows:

1. **FACILITY USE AGREEMENT.** The School District, in consideration of the Usage Fees to be paid and the covenants and agreements to be performed by the User, does hereby allow the User to use the following described facilities situated in the City of Livonia, Wayne County, Michigan, to wit:

The facilities and fields listed below for the times and dates are identified below:

Frost East Gym	Monday through Friday 6 pm to 9:30 pm from the second week in November until the last week in April
Frost West Gym	Monday through Friday 6 pm to 9:30 pm from the second week in November until the last week in April
Emerson East Gym	Monday through Friday 6 pm to 9:30 pm from the second week in November until the last week in April
Emerson West Gym	Monday through Friday 6 pm to 9:30 pm from the second week in November until the last week in April
Johnson Gym	Monday through Friday 6 pm to 9:30 pm from the first week in December until the last week in April
Holmes West Gym	Monday through Friday 6 pm to 9:30 pm from the first week in January until the last week in February
Clay Field	Monday through Friday 6 pm to 8:30 pm from the first week in August until the first week in November
Bentley Field (South of Stadium)	Monday through Friday 6 pm to 8:30 pm from the first week in August until the first week in November
Riley Baseball Field	Monday through Friday 6 pm to 9 pm and Saturday and Sunday 8 am to 8 pm from the first week of April until the end of May

Garfield Baseball Field	Monday through Friday 6 pm to 9 pm from the first week of April until the end of May
Randolph Baseball Field	Monday through Friday 6 pm to 9 pm from the first week of April until the end of May
Marshall	One room used for storage all year.
Washington	Two rooms; the office to be used for office space and Room 101 to be used for storage all year.

(The above-designated spaces/locations shall hereinafter be referred to as the "Facilities").

The Facilities identified **MAY NOT** be used on days where there is no school scheduled, or on days when school is cancelled, by the Livonia Public Schools, with the exception of Riley Baseball Fields on the weekends, and the storage and office space noted above.

The term of this Facility Use Agreement is August 1, 2011 until June 30, 2014 (the "Term").

2. **CONSIDERATION.** The User agrees that the consideration for this Facility Use Agreement is the full, faithful and strict performance of each and every one of the terms, conditions and obligations and payment of any Usage Fees or other payment obligations set forth herein, in addition to User's continued good will toward the School District and cooperation with the School District in matters involving User and the School District. The Usage Fees for the Facilities shall be as follows:

2011-12	\$ 40,000
2012-13	\$ 41,000
<u>2013-14</u>	<u>\$ 42,000</u>
Total	\$123,000

3. **OCCUPANCY.** It is understood and acknowledged by User that the School District reserves the right to use the Facilities indentified herein for school purposes at any time as determined by in the sole and absolute discretion of the School District. The School District will make every effort to notify User 48 hours in advance if a Facility is needed by the School District. The School District's use of any such Facility shall take precedence over any use of the User whether advance notice was provided or not.
4. **RIGHT TO TERMINATE FACILITY USE AGREEMENT.** At any time prior to the expiration of this Facility Use Agreement or any extended or renewed Term hereof, User may terminate this Facility Use Agreement by giving the School District one (1) month's prior written notice of termination and by completing any performances and obligations then due through to the actual date of termination or as may herein survive any termination hereof. The School District may also terminate this Facility Use Agreement in advance of its expiration upon the same notice if the School District needs the Facilities for school purposes, or if it intends to sell the property of which the Facilities are a part.

5. **UTILITIES.** The School District shall provide utilities for all indoor School District Facilities and no utilities for the outdoor School District Facilities. The School District shall not be responsible for any loss or interruption of utility services to the Facilities.
6. **MAINTENANCE SERVICES - OUTDOOR FACILITIES.** User, at a minimum, agrees to continue whatever routine, minimum maintenance the School District currently provides to the outdoor School District Facilities identified in Paragraph 1, all at no cost to the School District, upon User's use of the outdoor Facilities. Additionally, User shall be solely responsible for maintaining the outdoor School District Facilities in conformity with all applicable Laws, any purpose stated herein and in conformity with any and all terms and conditions herein and shall, upon the termination hereof, return the outdoor School District Facilities to the School District in at least the same condition as it existed at the commencement of this Facility Use Agreement, normal wear and tear and improvements, if in accordance with the terms hereof, excepted. In addition, User shall regularly and as needed, de-litter, chalk, mow and seed or re-turf the outdoor School District Facilities and maintain the same in a safe and kept condition.
7. **MAINTENANCE SERVICES – SCHOOL FACILITIES.** The School District will maintain the indoor School District Facilities. Notwithstanding the above, the User agrees to restore the indoor School District Facilities to the same condition after daily use, including, but not limited to putting away any equipment, general clean-up, etc.
8. **NONEXCLUSIVE USE PURPOSE.** User shall have a nonexclusive right to use the Facilities as provided for herein and only for the following purpose and for no other purpose without the prior written consent of the School District: The purpose for which this Facility Use Agreement was granted and is intended is use of the Facilities by User as basketball courts, football and baseball fields for games, practices and related events.
9. **COMPLIANCE WITH THE LAW.** As used herein, the Law means each and every Federal, State, and local law, statute, act, rule, regulation, or ordinance and all School District and/or School District Board of Education policies, practices and procedures, past, present and future. User shall comply and conform to the Law throughout the entire Term of this Facility Use Agreement and any extensions or renewals thereof, provided, however, that User shall not be required to make any structural changes to the Facilities or any modification or addition to any utility systems, unless such required changes are occasioned by or on account of the specific use specified herein, in which case User shall bear the cost of any such changes.
10. **ALTERATIONS.** User may not make any alterations, additions or improvements to the Facilities without the prior written consent of the School District.

11. **EXEMPTION OF SCHOOL DISTRICT FROM LIABILITY.** The School District shall not be liable for any injury to User, its employees, invitees, volunteers, agents or contractors or any other person in or about the Facilities caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Facilities, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the same, whether the said damage or injury results from conditions arising upon the Facilities or upon other portions of the property of which the Facilities are a part, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing same is inaccessible to User.
12. **LIABILITY INSURANCE.** User, at its sole cost and expense during the Term hereof and during any extension or renewals thereof, with a company or companies licensed to sell insurance in Michigan with an A+A.M. Best rating, or equivalent, maintain and keep in effect such primary insurance as will protect User, and which names the School District and the Facilities as additional or co-insureds and loss payee, for or from the kinds of claims set forth below which may arise out of or result from User's operations under and performances pursuant to or default of this Facility Use Agreement and for which User may be legally liable:
- a) claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the operations to be performed or maintenance and occupancy of the Facilities;
  - b) claims for damages because of bodily injury, occupational sickness or disease, or death of User's employees;
  - c) claims for damages because of bodily injury, sickness or disease, or death of any person other than User's employees;
  - d) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an act or offense directly or indirectly related to employment of such person by User, or (ii) by another person;
  - e) claims for damages, other than to the Facilities itself, because of theft of or injury to or destruction of tangible property, including loss of use resulting therefrom;
  - f) claims for damages because of bodily injury, death of a person or property damage arising out of User's maintenance or use of a motor vehicle;
  - g) claims based upon patent or copyright infringement, interference, vandalism, tax evasion or delinquency, defamation, the Constitution or laws of the United States or Michigan and gross negligence.

The insurance required shall be written for the greater limits not less than the limits of liability specified or required by the law OR primary coverage of \$1,000,000.00 per occurrence on an occurrence basis or in the amount of said limit on a claims-made basis, provided that if the latter form (claims-made) is procured and/or maintained in compliance herewith, it be maintained for a period of no less than four (4) years subsequent to the or any termination hereof. In this regard, this

provision shall survive any termination hereof or end hereto. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of this Facility Use Agreement until the date herein specified that coverage is no longer required.

User shall provide School District with proof of such coverage and/or a copy of the applicable certificate or certificates upon demand.

User warrants and represents that it has furnished its insurer or insurers for the coverages required hereunder with a copy of this Facility Use Agreement and that no exclusions will bar coverages for the kinds of claims delineated above and for which coverage is herein required. In addition, the parties hereto agree that to the extent any waivers of subrogation made herein, if any, are prohibited by or would adversely compromise the coverages applicable or available to any party hereunder, same are hereby waived with respect to the particular coverage in question or, if necessary, deemed void or voidable by any party hereto without further action in relation thereto.

School District, at User's sole and ultimate expense, may, at School District's option, fulfill User's obligations hereunder in whole or in part to the extent User is not fulfilling same and/or to remedy any failure on its part to fulfill same. User shall pay any bill issued by School District pursuant hereto within thirty (30) days its issuance.

If User is insured differently than as specified herein and School District chooses to waive the minimum coverages and/or kind of coverages required hereunder, School District must do so in writing to User.

13. **INDEMNIFICATION AND HOLD HARMLESS**. User agrees to indemnify, hold harmless and defend the School District, its Board Members, administrators, officers, employees, students, volunteers and agents against any and all suits, actions, legal proceedings, claims (of any nature and kind including, but not limited to, those kinds listed in the insurance provisions hereof, whether or not waived), demands, and all damages, loss, costs, expense, taxes, penalties, fines, liens and actual attorney's fees incurred, caused by arising from or attributable, whether in whole or in part, directly or indirectly, to:
- a) Any negligent or willful or intentional or criminal acts or omissions of or a breach of contract or this Facility Use Agreement by User or its officials, commissioners, board members, employees, agents, attorneys, invitees, accountants or contractors and subcontractors;
  - b) Any claims by any employees or former employees of User or its agents or contractors or subcontractors, regarding any matter relating to their employment or relationship with User;
  - c) Any matter for which School District may be held strictly liable, but which is the result of, in whole or in part, the negligent or willful or sole acts or omissions of User or its officials, commissioners, board members, employees, agents, attorneys, accounts and/or contractors and subcontractors; and
  - d) Any tax or levy imposed upon or charged to the School District as a result of or pursuant to or on account of this Facility Use Agreement; but

- e) Excluding claims for which the School District, in a capacity other than as User's invitee or an invitee with respect to the Facilities, is the sole cause.

The School District shall give User written notice of any claim or event known to it for or from which it believes it is entitled to be held harmless and/or indemnified and/or defended pursuant to this paragraph, stating the nature and basis of said claims or events and the amounts thereof, to the extent known and possible, and in the case of any claim, action or proceeding brought by a third party, a copy of any claim, process or legal pleadings with respect thereto, after any such documents are received by the School District. User shall, at its own and sole expense and in addition to its indemnification obligations and to the extent permitted by the law, be entitled to participate in and, to the extent that it shall wish or be obligated, assume the defense of any such claim or proceeding. If User elects to assume control of such defense or settlement, it shall conduct such defense or settlement in a manner reasonably satisfactory and effective to protect the School District. No compromise or settlement shall be agreed to or made without the School District's written consent, which shall not be unreasonably denied. In the event no admission of the School District culpability or wrongdoing is made as a part of a compromise or settlement proposed under or in connection with this part of this paragraph, there are no pending claims by a third party involved which remain or could be brought against the School District after culmination of the compromise or settlement, and there is no contribution required of the School District in said compromise or settlement, then the School District will not withhold its consent.

- a) In any case, the School District shall have the right to employ its own counsel for the purposes and enforcement of this paragraph and any related provisions and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the School District, unless same are a subject of another provision herein or a required part of User's duty to indemnify, defend and hold the School District harmless or the School District shall have reasonably concluded that there may be a conflict of interest between User and the School District in the conduct of any such defense or settlement.
- b) If User does not elect or refuses despite being obligated to assume the defense or settlement in a manner reasonably satisfactory to protect the School District, the School District may engage independent counsel to protect the School District, to assume its or any needed defense and/or to contest, pay, settle or compromise any such claims on such terms and conditions as the School District and its counsel may then determine, subject still to all obligations hereunder. The actual fees and disbursements of such counsel shall constitute amounts for which indemnification shall be made hereunder irrespective of any negligence or other cause.

This Section shall survive any termination or expiration of this Facility Use Agreement.

- 14. **NOTICE.** Any reference to notice hereunder means written notice and same shall be effectuated by sending same via Certified, U.S. Mail, Return receipt Requested, and receipt of same shall be the

date the mailing is received and/or accepted or first refused if finally refused. Notice to School District shall be to, unless notified by it of any new address:

Business Services Director  
Livonia Public Schools  
15125 Farmington Road  
Livonia MI 48154

Notice to User shall be to, unless notified by it of any new address:

Livonia Junior Athletic League  
16380 Aldrich Court  
Livonia MI 48154

15. **DEFAULT**. The word "default" as used herein shall include, but not be limited to, the breach of any clause, term, agreement, covenant or condition, contained in this Facility Use Agreement. If User should become in default under this Facility Use agreement, the School District, at its option and upon three (3) days written notice:
- a) May terminate this Facility Use Agreement and take possession of the Facilities and recover from User, in successive actions or a single action, all expenses and damages, including actual attorney fees incurred in the terminating and/or retaking of possession of the Facilities and/or caused by the default; or
  - b) Without terminating this Facility Use Agreement, may:
    - (i) Sue at regular or irregular intervals and in successive suits, to recover for all damages and actual costs and attorney fees incurred by or as a result of the default or defaults and/or action taken to stop same or keep same from occurring or continuing;
    - (ii) Bring a single action to recover for same; and/or
    - (iii) Sue for general and special damages.

If the School District should take possession of the Facilities under the provisions of this paragraph or at the end of the Term, the School District may remove to any place of storage or any dumping ground, at User's risk and expense and without incurring any responsibility to User for loss, damage or theft, all property in or about the Facilities belonging to or in the custody of User. These remedies provided in this paragraph are cumulative and may be exercised simultaneously with, in addition to, or independently of, or independently of, any other remedies provided to the School District by the law including the laws of the State of Michigan.

16. **RIGHT TO INSPECT AND POST NOTICES**. The School District or the School District's representatives or agents shall have the right to enter the Facilities at all reasonable times during the Term of this Facility Use Agreement to inspect the same.
17. **SURRENDER**. User shall peacefully give up and surrender to the School District the Facilities and every part thereof upon the termination or upon the expiration of the Term of this Facility Use

Agreement in as good a condition and repair as at the beginning of this Facility Use Agreement, normal wear and tear excepted.

18. **HOLDING OVER**. If User does not vacate and surrender the Facilities at the termination or on the expiration of the Term of this Facility Use Agreement, the User agrees to and shall pay to the School District in monthly installments in advance the sum of One Thousand (\$1,000) Dollars per week for any week or part thereof in which User holds over beyond termination hereof. User further agrees that any hold over is without the School District's permission and that the acceptance of any sum or further consideration or benefit thereafter received by the School District hereunder does not constitute a waiver of any of the School District's rights under this Facility Use Agreement or right to pursue any and all remedies otherwise legally available and said sum or sums shall not be considered and User hereby agrees that same are not liquidated damages in lieu thereof but, rather, as in addition thereto.
19. **SURVIVAL CLAUSE**. All clauses, terms, covenants and conditions contained in this Facility Use Agreement and running to the benefit of the School District survive any default, hold over or termination of this Facility Use Agreement and in no way affects the School District's rights under this Facility Use Agreement, unless otherwise specifically stated. That some provisions herein contain specific survival language shall not be construed to mean that other provisions with no such language do not survive.
20. **NON-DISCRIMINATION**. User shall not discriminate, directly or indirectly, against anyone on account of any reason or attribute prohibited by the United States or Michigan Constitution, the Law, or any promulgated School District policy.
21. **PROHIBITED CONDUCT**. Any provision to the contrary herein notwithstanding, there shall be no smoking, use of tobacco products or possession or use of alcohol products permitted on the Facilities or any property used in connection therewith, at any time.
22. **ENTIRE AGREEMENT**. This instrument constitutes the entire agreement between the School District and User relative to the Facilities, and this Facility Use Agreement may be altered, amended, or revoked only by an instrument in writing signed by both the School District and User, unless otherwise indicated herein. The School District and User hereby agree that all prior contemporaneous oral agreements between and among themselves and their agents or representatives relative to the use of the Facilities are merged in or revoked by this Facility Use Agreement.
23. **SEVERABILITY**. If any term or provision of this Facility Use Agreement shall, to any extent, be determined by any court or tribunal or quasi judicial or administrative body of competent jurisdiction to be invalid or unenforceable, then, at the School District's sole option, with notice of the exercise



thereof to User, the remainder of this Facility Use Agreement shall not be affected thereby, and each term and provision of this Facility Use Agreement shall be valid and enforceable to the fullest extent permitted by law or this Facility Use Agreement shall be terminated.

24. **TIME-JOINT AND SEVERAL LIABILITY.** Time is of the essence with respect to this Facility Use Agreement and each and every provision hereof. All the terms, covenants and conditions contained in this Facility Use Agreement to be performed by either party, if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other right and remedy at law or in equity.
25. **BINDING EFFECT - CHOICE OF LAW.** The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate paragraph hereof; subject to any provisions hereof restricting assignment or subletting by User all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Facility Use Agreement shall be governed by the laws of the State of Michigan.
26. **AUTHORITY.** Each individual executing this Facility Use Agreement on behalf of User or the School District represents and warrants that he/she is duly authorized to execute and deliver this Facility Use Agreement on behalf of said User or the School District in accordance with a duly adopted resolution of the School District's or User's Board of Directors, Council, Board of Education, or equivalent or in accordance with applicable By-Laws, Charter provisions or the law governing the execution of documents by User or the School District, as the case may be. Each such party represents that this Facility Use Agreement is binding upon User or the School District in accordance with its terms.
27. **ACCEPTANCE OF FACILITIES.** User acknowledges that it has examined the Facilities prior to the making of this Facility Use Agreement and knows the conditions thereof. User further acknowledges that no representation as to the condition or state of repairs thereof have been made by the School District or its agents which are not herein expressed. User hereby accepts the Facilities in its present "AS IS" condition as of the Effective Date of this Facility Use Agreement. The School District makes no warranties or representations, express or implied, of any nature or kind including that the Facilities are fit, safe or usable for the purpose and/or use intended and/or identified herein and User's sole and exclusive remedy for any inability to use the Facilities as intended and/or identified herein shall be terminate this Facility Use Agreement as provided herein without any further recourse.
28. **COMPLIANCE.** User shall, at its own expense, under penalty of forfeiture and damages, promptly comply with all Laws, orders, regulations or ordinances of all Municipal, County, State, and Federal

authorities affecting use of the Facilities with respect to the cleanliness, safety, occupation, and use of same.

29. **CHALLENGE**. The School District, although presently unaware of any such non-compliance, does not covenant that the Facilities are in compliance with applicable Municipal, County, State, and Federal laws, including, but not limited to, fire, safety, handicap, barrier free, zoning and use ordinances or laws and other governmental regulations relating to the use of the facility for the purpose intended through this Facility Use Agreement.
30. **POLICIES/REGULATIONS**. User, including its agents, representatives, employees, contractors, invitees, licensees and students shall at all times comply with all of the Livonia Public Schools policies, procedures and regulations.

**LIVONIA PUBLIC SCHOOLS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LIVONIA JUNIOR ATHLETIC LEAGUE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_