

FIRST AMENDMENT TO USE AGREEMENT

This First Amendment to Use Agreement (“***Amendment***”) is entered into by and between the Bloomingdale Park District (the “***Park District***”) and the Board of Education of Bloomingdale School District 13 (the “***School District***”). The Park District and School District may collectively be referred to as the “***Parties***,” or individually as “***Party***,” throughout this Amendment.

RECITALS

WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois provides that units of local government may contract among themselves to obtain or share services and to exercise, combine, or transfer any power or function of government in any manner not prohibited by law or ordinance; and

WHEREAS, Section 5 of the Intergovernmental Cooperation Act, 5 ILCS 220/5, authorizes units of local government to contract with other local governments to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges or authority which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, the Park District and School District previously entered into an agreement dated September 27, 1993 (the “***Agreement***”), providing for the shared use of certain Park District and School District facilities, subject to the terms of the Agreement; and

WHEREAS, the Park District and School District have mutually benefited from the improvements made to the Property pursuant to the Park District’s obligations under the Lease Agreement; and

WHEREAS, since the Agreement was executed, the Parties have expanded the scope of their shared facility use, including the use of School District playgrounds, multi-purpose rooms, parking lots, and School District grounds used incidental to the Park District’s use of School District facilities; and

WHEREAS, Section 6 of the Agreement provided that the Agreement is considered renewed on an annual basis unless terminated by a Party with 90 days’ prior written notice; and

WHEREAS, the Parties desire to amend and extend the Agreement to accurately reflect the facilities used by the School District and Park District, and to provide a more definite term for the Agreement to allow for the regular review of its terms and conditions.

NOW THEREFORE, in consideration for the foregoing and the mutual covenants and agreements contained hereinafter that the Parties by their approval and signature hereto acknowledge is good and sufficient, the Parties agree as follows:

Section 1: Recitals. The foregoing recitals are incorporated as though fully set forth in this Section 1.

Section 2: Amendment to Section 2. The Parties hereby amend Paragraph 2 of the Agreement as follows:

2. The School District agrees to allow the Park District to use the following facilities (collectively, the “***School Facilities***”):
 - a. The gymnasiums and other common areas and adjacent toilet facilities located in the Erickson and DuJardin schools, with access thereto during hours when these facilities are not being used for School District functions, subject, however, to such reasonable restrictions as may be imposed by the School District.
 - b. The multipurpose rooms and spaces located in the Erickson, DuJardin, and Westfield schools, with access thereto during hours when these facilities are not being used for School District functions, subject, however, to such reasonable restrictions as may be imposed by the School District.
 - c. The outdoor playgrounds located on the grounds of the Erickson and DuJardin schools, with access thereto during hours when these facilities are not being used for School District functions, subject, however, to such reasonable restrictions as may be imposed by the School District.
 - d. The outdoor grounds, spaces and parking lots located on the grounds of the Erickson, DuJardin, and Westfield schools, for use related to the Park District’s use of the School Facilities described in Sections 2(a)–(c) and subject to such reasonable restrictions as may be imposed by the School District.

The School District will provide the custodial service without charge for such School Facilities used when possible. The Park District will provide the sole supervision when the School Facilities are being used by the Park District and agree to provide adequate supervision of Park District activities.

To the fullest extent allowed by law, the Park District agrees to reimburse defense costs, indemnify and hold harmless the School District from and against all injuries, loss, causes of action, claims, liability, damages, or judgments, including costs, expenses, and attorneys’ fees, to the extent arising from (1) negligent acts and/or errors and/or omissions by the Park District, its officials, officers, employees, agents or volunteers; (2) the Park District’s breach of the Agreement; or (3) violation of law by the Park District, its officials, officers, employees, agents or volunteers. The indemnification obligation set forth in this section shall not be limited by the amount of any insurance maintained by the Park District, or by a limitation on an amount or type of damages, compensation or benefits payable under workers’ compensation acts, disability benefit acts, or other

employee benefit acts. This provision shall survive the termination of the Agreement.

During the term of this Agreement, the Park District, at its sole cost and expense, shall carry and maintain insurance against liabilities to others (or claims thereof) consisting of Comprehensive General Liability, and Workers' Compensation insurance against claims for bodily injury or death or damage to property arising out of the Park District's use of the School Facilities, such insurance to afford protection to the limit of not less than \$3,000,000 Comprehensive General Liability coverage with respect to any single occurrence, and \$3,000,000 in the aggregate, plus required Workers' Compensation insurance coverage. The School District shall be named as an additional insured under said coverage. The insurance shall be carried with a company acceptable to the School District and shall provide contractual coverage of the indemnification set forth above, and shall contain the agreement of the insurer that such coverage will not be canceled without at least sixty (60) days' prior written notice to the parties. Prior to the commencement of the term of this Agreement and not less than thirty (30) days prior to the expiration of any policy required to be maintained hereunder, the Park District will deliver to the School District a certificate of insurance providing proof of coverage consistent with this Agreement.

The Park District will have priority use of the School Facilities, secondary only to the School District's use of the School Facilities for its purposes. The Park District agrees that it will be responsible for all damages to any School Facilities arising out of the use of the School Facilities by the Park District. The Park District further agrees to submit to the School District a complete annual schedule of its activities and programs which will involve the use of the School Facilities not later than the 15th day of July each year.

Section 3: Amendment to Section 3. The Parties hereby amend Paragraph 3 of the Agreement as follows:

3. The Park District agrees to allow the School District the use of the park facilities and equipment for school programs at hours that would not affect Park District use. The School District agrees to submit to the Park District a complete schedule of its activity programs which will involve the use of park areas or facilities by August 1 each year of this Agreement.

To the fullest extent allowed by law, the School District agrees to reimburse defense costs, indemnify and hold harmless the Park District from and against all injuries, loss, causes of action, claims, liability, damages, or judgments, including costs, expenses, and attorneys' fees, to the extent arising from (1) negligent acts and/or errors and/or omissions by the School District, its officials, officers, employees, agents or volunteers; (2) the School District's breach of the Agreement; or (3) violation of law by the School District, its officials, officers, employees, agents or volunteers. The indemnification obligation set forth in this

section shall not be limited by the amount of any insurance maintained by the School District, or by a limitation on an amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination of the Agreement.

During the term of this Agreement, the School District, at its sole cost and expense, shall carry and maintain insurance against liabilities to others (or claims thereof) consisting of Comprehensive General Liability, and Workers' Compensation insurance against claims for bodily injury or death or damage to property arising out of the School District's use of park facilities, such insurance to afford protection to the limit of not less than \$3,000,000 Comprehensive General Liability coverage with respect to any single occurrence, and \$3,000,000 in the aggregate, plus required Workers' Compensation insurance coverage. The Park District shall be named as an additional insured under said coverage. The insurance shall be carried with a company acceptable to the Park District and shall provide contractual coverage of the indemnification set forth above, and shall contain the agreement of the insurer that such coverage will not be canceled without at least sixty (60) days' prior written notice to the parties. Prior to the commencement of the term of this Agreement and not less than thirty (30) days prior to the expiration of any policy required to be maintained hereunder, the School District will deliver to the Park District a certificate of insurance providing proof of coverage consistent with this Agreement.

Section 4: Amendment to Section 6. The Parties hereby amend Paragraph 6 of the Agreement as follows:

6. The term of this Agreement is hereby renewed and extended for a period of ten (10) years, expiring on _____, 2035 (the "***Term***"). No additional requests are notices are required to make this extension effective. Either Party may terminate this Agreement for convenience prior to the expiration of the Term by providing 90 days' prior written notice to the other Party.

Section 5: Reaffirmation of Other Terms and Conditions. All other terms and conditions of the Agreement not otherwise modified or amended in this Amendment are hereby reaffirmed in their entirety.

Section 6: Effective Date. This Second Amendment shall be deemed dated and become effective on the date the last of the parties executes the Agreement as set forth below.

IN WITNESS THEREOF, the Parties have approved and executed this Fourth Amendment as of the Effective Date.

[signature page follows]

**THE BLOOMINGDALE PARK
DISTRICT**

By: _____

Title: _____

Attest: _____

Date: _____

**THE BOARD OF EDUCATION OF
BLOOMINGDALE SCHOOL DISTRICT
13**

By: _____

Title: _____

Attest: _____

Date: _____