

USE OF FACILITY LEASE AGREEMENT

THIS LEASE made as of the 17th day of January, 2021, between the **TOMS RIVER REGIONAL SCHOOLS BOARD OF EDUCATION**, an educational entity, with offices located at 1144 Hooper Avenue, Toms River, New Jersey 08753, hereinafter designated as “Lessor” and Timber Creek High School, with offices located at Timber Creek Regional High School, 501 Jarvis Rd, Sicklerville, NJ 08081, hereinafter “Lessee.”

W I T N E S S E T H:

WHEREAS, the Lessor is the owner of a certain air structure facility, located between Toms River Intermediate School East and Hooper Avenue Elementary School, also commonly known as the “Bennett Indoor Athletic Complex,” hereinafter “Facility”; and

WHEREAS, the Lessor has agreed to lease to Lessee said Facility; and

WHEREAS, this Use of Facility Lease Agreement is strictly for the use of said Facility for 3 athletic events starting on February the 20th 2021, and ending March 13th, 2021.

NOW, THEREFORE, be it agreed between the Lessor and Lessee as follows:

ARTICLE 1

1. Facility and Term. Lessor does demise and lease to Lessee, and Lessee does hereby lease from Lessor, that certain facility owned by the Lessor located between Toms River Intermediate School East and Hooper Avenue Elementary School, commonly known as the “Bennett Indoor Athletic Complex.” The term of this lease shall be limited to the duration of 3 athletic events, pre-approved by the Lessor.

ARTICLE 2

2. Fees.

A. Rent.

- (1) **Facility.** Lessee shall pay as rent for the use of Facility the sum of **ONE THOUSAND TWO HUNDRED DOLLARS**, (\$1200.00 hereinafter called "Rent.")
- (2) **Timing System.** Lessee may use Lessor's timing system during its event. Lessee shall pay Lessor's personnel to operate the timing system at the prevailing hourly rate. In addition, Lessee shall pay as additional Rent the amount of **ONE HUNDRED TEN (\$110.00) DOLLARS PER HOUR** (minimum of 5 hours, \$550.00), for its use of the timing system.
- (3) An additional list of potential fees is attached hereto and made a part hereof as Schedule A.

B. Athletic Event Cancellation.

- (1) In the event Lessee provides Lessor with notice of the cancellation of the athletic event thirty (30) days prior to the scheduled date of said athletic event, then, Lessee shall forfeit fifty (50%) percent of the deposit and, in addition, be responsible to reimburse Lessor for all costs incurred prior to the receipt of notification of cancellation. In the event Lessee provides Lessor notification of event cancellation less than thirty (30) days prior to the scheduled date of said event, then, Lessee shall forfeit the entire deposit and shall, in addition, be responsible to reimburse Lessor for all costs incurred prior to receipt of notification of cancellation.

- (2) In the event schools are closed for any reason, including but not limited to, snow and power failures, the event shall be canceled and Lessor's deposit refunded.
- (3) In case of cancellation by the Lessee, it shall be the responsibility of the Lessee, at Lessee's expense to make reasonable public announcement of the cancellation by all means commercially reasonable, including all daily newspapers, news departments of television stations and radio stations through which paid advertisements originally announcing the event were broadcast.

ARTICLE 3

3. Use of Facility. The Facility shall be only be used for a single athletic event as pre-approved, in writing, by the Lessor. Only 1/8" pyramid spikes shall be permitted in the Facility.

ARTICLE 4

4. Warranties. Lessor warrants and represents that the proposed use of the Facility is not in violation of any law, ordinance, requirement or regulation of any governmental authority.

ARTICLE 5

5. General Conditions.

A. Lessee Accepts As Is, Where Is. Lessor or Lessor's agents have made no representations or promises with respect to the leased Facility, except as herein expressly set forth. The utilization of the leased Facility by Lessee shall be conclusive evidence, as against Lessee, that **Lessee accepts same "as is, where is"** and that said Facility is in good and satisfactory condition. Facility rental by Lessee is for use of space only, exclusive of services, equipment, fixtures or personnel, which are available only at additional cost.

B. Tax Exemption. Not-for-Profit, tax-exempt organizations shall submit to Lessor such tax exemption certificates as shall pertain. Such certificates are required to be submitted with Lease application. Such certificates will be kept on file by Lessor. Lessor may require re-filing from time to time.

C. Damage/Clean-Up. Lessee shall be responsible for any and all damages to Lessor's premises, fixtures or equipment cause by acts of Lessee or Lessee's agents, employees, patrons, guests, or equipment, whether accidental or otherwise. At the conclusion of the lease, Lessee shall promptly remove all Lessee equipment so Lessor may use the premises for its next scheduled event. Lessee shall leave Lessor's premises in the same condition as existed at the time Lessee took possession. Any additional charges incurred due to an unusual amount of post-event clean-up will be borne by Lessee.

D. Public Safety. Lessee shall neither encumber nor obstruct the sidewalk in front of entrances to, or aisles, walkways, halls and stairs of, the leased Facility, nor allow same to be obstructed or encumbered in any manner. Lessee further agrees not to bring onto the Facility any material, substances, equipment or objects which are likely to endanger the life of, or cause bodily injury to, any person at the Facility, or which might constitute a hazard to property thereon, without prior approval of Lessor. Lessor shall have the right to refuse or allow any such material, substance, equipment or objects to be brought onto the leased Facility and have the further right to require immediate removal therefrom if found thereon.

E. Compliance with Laws. Lessee shall comply with all Federal, State and local laws, rules and regulations.

F. Lessee's Responsibilities. The Lessee is solely responsible for (a) awards, (b) officials and clerks, (c) collecting entries, and (d) trainers deemed necessary by Lessee.

ARTICLE 6

6. **Utilities.** Lessor will provide customary electrical power, water, air-conditioning and heating.

ARTICLE 7

7. **Security.** Lessor will provide security personnel as deemed necessary by Lessor. Lessee shall pay for said security personnel at the prevailing hourly rate. Lessee may, at its option, obtain from Lessor an estimate of the anticipated security charge.

ARTICLE 8

8. **Insurance for Benefit of Lessor.**

A. **Public Liability.** Lessee shall carry comprehensive liability insurance in the amount not less than \$1,000,000 for injury to any one person and \$1,000,000 for any once occurrence, and property damage insurance in the amount of not less than \$1,000,000. It is understood and agreed that the policy will not be canceled or reduced or modified in any way adversely affecting the coverage period with respect to Lessor. Lessor shall be listed as an additional named insured and evidence of said insurance shall be furnished to Lessor with signed Lease Agreement. If said insurance is to be canceled, Lessor shall be notified in writing at least ten (10) days prior to said cancellation. The insurance company providing said insurance shall be licensed to do business in the State of New Jersey.

B. **Workers' Compensation Insurance.** Lessee shall carry Workers' Compensation Insurance as required under the provisions of New Jersey State law, and Lessee shall furnish to Lessor written evidence of said insurance coverage. Lessee agrees to pay Lessor \$200.00 per event under this Use of Facility Lease Agreement as penalty for failure to supply paperwork. Lessee shall compensate Lessor for any and all expenses in excess of \$200.00 arising in any way from Lessee's failure to carry Workers' Compensation Insurance.

C. **Indemnity.** Lessee shall indemnify, defend and hold harmless Lessor, its officers, agents and employees against any and all liability, penalties, damages, expenses and judgments, loss

or claim of injury to any person including, but not limited to, Lessee's employees, patrons, guests or invitees, or property, of any nature and howsoever caused, arising out of the use, occupation and control of the Facility, or the corridors, lavatories, offices, sidewalks or parking lots by the Lessee at any time during the terms of the lease or by reasons or any invasion of personal or property rights, of every name and nature, and where casual or continuing trespass or nuisance and any other claim for damages arising at law or equity alleged to have been caused or sustained in whole or in part by or because of any omission of duty, negligence or wrongful act on the part of Lessor, its officers, agents or employees, either jointly or severally, or to enforce any such claim. Lessee shall have the right to defend any such suit with attorneys acceptable to the Lessor and Lessor shall have a right, if it sees fit, to participate in any such defense.

D. Lessor shall not be responsible for damage to or loss of Lessee's property or that of Lessee's agents, employees, invitees or others, no matter what the cause of such damage or loss.

ARTICLE 9

9. Force Majeure. If the Facility is damaged by fire or other casualty, or if the Facility is not available on account of force majeure, such as Acts of God, strikes, lockouts, labor difficulties, explosions, sabotage, accidents, riots, civil commotions, acts of war or the threat of any of the foregoing, or other causes beyond the control of the Lessor, whether or not the same shall be similar or dissimilar to any of the specifications of excuse heretofore stated, Lessor shall not be responsible for any damages Lessee may suffer thereby, and Lessor's sole obligation shall be to return to Lessee the amount of any deposit paid by Lessee upon the execution of the Use of Facility Lease Agreement, and upon such refund being made, the Use of Facility Lease Agreement shall be deemed canceled and neither party shall have any claim or obligation to the other.

ARTICLE 10

10. Sublet. The Lessee may not sublet or assign this Use of Facility Lease Agreement, and any purported assignment or sublease shall be void.

ARTICLE 11

11. Box Office.

A. General. Prior to Lessor receiving from Lessee a properly sign Use of Facility Lease Agreement accompanied by certificate(s) of insurance and deposit, no reference to Lessor is to appear on tickets, advertising, publicity or any form of public communication associated with any proposed use of Lessor's Facility. No tickets shall be placed on sale until these requirements are fulfilled. Lessee shall set the fee structure for the event.

B. Tickets. All event tickets produced by Lessee shall include on the back of each ticket "No smoking, no cameras, no recording devices, no refunds, no exchanges."

C. Handicapped Seating. Seating is available for wheelchairs on both floor level and bleachers.

D. Ticket Agency Fees. Any ticket agency fees incurred through the sale of tickets shall be borne by Lessee.

E. Lessee's Options.

(1) Lessee shall have the option to use Lessor's personnel to sell tickets. Lessee shall pay such personnel at the prevailing rate.

(2) Lessee shall also have the option of utilizing Lessor's ticketing system. If Lessee decides to use Lessor's ticketing system, it must also use Lessor's personnel, as provided in (1) above. Lessee shall be assessed a fee in the amount of \$_____ for the use of said ticketing system. If Lessee determines to utilize Lessor's ticketing system, it shall comply with requirements as follows:

- (a) **Payment of Box Office Receipts.** Box office receipts collected for Lessee by Lessor will be distributed to the Lessee at box office financial settlement.
- (b) **Lessee Ticket Representative.** Lessee shall furnish Lessor with the name, address and phone number(s) of Lessee's designated ticket representative(s). Designated ticket representative(s) will be the only person(s) to receive ticket counts/financial information from Lessor's personnel. Designated ticket representative(s) must be available to resolve last minute ticket problems. If Lessee must change representative(s), Lessor shall receive written notification not less than eight (8) hours prior to change.
- (c) **Box Office Hours.** Lessor's box office will be open during its customary work hours. Daily ticket sales reports will be available to Lessee, generally between 8:00 a.m. and 4:00 p.m.
- (d) **Box Office Access.** Access to Lessor's box office is restricted to authorized Lessor personnel only.
- (e) **Lessee Ticket Responsibility.** Lessee accepts complete financial responsibility for all tickets released to Lessor or agents designated by Lessee.
- (f) **Customer Payments.** Lessor will accept checks payable to Lessee for ticket purchases, only at Lessee's request. Lessor will attempt to secure reliable identification from purchasers paying by check; however, in all cases, whether identification is provided or not, Lessee accepts the ultimate responsibility for bad checks. Lessor

will accept credit cards only if Lessee provides appropriate equipment.

- (g) **Refund of Ticket Revenue.** Lessor retains the right to make determination of ticket refunds for cause, in keeping with Lessor's policy of retaining public faith. This shall include, but not be limited to, seats blocked by equipment and failure of event to proceed within reasonable time of schedule provided by Lessee. In case of cancellation, Lessor shall provide refunds on all tickets sold by Lessor's box office; Lessor's box office will make refunds only on those tickets sold from Lessor's box office. Deadlines for refunds shall be advertised in public media by Lessee at Lessee's expense.
- (h) **Ticket Fee.** Lessor may be entitled to a negotiated fee predicated on gate receipts. Said fee shall be agreed to by the parties prior to execution of this Lease.
- (i) **Box Office Financial Settlements.** Lessor will provide Lessee's ticket representative(s) a ticket audit of sales from its box office prior to event. Lessor shall provide Lessee the funds held from its box office, less the balance of rent and other fees due to the Lessor. Final audit will be based on paid tickets, complimentary tickets, tickets unsold, and other expenses. Audit does not indicate attendance. If attendance count is required, a torn ticket count can be made.

(j) **Description of Event.** Lessee shall furnish Lessor's box office, prior to the first day of public ticket sales, a short, accurate description of the event for which tickets will be sold.

(k) **Ticket Sale Locations.** Tickets for events at the Facility will be sold at Lessor's box office and other outlets approved by the Lessor.

ARTICLE 12

12. General Requirements.

A. Lessee Event Representative. Lessee shall furnish to Lessor the name, address and phone number(s) of event representative designated by Lessee to be the sole person authorized to make decisions or to negotiate on behalf of Lessee with Lessor's staff. This representative, who must be present at each event, will be the sole person authorized to resolve problems and conflicts or to negotiate any alteration in house procedure(s).

B. Handicapped Accessibility. Information and assistance for handicapped patrons is available to Lessee from Lessor's staff and is available to the public from the Lessor's box office, if Lessee exercises the option to use Lessor's ticketing system.

C. Time. The Facility will be opened to the audience at least thirty (30) minutes prior to scheduled event(s). The event will begin at the time printed on the tickets. Specific arrangements to the contrary must be approved and arranged by Lessor, at its designated representative.

D. Concessions. Lessor reserves and retains to itself the exclusive right to operate or permit others to operate any and all concessions at, in, or on the Facility. Lessor reserves the right to use such areas as are, in its opinion, necessary for such concessions. Lessor will determine which concession shall be in operation during the period of the lease agreement.

- Lessee shall not vend or sell any food, soft drinks, candy or refreshment of any kind without permission of Lessor, nor shall Lessee grant any concession rights to others.
- No free samples of food, beverage or any product may be given away or otherwise distributed without prior written approval of Lessor.

E. Merchandise. Lessee shall only be permitted to sell merchandise including, but not limited to, t-shirts and other memorabilia in accordance with separate prior written agreement with Lessor. If the parties cannot agree on such agreement, then, in such event, Lessee shall not be permitted to sell merchandise. If authorized to sell merchandise, Lessee shall, unless otherwise approved by Lessor, utilize Lessor's personnel for the sale of such merchandise at the athletic event. Lessee shall pay such personnel directly immediately upon end of the event.

F. Photographs and Recorders. The taking of photographs and the possession or use of audio or video recorders during events is strictly forbidden.

G. Staff Right to Entry. Lessee shall afford Lessor's staff the right to enter any part of the Facility at any time to perform official functions.

H. Smoking/Waste. Lessee will not permit smoking at the Facility or on Lessor's premises. Lessee further agrees not to suffer or commit waste on or to the Facility or on Lessor's premises. Lessee is responsible for enforcement of this provision.

I. Collections. No collections, donations or solicitations of money or goods of any kind, whether for charity or otherwise, shall be made or attempted at the Facility without the permission of Lessor.

J. Distribution of Literature. The inclusion into programs or the distribution of any literature, pamphlets, tracts, flyers or the like, unless pertaining directly to the content of, or

personnel in the event (other than standard commercial advertising) is not permitted without permission from Lessor.

K. Broadcast Rights. Lessor reserves the right and privileges for audio and video recording and/or outgoing radio and television broadcasts originating from the Facility during the term of the Use of Facility Lease Agreement. Should Lessor grant to Lessee such privileges, Lessor has the right to require advance payment of any estimated related costs to Lessor and payment for said privileges in addition to rental fee. Such permission must be obtained in writing forty-five (45) days in advance of recording broadcast date.

L. Alcohol. Concession and/or consumption of any alcoholic beverage or controlled dangerous substance at the Facility or on Lessor's premises is strictly prohibited. Violators are subject to arrest.

ARTICLE 13

13. Clean-Up. Lessee shall pay to Lessor a custodian clean-up fee in the amount of six hundred (\$620.00) dollars.

ARTICLE 14

14. Financial.

A. Penalty for Late Payment. When financial payment is not received as prescribed in the lease agreement, a late payment service charge on the unpaid balance at the maximum amount allowed by law per month will be added to the amount due.

ARTICLE 15

15. Termination of Lease. If, for any reason, Lessee shall cancel the event, this lease agreement shall terminate and the Lessee shall forfeit its deposit to the Lessor, as provided in Article 2, Paragraph B.

ARTICLE 16

16. Notice. Any notice by either party to the other shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by registered mail or certified mail in a postpaid envelope addressed, if to Lessor, at the Lessor's address as set forth below. If to Lessee, at Lessee's address as set forth below; or to either at such other address as Lessee or Lessor respectively, may designate in writing. Notice shall be deemed to have been duly given, if delivered personally, on delivery thereof, and if mailed, upon the 5th day after the mailing thereof. In the event that either Lessor or Lessee shall fail to comply with the any of the covenants contained herein, either party shall give written notice of such failure by certified mail, return receipt requested, to Lessor at:

Notice addressed to Edward Gillen, District Athletic Director
Lessor shall be sent to: Toms River Regional Schools/ High School East
 1225 Raider Way
 Toms River, NJ 08753

With a copy to: William J. Doering, Business Administrator
 Toms River Regional Schools
 1144 Hooper Avenue
 Toms River, NJ 08753

Notices addressed to Timber Creek High School
Lessee shall be sent to: 501 Jarvis Rd,
 Sicklerville, NJ 08081

ARTICLE 17

17. Waiver. The failure of either party to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any subsequent breach or default in either the terms or conditions breached or in any other term or condition hereof.

ARTICLE 18

18. Modification. This Use of Facility Lease Agreement may not be modified unless such modification is in writing and signed by both parties.

ARTICLE 19

19. Effect of Partial Invalidity. If any provision of this lease agreement is held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

ARTICLE 20

20. Integration. This written lease agreement contains the entire agreement between the parties, and neither party has relied upon any prior or contemporaneous representation, either oral or written, that are not contained in the lease or its incorporated parts.

ARTICLE 21

21. Pronouns. The use of the neuter singular pronoun in referring to Lessor or Lessee shall, nevertheless, be deemed proper reference even though Lessor or Lessee may be an individual, a corporation, a partnership or a group of two or more individuals or corporations.

ARTICLE 22

22. Successor and Assigns. The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

ARTICLE 23

23. Affirmative Action.

A. The parties to this contract agree to incorporate into this contract the mandatory language of subsection 3.5(a) of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of said subsection 3.5(a).

B. The parties to this contract agree to incorporate into this contract the mandatory language of section 3.7 of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the contractor or subcontractor agrees to comply fully with the terms, provisions, and obligations of said section 3.7.

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be signed by their proper corporate officers or representatives of the partnership, as the case may be, on the day and year set forth at the heading of the within Lease Agreement.

WITNESS & ATTEST:

**TOMS RIVER REGIONAL SCHOOLS
BOARD OF EDUCATION, LESSOR**

WENDY SAXTON
Board Secretary
(Seal)

By _____
WILLIAM J. DOERING
School Business Administrator

TIMBER CREEK HS, LESSEE

Board Secretary

By _____

SKF:nmc
#3000-195

SCHEDULE A

Schedule of Costs

I. Rent

- | | | |
|----|-----------------------------------------------------------------------|-----------------|
| 1. | Rent | <u>\$400.00</u> |
| 2. | Finish Lynx Timing Device
(minimum of 5 hours @ \$110.00 per hour) | \$ |

II. Miscellaneous Fees

- | | | |
|----|---------------|----|
| 1. | Setup/Cleanup | \$ |
|----|---------------|----|

III. Minimum House Personnel

- | | | |
|----|----------------------------------------------------------|----|
| 1. | Site Director | \$ |
| 2. | Security (minimum of 4 @ \$85.00 each) | \$ |
| 3. | Ticket Seller (minimum of 2 @ \$75.00 each) | \$ |
| 4. | Ticket Taker (minimum of 2 @ \$75.00 each) | \$ |
| 5. | Finish Lynx Timers | |
| | Data Processor | \$ |
| | Assistant (4 @ \$125.00 each) | \$ |
| 6. | PA Announcer | \$ |
| 7. | EMT – (minimum of 2, minimum 5 hours @ \$40.00 per hour) | \$ |

Number of personnel subject to change in conjunction with event Total:

\$400.00 X 3

- **The above fees are priced for a 2 hour track meet.**
- **If Lessee requests that the 2 EMT's be removed from this contract, the Lessee shall be Responsible to provide Athletic Trainer Services to all of their events.**