

MIDLAND CIVIC ARENA USE AND INDEMNIFICATION AGREEMENT

This Agreement, dated this _____ day of _____, _____, entered into between:

OWNER:

City of Midland, a Michigan Municipal Corporation _____

333 W. Ellsworth Street _____

Midland, MI 48640 _____

USER:

Name

Address

City, State, Zip

Phone

Email

for use of the Civic Arena property specified below for activities, including ice/turf games, practices, other approved events or non-ice events and use of the conference room and mezzanine. This Agreement goes into effect on the _____ day of _____, _____ and remains in effect until cancelled by either party.

This Agreement is subject to the following conditions:

1. **AGREEMENT.** This Agreement authorizes User to use the South Ice, Olympic Ice, North Turf, conference room or mezzanine area, as specified in the attached Exhibit 1, including the assigned locker rooms, spectator stands, public areas of the Civic Arena, and areas of ingress and egress to said areas. Owner shall also permit the use of the parking area and other areas normally used by members of the public. Said areas shall hereinafter be referred to as the "Property". The use granted pursuant to this Agreement only applies to the dates and times specified in Exhibit 1. Additional dates and times may be scheduled and Exhibit 1 may be supplemented accordingly under the same terms and conditions as specified in this Agreement. Additional copies of Exhibit 1 may be attached hereto if additional space is required.
2. **PERSONS COVERED.** Only User's members, prospective members, and invitees are permitted by this Agreement to use the Property.
3. **USER FEE.** In consideration for the use granted pursuant to this Agreement, User shall pay Owner for the time and amount specified in Exhibit 1 and in accordance with the payment schedule set forth therein (the "User Fee"). User owes the full amount of the User Fee whether or not the rented time is actually used. User must cancel scheduled time at least thirty (30) days in advance. If said notice is not received by the User or an individual authorized by the User, the User may be charged the full amount of the scheduled time. Owner shall invoice User at the beginning of each month with payment due by the 15th of each month. Payments received after the invoice due date shall be assessed a \$25 fee or 2% of the unpaid balance, whichever is greater.
4. **OWNER'S DUTIES.** Owner's duties shall include advance preparation of the Property, maintenance and lighting, maintenance of the ice/turf surface from time to time, and cleaning of the locker rooms, in accordance with Owner's usual and customary practices.
5. **USER'S DUTIES.** User's duties shall include inspection of the Property subject to this Agreement prior to each use (including, but not limited to, the ice/turf surface, glass, boards, spectator stands and locker rooms), notifying Owner of any potential problems or defects, and crowd control during the specified times set forth in Exhibit 1. Moreover, User shall obtain the written release, hold harmless and waiver of claim of every participant (including the written consent of the parent or guardian for minor participants) in a manner and form satisfactory to Owner.
6. **ASSUMPTION OF RISK.** User shall defend and hold Owner, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of User, its officers, agents or employees. Owner shall defend and hold User, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Owner, its officers, agents or employees. This provision shall survive the expiration or earlier termination of this Agreement.

7. **RELEASE.** User hereby waives, releases and discharges Owner from any losses, damages, costs, expenses, causes of action and claims they may have arising out of the use of the Property pursuant to this Agreement or otherwise.
8. **INDEMNIFICATION.** The parties to this Agreement do hereby mutually agree to release, indemnify and hold harmless each other, from and against all liability for bodily injury (including death), damage to property, personal injury, claims, demands, losses, damages, costs and expenses (including any attorney's fees), and lawsuits arising from, or alleged to arise from, rental and use of the Property. Each party shall agree to accept the full responsibility for their own negligence and actions. This provision shall survive the expiration or earlier termination of this Agreement.
9. **PROMOTIONAL ACTIVITY.** User agrees not to conduct any promotional activity with respect to any event to be conducted at the Civic Arena without the prior written consent of the Owner.
10. **POLICIES/PROCEDURES.** User agrees to comply with Owner's policy and procedures for the Civic Arena as specified in Exhibit 2, which may be amended from time to time.
11. **ASSIGNMENT.** User may not assign this Agreement or any portion thereof without the prior written consent of Owner, which consent may be withheld at the Owner's sole discretion. Any purported assignment without the consent of Owner shall be null and void.
12. **NOTICE.** All notices shall not be deemed to have been duly given or served unless in writing and personally delivered or mailed in the US mail by first-class registered or certified mail, postage prepaid, or delivered by a nationally recognized courier service addressed to the parties above. Notice is deemed effective if delivered (or refused) pursuant to this section.
13. **WAIVER.** No waiver by Owner of any rights or remedies pursuant to this Agreement shall be effective unless in writing and signed by Owner. The written waiver by Owner of any breach by User of any term, covenant or condition herein shall not be deemed a waiver of any subsequent breach or any breach of any other term covenant or condition herein by User.
14. **BINDING EFFECT.** This Agreement shall be binding upon Owner, its successors and assigns. It shall be binding upon User, its officers, employees, members, agents, and representatives together with their heirs and assigns.
15. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan without reference to the conflict of laws or choice of laws provisions thereof.
16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties.

IN WITNESS WHEREOF, the Owner and User have executed this Agreement.

OWNER: _____
Date

USER: _____
Date

Reviewed as to form by James O. Branson III, Midland City Attorney
Reviewed as to form and content by Kenny Benson, Civic Arena Manager