

**AGREEMENT FOR USE OF CERTAIN ROOMS WITHIN THE SHAKOPEE ICE
ARENA BUILDING BY ADVANTAGE SPORTS GROUP, LLC**

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2023, by and between the CITY OF SHAKOPEE, a Minnesota municipal corporation (“City”) and Advantage Sports Group, LLC, a Minnesota limited liability company (“ASG”).

Recitals

- A. The City is the fee owner of certain property located at 1255 Fuller Street, Shakopee, MN 55379 (PID No. 279120451), which includes the building known as the Shakopee Ice Arena (the “Ice Arena”).
- B. The City currently rents the Ice Arena during certain dates and times to Independent School District #720 (“ISD 720”), between October 1st through March 31 of each year, according to the terms of the City’s agreement with ISD 720.
- C. ASG desires to use certain areas of the Ice Arena, including a coaches room and a locker room (respectively, the “Coaches Room” and the “Locker Room”, and, collectively, the “Rented Rooms”) during certain times when ISD 720 does not have exclusive use of the Ice Arena.
- D. The City and ASG desire to enter into this Agreement setting the terms by which the ASG will use the Rented Rooms.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained in this Agreement, the City and ASG agree as follows:

1. Term. This Agreement is valid and extends through **August 31, 2028** (the “Initial Term”), during which time ASG shall have the right to use the portions of the Ice Arena described in this Agreement from April 1st through August 31st (the “Off Season”) of each year. At ASG’s option, the original five-year term is renewable for additional one-year terms for a period of up to five years. If ASG desires to exercise its option to renew prior to the expiration of the Initial Term, ASG must provide written notice to the City 90 days prior to the expiration of the Initial Term. For each subsequent one-year term following the Initial Term, if ASG wishes to exercise its option to renew, ASG must do so by providing the City with notice 90 days prior to the expiration of each one-year term.
2. Payment. ASG shall pay \$1,073.12 per month (the “Monthly Rental Payment”) for ASG’s use of the Rented Rooms. Payment of the Monthly Rental Payments shall be paid by ASG to the City by the first day (the “Payment Date”) of each month of the Off Season. Each payment may be made to the City by check on the Payment Date. The Monthly Rental Payment sum was determined according to the square footage of the Rented Rooms, as follows:

Coaches Room: 183.75 square feet, \$139.65/month.

Locker Room: 1,228.25 square feet, \$933.47/month.

Following the first year of the Initial Term, there will be an annual increase in the Monthly Rental Payment of 3 % per year.

3. Locker Room. ASG is granted exclusive use of the _____ Team locker room during the Term of this Agreement, with an area of approximately 1,228.25 square feet. With the permission of ASG, the City may allow other organizations or groups to use the Locker Room during the Off-Season.

4. Coaches Room. ASG is granted exclusive use of _____ Coaches Room during the Term of this Agreement, with an area of approximately 183.75 square feet. With the permission of ASG, the City may allow other organizations or groups to use the Coaches Room during the Off-Season.

5. ASG's Use of the Rented Rooms. ASG shall use the Rented Rooms for: _____

_____ pursuant to the terms of this Agreement. ASG shall not permit nor suffer any conduct, noise, odor, or other nuisance in, on or about the Ice Arena and Rented Rooms to disturb any persons on or about the Ice Arena or adjacent premises. Tenant shall also not permit or suffer on or within the Ice Arena or Rented Rooms any criminal activity by ASG or the ASG's employees, including those crimes involving physical violence or harm to persons or property or possession of contraband or a controlled substances. Tenant shall not use or permit the Rented Rooms to be used for any purpose or purposes other than those set forth in this Paragraph.

6. Compliance With Laws. The City warrants that the physical condition of the Ice Arena and Rented Rooms will comply with all applicable laws, ordinances, rules, and governmental regulations ("Applicable Laws"). The City shall comply with all Applicable Laws regarding the physical condition of the Ice Arena and Rented Rooms, except to the extent that ASG must comply with Applicable Laws. ASG shall comply with all Applicable Laws regarding the physical condition of the Rented Rooms to the extent the Applicable Laws pertain to the particular manner in which ASG uses the Rented Rooms or to the lawful use of the Rented Rooms, such as laws governing maximum occupancy and illegal business operations. In addition ASG shall follow City policies regarding age, discrimination policies and facility use policies within the Ice Arena during the Term of this Agreement.

7. Services and Utilities. The City shall at its expense:

- a. Provide heating, ventilation and air conditioning (HVAC) for the Rented Rooms to maintain comfortable temperatures during the times that ASG uses the Rented Rooms;
- b. Provide electricity to the Ice Arena in reasonable amounts necessary for ASG's use of the Rented Rooms;
- c. Provide such other utility services including, but not limited to: gas, water, garbage removal, and sewer;

- d. Provide expendables such as light bulbs, toilet paper and similar items;
- e. Provide trash disposal receptacles; and
- f. Maintain common areas in the Ice Arena.

8. ASG's Use and Care of the Ice Arena and Rented Rooms. ASG shall:

- a. Keep the Rented Rooms in good order;
- b. Immediately give notice to the City of any damage to the Rented Rooms, and make all repairs and replacements to the Rented Rooms resulting from ASG's misuse or negligence;
- c. Clean and maintain the Rented Rooms in sanitary condition, including those conditions required by ordinance and regulations of any governmental or quasi-governmental entity having jurisdiction. "Clean" and "sanitary conditions" includes: daily cleaning, mopping, disinfecting, depositing trash into proper receptacles, and keeping the Rented Rooms free from litter, dirt, and obstructions;
- d. Cooperate with City staff whom are assigned to oversee the Ice Arena;
- e. Pay for and provide its own data service, if necessary;
- f. Pay for and provide any security measures necessary or desired to secure its equipment, appliances, or other valuables, and to provide access to those security measures to the City's Recreation Facilities Manager;
- g. Follow the City's no smoking, tobacco, and alcohol policy and other premises policies regulating permissible activities and do not allow any smoking or drinking within the Ice Arena or surrounding property;
- h. Maintain and implement a hiring process that provides for a criminal background check for any ASG staff working at the Ice Arena; and
- i. At the end of each Off Season remove from the Rented Rooms all personal property and equipment, and repair any damage to the Rented Rooms and Ice Arena caused by such removal.

9. Indemnification. Except for claims arising out of the willful or negligent act or acts of the City or its agents, ASG shall hold harmless, indemnify and defend Landlord against all claims, expenses and liabilities incurred, including reasonable attorneys' fees, in connection with loss of life, personal injury, and/or damage to or theft of property arising out of occurrences in, upon or at the Ice Arena, resulting from ASG's use of the Ice Arena, or occasioned wholly or in part by any act or omission of ASG, its agents, employees, or invitees.

10. Interruption of Services. The City explicitly does not warrant that any services the City supplies to the Ice Arena and the Rented Rooms will not be interrupted. Services may be interrupted because of accidents, repairs, alterations, improvements, or any reason beyond the reasonable control of the City. No interruption shall make the City liable to ASG for monetary damages of any nature. The City may enter the Rented Rooms at reasonable times, and at any time in the case of an emergency, to make repairs, alterations, improvements, and additions either required or advisable to preserve the safety and physical condition of the Rented Rooms and Ice Arena.

11. Alterations. ASG shall not make alterations to the Rental Rooms or the Ice Arena without the City's advance written consent. "Alterations" means additions, substitutions, installations, improvements, and similar changes to the physical condition of the Rental Rooms and Ice Arena.

12. Surrender of Rented Rooms. At the expiration of each Off Season during the Term of this Agreement, ASG shall surrender the Rented Rooms in the same condition as existed at the commencement of each Off Season, ordinary wear and tear excepted.

13. Termination. If anything in the Ice Arena or Rented Rooms is damaged or destroyed, the City shall have the option to rebuild or terminate this Agreement. This option must be exercised by notice to ASG given not more than 90 days from the date of such damage. If the City exercises the foregoing option to terminate this Agreement, the City will refund to ASG the prorated Rental Payment up to the date of the damage.

14. NO WARRANTY OF CONDITION OF PREMISES. The City makes no warranties or representations of any kind in connection with the quality or condition of the Rented Rooms, and makes no warranties that the Rented Rooms are fit for ASG's particular purpose. ASG shall rely solely upon any prior inspections ASG may have made. ASG acknowledges that it is renting the Rented Rooms based upon ASG's own investigation and inspection thereof. The City and ASG agree that ASG accepts possession of the Rented Rooms as of the Term commencement date "AS IS, WHERE IS, WITH ALL FAULTS" subject to the provisions of this Agreement.

15. Default. Should ASG default under this Agreement, the City shall give ASG written notice of the default, and ASG shall have 30 days or such other period reasonably required to cure such default. If the default is not cured within the applicable cure period, the City may terminate this Agreement. Should the City default in its performance under this Agreement and such default shall continue for 30 days after written notice to the City from ASG specifying such default, the City shall have 30 days after receiving notice to cure the default. If the default is of such character so as to require more than 30 days to remedy, the City shall have a reasonable period in which to remedy the same. ASG's sole and exclusive remedy in the event of the City's default under this Agreement shall be termination of this Agreement.

16. Environmental. ASG agrees that throughout the Term of this Agreement, ASG shall not use the Rented Rooms or the Ice Arena for the storage, handling, transportation, or disposal of any Hazardous Substances. "Hazardous Substances" for purposes of this Agreement shall be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated, or classified under any Environmental Law of other applicable federal, state, or local laws and the regulations promulgated thereunder as: (i) a "hazardous substance" pursuant to

Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a “hazardous waste” pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5) , 6921, as now or hereafter amended; (iii) toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a “hazardous air pollutant” under Section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a “hazardous material” under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future. “Hazardous Substances” shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls (“PCBs”), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives, and urea formaldehyde.

17. Entire Agreement. This Agreement is the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings or agreements. Any alterations, variations, modifications, or waivers of the Agreement shall only be valid when they are agreed to in writing and signed by the parties.

18. Applicable Law. The laws of the State of Minnesota shall govern the interpretation, validity, performance, and enforcement of this Agreement, without giving effect to the principles of conflict of laws. Any proceedings related to this Agreement shall be venued in the State of Minnesota.

19. Data Practices Act. All of the data created, collected, received, stored, used, maintained, or disseminated by the City in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

20. Waiver. Failure on the part of the City to complain of any action or non-action on the part of ASG, no matter how long the same may continue, shall not be deemed to be waiver by the City of any of its rights hereunder. No waiver at any time of any of the provisions of this Agreement by the City shall be construed as a waiver of any of the other provision hereof, and that a waiver of any provision shall not be construed as a waiver at any subsequent time of the same provision.

21. Assignment. Neither party shall assign this Agreement or any of the rights, duties or payments arising under this Agreement to any third party without the written consent of the other.

22. Provisions Binding. The terms of this Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, and legally appointed representatives of the City and ASG.

23. Notices. Any notice which may or must be given under this Agreement shall be deemed “given” upon hand delivery, or three days after prepaid posting in the U.S. Mail whichever shall first occur. Notice shall be addressed to the addresses listed below or to any other address as shall be designated by written notice:

If to ASG:

Advantage Sports Group, LLC
Attn: Manager
909 Spruce St.
Farmington, MN 55024

If to City:

City of Shakopee
Attn: Parks and Recreation Director
1255 Fuller St. S
Shakopee, MN 55379

With a Copy to:

Kennedy & Graven, Chartered
Attn: Jim Thomson
150 S. 5th Street, Suite 700
Minneapolis, MN 55402

or such other address as either party may give to another party in accordance with this Section.

24. Miscellaneous.

- a. ASG may not post advertisements in any portion of the Ice Arena without prior written approval from the City.
- b. ASG will have shared use of the Ice Arena parking lot on a first-come, first-served basis. ASG may not prohibit, regulate, or obstruct use of the Ice Arena parking lot by others. ASG is not responsible for the plowing or shoveling of the Ice Arena parking lot or sidewalks.

25. Severability. If any clause, term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining terms and conditions shall not be affected and the rights and obligations of the parties under this Agreement shall be construed and enforced as if the Agreement did not contain the particular invalid or unenforceable provision.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned parties acknowledge that they have read and understand this Agreement and have executed it on the dates recorded below.

CITY OF SHAKOPEE

Date: _____

By: _____
Matt Lehman, Mayor

By: _____
William H. Reynolds, City Administrator

ADVANTAGE SPORTS GROUP, LLC

Date: _____

By: _____
Calvin Simon, Manager