

USE AGREEMENT

This Use Agreement (Agreement) is made and entered into this 2nd day of August, 2010 by and between the Germantown School District, a school district organized according to the Constitution and laws of the State of Wisconsin (the "School District") and the Village of Germantown, a village duly organized according to the laws of the State of Wisconsin (the "Village"), together the Parties.

WHEREAS, the Village desires to use certain property of the School District on the terms described herein,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE SCHOOL DISTRICT AND THE VILLAGE AGREE AS FOLLOWS:

1) Right to Use Facilities. Subject to the Village's observance of the terms and conditions of this Agreement, the School District hereby grants to the Village the non-exclusive right to use the Facilities and portions of the Facilities listed on Exhibit B hereto, and only at the specific times and only for the specific activities set forth on Exhibit A hereto (which purposes shall only be educational and recreational). The Village and the School District shall negotiate the contents of Exhibit A and shall have agreed to the contents of Exhibit **B** on or before the dates indicated below:

- (a) For a School Year Period **August 25 through June 15** by August 1 and
- (b) For a Summer Period **June 15 to August 25** by April 1.

In the event that the Village and the School District are unable to agree upon the contents of an Exhibit by the stated date, this Agreement shall terminate upon the expiration of the then-current schedule of uses. The Village will provide use requests to the School District in advance of the requested usage

- 2) Purpose. The Village may make reasonable use of the Facilities and/or portions of the Facilities in Exhibit B at the times and for the educational or recreational uses described on Exhibits A (the Permitted Uses). The Village agrees that the Facilities shall not be used for any unlawful purpose or for any purpose that will damage or harm in any way the Facilities or any third party, and the Village will not use or keep about the Facilities any article or equipment that would in any way affect the validity of the fire and extended coverage insurance policy carried by [the School District] or would cause an increase in any premium for insurance carried by the School District.
- 3) Right to Use Common Areas. During the hours in connection with the Permitted Use on Exhibit A, the Village shall have the restricted nonexclusive use of the common areas of the Facilities, including corridors, stairways, elevators, entryways and restrooms, for the following purposes (i) purposes necessary or incidental to the Village's Permitted Use (ii) purposes necessary or incidental to the Village's complying with all laws and regulations (including, without limitation, for emergency exit purposes), and (iii) purposes necessary to permit the Village to complete the Village's obligations under this Agreement.
- 4) Compliance with Laws. The Village, at its sole costs and expense, shall comply and shall cause its Users (as defined herein) to comply with any and all laws, statutes, ordinances, and regulations (federal, state, county or municipal), now or hereafter enforced, that are applicable. The Village, at its sole cost and expense, also covenants to comply and to cause its Users to comply with all rules and regulations issued from time to time by the School District. The Village understands that the School District is subject to the strictures of the First Amendment to the United States Constitution respecting an establishment of religion and of comparable provisions in article 1, section 18 of the Wisconsin Constitution (which constitutional provisions are referred to collectively as the Establishment Clause). The Villages thus expressly represents and warrants that it shall not act or fail to act with respect to the Facilities in a manner that would cause the School District's use of the Facilities to contravene the Establishment Clause. The Parties each recognize that the application of the Establishment Clause or other laws and regulations to particular situations may present difficult legal questions and hence the Parties agree to act in good faith to resolve any issues that might arise and to do so with the purpose of avoiding any violation of any laws or regulations by the School District in connection with the Village's use of the Facilities.
- 5) Term of Agreement. This term of the renewal of this Agreement (the "Renewal Term") shall be for a period commencing as of the date of the last execution of this Agreement and ending on September 1, 2012, unless sooner terminated or extended by renewal, according to the terms hereinafter set forth. The Term shall be renewable for additional renewal periods upon a written agreement signed by the parties hereto.

- 6) Village Financial Contribution in Consideration of Use. In consideration of the use of the Facilities during the Renewal Term according to the terms of this Agreement, the Village shall fund the purchase of replacement equipment and/or maintenance, repairs and improvements to the Facilities, as follows: (i) to the extent funds are available from the Germantown Park and Recreation Department Special Non-Lapsing Operating Fund, created by the Village Board for that purpose (**Exhibit C**); (ii) for which the parties to this Agreement mutually determine will benefit and promote the Permitted Uses under this Agreement; and (iii) which disbursements shall be made strictly in accordance with Village expenditure policy. Any equipment or improvements funded hereunder shall remain the property of the School District on termination of this Agreement.
- 7) Fees. The Village agrees to charge the School District's residents the same usage fees for participation in the Permitted Uses of the Facilities as the Village charges residents of the Village of Germantown. The Village also agrees waive all inspection, permit, plan examination, conditional use, and all similar fees \$1,000 and under (**Exhibit D**) for the School District when requested by the School District.
- 8) Taxes. Both parties represent that they are exempt from real property taxation under the Wisconsin Statutes.
- 9) Insurance. The Village shall carry fire and extended coverage insurance, public liability insurance, and other risk insurance as required by the District's insurance coverage provider(s).

Every year during the Term of this Agreement, the Village shall provide the School District with a certificate of insurance evidencing that insurance satisfying the requirements of this Agreement are in effect. The School District shall have the right to take any action or make any payment required to continue coverage as required by this Section. The Village hereby covenants to reimburse and hold the School District harmless for the cost of any such action or payment.

- 10) Maintenance and Repairs. The School District shall maintain the Facilities consistent with its own standards of maintenance. Before each use of the Facilities, the Village will record the condition of each Facility. After each use of the Facilities, the Village shall return the Facilities to the same condition the Facilities were in prior to their use, normal wear and tear excepted, including without limitation the clean-up of any activity, the collection and disposal of all waste generated by or due to the activity, and the return of any equipment or furniture to its position prior to the Village's use. The Village shall fund in accordance with Section 6 above, any additional janitorial support required due to the use by the Village. The Village shall notify the School District in the event the Village or any User determine that the Facilities or any equipment or furniture therein are unsafe or in need of repair or replacement, and the Village shall participate in the cost of such repair or replacement in accordance with Section 6 above.
- 11) Damage or Destruction. In the event any of the Facilities shall be damaged or destroyed, in whole or in part, by fire or any other casualty, the School District, in its sole discretion may decide either to terminate this Agreement (or a part hereof) or to repair or replace that portion of the Facilities which has been damaged or destroyed by such casualty. During the time of any such repair or replacement, the School District shall use reasonable efforts to accommodate the Village in its anticipated uses of the Facilities. In no event shall the School District be liable for any damages to the Village or its Users for failing to provide any of the Facilities in the event the Facilities have been damaged or destroyed.
- 12) Termination. In the event the Village breaches any representation or warranty or fails to perform any obligation in this Agreement, the School District may, in its sole discretion, and after providing the Village with a 30 calendar day written notice to cure, terminate this Agreement. Any fees or expenses owing by the Village at the time of termination shall be paid by the Village. This Agreement may also be terminated by either party [without cause] upon six months prior written notice to the other party.
- 13) Security. The Village agrees that all instructors, employees, and similar persons who are engaged in the presentation of the Activities shall abide by the security policies of the District, including those policies which govern the disbursement of keys, pass codes, etc.

- 14) Indemnification by Village. THE VILLAGE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE SCHOOL DISTRICT NOR ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF THE SCHOOL DISTRICT IS MAKING, AND THE VILLAGE IS NOT RELYING ON, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, OTHER THAN THOSE PROVIDED IN THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE FACILITIES OR ANY EQUIPMENT ON THE FACILITIES, INCLUDING WITHOUT LIMITATION THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR IS IN GOOD WORKING CONDITION.

The Village shall defend, indemnify and hold the School District and its employees, officers, directors, agents, authorized representatives, students, permitted sublessees, invitees, licensees and frequenters harmless from and against any and all claims, demands, suits, losses, damages, costs, expenses, obligations, judgments, or other forms of liability to third parties, actual or claimed, or the School District (including reasonable attorney=s fees) arising out of (i) the breach of the Village=s representations, warranties and agreements herein, and (ii) any injury to property or persons occurring or allegedly occurring in connection with the negligence or intentionally wrongful act or omission of the Village or its employees, officers, directors, contractors, representatives or guests and invitees of any kind with respect to the Facilities, ~~(ii)~~ **(iii)** any damage or harm to the Facilities, the School District's land, buildings, parking lots and sidewalks or to third parties as a result of the Village or its Users use of the Facilities.

- 15) Indemnification by School District. The School District shall defend, indemnify and hold the Village harmless from and against any and all claims, arising out of the breach of the School District=s warranties and agreements herein, provided that the Village=s sole and exclusive remedy under any theory of liability (tort, contract, etc.) shall be limited to the fees paid by the Village hereunder.
- 16) Assignment and Suboccupancy. The School District shall have the right at any time during the Term to sell or convey the Facilities subject to all the terms of this Agreement, or to assign its rights, title and interest under this Agreement in whole or in part. In the event of any such sale or assignment, the School District shall be relieved from and after the date of such transfer or conveyance of liability for the performance of any of its obligations contained herein as per Facility assignment, except for obligations or liabilities accrued prior to the date of such assignment or sale, to the extent that the buyer or assignee has not assumed such liabilities. The Village affirms and acknowledges that its right hereunder to use certain portions of the Facilities is in the nature of a license and hence that such right is personal to the Village and not transferable by it. Accordingly, the Village shall not attempt to sublet its interests hereunder in the Facilities, or in any portion of the same, nor shall it attempt to assign, mortgage, pledge, transfer or otherwise encumber or dispose of its interests under this Agreement. Any effort to so transfer such interests shall be void ab initio and hence of no force and effect. In addition, the Village shall not advertise, publish, or otherwise promote the real or implied use of any District facilities or portions thereof by any third party at any time without the written consent of the District. Failure to comply with this requirement shall constitute an immediate breach of this Agreement, and no remedies shall be granted by the District to the Village.
- 17) Relationship of Parties. This Agreement does not create the relationship of principal and agent, or of partnership or joint venture, or of any association or relationship between the parties.
- 18) No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
- 19) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof. This Agreement shall be deemed to amend and restate any prior written agreements relating to the Facilities. The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof. This Agreement shall not be modified, amended, or supplemented in any manner, except by an instrument in writing executed by the Parties or except as provided in Section 1 hereof.
- 20) No merger. There shall be no merger of this Agreement with any other estate or interest in the Facilities.
- 21) Succession. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.

22) Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Village:

Village of Germantown
N112 W17001 Mequon Road
Germantown, WI 53022-0337
Attn: Village Administrator

If to the School District:

Germantown School District
District Administrative Offices
N104 W13840 Donges Bay Road
Germantown, WI 53022-4499
Attn: Superintendent

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

- 23) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Wisconsin, without giving effect to any choice or conflict of law provision or rule.
- 24) Waivers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- 25) Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
- 26) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 27) Force Majeure. If either party is prevented from carrying out its obligations under this Agreement by events beyond its reasonable control, including acts or omissions of the other party, acts of God or government, natural disasters or storms, fire, act of terrorism, explosion, riot, war or political strike, labor disputes, failure or delay of third party transportation, or the availability of raw materials, then such party's performance of its obligations hereunder shall be excused during the period of such event and the time for performance of such obligations shall be automatically extended by the same period.

In Witness whereof the School District and the Village have entered into this Agreement as of the date set forth above.

GERMANTOWN SCHOOL DISTRICT

By: _____

Its: _____

Attest: _____

Its Clerk: _____

VILLAGE OF GERMANTOWN

By: _____

Its: _____

Attest: _____

Its Clerk: _____

RESOLUTION No. 4-10**A Resolution establishing a special non-lapsing and non-reverting operating fund for the Germantown Park and Recreation Department and for its Administration**

WHEREAS, the Germantown Park and Recreation Department collects program fees and corporate donations in its normal operation; and

WHEREAS, the Germantown Park and Recreation Department would like to add to the program fees charged, an additional fee component to be collected and used exclusively for improvements and maintenance to facilities, said charge to be known as the "Facility Fee"; and

WHEREAS, the Germantown Park and Recreation Department has requested that the Germantown Village Board establish a special non-lapsing and non-reverting operating fund for park and recreation purposes; into which all of the Facility Fees, and corporate donations earmarked for such purpose, will be deposited and from which improvements and maintenance for facilities used by the Park and Recreation Department may be funded; and

WHEREAS, the Germantown Village Board has determined that it is in the public interest to establish such special non-lapsing and non-reverting "Facility Fees Fund" for park and recreation purposes and a system to receive, hold and disburse such monies;

NOW THEREFORE, THE VILLAGE BOARD OF THE VILLAGE OF GERMANTOWN, WASHINGTON COUNTY, WISCONSIN, RESOLVES AS FOLLOWS:

NON-LAPSING OPERATING FUND**1. Creation of fund.**

The Village of Germantown hereby creates and establishes a specific non-lapsing and non-reverting fund to be known as the Germantown Park and Recreation Department Special Non-Lapsing Operating Fund, into which an added user program fee component to be charged to users, referred to as "Facility Fees", and corporate donations to the Germantown Park and Recreation Department earmarked by the donor for such purpose, shall be deposited.

2. Purpose of fund

The purpose of the Germantown Park and Recreation Department special Non-Lapsing Operating Fund is to allow for the use of program fees to assist with the maintenance and improvement of any indoor and outdoor facility, Village or School District owned, used by the Park and Recreation Department.

3. Responsibility for fund

The Treasurer of the Village of Germantown shall be responsible for receiving all funds to be deposited in such account and shall keep records as to the amounts received, the manner of their receipt, any disbursements and a current balance in such fund at all times.

4. Deposit of funds

Upon receipt from the Director of Germantown Park and Recreation Department, the Germantown Finance Department shall weekly deposit all Facility Fees into the Germantown Park and Recreation Department Special Non-Reverting Operating Fund.

5. Limitations on the use of funds

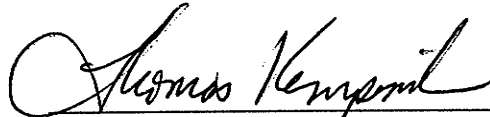
All Facility Fees placed in the special non-reverting operating fund may not be withdrawn except for the purposes for which the fund was created. Disbursements shall be made strictly in accordance with Village policy.

Introduced by Trustee: Vanderheiden

Adopted: January 18, 2010

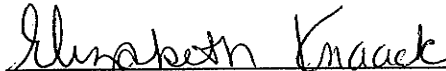
Vote: Ayes: 9

Nays: 0



Thomas Kempinski, Village President

ATTEST:



Elizabeth Knaack, Village Clerk

VILLAGE BOARD
of the
VILLAGE OF GERMANTOWN, WISCONSIN

RESOLUTION NO. 18-10

RESOLUTION WAIVING CERTAIN PERMIT FEES AND CERTAIN INSPECTION FEES TO
THE GERMANTOWN SCHOOL DISTRICT

WHEREAS, the Trustees of the Village of Germantown, in an effort to foster good relations and cooperation between the Village of Germantown and the Germantown School District Board of Education, and

WHEREAS, both the Village of Germantown and the Germantown School District are local units of government and taxing entities, and

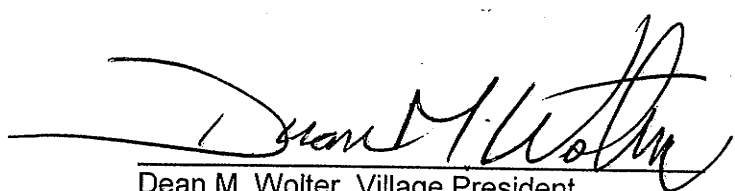
WHEREAS, the Germantown School District Board of Education allows the Germantown Parks and Recreation Department use of School District facilities free of charge for programs of the Parks & Recreation Department.

NOW, THEREFORE, BE IT RESOLVED, that the Village of Germantown waives all, Germantown School District, permit fees one thousand dollars and less and all inspection fees of one thousand dollars and less.

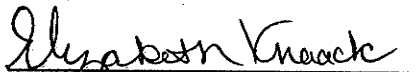
Introduced by Trustee: Baum

Adopted: August 2, 2010

Vote: Ayes: 6
 Nays: 2
 Absent: 1


Dean M. Wolter, Village President

ATTEST:


Elizabeth Knaack, Village Clerk