

ROBERT CROWN CENTER USE AGREEMENT  
City of Evanston

This Use Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between BEACON ACADEMY, a Montessori high school and a not-for-profit organization with offices at 1574 Sherman Avenue, Evanston, Illinois 60201 (hereinafter referred to as “Beacon Academy” or “Beacon,”), and the CITY OF EVANSTON, an Illinois home rule municipal corporation, with offices at 2100 Ridge Avenue, Evanston, Illinois 60201 (hereinafter referred to as “the City”). Together, the City and Beacon are referred to as the “Parties.” This Use Agreement is entered into contemporaneously with a separate Gift Agreement (the “Gift Agreement”) between the Parties pursuant to which Beacon pledges a gift as described therein.

The Beacon and the City agree as follows:

1. Purpose. The City of Evanston is constructing a new Robert Crown Community Center (the “Center”) with athletic fields and a new branch library (the “Project”). In order to support the long term financial viability of the Center, the City agrees to enter into a long term facilities use agreement for the Center with Beacon Academy to use the gymnasium, locker room, training room, and dedicated office space within a shared space. This Agreement is not a lease agreement; Beacon does not have exclusive control of the Center or a portion thereof. Beacon is permitted to use the Center according to specified time periods each day during the Term and restricted to the agreed upon schedule with the Parks, Recreation, and Community Services Department (the “Department”).
2. Term and Termination:
  - a. The term of the Agreement shall be for a period of seven (7) years (the “Term”). The commencement date is anticipated to be 1/1/2020 (“Commencement Date”) and the termination is anticipated to be 12/31/2027 (the “Termination Date”); however, actual commencement and termination dates will be determined based on construction schedules and Beacon’s school schedule and agreed to by the parties prior to occupancy. If the construction schedule is delayed and the delivery date is after 1/1/2020, the Parties will amend the agreement accurately represent the Commencement Date.
  - b. Option to extend the Agreement: The Term cannot be automatically renewed. If the Parties seek to negotiate an extension of the Agreement, the Parties will meet and confer to negotiate a five-year extension which must be approved by both parties in writing.
3. Fees:
  - a. Use Fees. Beacon agrees that for Term it will be assessed hourly rate of \$125 per hour to utilize the gymnasium in the Center. The rate for a five-year extension (if elected by Beacon) will be no more than 115% of the initial Term hourly rate.
  - b. Payment of Fees. The Department will invoice Beacon monthly for its usage of the Center. Beacon Payments shall be made payable to the City of Evanston and mailed to:

Robert Crown Community Center, 1801 Main Street, Evanston, IL 60202. Please note on the check the invoice number to ensure that the payment is properly credited. If and when the City is able to receive electronic payment, the Parties may agree to do so without amending the terms of this Agreement.

4. Facilities Covered:

a. Outdoor Facilities

The term “Outdoor Active Use Areas” will be used for purposes of this Agreement to mean the turf fields, baseball fields, and tennis courts. Beacon Academy will not have any exclusive use provided for the Outdoor Active Use Areas. Beacon may request use as any other user and payable at rates for use of Outdoor Active Use Areas will be established by the Department. Field rates have not yet been determined at the signing of this Agreement, but Beacon will not be charged more than other users of the Outdoor Active Use Areas.

b. Indoor Facilities

The term “Indoor Active Use Areas” will be used for purposes of this Agreement to mean the gymnasium, training room, locker room, and office space. The Parties shall have the right to add or exclude Active Use Areas during the term of this Agreement, provide that any such change shall be in writing and approved by both the Parties. Beacon will purchase training equipment such as a training table and ice machine (“Training Equipment”), and replacement of such Training Equipment, as Beacon deems necessary for the training room during the Term. Beacon is providing the Training Equipment for both its own use and that of the public. Public access to the equipment will be available during the times Beacon is not renting the gym/training room. The City will take reasonable precautions to insure use of the Training Equipment by the public is done in accordance with standard safety practices utilized at public use facilities. Beacon will have no responsibility or liability for injury to any person (including death) or damage to any property caused by public use of the Training Equipment.

5. Indoor Active Use Area guidelines: The City hereby grants permission to Beacon to use the Indoor Active Use Areas as set forth below for the sole purpose of providing its student athletes practice and contest space to compete in their respective sport with other school teams, including their coaches and staff, and any related uses to the activities described in Section 4.

a. Use Schedule. Beacon will be provided complete access to the Indoor Active Use Areas (minimum capacity 300 people) during a set schedule with the Department, for the following Beacon sports teams: basketball and volleyball teams. In setting the schedule, Beacon will be provided the opportunity prior to other possible users of the Center within the anticipated number of hours each week provided below. Additional sports teams may be added with the written consent of the City. Beacon must first provide the Department with a schedule of their maximum usage schedule of the Indoor Active Use Areas and the time slots for Beacon’s anticipated use (“Maximum Use Schedule”). Time slots to accommodate Beacon’s full Maximum

Use Schedule will be reserved for Beacon's dedicated use throughout the 7 year term of the Agreement. Each year of the Term, not less than six months in advance of the start of a school year, Beacon will submit to the Department its actual use needs ("Actual Use Schedule"), which will be blocked for Beacon's dedicated use. If Beacon's Actual Use Schedule is for fewer hours than its Maximum Use Schedule, the unused time slots will be released and made available to other users at the Department's discretion. Beacon will not provided credit or refund for any Indoor Active Use area that it does not utilize that is on the Actual Use Schedule. For example, for the fall season that commences in August, Beacon will provide their Actual Use Schedule to the Department by February. The Maximum Use Schedule for the term of the Agreement must be approved by the City and any amendments requested by Beacon to the Maximum Use Schedule must be approved in writing. The gymnasium is scheduled to operate 7 days a week for 17 hours per day. It is anticipated that Beacon will utilize the gym approximately 5 days per week for 2 hours per day in the fall and 3.5 hours per day in the winter.

- b. Cancellation: If Beacon will not be using the reserved Indoor Active Use Area, it must provide the Robert Crown Community Center Manager notice as soon as practicable by phone or email to allow the City to utilize the Indoor Active Use Area.
- c. Sports Seasons. The Beacon sports seasons for Indoor Active Use Areas are: fall and winter. Beacon will be provided with complete access to the Indoor Active Use Areas during the hours blocked on the Maximum Use Schedule from August 1st – March 10th of each year. Beacon understands that programming and other users will occupy the Indoor Active Use Areas during times outside of the Maximum Use Schedule for the fall and winter seasons. In addition, the City will have no limits on programming and usage of the Indoor Active Use Areas from March 10 – July 31 every year.
- d. Office Space. Beacon staff will be provided a dedicated work space within the office near or adjoining the gymnasium. For clarity, this work space is a shared space within an office with City staff.
- e. Locker facilities. Beacon and their opponents' teams, coaches, and staff will be permitted to utilize the locker room during the Maximum Use Schedule time. However, it is noted that the locker room will be utilized by other patrons of the facility as well.
- f. Parking. Four parking placards will be available for Beacon at the Center, Beacon will not receive dedicated parking spaces.
- g. Beacon understands and agrees that during the Term, if Beacon is not scheduled to utilize the Indoor Active Use Area, it will be used by other City patrons and users not affiliated with Beacon. Beacon must conduct its activities so as not to interfere or impede other users from using the Indoor Active Use Areas in use by Beacon.

- h. Supervision. Beacon is responsible for providing personnel necessary for the direction and supervision of activities in Indoor Active Use Areas. Beacon shall enforce all City rules, regulations, and policies provided by the City while supervising the Indoor Active Use Areas, provided such rules, regulations and policies do not unreasonably impede or hinder Beacon's use as intended by this Agreement. Beacon is responsible for notifying the City within 24 hours in the event that an Active Use Area suffers damage during Beacon's scheduled time.

5. Compliance with Law

All use of the Center shall be in accordance with state and local law. In the case of a conflict between the terms of this Agreement and the requirements of state law, the state law shall govern. Any actions taken by Beacon that are required by state law, but are inconsistent with the terms of this Agreement shall not be construed to be a breach or default of this Agreement.

6. Obligations of City

a. Designation of Employee

The City shall designate an employee with whom Beacon, or any authorized agent of the Beacon, may confer regarding the terms of this Agreement.

b. Access and Security

The City shall provide the personnel necessary to open and close the Indoor and Outdoor Active Use Areas during the hours of the Center. The City believes the hours of operation to be 5:30 a.m. to midnight at the time of signing this Agreement, these hours are subject to change, with no amendment to the Agreement necessary. The City will provide electronic access to the Indoor Active Use Area and the office space, but Beacon will not be provided a key to the Center and only permitted access during Center hours.

c. Inspection and Notification

City personnel shall inspect the Indoor and Active Use Areas to ensure these sites are returned in the condition they were received, excluding normal wear and tear.

d. Equipment and Storage

The City will provide secure storage space for Beacon's sports equipment including basketballs and volleyballs, which Beacon will supply at its own expense. The City will install and provide basketball hoops, volleyball stands, and volleyball nets of the type typically used in competitive Illinois high school athletics. Any replacement of volleyball nets will be made at the sole cost and expense of Beacon.

e. Custodial

The City shall make its trash receptacles available during the Center hours of operation. Beacon will encourage users to dispose of trash in the trash receptacles. Beacon will ensure that its users leave the Indoor Active Use Areas and locker rooms with the

equipment stowed away.

7. Maintenance

The City shall perform normal maintenance of Outdoor and Indoor Active Use Areas and the equipment contained therein to basic level of service subject to normal wear and tear. The City shall notify Beacon of any known change in condition of the Active Use Areas. The City will maintain and repair of equipment and fixtures contained in the Outdoor and Indoor Active Use Area, including the equipment in the training room (treadmill and free weights) and gymnasium (basketball hoops and nets and volleyball nets and stands) during the Term.

8. Restitution and Repair

- a. Inspection and Notification. Beacon and the City shall each, through their designated employees, periodically inspect the Indoor Active Use Areas and notify the other Party of any damage.
- b. Beacon is responsible for the cost of replacement or repair of equipment, fixtures, or property of the City that is damaged by Beacon's users, except for repairs which are due to ordinary wear and tear. Upon a determination that Beacon is responsible for payment of any repair or replacement, the City will notify Beacon specifying the nature and extent of the damage and the reason the City believes it to be Beacon's responsibility. The City agrees to make such repairs or replacement, depending on the extent of the damage, within the estimated and/or fixed costs agreed upon. If it is mutually determined that Beacon is responsible for the damage, then Beacon agrees to reimburse the City at the final cost paid by the City, which shall be not more than the estimated and/or fixed costs agreed upon.
- c. Reimbursement Procedure. The City shall send the paid invoice to Beacon's designated employee within 10 business days of completion of repairs or replacement of damaged property. The invoice shall itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached. Actual costs shall be reimbursed if less than estimated and/or fixed costs. Beacon shall reimburse the City for amounts not reasonably in dispute within 30 days from receipt of such invoice.
- d. Disagreements. Beacon may dispute any and all determinations of its responsibility for damage to buildings, facilities, property, or equipment, as identified by the City, by providing written notice to the City not more than five (5) days after receipt of written notice from the City as provided in subsection (b) above. Beacon's notice shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by Beacon.
  - i After proper notification, representatives from the Parties, or other designated representatives of the City and Beacon, shall make an on-site investigation and attempt

a settlement of the disagreement.

- ii In the event an agreement cannot be reached, the matter shall be referred to the City Manager and Beacon Academy's president or their designees, for resolution.
- iii The City shall have the right to make immediate emergency repairs or replacements of property without voiding Beacon's right to disagree.

#### 9. Operational Costs

a. Documentation of Costs

The City shall maintain records of usage associated with the Agreement.

b. Payment of Overtime

Each party shall bear all costs relating to or incurred by their employees, including overtime, in carrying out this Agreement.

#### 10. Damage or Destruction

If the Center is damaged or destroyed by fire or other casualty ("Casualty") and thereby rendered unusable in the manner contemplated by this Agreement, City may, within one hundred eighty (180) days after such incident occurs (subject to being able to obtain all necessary permits and approvals, including, without limitation, permits and approvals required from any agency or body administering environmental laws, rules or regulations, and taking into account the time necessary to effectuate a satisfactory settlement with any insurance company) repair such damage at City's expense and this Use Agreement shall not terminate. Notwithstanding any provision contained herein to the contrary, upon a determination that the Center cannot be repaired or replaced and made useable within the 180 days of the Casualty event, either party will have the option and right to terminate this Use Agreement, and contemporaneously terminate the related Gift Agreement, if such a Casualty event occurs. If Beacon's use of the Center is suspended due to a Casualty or other event, then Beacon's obligation to make its annual pledge payment will be suspended for the duration of such suspension. At the end of any such suspension period, Beacon's next annual pledge payment shall be reduced by a pro rated amount for the period Beacon was unable to use the Center. Nothing in this Section 9 alters Beacon's right to terminate this Agreement and the related Gift Agreement for any reason, as set forth in Section 2(c).

#### 10. Liability and Indemnification

Beacon hereby indemnifies and holds harmless the City, its elected officials, employees and agents (collectively, the "City Parties" and individually, a "City Party") from, and if requested shall defend them against, all liabilities, obligations, losses, damages, judgments, costs or expenses (including reasonable legal fees and costs of investigation) (collectively "Losses") as a result of or arising out of claims made or threatened by third parties for (a) personal injury or property damage caused by any act or omission of Beacon during Beacon's use of the Center under this Agreement; or (b) any damage to any City property as a result of access granted

pursuant to this Agreement; provided, however, Beacon shall not be obligated to indemnify the City to the extent any Loss arises out of negligence or willful misconduct of the City, or the City's breach of this Agreement.

11. Insurance

a. Beacon: Beacon agrees to obtain at its own cost and expense a policy or policies of commercial general liability insurance written by an insurance carrier rated at least Class A or better in Bests Key Rating Guide of Property-Casualty Insurance Companies and licensed to do business in the State of Illinois which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others. Said policy or policies shall provide, among other things, blanket contractual liability insurance. Tenant will provide at the time of signing this Use Agreement a Certificate of Insurance naming the City of Evanston, its elected officials, employees, and agents as additional insureds.

b. City. City is self-insured up to \$1.25 Million and agrees to maintain an excess policy or policies of commercial general liability insurance over the self-insured limit written by an insurance carrier with a rating at least Class A or better in the Bests Key Rating Guide and licensed to do business in the State of Illinois which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others. The City will issue a certificate of insurance at the time of execution of this agreement naming Beacon an additional insured. City shall maintain casualty insurance covering the entire Center and any alterations, improvements, additions or changes made by City thereto in an amount not less than their full replacement cost from time to time during the Term, providing protection against any peril included within the classification of "all risks".

12. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter of the Agreement and is subject to the laws of the State of Illinois. This Agreement also supersedes all other agreements and understandings, both oral and written, between the parties relating to the subject matter of the Agreement. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

13. Attorneys Fees. The Parties shall bear its own costs, charges, expenses and attorney's fees, and any other fees incurred in the event of a dispute between the Parties.

14. Amendment. By mutual consent of the City and Beacon's legally or duly appointed agent or attorney-in-fact, any provision of this Agreement may be amended, modified, or deleted. Any such amendments, modifications, or deletions shall be recorded in written addenda signed by authorized representatives of both Parties, which shall form part of

this Agreement. Beacon may not assign or transfer this Use Agreement or enter into a license agreement for any portion thereof without the written consent of the City.

15. Third Parties. Nothing herein expressed or implied is intended or shall be construed to give any person other than the parties hereto any rights or remedies under this Agreement.
16. No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.
17. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction.
18. Freedom of Information Act. This Agreement and all related public records maintained by, provided to or required to be provided to the City are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this Agreement.
19. Notices. Any notices required to be given hereunder, or which either party hereto may desire to give to the other, shall be in writing. Such notice may be given by reputable overnight delivery service (with proof of receipt available), personal delivery or mailing the same by United States mail, registered or certified, return receipt requested, postage prepaid, at the following addresses identified for City and Beacon, or to such other address as the respective parties may from time to time designate by notice given in the manner provided in this Section.

If to the City:

City of Evanston  
Attn: City Manager  
2100 Ridge Avenue  
Evanston, IL 60201

with a copy to:

City of Evanston  
Attn: Corporation Counsel  
2100 Ridge Avenue  
Evanston, IL 60201

If to Beacon:

Beacon Academy  
Attn: Patty Abrams  
1574 Sherman Avenue  
Evanston, IL 60201

Beacon Academy  
Attn: Jeff Bell  
1574 Sherman Avenue  
Evanston, IL 60201

20. Severability. Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein.
21. Savings Clause. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions, or results, the remaining parts or portions of this Agreement shall remain in full force and effect.
22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile copy of a signature shall be as binding as an original signature.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above by their respective officers thereunto duly authorized.

BEACON ACADEMY  
An Illinois not-for-profit corporation

CITY OF EVANSTON  
An Illinois home rule municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: President

Its: City Manager

Print Name: Patty Abrams

Print Name: Wally Bobkiewicz

By: \_\_\_\_\_

Its: Head of School

Print name: Jeffrey Bell

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