

## **LICENSE AND DONATION AGREEMENT**

This Agreement is entered into between the **NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION** (the “Board”), and the **COLERAIN SCHOOL DISTRICT BOOSTER ASSOCIATION** (the “Boosters”) under the following circumstances:

**WHEREAS**, the Board is the fee simple owner of the property located at 8801 Cheviot Road, which is commonly known as the Colerain High School; and

**WHEREAS**, the Boosters desire to build a field house; and

**WHEREAS**, the Boosters has offered to fund the replacement and to donate the completed work to the Board; and

**WHEREAS**, the parties desire to set forth the terms and conditions pursuant to which the fieldhouse will be built and donated;

**NOW THEREFORE**, the Boosters and the Board agree as follows:

**1. Grant of License.** In consideration of the terms and conditions as provided herein, and in consideration of the full performance by Boosters of all the terms and conditions to be performed by Boosters as set forth herein, the Board grants Boosters the license right to build the field house on the Board’s Property (the “Project”). The Project shall be located generally at 8801 Cheviot Road, OH 45251 (the “Premises”). The specific location of the Project on the Premises shall be determined by the Board and shall be outlined in Exhibit A.

The Board hereby grants Boosters the license right to use the Premises for construction of the Project beginning on the effective date of this Agreement and ending on the date the Board publicly accepts the Boosters donation of the Project, as set forth herein.

**2. Board’s Designee.** The Board shall designate an administrator as its representative for purposes of this Agreement. Unless otherwise directed by the Board, the representative shall have the authority to grant approvals required by this Agreement, including but not limited to the inspection acceptance and location of equipment, objection to any contractor or any design professional, inspections, and acceptance of construction work. The Board is the only entity that may provide final acceptance of the donation.

**3. Construction.** The Boosters will contract for the building of a field house on the Board grounds (the “Project”) pursuant to the plans and specification secured and developed by the Boosters which shall be subject to prior written approval of the Board’s designee. No building or construction shall occur without the initial, prior written approval of all plans and contractors by the Board’s designee. The Boosters shall only use qualified, licensed and insured contractors, with written proof of the same provided to the Board’s designee. The Boosters shall be required to apply for the appropriate permits for all construction. Construction shall not be considered complete until a final inspection occurs without need for repairs or improvements to the Project to make it inhabitable and usable.

4. **Costs and Expenses.** The Boosters shall retain full financial responsibility for the cost and expenses associated with construction of the Project. The Board shall not be responsible for any cost or expense associated with the design or construction or closeout of the Project. The Boosters are securing a contract with a guaranteed maximum price for the work. No work shall begin on the Project until the Boosters have provided proof of full financial capital and backing to complete the construction of the Project to the Board's designee. The Boosters shall be responsible for any cost increases due to change orders and any cost overruns on the Project in excess of the guaranteed maximum price set forth in the contract for the work.

5. **Consideration.** For the term of this Agreement, and any renewal term, Boosters shall pay to the Board the sum of one dollar \$ 1.00 for license to use the Premises as set forth herein.

6. **Contractor.** The Boosters shall obtain the prior written approval of the Board's designee for all improvements, modifications, signs or equipment added to or placed on the Premises. Any improvements, modifications, signs or equipment proposed by the Boosters on the Premises shall only be permitted upon submission of written plans, along with any appropriate blueprints, to the Board's designee in advance of the construction of such improvements, modifications, signs or equipment and upon the Board's prior approval of such plans and appropriate blueprints.

The Board shall not approve any plans submitted by Boosters until the Board is presented with documentation demonstrating the Boosters' possession of, or access to, adequate available funding required to complete construction of such improvements, modifications, signs or equipment is provided by the Boosters to the Board. The necessary documentation shall be of a type and nature determined by the Board to be necessary in order to ensure completion of the improvement, modification, sign or equipment plans submitted by the Boosters to the Board.

The Boosters shall ensure that any contract for construction, services or materials will name the Board as a third-party beneficiary to such contracts. All warranties shall inure to the benefit of the Board, and documentation of the same shall be provided by the Boosters to the Board.

7. **Use of Premises.** The Boosters shall be permitted reasonable access to the Board grounds for the purpose of constructing the Project.

Boosters shall comply with and obey all laws, ordinances, rules, regulations, and requirements of the Board, the state, city, or other governmental subdivision in which the Premises is located, so far as such laws, ordinances, rules, regulations, and requirements affect the use and occupancy of the Premises. This requirement includes, but is not limited to, ensuring improvements are in full compliance with the Americans with Disabilities Act (2010 ADA Standards for Accessible Design).

Boosters will use and occupy the Premises in a careful, safe, and proper manner, and will not permit any waste or nuisance thereon, and will maintain the Premises in a clean, neat, and orderly condition. Boosters acquires no right or privilege in the Premises except the right to use the Premises as herein specified.

The Board's designee reserves the right of entry of its representatives, agents, and employees for the purpose of examining and inspecting the Premises and any property of the Board located on the Premises.

**8. Board Approval.** Boosters shall obtain the prior written approval of the Board's designee for all improvements to be added to or placed on the Premises. Any changes from the original plans approved by the Board's designee shall only be permitted upon submission of written plans, along with any appropriate blueprints, to the Board's designee in advance of the construction of such changes or improvements and upon the Board's prior approval of such plans and appropriate blueprints.

The Board shall not approve any plans submitted by Boosters until the Board is presented with documentation demonstrating the Boosters' possession of, or access to, adequate available funding required to complete construction of such improvements is provided by the Boosters to the Board. The necessary documentation shall be of a type and nature determined by the Board's designee to be necessary in order to ensure full completion of the Project and any changes or improvements to the construction plans submitted by the Boosters to the Board.

**9. Donation.** Upon completion of construction of the Project, and following the final close out of the Project, the Boosters have an inspection conducted on the Project that will ensure the Project has been built to full specifications, and in alignment with all required permits and building codes. Upon satisfactory passing of an inspection, the Boosters will unconditionally donate the Project to the Board. The Boosters shall remain responsible for resolving any liens, contractor claims or contractual disputes after the donation has been made. The Boosters shall ensure that any warranties on the Project follow the Project and are signed over to the Board.

The Boosters shall notify the Board in writing of the completion of construction of the Project. Upon receiving such notice, the Board shall have 30 days to inspect the Project and evaluate whether it has been constructed in a satisfactory manner that is consistent with the plans and specifications approved by the Board prior to commencement of construction. Prior to completion, the Board may perform inspection(s) and evaluation(s) as part of the ongoing project monitoring to expedite the donation process. If, after conducting such an inspection, the Board determines that the Project has not been constructed in a satisfactory manner, it shall notify the Boosters in writing of such determination and shall describe any deficiency in construction. Following receipt of such notice, the Boosters shall have 30 days to remedy such deficiency with all due diligence. The Boosters shall notify the Board in writing upon the completion of such remedial construction efforts, and the Board shall have 15 days from the date of such notice to inspect the Project and evaluate whether any and all deficiencies in construction have been satisfactorily remedied.

Should the Board determine that any construction deficiencies remain, it shall provide written notice of such deficiencies, and the Boosters shall have the opportunity to remedy such deficiencies with all due diligence according to the notice and remedy framework provided in the preceding paragraph. Such framework shall be repeated until the Board has determined the Project has been completed in a satisfactory manner. The Board shall not unreasonably withhold its determination that the Project has been constructed in a satisfactory manner.

After the Board has determined that the Project has been constructed in a satisfactory manner, it shall formally accept donation of the improvements to the Premises, from the Boosters free of charge, by vote of the Board in open session. Such acceptance of the donation by the Board, so long as such acceptance also accepts any and all warranties, shall serve to terminate this Agreement. Following such acceptance of the donation, the Project shall thereafter be the property of the Board, and all maintenance and upkeep of the Project shall be the sole responsibility of the Board.

**10. Indemnification and Waiver.** The Boosters shall indemnify, defend, and hold the Board harmless from and against any and all claims, demands, liabilities, damages of any kind whatsoever and losses and any incidental expenses ( including but not limited to, reasonable attorneys' fees) resulting from injury to or death of persons or damage to property arising out of the construction of the Project by the Boosters or its agents, employees, invitees, or contractors, or otherwise arising in connection with this Agreement, unless the injury, death, or property damage was sustained solely as a result of any negligent or other wrongful acts of the Board or its agents or employees. The Boosters shall indemnify, defend, and hold the Board harmless from and against any and all claims, demands, liabilities, damages of any kind whatsoever and losses and any incidental expenses (including but not limited to, reasonable attorneys' fees) resulting from the contractual claims of contractors on the Project.

In consideration of the mutual promises set forth herein, in no event will either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

**11. Insurance.** The Boosters shall require that any contractor or subcontractor performing work on the Project carry and maintain the following insurance: (a) Workers Compensation insurance to the full extent required by law; (b) commercial general liability coverage of not less than \$1,000,000; and (c) automobile liability coverage. The Boosters shall, at its own cost, insure the Premises and improvements thereon in an amount equal to the replacement value thereof against loss from fire and other perils included in the so-called Special Perils insurance endorsement/form, designating the Board as an additional insured. The Boosters shall provide all certificates of insurance evidencing the required insurance and amounts to the Board prior to commencing any work. Any applicable insurance policies related to the Project shall name the Board as an additional insured.

The Boosters shall require any and all contractors, subcontractors, servants, employees, agents, volunteers and/or similarly situated individuals (collectively "Contractors") who perform any construction, improvement or modification on the Premises to carry their own individual General Liability Insurance Policy. The Boosters shall require any and all Contractors who perform any construction, improvement or modification on the Premises to be bonded to the extent required by Ohio law.

Upon securing the insurance coverage as provided herein, Boosters shall submit to the Board written evidence of the insurance and any other documentation regarding the scope of coverage

required in this Agreement. No work shall commence until the Board's designee has received proof of such insurance. The Boosters shall timely pay any amounts or deductibles not covered under said insurance policy.

The Boosters has no contractual obligation to maintain a General Liability Insurance Policy beginning one (1) year and one day after the date of termination of this Agreement. However, nothing in this paragraph shall negate Boosters' obligation to indemnify Board in any future claim in accordance with this Agreement.

**12. Assignment.** This Agreement is not assignable by either party. Any attempted assignment shall be void and of no force and effect.

**13. Invalidity.** If any one or more of the provisions of the Agreement shall for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

**14. Entire Agreement.** With regard to the subject matter hereof, this Agreement sets forth the entire Agreement and understanding amount the Parties and merges and supersedes all prior discussions, agreements, and understandings between or amount the Parties.

**15. Amendment.** This Agreement may not be amended, modified, waived or terminated orally or discharged, except in a writing executed by all of the Parties.

**16. Construction of Agreement.** The Agreement has been and shall be construed to have been drafted by all of the Parties, so that any rule of construing ambiguities against the drafter shall have no force and effect.

**17. Warranty of Understanding.** The parties have read this Agreement, have had access to their attorneys, and understand all of its terms. This Agreement is executed voluntarily and with full knowledge of its significance after opportunity for consultation with counsel. It is specifically agreed and understood that no agent or representative of the parties or anyone else acting on their behalf, has made any promise or representation regarding the subject matter of this Agreement that is not expressly stated in this Agreement.

**18. Counterparts.** This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument. This Agreement shall not be binding or enforceable against any Party until an original or counterpart or facsimile counterpart has been executed by each of the Parties.

**19. Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio.

**20. Authorization.** Each of the Parties affirms, represents, and warrants to the other Parties that it has full and complete authority of all necessary persons to enter into this Agreement and to take all action necessary or required to consummate the terms of this Agreement.

21. **Waiver.** No breach of any provision of this Agreement shall be deemed waived unless it is waived in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

22. **Breach of Agreement.** In the event Boosters shall violate any agreements, conditions, or obligations of this Agreement, or be in any manner in default under this Agreement, the Board shall have the right to declare this Agreement cancelled and terminated, and shall have the further right, without notice and without recourse to any legal proceeding, to enter the Premises and repossess the Premises, including all property embraced within the terms of this Agreement. In the event either party commences any action in a court of law to enforce this Agreement or obtain damages for the breach of this Agreement, the prevailing Party shall be entitled to an award of its actual attorneys' fees and costs incurred in such action.

23. **Notice.** Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail if sent to the the following individuals at the following addresses:

Board: Attn: Amy Wells  
Treasurer  
3377 Compton Road  
Suite 110  
Cincinnati, OH 45251

Boosters: Attn: Sandi Petrou  
Booster President  
8801 Cheviot Road  
Cincinnati, OH 45251

**IN WITNESS WHEREOF**, the authorized representatives of the parties have each set their name hereunder in order to signify their intent to be bound by the forgoing.

**COLERAIN BOOSTERS**

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

Date: \_\_\_\_\_

**NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION**

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

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_