

## FACILITY USE AGREEMENT

(Green Island Tennis Courts)

This Facility Use Agreement (herein "Agreement") is entered into by and between the **City of La Crosse**, a Wisconsin municipal corporation (herein "City" or "Party") and the **Aquinas Catholic Schools, Inc.**, a Wisconsin non-stock and IRC § 501(c)(3) tax exempt corporation (herein "Aquinas" or "Party")(collectively herein "Parties").

**Whereas**, City and the University of Wisconsin System, doing business as the University of Wisconsin-La Crosse (herein "University") entered into a Joint Facility Use Agreement in 2013 allowing, among other things, City access to the University tennis courts; and

**Whereas**, the Coulee Region Tennis Association, Ltd., a Wisconsin non-stock and IRC § 501(c)(3) corporation (herein "CRTA") utilized the University tennis courts for its programs promoting tennis, including, but not limited to, the La Crosse Team Tennis Association; and

**Whereas**, Aquinas had, for many decades, utilized the University tennis courts for conducting its boys' and girls' high school and middle school tennis programs in the fall and spring of each academic year; and

**Whereas**, the University discontinued use of the University tennis courts in 2019; and

**Whereas**, the University, CRTA and Aquinas would like the City to construct and maintain a tennis facility and allow them the use of the facility; and

**Whereas**, the construction and maintenance of a tennis facility is a significant endeavor for the City and would not be possible without continued support of the University, CRTA and Aquinas; and

**Whereas**, Aquinas is in need of a minimum of seven (7) tennis courts to conduct its middle school and high school boys' and girls' tennis programs; and

**Whereas**, City will be entering into Facility Use Agreements with the CRTA and the University so that they may utilize the facility in operating their tennis programs.

**Now, therefore**, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

**1. Term.**

**A.** The initial term of this Agreement shall commence on August 1, 2020 and end on July 31, 2040, unless terminated or extended as provided herein.

**B.** Aquinas shall have the option to extend the term of this Agreement for two (2) - five (5) year renewal terms. Aquinas may exercise each renewal option by written notice to City not more than three hundred sixty-five (365) days or less than ninety (90) days prior to the expiration of the then in effect term. Collectively in this Agreement, the initial term and any renewal term are described as the “term.”

**C.** Aquinas may terminate this Agreement at any time upon one hundred twenty (120) days advanced written notice to City. Termination of this Agreement by Aquinas shall not relieve Aquinas of the payment of any financial obligation pursuant to this Agreement accruing prior to the effective date of termination.

**2. Facility.** City shall design and construct thirteen (13) outdoor tennis courts at Green Island Park (herein “Facility”), subject to annual appropriation of the City’s Common Council. The location and design of the Facility shall be as identified on Exhibit A attached hereto and incorporated herein by reference. The seven (7) tennis courts dedicated for use by Aquinas pursuant to the terms of this Agreement and highlighted in blue on **Exhibit A** (herein “Aquinas Courts”).

**3. Contribution of Construction Funds.** Aquinas shall provide funds to offset the City’s costs to design and construct the Facility. Specifically, within ten (10) days of Common Council approval, Aquinas shall pay two hundred fifty thousand dollars (\$250,000.00) to the City, which shall be kept in a segregated account until used to pay for the design and construction of the Facility. If the Facility is not constructed, the City shall return the funds to Aquinas.

**4. Shared Use.**

**A.** During the term of this Agreement, Aquinas shall have scheduled use of the Facility as follows:

**i.** Aquinas’ use of the Aquinas Courts for the girls fall tennis season shall commence on the first day of practice specified by the Wisconsin Interscholastic Athletic Association (herein “WIAA”) and shall conclude at 7:00 p.m. on the day prior to the first day of the Girls’ State Team Tennis Tournament for the division to which the Aquinas Girls’ Team is assigned (currently Division 2) (herein “Fall Season”).

**ii.** Aquinas’ use of the Aquinas Courts for the boys spring tennis season shall commence on the first day of practice specified by the WIAA and shall conclude at 7:00 p.m. on the day prior to the first day of the Boys’ State Team Tennis Tournament for the division to which the Aquinas Boys’ Team is assigned (currently Division 2) (herein “Spring Season”).

**iii.** On weekday (Monday through Friday) practice days during the Fall Season and Spring Season, Aquinas’ exclusive use of the Aquinas Courts shall

commence at 3:30 p.m. and shall conclude at 7:00 p.m.

**iv.** On Saturday practice days during the Fall Season and Spring Season, Aquinas' exclusive use of the Aquinas Courts shall be from 8:00 a.m. to 1:00 p.m.

**v.** When Aquinas varsity, junior varsity or middle school competitions (herein a "Competition") are held at the Aquinas Courts during the Fall Season and Spring Season, the period for Aquinas' exclusive use of the Aquinas Courts shall be from one (1) hour prior to the scheduled start of the Competition until the conclusion of the Competition.

**vi.** Pursuant to Section 4. B. and subject to the CRTA Use Agreement and University Use Agreement, Aquinas shall have priority scheduling of the Facility (13 tennis courts) for multi-team Competitions (invitationals, WIAA subsection and section tournaments, conference tournaments), including the rescheduling of such events due to weather or other circumstances.

**vii.** Aquinas shall have priority scheduling of the Aquinas Courts for rescheduling Competitions interrupted or delayed due to weather or other circumstances.

**viii.** Aquinas shall have the right to place/build, maintain, repair, replace and use a tennis equipment storage shed at the Facility in proximity to the Aquinas Courts.

**ix.** Aquinas shall have access to water and bathroom facilities located at the Facility during its period of scheduled use pursuant to this Agreement.

**x.** Aquinas may construct/place, maintain, repair and replace recognition signs/monuments/paver stones on, and in proximity to, the Aquinas Courts, recognizing donors of the funds paid pursuant to Section 3. City shall review and approve all such signs/monuments/paver stones as to design and placement prior to construction/placement.

**xi.** Aquinas may use the Aquinas Courts for an Aquinas summer camp/clinic. The Camp shall be scheduled in the month of July for five (5) consecutive weekdays (or less) between the hours of 8:00 a.m. and 5:00 p.m.

**xii.** Aquinas shall have access to water, restrooms, locker rooms and other indoor meeting rooms and offices as needed at the nearby Green Island Ice Arena consistent with the use enjoyed by the university and CRTA to the extent the Green Island Ice Arena is not already occupied by third parties and is available for use. Aquinas shall also have accessible parking located at or near the facility.

In the event the Green Island Ice Arena is occupied and/or not available for Aquinas use, then the City shall provide reasonable alternative restroom arrangements (e.g., placement of portable toilets at or near the facility.)

**B. Scheduling.** High school and middle school competitions are scheduled as much as eleven (11) months in advance. Tennis court availability for competitions, particularly multi-team competitions, is crucial for scheduling. Accordingly, annually during the term of this Agreement City, University, CRTA and Aquinas shall meet in November following the Fall Season related to master scheduling for the subsequent Fall Season. Annually during the term of this Agreement, City, University, CRTA and Aquinas shall meet in July following the Spring Season related to the master scheduling of the Facility for the subsequent Spring Season. In January of each year during the term of this Agreement, the Parties shall participate in a scheduling meeting to identify potential scheduling conflicts, negotiate in good faith to finalize the Facility schedule and make every effort to resolve such conflicts with minimal disruption to any other Party. Subject to Section 11, any scheduling conflicts that remain unresolved between the Parties shall be decided by the Director of the Parks and Recreation Department, or his/her designee within the Department. City's Parks & Recreation Department shall schedule and conduct the annual scheduling meetings. Meetings may be conducted and/or attended in person or by electronic means.

**C. Public Use.** City may schedule events or allow other general public use of the Facility except as may be reserved to Aquinas, the University and CRTA pursuant to their respective Use Agreements and the scheduling meetings, all as may be modified due to weather and other unforeseen circumstances. Sundays will be kept open for the exclusive use of public play.

## **5. Maintenance.**

**A.** City shall operate and provide ordinary and regular maintenance of the Facility subject to annual appropriation of the City's Common Council. The City shall not be responsible for any uncommon or extraordinary maintenance, supply, equipment, personnel, utilities, clean-up costs or any other expense associated with the use of the Facility by the University, CRTA or Aquinas. Specific work to set up or dismantle preparations for events at the Facility shall be the responsibility of the user. The Parties further acknowledge, understand and agree that the Facility will deteriorate over time and that the contributions made pursuant to Section 3. are only in consideration for the City to design and construct the Facility on City land.

**B.** In years 1-9 of the term of this Agreement, Aquinas shall pay an annual user fee of four thousand dollars (\$4,000.00). In years 10-20 of the term of this Agreement, as applicable, Aquinas shall pay an annual user fee of five thousand dollars (\$5,000.00). The user fee shall be paid in two equal, semi-annual installments. The first installment shall be due on or before August 1 of each year during the term. The second

installment shall be due on or before March 15 of each year during the term. The user fees paid by Aquinas, the University and the CRTA shall be placed in a facility specific fund with the City. Said user fees shall be utilized for the resurfacing of the court playing surface, tennis net replacement, net post repair and replacement and fencing repair, as applicable.

**6. Appropriate Use.** Aquinas shall be responsible for ensuring that its use complies with this Agreement along with any applicable laws, rules, regulations, policies and procedures. The sale or consumption of alcoholic beverages in or about the Facility is prohibited. Additionally, Aquinas shall not sell or cause to be sold programs and/or other novelties in or about the Facility, except on written terms and conditions as established by the City's Board of Park Commissioners. Aquinas shall not permit any use whatsoever of fire, flames, sparks, or the like without the prior express written consent of (i) the Chief of the City's Fire Department and (ii) the City's Board of Park Commissioners. The University, CRTA and Aquinas shall provide appropriate crowd control and oversight for participants when using the Facility and shall ensure that spectators and participants comply with all applicable laws, rules, regulations, policies and procedures during their use of the Facility. When using the Facility, Aquinas shall not charge any admission fee for spectators. Aquinas shall be responsible for any damage caused by its use arising from this Agreement.

**7. Violation/Removal from Facility.** Subject to Section 11, if at any time the use of the Facility by Aquinas violates an applicable ordinance or law of the City, State or other authority, they shall either cease and desist from continuing such use or surrender the Facility forthwith upon demand of the City. The terms and conditions of this Agreement do not require the City to relinquish its control of the Facility to any other Party. The City retains the right to require any third Party, or any Party's participants, guests or subcontractors, to leave the Facility and City premises if the City in its sole discretion determines that circumstances require it.

**8. Liability.** Each Party shall be solely responsible for its actions, omissions, claims or losses of any type arising from its use of the Facility. Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of any Party or Party's insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§345.05 and 893.80. or other applicable law.

**9. No Sublease or Assignment.** Aquinas shall not sublease the use of the Facility or otherwise assign or transfer any rights or obligations under this Agreement without the express written consent of the City, which consent shall not be unreasonably withheld.

**10. Notice.** Any notices or communication required or permitted hereunder shall be sufficiently given if delivered in person, or by registered or certified mail, postage prepaid, or by recognized overnight delivery service, to the address of the applicable Party as set forth below, and such notice shall be deemed to have been given when so delivered or mailed. By such notice, any Party may change its address for future notices.

To the City: Attn: City Clerk City Hall  
400 La Crosse St.  
La Crosse, WI 54601

With a copy to: Attn: Director of Parks and Recreation City Hall  
400 La Crosse St.  
La Crosse, WI 54601

To Aquinas: Attn: Athletic Director  
315 11<sup>th</sup> Street South  
La Crosse, WI 54601

With a Copy to: Attn: President  
315 11<sup>th</sup> Street South  
La Crosse, WI 54601

**11.** Any dispute arising out of or relating to this Agreement, including the alleged breach, termination, validity, interpretation and performance thereof (herein "Dispute") shall be resolved with the following procedures:

**A.** Upon written notice of any Dispute, the Parties shall attempt to resolve it promptly by negotiation between individuals who have authority to settle the Dispute on behalf of the Parties and this process should be completed within sixty (60) days (herein "Negotiation").

**B.** If the Dispute has not been resolved by Negotiation in accordance with Section 11. B., then the Parties shall proceed to mediation unless the Parties at the time of the Dispute agree to a different timeframe. A "Notice of Mediation" shall be served, signifying that the Negotiation was not successful and to commence the mediation process. The mediator shall be agreed on by the Parties or, if they are unable to agree, selected by the Circuit Court of La Crosse County, on application of either Party. The mediation session shall be held within thirty (30) days of the retention of the mediator, and last for at least one full mediation day, before any Party has the option to withdraw from the process. The Parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one Party (or the mediator) states that there is no reason to continue because of an impasse that cannot be overcome and sends a notice of termination of mediation. All reasonable efforts will be made to complete the mediation within fifteen (15) days of the first mediation session. During the course of mediation, no Party can assert the failure to fully comply with Section 11. A., as a reason not to proceed or to delay the mediation. The service of the Notice of Mediation shall stay the running of any applicable statute of limitation regarding the Dispute until thirty (30) days after the Parties agree that the mediation is concluded or the mediator issues a Notice of Impasse. Each Party shall bear an equal share of the mediation cost unless the

Parties agree otherwise. All communications, both written and oral, during the Negotiation and Mediation phases are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

**C.** If the Parties cannot resolve the Dispute by mediation, after reasonable efforts, either Party may demand arbitration conducted in accordance with chapter 788, Wis. Stat., or any successor statute, by a single arbitrator, chosen by mutual agreement of the Parties, or if they do not agree, by the Circuit Court for La Crosse County, on application of either Party. The arbitrator shall be a Wisconsin licensed attorney, being a member of The La Crosse County Bar Association, with at least ten (10) years' experience. The Parties shall each pay one-half (½) of the arbitrator's fee. Chapter 788, Wis. Stat., or any successor statute, shall govern the arbitration proceeding, except that the Parties waive any right to trial by jury if a dispute concerning the arbitration proceeding is resolved by a court. Each Party is hereby authorized to file a copy of this Section in any proceeding as conclusive evidence of this waiver of jury trial by the other Party. Each Party shall pay their own cost of the arbitration process.

**D.** In the event of a Dispute, each Party shall have all remedies available at law or in equity.

## **12. Miscellaneous.**

**A.** The Preamble and Recitals to this Agreement are incorporated into, and made a part of, this Agreement by reference.

**B.** If any term, condition, covenant, provisions, or part thereof of this Agreement is declared invalid, void, or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

**C.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin.

**D.** The Parties acknowledge and agree that each Party has reviewed and negotiated the terms and provisions of this Agreement and has had the opportunity to contribute to its revision. Accordingly, the rule of construction that ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement. Rather, the terms of this Agreement shall be construed fairly as to all Parties and not in favor or against a particular Party.

E. This Agreement shall be binding upon the Parties hereto and their successors and permitted assigns.

F. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one agreement. All rights not expressly granted to the University, CRTA or Aquinas pursuant to their applicable Use Agreements are reserved by the City.

G. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the Party for whom they are signing.

H. This Agreement represents the complete and entire understanding between the Parties and contains all the terms and conditions agreed upon by the Parties hereto. No other agreement, verbal or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or be binding upon any of the Parties hereto. This Agreement shall not be modified, changed or altered in any respect except in a writing signed by all Parties.

**In Witness whereof**, the Parties have caused this Agreement to be executed in duplicate, each constituting an original, by their duly authorized representatives, as of the date identified below.

**AQUINAS CATHOLIC SCHOOLS, INC.**

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

Name: Ted Knutson

Title: President

Date: July \_\_, 2020

**CITY OF LA CROSSE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: July \_\_, 2020  
(herein "Effective Date")