

RESOLUTION

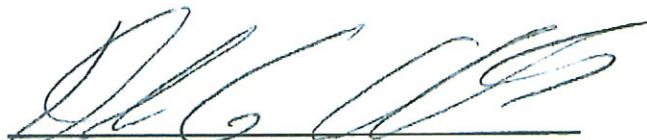
To Approve the Agreement between Robert Wood Johnson Fitness and Wellness Center New Brunswick Public Schools to Offer Physical Education Opportunities to New Brunswick Health Sciences Technology High School Students

WHEREAS, the New Brunswick Board of Education supports and endorses opportunities for students meet New Jersey State Physical Education graduation requirements; and,

WHEREAS, Robert Wood Johnson Fitness and Wellness Center is providing this opportunity to New Brunswick Health Sciences Technology HS students, during SY 2021-2022; and,

WHEREAS, the Agreement details the procedures and provisions, and is attached hereto.

NOW THEREFORE BE IT RESOLVED, that the New Brunswick Board of Education hereby approves the Agreement between New Brunswick Public Schools and Robert Wood Johnson Fitness and Wellness Center for SY 2021-2022, at a cost not to exceed \$13,080.00.



Dr. Dale G. Caldwell
Board President



Mr. Richard D. Jannarone
Business Administrator/Board Secretary

ADOPTED: November 16, 2021

Requested By: Jeremiah Clifford, HST Principal

AGREEMENT

BETWEEN

**ROBERT WOOD JOHNSON FITNESS AND WELLNESS
CENTER**

And

**NEW BRUNSWICK PUBLIC SCHOOLS
New Brunswick Health Sciences Technology High School**

Usage Agreement

**RWJ Fitness & Wellness Center
100 Kirkpatrick Street Suite 201
New Brunswick, New Jersey**

USAGE AGREEMENT

THIS USAGE AGREEMENT (this "Agreement") is made as of the ____ day of November 2021 by and between **ROBERT WOOD JOHNSON FITNESS & WELLNESS CENTER** having its principal place of business at 100 Kirkpatrick Street, New Brunswick, New Jersey 08901, (hereinafter referred to as "**Operator**"), and **NEW BRUNSWICK PUBLIC SCHOOLS**, Health Sciences Technology High School (hereinafter designated as "**School**").

Background

Operator is the Operator of a certain fitness and wellness center located at 100 Kirkpatrick Street, New Brunswick, New Jersey 08901 (the "**Center**") which contains a comprehensive fitness floor and aquatics center. **THE NEW BRUNSWICK PUBLIC SCHOOLS**, New Brunswick NJ 08901, is a public school system that seeks to provide an exercise program to the students of the Health & Science Technical School (the "**Program**"). Operator has agreed to permit the School to have access to the Facilities in accordance with the terms and conditions as set forth below. School agrees to abide by the terms and conditions set forth below.

Agreement

In consideration of the mutual promises and covenants herein contained, Operator and School agree as follows:

1. **Program.** Operator shall provide School with access to the fitness floor, aquatics center and locker rooms for exercise for the students for four (4) months of the 2021-2022 school year, from November 16, 2021 to March 15, 2022. The program will take place Tuesday through Friday, from 12:40 PM to 2:00 PM. Students must arrive by no later than 12:40 PM except for the first week of the program, when they should arrive at the Center by 12 pm for initial intake.
 - (a) The students will visit in groups of 26 to no more than 30 on a given day. The students will always be accompanied by School staff at all times.
 - (b) School agrees that it shall have non-exclusive access to the exercise floor and aquatics center. It is further understood that School is not an agent for the Operator, and is not employed by Operator at any time during this Agreement.
 - (c) To participate in the Program, each student must provide completed waivers and permission to respond to minor forms. The forms must be completed by the student's parent or legal guardian.
 - (d) Students will have the right to use the facility at any time in the four month period with the consent of the student's parent/guardian. Any student under the age of 16 must be accompanied by a parent/guardian if not attending with School.

(e)

2. Permitted Guests.

School staff shall escort the students to the Center for supervised activities based on the schedule. At all times the staff of the School will be present to supervise and monitor the students while they partake in the Program.

- A. The only permitted guests shall be the matriculated students of the School and the staff of the School.
- B. At all times the students must comply with the rules and regulations of the Center and the Aquatics Center. Failure to comply may result in suspension or expulsion from the Program.

3. Indemnification. School agrees to indemnify and hold harmless Owner/Operator, Robert Wood Johnson Fitness and Wellness Center of New Brunswick, LLC including its respective officers, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, attorney's fees and costs of litigation and or settlement, whether incurred as a result of a claim by a participant, student, a third party or an indemnitee hereunder) arising from School's use of the Center and the Aquatics Center.

4. Insurance.

(a) School shall maintain, at its sole cost and expense, and at all times during the Term of this Agreement, the following types and amounts of insurance:

- (i) Commercial general liability insurance and property damage insurance written on an occurrence basis, naming Robert Wood Johnson Fitness and Wellness Center of New Brunswick, LLC, (the "**Operator Insureds**"), and their respective agents and employees, managers and upon request, any lender furnishing construction and/or long term financing for the Property ("**Operator's Lender**"), as additional insureds, including such additional interested parties as Operator may, from time to time, designate, under policies issued by insurers of recognized responsibility having a combined single limit for any one (1) occurrence of not less than One Million Dollars (\$1,000,000) per occurrence (using any combination of primary and umbrella insurance; provided, however, that if an umbrella policy is used, School must provide Operator with evidence that such coverage is on a follow-form basis) for personal injury, bodily injury, death, disease and damage or injury to or destruction of property (including the loss of use thereof) occurring upon, in, or about the Premises. The certificate of insurance evidencing such policy must evidence that the limits of School's liability insurance required hereunder apply solely to the Premises and not to other locations.

- (ii) Worker's compensation insurance containing statutory limits covering School's employees and business operations within any statutory jurisdictions that may apply, as well as employer's liability insurance providing coverage of not less than One Million (\$1,000,000.00) Dollars each accident, One Million (\$1,000,000.00) Dollars bodily injury and/or disease for each employee and One Million (\$1,000,000.00) Dollars bodily injury by disease policy limit (in each case using any combination of primary and umbrella insurance; provided, however, that if an umbrella policy is used, School must provide Operator with evidence that such coverage is on a follow-form basis).
- (iii) An umbrella policy providing coverage on a follow-form basis to the general liability, and employer liability policies above (except for the per-location requirement) and with a limit of not less than Five Million Dollars (\$5,000,000).
- (iv) Policy Requirements. All insurance provided by School pursuant to this Subsection shall be affected under valid and enforceable policies, in such form, in such amounts, with such deductibles, and upon such other terms and conditions as may from time to time be reasonably satisfactory to Operator. All insurance required to be obtained and maintained by School shall be with well-rated insurance companies qualified to do business in the State of New Jersey.

5. Cost of Program.

- (a) The total cost of the program is Thirteen Thousand and eighty dollars (\$13,080.00), to be paid in monthly installment of Three Thousand Two Hundred and Seventy Dollars (\$3,270.00). The first payment shall be due and owing on the first week of the proceeding month, December 17, 2021.

6. Compliance with Laws. School and its employees and subcontractors shall perform all of the services under this Agreement in compliance with all applicable rules, regulations, orders, determinations, ordinances or laws of any federal, state or municipal authority.

7. Assignment. The parties hereto shall not transfer, assign, pledge or hypothecate their respective rights, duties and obligations under this Agreement without the prior written approval of the other party.

8. Term of Agreement; Extension; Termination.

- (a) This Agreement shall be in effect for a period (the "**Initial Term**") beginning on or about November 16, 2021 (the "**Commencement Date**") and ending on or about March 15, 2022. (the "**Termination Date**").

- (b) This Agreement may also be terminated in accordance with the following conditions:
- (i) This Agreement may be terminated by the mutual written consent of Operator and School.
 - (ii) Either Operator or School may terminate this Agreement by giving three (3) days written notice to the other party in the event that the other party breaches its obligations, duties or covenants under the terms of this Agreement. Such notice shall specify the nature and scope of the claimed breach of this Agreement. The Agreement shall terminate three (3) days after the defaulting party's receipt of the written notice from the non-defaulting party, unless the breach is cured within such period of three (3) days, provided that this Agreement will not terminate if the breach is not reasonably curable within three (3) days and the defaulting party has proceeded within such period actively, diligently and in good faith to begin to cure such breach and continues thereafter to do so until it is fully cured, in which case this Agreement shall not terminate, unless said breach is for failure to make payment in accordance with the terms above. Failure to pay shall result in termination of this Agreement after the three (3) day period if the breach is not cured.
9. School's Representations. School represents and warrants that it is qualified to do business in the State of New Jersey, is in good standing in the state in which it is organized and in the State of New Jersey, and has obtained all licenses, permits, and approvals necessary for the performance of School's obligations under this Agreement.
10. Relationship of Parties. School's relationship to Operator hereunder is that of a business arrangement to permit usage of the Aquatics Center. Nothing herein shall constitute or be construed as creating a partnership, joint venture or joint employer relationship between School and Operator.
11. Miscellaneous Provisions.
- (a) This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between Operator and School with respect to the Facilities. It is expressly agreed that there are no verbal understandings or agreements, which in any way change the terms, covenants, and conditions herein set forth. No modification or amendment of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing, duly executed by Operator and School and in compliance with the Sections hereof.

unless made in writing, duly executed by Operator and School and in compliance with the Sections hereof.

- (b) This Agreement may be executed in multiple counterparts, each of which so executed will be deemed an original and all of which together shall constitute one and the same instrument.
 - (c) As used herein, whenever appropriate, the masculine gender shall be construed to mean the feminine or neuter gender, or both of them; the feminine gender shall be construed to mean the masculine or neuter gender, or both of them, and the neuter gender shall be construed to mean the masculine or feminine gender, or both of them.
 - (d) As used herein, whenever expressed, the singular number shall be construed to mean the plural number and the plural number shall be construed to mean the singular number.
 - (e) The paragraph headings or captions appearing in this Agreement are for convenience only, and are not to be considered in interpreting the Agreement.
12. Notices. All notices, certificates, demands, other communications or approvals required to be given hereunder shall be in writing and delivered (i) personally or (ii) by certified mail, return receipt requested or (iii) by reliable overnight commercial courier (charges prepaid), and addressed as follows:

To Operator:

RWJ Fitness & Wellness Center
100 Kirkpatrick Street Suite 201
New Brunswick, NJ 08901
Attention: Andrew Reid, GM
Tel. No.: (732) 873.1222

To School:

New Brunswick Public Schools
Health Sciences Technology High School
New Brunswick, NJ 08901
Attn: Jeremiah Clifford
Tel. No.:

Each such notice shall be deemed to have been given to, or served upon, the party to whom delivered, upon delivery at the addresses provided above. Any party hereto may change its address for the service of notice hereunder by providing written notice of said

Signature on following page.

IN WITNESS WHEREOF, Operator and School by their duly authorized representatives have executed this Agreement on the date first above written.

OPERATOR:

**Robert Wood Johnson Fitness and
Wellness Center of New Brunswick, LLC**

By: 
Andrew Reid
General Manager

SCHOOL:

**NEW BRUNSWICK PUBLIC SCHOOLS
Health Sciences Technology High School**

By: 