

Asset Donation Agreement

This Asset Donation Agreement (this “Agreement”) is entered into and effective as of ____August 21, 2023 (the “Effective Date”) by and among the Town of Avon, Indiana (the “Town”) and the Avon Junior Athletic Association Inc. (the “AJAA”).

Recitals

A. AJAA is an Indiana corporation which owns certain real estate in Hendricks County, Indiana and which conducts youth athletic events. This real estate is improved with athletic facilities and improvements which support these events.

B. The Town is a municipality in Hendricks County, Indiana and which desires to acquire additional park land and offer additional park and youth services to the citizens of Avon and Hendricks County.

C. The Town desires to acquire from AJAA, and AJAA desires to donate to the Town, its real estate, substantially all of its assets, and youth athletic programming pursuant to this Agreement for the consideration and on the terms set forth below.

Now, Therefore, in consideration of the foregoing recitals and of the mutual promises, representations, warranties, and covenants herein contained, and other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

Article I **Assets and Liabilities**

1) Donation of Real Estate, Assets, and Programming.

- A) Donation Assets and Programming.** AJAA agrees to donate, convey, and assign to the Town, and the Town agrees to accept and receive from AJAA, all right, title, and interest in and to the following (the “Donation Assets”) at Closing (as herein defined):
- i) Park Property.** the approximate 16.356 acres located near CR 100 S and CR 625 E, that is defined in Schedule A, (“Property”) attached to this Agreement and incorporated herein;
 - ii) Easements.** Easement rights for access to the Park Property or necessary for access and repair of Park Property which is currently held, whether recorded or otherwise, benefiting the Park Property;
 - iii) Personal Property and Equipment.** AJAA agrees to donate, convey, and assign to the Town all tangible personal property, the improvements, athletic equipment, website, office equipment, furniture, electronics data, and other similar tangible personal property owned by AJAA or used in connection with the operation of AJAA programs, including but not limited to, those items listed on Schedule B. (“Personal Property and Equipment”);

iv) Assumed Contracts. The Town will assume AJAA's right, title, and interest in and to those contracts, agreements, and leases to which AJAA is a party listed, which appear on Schedule C. ("Assumed Contracts");

v) Intangible Assets. The intangible assets of the AJAA including, but not limited to, customer lists and customer records; customer management, and accounting systems. This shall also include intellectual property of the AJAA. A schedule of all intangible assets and intellectual property hereby conveyed is set forth as Schedule D (the "Intangible Property").

vi) Name Rights and Use. AJAA shall grant an exclusive perpetual license for the Town to use abbreviation, name, and image of "AJAA" and "Avon Junior Athletic Association" pursuant to Article V Paragraph 1, Section E below.

vii) Accounts Receivable. The Town will assume all of AJAA's accounts receivable as of the **Closing Date**.

viii) Other Assets. All cash, certificates of deposit, short term investments, or other cash equivalents of AJAA on hand on the Closing Date and after payment of all encumbrances and expenses.

B) The Donation Assets to be conveyed pursuant to this Section shall be conveyed free and clear of any and all claims, liens, security interests, mortgages, or encumbrances. Schedule E (the "Encumbrances") contains a list of such property described in this Section that is subject to claims, liens, security interests, or encumbrances, which shall be satisfied or released at AJAA's expense on or before the Closing Date. The conveyance of real estate shall be made by warranty deed.

2) Excluded Assets

A) Notwithstanding the foregoing, the Donation Assets shall not include any of the following (collectively, "Excluded Assets")

i) All liens, encumbrances, claims, security interests, mortgages, or other interest identified in Schedule E; and

ii) All of other assets not used exclusively in connection with the operation of AJAA's programs.

3) Liabilities

A) General. The Town will not assume and shall not be responsible for the payment of any liabilities or obligations of the AJAA or any kind whatsoever that arise on or prior to the Closing Date, except as provided in this Agreement. Except for the performance of the Assumed Contracts, the Town is not assuming and AJAA shall hold the Town harmless from, any claim, liability, expense, or obligation of AJAA or any employee of AJAA, whether known or unknown, fixed or contingent, accrued or unaccrued (collectively, "Excluded Liabilities"). The Town shall assume the payment and performance of AJAA's obligations arising after the Closing Date under the Assumed Contracts.

B) Additional Specific Exclusions. Without limiting the generality of Section 3(a), in no event shall the Town assume or incur any liability or obligation under this

Agreement or otherwise in respect of any of the following, all of which are included in the Excluded Liabilities:

- i)** any claim for injury to person or property, regardless of when made or asserted in connection with any service performed by or on behalf of the AJAA on or prior to the Closing Date;
- ii)** any liability or obligation under or in connection with any Assumed Contracts relating to periods on or prior to the Closing Date;
- iii)** any liability or obligation under or in connection with respect to the Excluded Assets;
- iv)** any liability or obligation arising prior to or as a result of the Closing to any employees, agents, or independent contractors of AJAA, whether or not employed by Town after the Closing Date, including, without limitation, accrued salaries and wages, benefit arrangement (including COBRA obligations), bonus, vacation pay, sick leave, insurance, employment tax or similar liability of AJAA;
- v)** any liability or obligation arising out of or in connection with any breach or violation or alleged breach or violation of any law or the settlement thereof by the AJAA on or prior to the Closing Date;
- vi)** any obligation or liability asserted under any restricted grant or loan program with respect to the ownership or operation of the Donation Assets in connection with any grant or loan contracted for or incurred prior to Closing, except as specifically set forth herein;
- vii)** any liability arising out of, or in connection with, claims for acts or omissions relating to the ownership or operation of the Donation Assets on or prior to the Closing, including, without limitation, any such liability arising in connection with any grant or loan contracted for or incurred prior to Closing;
- viii)** any debt, obligation, expense, or liability of AJAA arising out of or incurred in respect of any transaction of AJAA occurring after the Closing or for any violation by AJAA of any law, regulation, or ordinance; and
- ix)** any suit, claim, or cause of action related to or arising out of any action, inaction, happenstance, or state of facts that occurred at any time on or prior to the Closing Date.

Notwithstanding the foregoing, the Town may pay any outstanding amounts owed by AJAA if the Town concludes, in its reasonable discretion, that the failure promptly to pay such amount will have material adverse impact on the Town or the Donation assets, and, in such event, AJAA shall reimburse any amount that the Town pays within fifteen (15) calendar days of such payment. In making such a payment, the Town shall use its best efforts (but at no cost to the Town) to protect AJAA's rights to protest any such determination.

Article II **Conveyance**

- 1) **Conveyance of Donation Assets.** In consideration of covenants contained herein, the AJAA agrees to convey the Donation Assets as described above as a donation to the Town. The Town and AJAA will execute all agreements necessary to convey the Donation Assets.

Article III
Pre-Closing Matters

- 1) **AJAA Deliveries.** AJAA agrees that within ten business days after the Effective Date, it shall deliver to the Town copies of any agreements or contract to be assumed by the Town of relating to the Donation Assets and copies of documents evidencing the expenses related to the operations of the AJAA programs, including but not limited to ledgers, account information, books, statements, and budgets.
- 2) **Treatment of Employees of the AJAA.**
 - A) Avon shall create four new positions and appropriate funding for the following positions:
 - i) Recreation Superintendent \$85,000.00
 - ii) Recreation Operations Manager \$56,160.00
 - iii) Recreation Facilities Manager \$53,040.00
 - iv) Administrative Assistant – Recreation \$23.00/hour
- 3) **Pre-Closing Restrictions.** AJAA covenants and agrees that from the Effective Date to the Closing Date, except as otherwise specifically agreed in writing by the Town (which agreement shall not be unreasonably withheld), it will not:
 - A) incur or agree to incur any material liability or obligation relating to the operation of the Donation Assets or programming except those obligations incurred in the ordinary course of business;
 - B) create or incur any mortgage, lien, charge, or security interest on any of the Donation Assets;
 - C) without prior notice to the Town, amend, alter, or terminate any material agreement to which it is a party and which is to be assumed by the Town hereunder;
 - D) merge or consolidate or agree to merge or consolidate with or into any other entity; nor
 - E) substantially alter, destroy, abandon, harm or otherwise fail to maintain, or allow any other person or entity to alter, destroy, abandon, harm, or otherwise fail to maintain any of the Donation Assets.

Article IV
Closing

- 1) **Title and Possession.** Title and possession to the Donation Assets and Property shall pass to the Town at the “Closing,” which shall occur at a mutually agreeable time and place on or before October 1, 2023 (“Closing Date”).
- 2) **AJAA’s Closing Deliveries.** AJAA shall deliver at Closing the following to the Town:
 - A) **Letters of Satisfaction.** Letters from each holder of any encumbrance set forth on Schedule E which evidences AJAA’s payment in full and complete satisfaction of debt.
 - B) **Bill of Sale and Assignment.** A Bill of Sale and Assignment duly executed by the AJAA transferring and assigning all of the AJAA’s right, title and interest in and to the tangible and intangible property included in the Donation Assets to the Town.
 - C) **Consents and Assignments.** All third-party consents legally or contractually required to transfer the Sale Assets (including the Property and Assumed Contracts) pursuant to this Agreement, in form and substance reasonably acceptable to the Town. Any assumption agreement requested by a third party shall be in a form and at terms reasonably acceptable to the Town. AJAA shall pay all costs and expenses for obtaining such assignments and consents.
 - D) **Possession of Donation Assets.** Immediate and complete possession of the Sale Assets. All monies transferred to Town pursuant to this Agreement shall be shall be transferred to and deposited in the Town of Avon Park Fund no later than **October 1, 2023.**
 - E) **Property Documents.**
 - i) A general warranty deed conveying the fee simple absolute interest in the Property to the Town.
 - ii) If applicable, mortgage payoff statements and full releases of any mortgages encumbering the Property, which releases shall be in form satisfactory to Town and its counsel.
 - iii) Documents in recordable form memorializing the easements set out above.
 - iv) **Other.** All documents and instruments that (i) the Town or a title company of the Town’s choosing (“**Title Company**”) may reasonably determine are necessary to evidence the authority of AJAA to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by AJAA pursuant to this Agreement.
 - F) **Accounts Receivable.** AJAA will deliver to the Town, and in a form satisfactory to the Town, an Assignment of all of AJAA’s accounts receivable as of the Effective Date.
- 3) **Town’s Closing Deliveries.** Town shall deliver at Closing the following to AJAA:
 - A) **Assignment and Assumption of Contracts and Leases.** The assignment and assumption of Contracts and Leases duly executed by the Town.

- B) Approvals. A copy of the resolution or ordinance by the Avon Town Council evidencing adoption of this Agreement.
- C) Other. All documents and instruments that (i) AJAA or the Title Company may reasonably determine are necessary to evidence the authority of the Town to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by the Town pursuant to this Agreement.

Articles V Representations and Warranties

1) Representations and Warranties of AJAA.

- A) Power and Authority. The AJAA has full right, authority, and power to enter into this Agreement and each agreement, document, and instrument to be executed and delivered by AJAA pursuant to this Agreement, and to carry out the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by AJAA and is a valid and binding obligation of AJAA enforceable in accordance with its terms.
- B) Litigation. AJAA warrants that there is no notice, demand, claim, action, suit, inquiry, hearing, proceeding, notice of violation or investigation of a civil, criminal or administrative nature before any court or other governmental body or before any arbitrator or mediator of any nature involving the AJAA including, without limitation, those involving any services performed by or in connection with or on behalf of the AJAA, or class of claims or lawsuits involving the same or similar services performed by or in connection with or on behalf of the AJAA which, in any such case, is pending or to the knowledge of AJAA threatened, and the AJAA has not received notice of and there has not been any accident, happening or event which is caused or allegedly caused by or otherwise involving the AJAA or any services performed by or in connection with or on behalf of the AJAA that is reasonably likely to result in or serve as a basis for a claim or loss. There are no outstanding orders, writs, injunctions, or decrees of any court, arbitrator or governmental agency with respect to AJAA or the Donation Assets or which adversely affect the transactions contemplated by this Agreement.
- C) Property. AJAA owns good and marketable fee simple title to the Property, subject only to the lien of current, non-delinquent real estate taxes and subject to no easements or other encumbrances which would interfere, prevent, or frustrate the use of the Property by the Town. All of the Property and improvements on it are in good operating condition and repair, free from defects in workmanship and materials, ordinary wear and tear excepted, and AJAA has no knowledge of any patent or latent defects in the Property or the Improvements. The Property and improvements will be delivered at Closing in the same condition in which it now is, reasonable wear and tear excepted.

- D) Condition and Location of Equipment.** Each item of equipment and personal property is in good operating condition and repair, normal wear and tear excepted. All such equipment and personal property is located at 888 South County Road 625 East, Avon, Indiana 46123, Avon North School, and Cedar Elementary School and none of the equipment or personal property is held under any contract or other title retention or security arrangement except as disclosed as herein.
- E) Name Rights and Use.** AJAA will not use the name “Avon Junior Athletic Association” or “AJAA” for any reason other than for purposes of tax returns and dissolving the corporation, tax exemption status, and other government forms necessary to wind down and fully dissolve the corporation. AJAA covenants that they will complete the dissolution of the corporation and tax-exempt status within six months from the date of Closing. Beginning six months after the date of Closing, AJAA covenants not to use the above title name and abbreviation for any purpose. At Closing, AJAA will grant to the Town an exclusive license to the name rights and use of “Avon Junior Athletic Association” in perpetuity and the name rights and use of the abbreviation “AJAA” in perpetuity. These covenants are binding on the corporation, its owners, directors, officers, representative, employees, and all other affiliates of AJAA.

2) Representations and Warranties of Avon

- A)** The Town has full right, authority, and power to enter into this Agreement and each agreement and to carry out the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Town and is a valid and binding obligation of the Town enforceable in accordance with its terms.
- B) Employees: The Town will hire three full time and one part-time employee, effective on the Closing Date. The employees hired by the Town are:**
- i)** Justin Thompson, Recreation Superintendent
 - ii)** Vacant, Recreation Operations Manager
 - iii)** Mike Clark, Recreation Facilities Manager
 - iv)** Amanda Maxwell, Administrative Assistant – Recreation

The employment of these individuals will be classified as an “at-will” employment. Nothing in this Agreement shall be read or interpreted to create a contract with these individuals nor afford or otherwise guaranteed employment with the Town. The Town, at the discretion of the Town Council, reserves the right to modify or terminate the positions described herein and/or modify the salary, rate of pay, and/or benefits of these employment positions.

- C) Youth Athletic Programs.** The Town will continue all of AJAA’s current programs. The Town will assess the condition of the Donation Assets and make improvements that are, in its discretion, needed for the furtherance of the purpose of the programs. Subject to approval by the Town of Avon Town Council, the Town will make a minimum contribution of \$40,000.00 for capital

improvements related to the Donation Assets. Nothing in this Agreement shall be read or interpreted as requiring the Town to operate and provide these programs for any duration or time.

The Town will eliminate the “Family Fee” no later than December 1, 2023. The Town reserves the right to adjust and modify program fees and charges at the sole discretion of the Town and at any time.

- D) Recreation Impact Fee.** The Town will review the impact that this agreement and acquisition has on the Town’s current Recreation Impact Fee analysis. Nothing in this Agreement shall be read or interpreted as requiring the Town of modify its Recreation Impact Fee or allocated funding to the furtherance of the programs or Donation Assets.

Article VI Termination

- 1) Right of Termination.** This Agreement may be terminated prior to the Closing Date by either party, with or without cause. The terminating party must provide the other party with notice of its exercise of termination in writing.

Article VII Miscellaneous

Entire Agreement. This Agreement (including the Schedules attached hereto) and the documents delivered pursuant hereto constitute the entire agreement and understanding between the parties hereto and supersede any prior agreement and understanding relating to the subject matter of this Agreement, including the Memorandum of Understanding. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

Indemnification. To the fullest extent permitted by law, AJAA and Town agree to indemnify and hold the other (and their respective officers, directors, partners, agents, consultants, and employees) harmless, from and against liability for all claims, costs, losses, and damages, including but not limited to all fees and charges of attorneys and other professionals, arising out of or relating to this Agreement, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party’s negligent acts, errors, or omissions. In the event claims, losses, damages or expenses are caused by joint or

concurrent negligence of the parties, they shall be borne by each party in proportion to the negligence.

Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties hereto so long as at least one counterpart is executed by each party.

Law and Dispute. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Indiana. In the event of a dispute arising with respect to this Agreement, the breaching party shall be responsible for the non-breaching party's costs, expenses, and attorney's fees.

Recording. This Agreement may be recorded by the Town, at the Town's expense.

Notices. Any notice required or permitted hereunder or any agreement or document executed and delivered in connection with this Agreement shall be deemed to have been served properly if hand delivered or delivered by overnight courier, charges prepaid and properly addressed, to the respective party to whom such notice relates at the following addresses:

If to the Town: Town of Avon

Attn: Ryan Cannon, Town Manager
6570 E. US HWY 36
Avon, IN 46123

With copy to:

Dan Taylor
Taylor, Minnette, Schneider & Clutter P.C.
105 N Washington St.
Crawfordsville, IN 47933

If to AJAA:

John K. McDavid
McDavid Law LLC
1302 High School Road
Indianapolis, IN 46224

Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

Contingency. This Agreement is subject to and contingent upon approval by the AJAA's Board of Directors and the Town's Town Council within thirty (30) days after the Effective Date. If either party fails to approve this Agreement within thirty (30) days after the Effective Date, this Agreement shall automatically terminate and all obligations hereunder shall cease. The parties may, in writing, extend this approval deadline.

[Signature Page to Follow]

Schedule A - Property

<u>Parcel</u>	<u>Legal Description</u>
32-10-10-300-022.000-031	PT SW SW $\frac{1}{4}$ 10-15-1E 0.44AC
32-10-10-300-021.000-031	PT SW SW $\frac{1}{4}$ 10-15-1E 2.96AC
32-10-10-300-020.000-031	PT SW 10-15-1E 7.245AC
32-10-10-360-005.000-031	Minor Plat #44 Lot 5 3.15AC
32-10-10-360-004.000-031	Minor Plat #44 Lot 4 2.561AC
	<u>16.356 acres</u>

Schedule B – Personal Property and Equipment

Office 1	
1	Dell Computer
1	Apple Macbook
1	Large L shaped desk
1	Office chair
1	Large bookcase with storage
	misc office supplies
	misc stored items
Office 2	
1	HP laptop
2	Desks
2	Metal file cabinets
1	Pop a Shot
1	TV
1	Chair
	Misc office supplies
Office 3	
2	HP screens
1	Lenovo Laptop
1	Card maker 300
2	Desks
1	TV
1	Chair
	Misc office supplies
Conference Room	
1	Large AJAA desk
1	Large storage bookcase
1	Large storage unit
1	Metal storage unit
1	Projector screen and projector
1	shredder
1	Water cooler
14	Office chairs
1	Small round table with 4 chairs

1	Glass dry erase board
1	HP copy machine
2	Mini fridges
1	Microwave
1	Vacuum
	Misc office supplies
Back Storage Area	
30	Baseball catcher gear sets
2	Cases of APT baseballs
12	Baseball Tees
20	5G buckets of balls, baseball coaches equipment
14	5G softball buckets w balls
8	cases of new softballs
30	Large carry bags
10	Umpire sets
	Flag football balls and gear
	Decorations for golf outing, xmas, family day
2	Metal Cabinets
Football Storage	
1	Metal rack
3	Large bags of volleyballs
1	3ft ladder
1	Folding table
9	Metal Helmet racks
7	Metal Pad racks
172	White Helmets, this number is higher due to equipment coming in
39	Black Helmets for JO
175	Shoulder pads
Garage	
2	Metal Cabinets
1	Metal rack
3	Large bags of volleyballs
1	3ft ladder
1	Folding table

9	Metal Helmet racks
7	Metal Pad racks
172	White Helmets, this number is higher due to equipment coming in
39	Black Helmets for JO
175	Shoulder pads
3	Chalk machines
3	Aersol paint sprayer machines
	misc shovels rakes etc
1	Air compressor
Grounds and Shipping Containers	
4	Portable mounds
7	L screens
1	Small trailer
2	Chemical sprayer tanks
1	Grass seeder
1	Ground roller
2	Large ladders
4	Pallets of diamond field conditoner
4	Pallets of trashbags for sale/fundraisers
1	Pallet of clay/ bricks
	Misc bags/ncaa
	Misc field supplies
North School	
2	Large field scoreboards
6	Extention cords
	misc rakes other field supplies
1	Batting cage net
2	Sets of football pylons/field markers
Elementary School	
2	Portable Scoreboards
	Misc office supplies

Trailers and Equipment	
2	Enclosed tandem axle trailers
1	20ft flat bed tandem trailer
2	Jacobsen golf carts
1	ABI force baseball machine w/attachments
1	LS Tractor with frontend loader
Concessions	
1	Stand up freezer
1	Large refrigerator
1	Stovetop oven
1	Chest freezer
1	Pepsi cases
1	Pepsi fountain system
1	Ice cream display case
1	Pretzel display case
1	Hotdog roller
1	Popcorn machine
1	Microwave
	Misc. small items/utensils

Schedule C – Assumed Contracts

- I. Official Healthcare Provider
 - a. Master Affiliation Agreement By and Between Hendricks Regional Health and Avon Junior Athletic Association
 - i. Term: April 4, 2023 – April 3, 2026
- II. Sponsorship Agreement
 - a. Hendricks Regional Health and Avon Junior Athletic Association
 - i. Term: April 4, 2023 – April 3, 2026
- III. Commercial Lease Agreement
 - a. Avon Junior Athletic Association and Frigid Frog and More
 - i. Term: April 1, 2023 – October 31, 2023
- IV. Sponsorship Agreement
 - a. Dick’s Sporting Goods (DSG)
 - i. Term: February 27, 2023 – December 30, 2023
- V. Turf Maintenance
 - a. All Terrain Snow and Landscape Management
 - i. January 2021 – December 2023
- VI. Financial Statement Preparation
 - a. Aliign, LLC
 - i. Term: ongoing
- VII. Background Checks
 - a. Safe Hiring Solutions, LLC
 - i. Term: ongoing
- VIII. Positive Coaching Alliance
 - a. 3 year agreement 2022-2025
- IX. Automatic External Defibrillator
 - a. Cintas
 - i. Term: August 2021 – August 2023
- X. Facility Management and Usage
 - a. Avon Community School Corporation and Avon Junior Athletic Association
 - i. Term: March 15, 2017 – June 30, 2026

Schedule D – Intangible Property

- I. Customer Management and Accounting System
 - a. StackSports
 - i. SportsConnect

- II. Website Domains
 - a. Ajaonline.com
 - b. Ajaonline.org

Schedule E - Encumbrances

Small Business Administration EIDL Loan