

AGREEMENT  
BETWEEN  
NEW MILFORD BOARD OF EDUCATION  
AND  
BOROUGH OF NEW MILFORD  
FOR  
SCHOOL FIELD USE LICENSE

+ 25 years  
boro. to  
maintain  
rec can layout  
fields as see  
appropriate  
for rec activities

THIS AGREEMENT made this 15th day of July, in the year Two Thousand and Fifteen, by and between the Borough of New Milford (hereinafter referred to as the "Borough") and the New Milford Board of Education (hereinafter referred to as the "Board");

WHEREAS, the Board presently owns property that is in need of improvement in order to expand the use of its curricular, co-curricular and extra-curricular programs, specifically Berkley Street School Playing Field (hereinafter referred to as "Berkley Playing Field"); and

WHEREAS, the Borough desires to use Berkley Playing Field for recreational purposes when not being utilized by the Board; and

WHEREAS, in consideration for a license to use Berkley Playing Field, the Borough agrees to assist the Board in constructing certain improvements to Berkley Playing Field, inasmuch as it will also enhance the Borough's recreation programs and potentially benefit all of the residents of the Borough; and

WHEREAS, the Borough and the Board are both empowered to make improvements to their property, to solicit bids for the construction of such improvements, and to engage contractors to make such improvements; and

WHEREAS, the Borough and the Board agree to jointly undertake a project for the refurbishing of and improvements to Berkley Playing Field presently located at 812 Berkley Street, New Milford, New Jersey 07646, behind the Berkley Street School, and any appurtenant athletic facilities. The improvements and refurbishing shall include, but are not limited to, the resurfacing of the field and other improvements to Board property which may become necessary as a consequence of the improvements to Berkley Playing Field, any approved change orders, and all associated professional

services fees, including but not limited to the Board's architectural, engineering and certain attorneys' fees (hereinafter referred to as "the Project"); and

WHEREAS, the Borough intends to utilize funds available for the acquisition, maintenance, or development of recreational lands in the Borough's Municipal Open Space, Recreation, Floodplain Protection, and Farmland and Historic Preservation Trust Fund pursuant to N.J.S.A. 40:12-15.7 (hereinafter referred to as the "Fund") and will fund the Project in exchange for a license to use Berkley Playing Field in accordance with the terms of this Agreement; and

WHEREAS, in exchange for the Borough's assistance with the Project, the Board is willing to enter into a license agreement with the Borough for the use of Berkley Playing Field whenever the Board does not need such fields for its own programs or school purposes or the continued use granted to the Hovnanian School, Inc. by the Board under the terms of a Settlement and Use of Facility Agreement entered into between them dated January 22, 2007; and

WHEREAS, the parties wish to memorialize the terms of their agreement.

NOW THEREFORE, it is hereby agreed by and between the parties as follows:

I. IMPROVEMENTS TO BERKLEY PLAYING FIELD

A. Design of the Project: The Borough shall obtain a design for the Project, including, but not limited to, plans and technical specifications for bidding purposes, which shall be mutually agreed upon by the Board and the Borough. The Project scope shall include:

1. Berkley Playing Field. The refurbishing of and improvements to Berkley Playing Field presently located at 812 Berkley Street, New Milford, New Jersey 07646, behind the Berkley Street School and any appurtenant athletic facilities; the improvements and refurbishing shall include, but are not limited to, the resurfacing of the field and any other improvements to Board property which may become necessary as a consequence of the improvements to Berkley Playing Field, any approved change orders, and all associated professional services fees, including, but not limited to, all engineering fees incurred by the Board in connection with review of the plans and technical specifications for bidding purposes, and the Board's architectural, engineering and attorneys' fees.

B. Solicitation of Bidders: The Borough will solicit bids for the Project pursuant to the Local Public Contracts Law 40A:11-1 et seq., based upon

the agreed-upon plans and specifications. The bid documents shall mandate that the Project be completed by a date mutually agreed upon by the Board and the Borough.

## II. STANDARDS AND PERFORMANCE

- A. The Borough shall be responsible for advertising for all bids, the award of all contracts in accordance with the Local Public Contracts Law 40A:11-1 et seq., the approval of any change orders to said contracts, the administration of the Project, and the funding of the Project using Borough funds (in accordance with Article III herein). The bid specifications shall, at a minimum: (1) state that the contract between the Borough and the contractor will be for the benefit of the Board; (2) require the contractor to follow all of the directives of the Board pertaining to the construction of the improvements; (3) require the contractor to abide by all applicable Board Policies and Regulations; and (4) require that both the Borough and the Board be named as additional insureds on any and all of the contractor's required insurance policies.
- B. The Borough shall secure all necessary governmental approvals and permits for the Project as may be required. The Board shall cooperate with the Borough and/or its professionals to facilitate the Borough's securing of the approvals and/or permits, and shall provide the contractor with access to the Board's property as necessary to complete the Project.
- C. Subsequent to the construction of the improvements, the Board shall be responsible for the maintenance of Berkley Playing Field and shall additionally be responsible for any and all costs associated therewith.

## III. COSTS AND PAYMENT PROCEDURES

- A. The Borough shall be responsible for all costs of the Project.
- B. All payments required herein by the Borough are subject to the availability of monies from the Fund and the approval process of N.J.S.A. 40:12-15.7

## IV. INDEMNIFICATION AND INSURANCE:

- A. Indemnification: The Borough assumes all liability for, and agrees to indemnify and hold the Board and its agents, servants, employees, students, guests, licensees and invitees, harmless against any and all claims, losses, damages, injuries and expenses, arising out of, resulting

from, or incurred in connection with, any acts or omissions by the Borough, its agents, servants or employees related to the performance of the Borough's obligations under the terms of this Agreement.

The Board assumes all liability for, and agrees to indemnify and hold the Borough and its agents, servants, employees, guests, licensees and invitees, harmless against any and all claims, losses, damages, injuries and expenses, arising out of, resulting from, or incurred in connection with, any acts or omissions by the Board, its agents, servants or employees related to the performance of the Board's obligations under the terms of this Agreement.

- B. Insurance: Both parties shall maintain full and complete liability insurance throughout the term of this Agreement and cause the other party to be designated on its policy as an additional insured. Said coverage limits shall be not less than the maximum amounts of liability coverage now maintained by each party.

V. USE OF BERKLEY PLAYING FIELD

The Board grants the Borough a license for the use of Berkley Playing Field in accordance with existing Board Policies and Regulations, particularly Board Policy No. 7510, entitled "Use of School Facilities," as well as any related regulations and/or forms. The Board shall have primary use of Berkley Playing Field at all times. However, the Board shall make Berkley Playing Field available for use by the Borough, which shall have priority of use over other users for its recreation programs and other programs, in accordance with the above-referenced Policy and the specific provisions of this Agreement. The Borough's use of the Berkley Playing Field shall not impede or interfere with the conditional use granted to the Hovnanian School, Inc. The Board shall amend Policy 7510 consistent with the priority given to the Borough in consideration of this Agreement.

VI. TERM OF THE AGREEMENT

- A. The term of this Agreement shall commence on the date upon which both parties have executed the agreement as set forth below, and shall continue for a period of ten (10) years from the date thereof. The parties may renew this Agreement by way of a written addendum adopted by both parties pursuant to the governing bodies' official resolutions.
- B. Notwithstanding any other terms of this Agreement, either party may terminate this Agreement for cause upon sixty (60) days notice pursuant

to the procedure set forth in this Article. In the event of a breach of this Agreement by either the Borough or the Board, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have sixty (60) days within which to cure the default. If the default is not cured within that time, the non-breaching party shall have the right to then terminate this Agreement by giving the breaching party sixty (60) days written notice of its intention to terminate as of the date specified in the written notice.

- C. This Agreement is contingent upon the Borough's allocation of monies from the Fund for this Project. In the event that the Borough does not allocate monies from the Fund for this Project, this Agreement shall be null and void.

#### VII. MISCELLANEOUS PROVISIONS

- A. Merger: This Agreement merges and supersedes all prior negotiations, representations and/or agreements between the parties relating to the subject matter of this agreement and constitutes the entire contract between the parties.
- B. Modification: This Agreement may only be modified by an instrument in writing signed by both parties to the Agreement.
- C. Waiver: No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement. Neither party may waive any of its rights or any obligations of the other party or any provision of this Agreement except by an instrument in writing signed by that party.
- D. Severability: If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- E. Notice: All notices pertaining to the Agreement shall be in writing, and delivered in person or sent certified mail to the parties at the following address:

For the Board:

Mr. Michael Sawicz  
School Business Administrator/ Board Secretary  
New Milford Board of Education  
145 Madison Avenue  
New Milford, New Jersey 07646

For the Borough:


Ms. Christine Demiris  
Borough Clerk  
Borough of New Milford  
930 River Road  
New Milford, New Jersey 07646

- F. Governing Law: This Agreement shall be governed, construed and interpreted in accordance with the law of the State of New Jersey as it applies to contracts made and performed in New Jersey. The Superior Court of the State of New Jersey, in the County of Bergen, shall have jurisdiction to hear and determine any claim or disputes pertaining directly or indirectly to the Agreement or to any matter arising therefrom. Each of the parties hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by the other in such court.
- G. Assignment: Neither party may transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the other, and any such transfer or assignment or attempt thereat shall be null and void.
- H. Section Headings: Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.
- I. Counterparts: This Agreement may be executed in any number of counterparts, which, taken together, shall constitute but one instrument. It is not necessary that all parties sign all or any one of the counterparts, but each party must sign at least one counterpart for the Agreement to be effective.

IN WITNESS WHEREOF, the parties have hereunto caused these presents to be signed by their proper corporate officers and caused their proper corporate seals to be hereunto affixed, the day and year first above written.

WITNESS:

NEW MILFORD BOARD OF  
EDUCATION

  
\_\_\_\_\_  
MICKHAEL SAWICZ  
School Business Administrator/  
Board Secretary

BY:   
\_\_\_\_\_  
PAIGE RYAN  
Board President


DATED: 7/13/15

DATED: 7/13/15

WITNESS:

BOROUGH OF NEW MILFORD

  
\_\_\_\_\_  
CHRISTINE DEMIRIS  
Borough Clerk

BY:   
\_\_\_\_\_  
ANN V. SUBRIZI  
Mayor

DATED: 6/22/15

DATED: 6/22/15