

## ATHLETIC FIELD LICENSE AGREEMENT

This ATHLETIC FIELD LICENSE AGREEMENT (the "Agreement") is made and entered into as of the ~~10<sup>th</sup>~~<sup>10<sup>th</sup></sup> day of ~~May~~<sup>July</sup>, 2000, by and between the Town of Hinesburg, a municipal organization of the State of Vermont ("Licensor") and the Hinesburg Town School District, a school district located in the State of Vermont ("Licensee").

WHEREAS, Licensee is required under the regulations of the State of Vermont Department of Education to provide school facilities;

WHEREAS, Licensor desires to license to Licensee by this License, the right, privilege and permission to enter into and on certain property as more particular described below for playground and athletic field uses so that Licensee may satisfy the regulations.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. **Grant of License.** Licensor hereby grants to Licensee, the right, privilege and permission to enter into and on the premises consisting of a parcel of land containing approximately 3.2 acres, more or less, known as "Lyman Park" in the Town of Hinesburg, County of Chittenden, and State of Vermont (the "Premises"). The Premises consist of the lands and premises conveyed to Licensor by the Warranty Deed of Lyman Meadow Condominium Association, dated November 4, 1991, recorded in Volume 79 at Page 356-359 of the Hinesburg Land Records. The Premises are subject to the restrictive covenants set forth in the Warranty-Deed, to all easements, covenants, conditions, permits and restrictions of record in the Hinesburg Land Records, and to a right of way hereby reserved in favor of Licensor to construct a road from Lantman's parking lot along the westerly portion of the Premises to Route 116 across from the White Building. In the event that Licensor constructs a right of way road in this location, Licensor agrees to provide a sidewalk along one side of the right of way to improve pedestrian travel between Hinesburg Elementary School and the Premises. Licensor reserves from this license an easement for the installation and repair of pipes and cables throughout the Premises.

2. **Term.** The term of this Agreement shall be a period of fifty years, commencing on ~~May 10<sup>th</sup>~~<sup>July</sup>, 2000, and expiring on ~~May 10<sup>th</sup>~~<sup>July</sup>, 2050 (the "Term").

3. **Use.** The above granted permission is for playground and athletic field uses only. Licensee shall comply with all applicable laws and regulations in its use and occupancy of the Premises. Licensor reserves the right to the use of the athletic fields and other parts of the Premises on behalf of the Town of Hinesburg Recreation Department (the "Recreation Department"). Licensee and the Recreation Department shall endeavor to cooperate in coordinating their schedules for the use of the Premises.

4. **Improvements.** Licensee may, at its sole cost and expense, install fixtures or other improvements to the Premises incidental to the permitted purposes set forth in Paragraph 3 hereof (individually or collectively the "Improvements"), provided that all such Improvements

shall be at Lessee's sole cost and expense, shall be constructed in accordance with all applicable laws and governmental requirements, and shall be made only with the advance written approval of Licensor, which shall not be unreasonably withheld or unduly delayed; prior to undertaking such Improvements, Licensee shall submit reasonably detailed construction plans and specifications to Licensor and Licensor shall have fifteen (15) days to approve or disapprove of such plans; a failure by Licensor to give Licensee written notice of disapproval within fifteen (15) days of Licensor's receipt of such plans and specifications shall be deemed an approval.

During the term of this Agreement, the Improvements constructed by Licensee shall be the property of Licensee. At the expiration or earlier termination of the term, the Improvements shall become the property of Licensor.

**5. Fees.** Licensor has donated the license of the Premises to Licensee on the understanding that Licensee needs the Premises to provide school facilities required under the regulations of the State of Vermont Department of Education. Licensee shall not be obligated to pay any fees to Licensor for the Premises, but it is intended by the parties that Licensee shall be responsible for all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises.

**6. Taxes.** During the Term, Licensee shall pay all real property taxes and special assessments (if any and as required by law) on the Premises and on any personal property of Licensee located on the Premises, and all sales and use taxes, rooms and meals taxes, employment taxes and other federal, state and local taxes or assessments arising from Licensee's operations on the Premises.

**7. Utilities; Common Areas.** During the Term, Licensee shall pay when due all costs of public or private utility services to or for the Premises, including but not limited to heat, light, electricity, gas, heating oil, water, sewer, telephone, cable communications and garbage collection. Whenever possible, Licensee shall pay such costs and fees directly to the providing utility. For such costs and fees paid by Licensor, Licensee shall reimburse Licensor within ten (10) days following invoice by Licensor.

**8. Maintenance and Repair.** During the Term, Licensee shall, at its cost, keep the Premises in good and sanitary order, condition and repair, damage thereto not covered by personal property insurance provided by Licensee and reasonable wear and tear excepted; Licensee's responsibilities shall include grading and snow plowing of parking areas on the Premises and lawn mowing and landscaping maintenance.

**9. Insurance.** During the Term, Licensee shall provide and keep in force: (a) comprehensive general liability for personal injury, death and property damage occurring in, upon or about the Premises, the parking areas and other common areas, in an amount not less than the liability insurance coverages maintained by the Licensor for the Premises; (b) personal property insurance covering Licensee's license in the Premises and all equipment and other

property of Licensee on or about the Premises, in such amounts and coverages as Licensee shall elect to maintain; and (c) workers' compensation insurance for all persons employed by Licensee at the Premises, in accordance with the laws of the State of Vermont. Licensee's insurance shall be provided by reputable companies licensed to do business in the State of Vermont and in form satisfactory to Licensor. Licensee's insurance policies shall provide that they may not be canceled, lapsed, nonrenewed, reduced in the amount of coverage or modified without thirty (30) days' prior written notice to Licensor. Licensee's liability insurance shall name Licensor as an additional insured. Licensee shall furnish Licensor on or prior to the date of this Agreement, and prior to the first day of each year during the Term, with a full certificate or endorsement showing that its required insurance is in full force and effect and that premiums for the succeeding year have been paid, and if requested, with a copy of all such insurance policies. Notwithstanding any other provision of this Agreement, Licensee hereby releases the Licensor from any and all liability or responsibility for any loss or damage to Licensee's interest under this Agreement or personal property, to the extent that such loss or damage would be covered by property insurance for basic and special perils written on a replacement cost basis, and Licensor shall not be liable to any insurance company providing property insurance to Licensee, regardless of whether the loss or damage may have been caused by Licensor or Licensor's employees, agents, contractors, guests, invitees or tenants.

**10. Permitted Contests.** Licensee at its sole cost and expense may by appropriate legal proceedings conducted in good faith and with due diligence, contest the amount, validity or application, in whole or in part, of any tax or utility charge or any lien for work on the Premises, if such proceedings suspend the collection thereof and Licensee shall have furnished such security, if any, as may be required in the proceedings.

**11. Default.** If Licensee shall fail to perform or observe any other covenant or agreement set forth in this Agreement, or shall otherwise default hereunder, and Licensee shall fail to cure such default within thirty days after receipt of a written notice from Licensor specifying the nature of such default. Licensor shall have the right to terminate this Agreement.

**12. Indemnification.** Licensee shall indemnify, defend and hold harmless Licensor from all claims, demands, actions, damages, liabilities, costs and expenses in connection with property damage, personal injury and death arising out of or caused by Licensee's failure to observe or perform any covenant or agreement set forth in this Agreement, or from the use and occupancy of the Premises or any act or omission by Licensee and Licensee's agents, contractors, employees, servants, guests, invitees, or licensees, except to the extent caused by the negligence, willful misconduct or breach of this Agreement by Licensor or Licensor's agents, contractors, employees, servants, guests, invitees or tenants.

**13. Hazardous Materials.** Licensee represents, warrants and covenants that Licensee will not use hazardous materials (as defined hereinafter) on or about the Premises in any manner which violates federal, state or local laws, regulations or orders governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of hazardous

materials. Licensor shall defend, indemnify, and hold harmless Licensee, and its employees and agents, from and against any claims, demands, actions, penalties, fines, settlements, damages, liabilities, costs and expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to the presence, disposal, release, or threatened release of any hazardous materials on or about the Premises prior to the date of this Agreement, including but not limited to (i) any personal injury, death or property damage, (ii) any lawsuit brought or threatened, settlement reached, or government order, (iii) any penalties, fines or other costs arising from or relating to a violation of laws, regulations or orders of government authorities, and (iv) reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. For purposes of this Paragraph 13, "hazardous materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 *et seq.*) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 *et seq.*), the Vermont Hazardous Water Management Statute, as amended (10 V.S.A. § 6601 *et seq.*) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, regulations or order. The provisions of this Paragraph 13 shall be in addition to any and all other obligations and liabilities the parties may have at common law, and shall survive the termination or expiration of this Agreement.

**14. Assignment and Subletting; Successors and Assigns.** The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior express and written consent of the other party, which shall not be unreasonably withheld or unduly delayed. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the parties' respective successors and assigns.

**15. Notices.** Any notice to Licensor or Licensee required or permitted hereunder shall be in writing and shall be deemed given when delivered in person or mailed by first class mail to the Licensor at P.O. Box 133, Hinesburg, VT 05461-0133, Attn: Board Chair, with a copy to the Town Administrator at the same address, and to the Licensee at 10888 Rt. 116, Hinesburg, VT 05461, Attn: Board Chair, with a copy to the Superintendent, Chittenden South Supervisory Union, 363 CVU Road, Hinesburg, VT 05461, or to such other address as a party may specify in writing.

**16. Attorneys' Fees.** In the event of litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and expenses.

**17. Entire Agreement; Governing Law.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth on the first page hereof.

In the Presence of:

Pamela Kimmell Leason  
Witness

Town of Hinesburg

By Lynn E. Saunders  
Selectman

By James S. Trefrey  
Selectman

By Andrea Moxley  
Selectman

By Randall [Signature]  
Selectman

By John W. [Signature]  
Selectman

Donna Jacob  
Witness

Donna Jacob  
Witness

Donna Jacob  
Witness

Donna Jacob  
Witness

\_\_\_\_\_  
Witness

Hinesburg Town School District

By [Signature]  
Director

By Alta Mackin  
Director

By James W. Brown  
Director

By Alvair H. Mansueto  
Director

By \_\_\_\_\_  
Director