

Westford, Vermont, Town Clerk's Office
 July 5, 20 22 at
 4 o'clock 15 minutes P M
 received for record and recorded in
 book 179 on page 150-157 of
 land records.
 Attest *[Signature]*
 Town Clerk

SHARED USE AGREEMENT

This Shared Use Agreement, dated this 5th day of June 2022, (the "Agreement") is by and among the **TOWN OF WESTFORD**, a Vermont municipality in the County of Chittenden and the State of Vermont, (the "Town") and the **ESSEX WESTFORD SCHOOL DISTRICT**, a Vermont school district in the County of Chittenden and State of Vermont, (the "School District," the Town and School District are collectively referred to herein as the "Parties").

WITNESSETH

WHEREAS, by Quitclaim Deed dated June 27, 2017 with the Westford Town School District conveyed a 15-acre, more or less, parcel of land to the Town, which was conveyed to the Westford Town School District by Warranty Deed of Frederick T. Rope and Irene K. Rope, dated November 13, 1970, and recorded in Volume 32, Page 82 of the Town of Westford Land Records. Said parcel of land is commonly known as "Parcel 2" and is described in the aforesaid Quitclaim Deed as "Parcel 1" ("Parcel 2" herein); and

WHEREAS, Parcel 2 is currently developed with a number of ball fields, backstops, recreation paths, a hay field and other uses consistent with educational, recreational or agricultural uses of Parcel 2; and

WHEREAS, by Quitclaim Deed dated June 27, 2017 with the Westford Town School District also conveyed a 50 acre, more or less, parcel of land abutting Parcel 2 to the east to the Town, which was conveyed to the School District by Warranty Deed of Frederick T. Rope and Irene K. Rope, dated March 31, 1972, and recorded in Volume 33, Page 288 of the Town of Westford Land Records. Said parcel of land is commonly known as "Parcel 3" and is described in the aforementioned Quitclaim Deed from the School District to the Town as "Parcel 2" ("Parcel 3" herein).

WHEREAS, the School District presently uses Parcel 2 and Parcel 3 for educational and recreational purposes consistent with its operation of the Westford School on a 14-acre, more or less, parcel of land abutting Parcel 2 to the north; and

WHEREAS, among other uses, including forestry, silviculture and agriculture, the Town also uses Parcel 2 and Parcel 3 for active and passive recreational uses, either as part of programs run by its Recreation Department or as part of the Town's network of recreational trails in the area; and

WHEREAS, upon conveyance of Parcel 2 and Parcel 3 to the Town, the Parties desire for the School District to continue its use of Parcel 2 and Parcel 3 for educational and recreational activities associated with its operation of the Westford School and for the Town to continue to use Parcel 2 and Parcel 3 for recreational, forestry, silvicultural and agricultural purposes, as set forth in more detail below.

NOW THEREFORE, in consideration of these mutual premises and covenants herein contained, and other good and valuable consideration, the Town, acting by and through its Selectboard, and the School District, acting by and through its School Board, covenant and agree as follows:

1. **Applicability and Term.** This Agreement governs the Parties' use of Parcel 2 and Parcel 3 for an initial term of five (5) years from the date hereof. This term may be extended by mutual agreement of the Parties for an unlimited number of successive five-year periods for so long as the Essex Westford School District ("EWSD"), operates the Westford School on the parcel of land abutting Parcel 2 to the north. Should the Westford School close and the parcel of land abutting Parcel 2 to the north cease to be used for educational purposes for a period of two consecutive years, then this Agreement shall terminate and be of no further force and effect.
2. **Fees.** The Town shall pay the School District an annual base fee of Four Thousand Three Hundred Fifty-Five Dollars (\$4,355), which shall be adjusted annually by the Consumer Price Index (CPI) published by the U.S. Bureau of Labor Statistics from October to October of the most recent preceding year. This amount will be billed annually for the forthcoming July 1-June 30 fiscal year.

Upon each renewal of this agreement, or at the request of either party, a cost analysis of the shared expenses will be performed to establish a new annual base fee.

The allocation of costs of maintenance, projects, and capital improvements will be agreed upon by the Parties when they meet annually during the first week of October to perform budget planning.

3. **Maintenance and Operations.** The Parties' maintenance responsibilities for Parcel 2 shall be as follows:
 - a. The School District shall maintain and improve all recreation fields and facilities on Parcel 2 in a good and workman-like fashion. For any proposed capital improvements, such as the construction of new facilities, backstops, drainage and grading, the Town and School District shall share such costs equally, unless otherwise mutually agreed. Between October 1 and November 15 of each calendar year, the School District and Town shall each appoint a representative who shall meet during said period of time with the other party's representative to discuss maintenance and capital improvement needs, projects and expenses in the following fiscal year (July 1-June 30).
 - b. The Town shall be responsible for four-season maintenance of the recreational trails on Parcel 2 and be responsible for general maintenance of Parcel 3. Notwithstanding the foregoing, the School District shall upgrade or maintain the recreational trails on Parcel 2 and Parcel 3 in preparation for or after use of the recreational trails for school events or cross-country races.
 - c. Each party shall be responsible to pay the costs and expenses necessary to repair damage to Parcel 2 and Parcel 3 caused by such party's use and activities on Parcel 2 and Parcel 3, other than ordinary wear and tear, so that Parcel 2 and Parcel 3 are returned as near as reasonably practicable to their condition prior to such damage.

- d. Unless otherwise agreed to by the Parties, the School District shall have primary use of Parcel 2 during and until the conclusion of any school-sponsored activity or function on weekdays during the school year. The School District and Town shall make reasonable provisions for use of Parcel 2 by the Town's Recreation Department or for Town-sanctioned events and use on weekdays during the school year and on weekends. Parking needs of each Parties' use of Parcel 2 and the fields will be considered in scheduling.
4. **Supervision**. The Town shall provide adequate personnel to supervise Town activities held on Parcel 2 and Parcel 3, and the School District shall provide adequate personnel to supervise School District activities on Parcel 2 and Parcel 3. Each party shall prepare/set-up, supervise and clean-up facilities and fields used by that party after regular hours of operation. School District administrative, athletic and safety staff will have authority to supervise student behavior during school or other School District-sponsored activities or functions on Parcel 2 and Parcel 3 during the school year.
5. **Town and School District Policies**. The Town hereby agrees that all laws applicable to the School District and all School District policies shall apply to Parcel 2 and Parcel 3 when they are being used for School District activities and functions, including but not limited to all School District policies regarding the prohibition on possession and use of firearms. Without limiting the foregoing, the Town and School District agree that the display, use and discharge of firearms on Parcel 2 and Parcel 3 shall be prohibited (see Schedule A).
6. **Cooperation Required**. The Parties acknowledge that various documents and proposals are necessary to enable continued shared use of Parcel 2 and Parcel 3. As a result, the Parties shall continue to cooperate in all matters between them regarding Parcel 2 and Parcel 3 that will allow continued joint use of Parcel 2 and Parcel 3, except as otherwise provided herein. This cooperation may include, but is not limited to, preparing, supporting and executing transactional and conveyance documents, joint or coordinated applications to the Town's zoning authorities or any other regulatory agency, all consistent with the terms of this Agreement.
7. **Insurance**. The Town and the School District agree to provide liability insurance covering their respective activities on Parcel 2 and Parcel 3 in the amount of not less than \$1,000,000 per individual and \$1,000,000 per average occurrence for bodily injury and property damage. The Town shall provide liability insurance coverage for Parcel 2 and Parcel 3. Each party shall deliver to the other party certificates of the required insurance coverage upon demand by the other party, which certificates shall provide that no cancellation, reduction in amount or material change in coverage shall be effective until at least thirty (30) days after receipt of written notice thereof by the other party.
8. **Indemnification**. The Town and the School District shall each defend, indemnify and hold harmless the other party and its officers, board members, employees, agents, representatives, successors and assigns from and against all claims, demands, lawsuits,

proceedings, judgments, losses, costs and expenses, including but not limited to reasonable witness and attorneys' fees and costs, which arise from the negligence or other misconduct of the indemnifying party or its agents in connection with use of Parcel 2 and Parcel 3. In the event either party hereto has or receives actual or constructive notice of any claims to which the foregoing indemnification clause may apply, that party shall immediately notify the other party in writing that a claim to which this indemnification clause may apply has been filed or made.

9. **Dispute Resolution.** In the event a dispute arises as a result of the implementation of this Agreement, resolution shall be addressed by the Parties in the following sequential order with each having a thirty (30) day period to meet:
- a. The Selectboard Chair or its designee and the School District Chief Operating Officer or designee.
 - b. The Selectboard Chair or its designee, a Selectboard member or designee, the School District Chief Operating Officer and the School Board Chair or its designee.
 - c. The Town Selectboard and the District School Board.

If the dispute cannot be settled through direct discussions between the above parties, the Parties shall endeavor to settle the dispute by mediation before a mutually agreed upon mediator within ninety (90) days of the date of a writing from either party indicating that discussions between those identified in Section 9(c), above, have failed and before commencement of any binding dispute resolution procedures.

10. **Other Dispute Resolution Processes.** If neither direct discussions nor mediation successfully resolve the dispute, the Parties agree that arbitration shall be used to resolve the dispute. Arbitration shall be in Burlington, Vermont pursuant to the Rules of the American Arbitration Association, unless the Parties mutually agree otherwise. Within thirty (30) days of an unsuccessful mediation session described in Section 9, above, a written demand for arbitration shall be filed with the American Arbitration Association and the other party to the Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding has run. The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction.
11. **Costs of Dispute Resolution.** The Parties agree that they shall each bear their own costs, fees, and expenses including attorneys', experts' and witness' fees, incurred in connection with any dispute resolution proceedings. If a third party mediator or arbitrator is retained in any dispute resolution, proceeding, the Town and School District shall share equally the costs of such third-party mediator or arbitrator.
12. **Assignment.** Neither the Town nor the School District may assign its interest in this Agreement without the prior written mutual consent of the other Party to do so.

- 13. Notices.** Any notice or other communication to be given hereunder shall be in writing and mailed, certified with return receipt requested, or emailed, or sent by facsimile, or sent by nationally recognized overnight courier (e.g., Federal Express) to such party at the address or number set forth below:

If to Town: Town of Westford
 Attn: Town Administrator
 1713 VT Route 128
 Westford, VT 05494
 Telephone Number: 802-878-4587
 Email: townadmin@westfordvt.us

If to District: Essex Westford School District
 Attn: Chief Operating Officer
 51 Park Street
 Essex Junction, VT 05452
 Telephone Number: 802-857-7040
 Email: bdonahue@ewsd.org

or to such other person, address or number as the party entitled to such notice or communication shall have specified by notice to the other party given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed by certified mail, return receipt requested, when deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by facsimile, upon the sender's receipt of a confirmation report generated by the sending machine; (iii) if emailed, upon transmission unless the sender receives an automatically generated message indicating delivery failure or that the recipient is "out of office", or (iv) if sent by overnight courier service, next day after sending.

- 14. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont, without giving effect to such jurisdiction's principles of conflict of laws.
- 15. No Waiver.** No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.
- 16. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. **Captions: Headings.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of such sections, nor in any way affect this Agreement or have any substantive effect.
18. **Joint Drafting.** The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.
19. **Entire Agreement: Amendment.** This Agreement embodies the entire agreement and understanding between the Parties relating to the subject matter hereof and there are no covenants, promises, agreements, conditions or understandings, oral or written, except as herein set forth. In conjunction with the meeting required pursuant to Section 3(a), above, representatives of the Parties will meet annually to review the terms of this Agreement. Either party may request changes in the Agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment or addendum hereto signed by the Parties.
20. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect and the Parties shall use their best efforts to construe and implement the Agreement in accordance with the intent expressed herein.
21. **Recording.** The Parties hereto agree that any party may record this Agreement in the Town of Westford Land Records without further consent from the other Parties.
22. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

ACKNOWLEDGMENT OF ARBITRATION. This Agreement contains an agreement to arbitrate. After signing this document, the Parties understand that they will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, the Parties agree to submit any such dispute to an impartial arbitrator.

IN WITNESS WHEREOF, the Parties hereunto set their hands and seals as of the date set forth above.

TOWN OF WESTFORD

Namette Boag
Witness

By: [Signature]
Lee McClenny, Chair, Westford Selectboard
and Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At Westford, Vermont this 20th of June 2022, personally appeared before me, Lee McClenny, Westford Selectboard Chair, and duly authorized agent of the **TOWN OF WESTFORD**, and acknowledged by this instrument, by their subscribed, to be their free act and deed and the free act and deed of the **TOWN OF WESTFORD**.

Before me,

Namette Boag
Notary Public #9136
My commission expires: 01/31/2023

ESSEX WESTFORD SCHOOL DISTRICT

[Signature]
Witness

By: [Signature]
Brian Donahue, Chief Operating Officer and
Duly Authorized Agent

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At Essex, Vermont this 5th of July 2022, personally appeared before me, Brian Donahue, Chief Operating Officer and duly authorized agent of the **ESSEX WESTFORD SCHOOL DISTRICT**, and acknowledged by this instrument, by their subscribed, to be their free act and deed and the free act and deed of the **ESSEX WESTFORD SCHOOL DISTRICT**.

Before me,

[Signature]
Notary Public #2396
My commission expires: 01/31/2023

SCHEDULE A

