

Draft Agreement subject to potential further adjustments based on Township Committee discussions on September 9, 2015

**LICENSE AGREEMENT TO USE TURF FIELD AT LONG HILL TOWNSHIP
MATTHEW G. KANTOR MEMORIAL PARK**

THIS LICENSE AGREEMENT entered into this _____ day of _____, 2015, between the **TOWNSHIP OF LONG HILL** (the "Township"), a municipal corporation of the State of New Jersey, having its offices at 915 Valley Road, Gillette, New Jersey 07933, and **ORATORY PREPARATORY SCHOOL** ("Oratory Prep"), located at 1 Beverly Road, Summit, New Jersey 07901.

WITNESSETH:

1. **Premises.** The Township grants to Oratory Prep a license to use the turf field which is to be constructed on a portion of the Matthew G. Kantor Memorial Park (Block 10601, Lot 10), which is owned by Township (the "Turf Field"), in accordance with the terms of this Agreement.
2. **Term.** The term of this License Agreement shall be approximately twelve and one half years (12 fall seasons and 13 spring seasons) to commence on March 15, 2016. (the "Commencement Date").
3. **License Fee.** Oratory Prep shall pay the Township a License Fee at the rate of \$20,000 per season or \$40,000 per calendar year for each year of the License Term. The License Fee shall be paid in twenty-five equal installments of \$20,000, payable on July 26 and February 26 during each year of this Agreement.
4. **Use.** Oratory Prep shall have a License to the exclusive use of the Turf Field for soccer, lacrosse and other school athletic activities ordinarily conducted on a turf field, during those times and on those dates and days set forth on Exhibit "A" to this agreement. When the turf field to be constructed on the Turf Field is not being used by Oratory Prep during its reserved times as set forth on Exhibit "A", the Turf Field may be used by Township.
5. **Compliance with Laws.** Oratory Prep shall comply with all statutes, ordinances and regulations that pertain to Oratory Prep's use of the Turf Field. Township warrants that as of the Commencement Date, the Turf Field is in compliance with all applicable statutes, ordinances and regulations. Nothing within the terms of this agreement and/or Oratory Prep's intended use of the Turf Field as expressed within this agreement is in violation of or in conflict with any applicable statutes, ordinances or regulations adopted pursuant thereto.

6. **Repairs and Maintenance.** During the Term of this License Agreement, the Township shall, at its sole cost and expense, responsible for normal, routine maintenance and care of the Turf Field, except that Oratory Prep shall be responsible to keep the Turf Field free from litter, debris, and trash resulting from its use of the Turf Field, and to make all reasonable repairs to any improvements located on the Turf Field resulting from use by Oratory Prep outside the normal course to the extent that any such repairs are a result of Oratory's gross negligence or willful misconduct caused by the negligence or willful misconduct of Oratory Prep, its students, athletes, coaches, fans, agents, independent contractors, representatives or employees and/or visiting teams, their students, athletes, coaches, or fans.
7. **Insurance.** Oratory Prep shall maintain, at its sole expense, during the Term, comprehensive general liability insurance for the Turf Field in a combined coverage for bodily injury and property damage in an amount not less than One Million Dollars (\$1,000,000). Oratory Prep shall name the Township as an additional insured under such policy.
8. **Indemnity.**
 - a. Oratory Prep shall defend, indemnify and save harmless the Township, its officers, agents and employees, against all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and other costs of litigation not covered under applicable policies of insurance) resulting from the injury to any person, including participants and spectators at any event or activity conducted by Oratory Prep at the Turf Field pursuant to this License Agreement. Furthermore, Oratory Prep shall defend, indemnify and save harmless the Township, its officers, agents and employees, against all claims, liabilities, losses, fines, penalties, damages, costs and expenses (including reasonable attorneys' fees and other costs of litigation not covered under applicable policies of insurance because of injury, including death, to any person, or damage or loss of any kind to any property caused by unreasonable action or unreasonable failure to act any action or omission of Oratory Prep, or any failure on the part of Oratory Prep to perform its obligations under this License Agreement, except to the extent caused by the negligence or willful misconduct of Township, or its employees, contractors, agents or representatives or by breach of township's obligations under this license agreement
 - b. Township shall defend, indemnify and save harmless Oratory Prep its officers, directors, shareholders and partners, against all claims, liabilities, losses, fines, penalties, damages, costs and expenses (including reasonable attorneys' fees and other costs of litigation not covered under applicable policies of insurance) because of injury, including death, to any person, or damage or loss of any kind to any property caused by any action or omission of Township, or any failure on the part of Township, to perform its obligations under this License Agreement, except to the extent caused by the negligence or willful misconduct of Oratory Prep, or

its employees, contractors, agents or representatives.

9. **Utilities.** Oratory Prep shall be solely responsible for and shall promptly pay all costs and charges for light, electricity, power, and any other utility or service used or consumed in or servicing the Turf Field during its use of the Turf Field for any use by Oratory Prep that is out of the ordinary course of use contemplated by the terms and times set forth in this agreement
10. **Improvements and Alterations.** Oratory Prep may not make any alterations, additions or improvements to the Turf Field.
11. **Assignment.** Oratory Prep shall not assign this License Agreement.
12. **Casualty and Condemnation.** If the Turf Field shall be so damaged by storms, other casualty, acts of God or the elements (a "Casualty"), or partially, so that it cannot be restored for recreational use within thirty (30) days from the date of the Casualty ("Substantial Damage"), Oratory Prep may terminate this License Agreement by giving written notice to Township within thirty (30) days after the date of the Casualty. In such case, the License Agreement may be terminated at the option of the tenant as of the date of the Casualty and the License Fee shall abate from that date, and any License Fee paid beyond such date shall be refunded to Oratory Prep.
13. **Oratory Prep's Defaults.** If an event of default in the terms of this agreement by Oratory Prep occurs, Township may, without prejudice to the exercise of any other remedy, exercise any remedy available under law, including those described below:
 - a. Township may enter the Premises without releasing Oratory from any obligation under this License Agreement.
 - b. Township may recover either: any Rent unpaid as of the termination date, and Oratory will remain liable for the payment when due of Rent for the remaining Term; or any Rent unpaid as of the termination date, and further recover the present value as of the termination date (calculated using the then current discount rate of the Federal Reserve Bank of New York) of the Rent to be paid for the Term remaining after the termination date.
14. **Representation of Authority.** The Township and Oratory Prep represent and warrant to each other that they have full right, power and authority to enter into this License Agreement without the consent or approval of any other entity or person or if consent is required all such consents have been received. The signatories on behalf of the Township and Oratory Prep represent and warrant that each has full right, power and authority to act for and on behalf of Township and Oratory Prep in entering into this License Agreement.
15. **Brokers.** Oratory Prep and Township warrant and represent to each other that neither has dealt with any broker or brokers regarding the negotiation of the within License Agreement. Oratory Prep and Township agree to be responsible for and to indemnify and

save the other harmless from and against any claim for a commission or other compensation by any broker claiming to have negotiated with the indemnifying party with respect to the Turf Field or to have called the said Turf Field to Oratory Prep's attention or to have called Oratory Prep to Township's attention.

16. **Attorneys' Fees.** In the event either party institutes legal proceedings against the other for breach of or interpretation of any of the terms, conditions or covenants of this License Agreement, the party against whom a final judgment is entered shall pay all reasonable costs and expenses relative thereto, including reasonable attorneys' fees of the prevailing party.
17. **Notices.** Any notice by either party to the other shall be in writing and shall be deemed to be duly given only if delivered personally or sent by registered or certified mail return receipt requested, or overnight delivery service, to the following: Notice shall be deemed to have been given on the date received, if delivered personally or by overnight delivery service, or, if mailed, three (3) business days after the date postmarked.

If to Oratory Prep:

Oratory Preparatory School
1 Beverly Road
Summit, New Jersey 07901.

Attn: Head of School

If to Township:

Township of Long Hill
915 Valley Road
Gillette, New Jersey 07933

Attn: Township Administrator

with a copy to: John Pidgeon, Esq.
Pidgeon & Pidgeon, PC
600 Alexander Road
Princeton, NJ 08540

18. **Non-Waiver by the Parties.** The various rights, remedies, options and elections of the Township and Oratory Prep under this License Agreement are cumulative. The failure of either party to enforce strict performance by the other party of the conditions and covenants of this License Agreement or to exercise any election or option, or to resort or have recourse to any remedy conferred in this License Agreement or the acceptance by the Township of any installment of a License Agreement Fee after any breach by Oratory Prep, in any one or more instances, will not be construed or deemed to be a waiver or a

relinquishment for the future by either party of any such conditions and covenants, options, elections or remedies, but the same will continue in full force and effect.

19. **Validity of License Agreement.** The terms, conditions, covenants and provisions of this License Agreement will be deemed to be severable. If any clause or provision contained in this License Agreement is adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other clause or provision in this License Agreement, but such other clauses or provisions will remain in full force and effect unless the clause or provision when adjudged to be invalid or unenforceable renders the use of Turf Field incapable of reasonable use by Oratory Prep, thereby rendering this agreement impossible to perform.
20. **No Estate Conveyed.** This agreement does not and shall not be deemed to (a) constitute a lease or a conveyance of personal or real property by the Township to Oratory Prep, or (b) confer upon Oratory Prep any right, title, estate or interest in the premises. This agreement grants to Oratory Prep only a personal privilege revocable by the Township on the terms set forth herein.
21. **Governing Law.** This License Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of New Jersey, and any disputes shall be resolved in the Superior Court of New Jersey, Morris County.
22. **Entire Agreement.** This License Agreement constitutes the entire agreement between the parties, there being no other terms, oral or written, except as herein expressed. No modification of this License Agreement shall be binding on the parties unless it is in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement as of the day and year first above written.

Attest:

Cathy Reese, RMC, CMR

Attest:

Title:

Township:

Township of Long Hill

By: _____

Brendan P. Rae, Mayor

Oratory Preparatory School

By: _____

Title:

SCHEDULE OF ORATORY PREP'S RESERVED TIMES

Fall Seasons

August 15 through November 15 3:00 p.m. to 5:00 p.m. Monday through Friday

Spring Seasons

March 15 through June 1 3:00 p.m. to 5:00 p.m. Monday through Friday

DRAFT

EXHIBIT A

Draft Agreement subject to potential further adjustments based on Township Committee discussions on September 9, 2015

LICENSE AGREEMENT #2 TO USE TURF FIELD AT LONG HILL TOWNSHIP MATTHEW G. KANTOR MEMORIAL PARK

THIS LICENSE AGREEMENT entered into this _____ day of _____, 2015, between the **TOWNSHIP OF LONG HILL** (the "Township"), a municipal corporation of the State of New Jersey, having its offices at 915 Valley Road, Gillette, New Jersey 07933, and **ORATORY PREPARATORY SCHOOL** ("Oratory Prep"), located at 1 Beverly Road, Summit, New Jersey 07901.

WITNESSETH:

1. **Premises.** The Township grants to Oratory Prep a license to use the turf field which is to be constructed on a portion of the Matthew G. Kantor Memorial Park (Block 10601, Lot 10), which is owned by Township (the "Turf Field"), in accordance with the terms of this Agreement.
2. **Term.** The term of this License Agreement shall be for thirteen (13) spring seasons to commence on March 15, 2016 (the "Commencement Date").
3. **License Fee.** Oratory Prep shall pay the Township a License Fee at the rate of \$5,000 per season for each year of the License Term, payable on July 26 each year during the term of this Agreement for a total of \$65,000.
4. **Use.** Oratory Prep shall have a License to the exclusive use of the Turf Field for soccer, lacrosse and other school athletic activities ordinarily conducted on a turf field, during those times and on those dates and days set forth on Exhibit "A" to this agreement. When the turf field to be constructed on the Turf Field is not being used by Oratory Prep during its reserved times as set forth on Exhibit "A", the Turf Field may be used by Township.
5. **Compliance with Laws.** Oratory Prep shall comply with all statutes, ordinances and regulations that pertain to Oratory Prep's use of the Turf Field. Township warrants that as of the Commencement Date, the Turf Field is in compliance with all applicable statutes, ordinances and regulations. Nothing within the terms of this agreement and/or Oratory Prep's intended use of the Turf Field as expressed within this agreement is in violation of or in conflict with any applicable statutes, ordinances or regulations adopted pursuant thereto.

6. **Repairs and Maintenance.** During the Term of this License Agreement, the Township shall, at its sole cost and expense, be responsible for normal, routine maintenance and care of the Turf Field, except that Oratory Prep shall be responsible to keep the Turf Field free from litter, debris, and trash resulting from its use of the Turf Field, and to make all reasonable repairs to any improvements located on the Turf Field resulting from use by Oratory Prep outside the normal course to the extent that any such repairs are a result of Oratory's gross negligence or willful misconduct caused by the negligence or willful misconduct of Oratory Prep, its students, athletes, coaches, fans, agents, independent contractors, representatives or employees and/or visiting teams, their students, athletes, coaches, or fans.
7. **Insurance.** Oratory Prep shall maintain, at its sole expense, during the Term, comprehensive general liability insurance for the Turf Field in a combined coverage for bodily injury and property damage in an amount not less than One Million Dollars (\$1,000,000). Oratory Prep shall name the Township as an additional insured under such policy.
8. **Indemnity.**
 - a. Oratory Prep shall defend, indemnify and save harmless the Township, its officers, agents and employees, against all claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees and other costs of litigation not covered under applicable policies of insurance) resulting from the injury to any person, including participants and spectators at any event or activity conducted by Oratory Prep at the Turf Field pursuant to this License Agreement. Furthermore, Oratory Prep shall defend, indemnify and save harmless the Township, its officers, agents and employees, against all claims, liabilities, losses, fines, penalties, damages, costs and expenses (including reasonable attorneys' fees and other costs of litigation not covered under applicable policies of insurance) because of injury, including death, to any person, or damage or loss of any kind to any property caused by unreasonable action or unreasonable failure to act any action or omission of Oratory Prep, or any failure on the part of Oratory Prep to perform its obligations under this License Agreement, except to the extent caused by the negligence or willful misconduct of Township, or its employees, contractors, agents or representatives or by breach of township's obligations under this license agreement.
 - b. Township shall defend, indemnify and save harmless Oratory Prep its officers, directors, shareholders and partners, against all claims, liabilities, losses, fines, penalties, damages, costs and expenses (including reasonable attorneys' fees and other costs of litigation not covered under applicable policies of insurance) because of injury, including death, to any person, or damage or loss of

any kind to any property caused by any action or omission of Township, or any failure on the part of Township, to perform its obligations under this License Agreement, except to the extent caused by the negligence or willful misconduct of Oratory Prep, or its employees, contractors, agents or representatives.

9. **Utilities.** Oratory Prep shall be solely responsible for and shall promptly pay all costs and charges for light, electricity, power, and any other utility or service used or consumed in or servicing the Turf Field during its use of the Turf Field for any use by Oratory Prep that is out of the ordinary course of use contemplated by the terms and times set forth in this agreement.
10. **Improvements and Alterations.** Oratory Prep may not make any alterations, additions or improvements to the Turf Field.
11. **Assignment.** Oratory Prep shall not assign this License Agreement.
12. **Casualty and Condemnation.** If the Turf Field shall be so damaged by storms, other casualty, acts of God or the elements (a "Casualty"), or partially, so that it cannot be restored for recreational use within ninety (30) days from the date of the Casualty ("Substantial Damage"), Oratory Prep may terminate this License Agreement by giving written notice to Township within thirty (30) days after the date of the Casualty. In such case, the License Agreement may be terminated at the option of the tenant as of the date of the Casualty and the License Fee shall abate from that date, and any License Fee paid beyond such date shall be refunded to Oratory Prep.
13. **Oratory Prep's Defaults.** If an event of default in the terms of this agreement by Oratory Prep occurs, Township may, without prejudice to the exercise of any other remedy, exercise any remedy available under law, including those described below:
 - a. Township may enter the Premises without releasing Oratory from any obligation under this License Agreement.
 - b. Township may recover either: any Rent unpaid as of the termination date, and Oratory will remain liable for the payment when due of Rent for the remaining Term; or any Rent unpaid as of the termination date, and further recover the present value as of the termination date (calculated using the then current discount rate of the Federal Reserve Bank of New York) of the Rent to be paid for the Term remaining after the termination date.
14. **Representation of Authority.** The Township and Oratory Prep represent and warrant to each other that they have full right, power and authority to enter into this License Agreement without the consent or approval of any other entity or person or if consent is required all such consents have been received. The signatories on behalf of the Township

and Oratory Prep represent and warrant that each has full right, power and authority to act for and on behalf of Township and Oratory Prep in entering into this License Agreement.

15. **Brokers.** Oratory Prep and Township warrant and represent to each other that neither has dealt with any broker or brokers regarding the negotiation of the within License Agreement. Oratory Prep and Township agree to be responsible for and to indemnify and save the other harmless from and against any claim for a commission or other compensation by any broker claiming to have negotiated with the indemnifying party with respect to the Turf Field or to have called the said Turf Field to Oratory Prep's attention or to have called Oratory Prep to Township's attention.
16. **Attorneys' Fees.** In the event either party institutes legal proceedings against the other for breach of or interpretation of any of the terms, conditions or covenants of this License Agreement, the party against whom a final judgment is entered shall pay all reasonable costs and expenses relative thereto, including reasonable attorneys' fees of the prevailing party.
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Oratory Preparatory School
1 Beverly Road
Summit, New Jersey 07901.

Attn: Head of School

If to Township:

Township of Long Hill
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Gillette, New Jersey 07933

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with a copy to: John Pidgeon, Esq.
Pidgeon & Pidgeon, PC
600 Alexander Road

Princeton, NJ 08540

18. **Non-Waiver by the Parties.** The various rights, remedies, options and elections of the Township and Oratory Prep under this License Agreement are cumulative. The failure of either party to enforce strict performance by the other party of the conditions and covenants of this License Agreement or to exercise any election or option, or to resort or have recourse to any remedy conferred in this License Agreement or the acceptance by the Township of any installment of a License Agreement Fee after any breach by Oratory Prep, in any one or more instances, will not be construed or deemed to be a waiver or a relinquishment for the future by either party of any such conditions and covenants, options, elections or remedies, but the same will continue in full force and effect.
19. **Validity of License Agreement.** The terms, conditions, covenants and provisions of this License Agreement will be deemed to be severable. If any clause or provision contained in this License Agreement is adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other clause or provision in this License Agreement, but such other clauses or provisions will remain in full force and effect unless the clause or provision when adjudged to be invalid or unenforceable renders the use of the Turf Field incapable of reasonable use by Oratory Prep, thereby rendering this agreement impossible to perform.
20. **No Estate Conveyed.** This agreement does not and shall not be deemed to (a) constitute a lease or a conveyance of personal or real property by the Township to Oratory Prep, or (b) confer upon Oratory Prep any right, title, estate or interest in the premises. This agreement grants to Oratory Prep only a personal privilege revocable by the Township on the terms set forth herein.
21. **Governing Law.** This License Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of New Jersey, and any disputes shall be resolved in the Superior Court of New Jersey, Morris County.
22. **Entire Agreement.** This License Agreement constitutes the entire agreement between the parties, there being no other terms, oral or written, except as herein expressed. No modification of this License Agreement shall be binding on the parties unless it is in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement as of the day and year first above written.

Attest:

Township of Long Hill

Cathy Reese, RMC, CMR

By: _____
Brendan P. Rae, Mayor

Attest:

Oratory Preparatory School

Title:

By: _____
Title:

DRAFT

SCHEDULE OF ORATORY PREP'S RESERVED TIMES

Spring Seasons

March 15 through June 1

5:00 p.m. to 5:30 p.m. Monday through Friday

DRAFT

EXHIBIT A

Draft Agreement subject to potential further adjustments based on Township Committee discussions on September 9, 2015

**TOWNSHIP OF LONG HILL
OPTION TO EXTEND LICENSE AGREEMENT FOR USE OF TURF FIELD AT
MATTHEW G. KANTOR MEMORIAL PARK**

Agreement made thisday of , 2015, between the Township of Long Hill, a municipal corporation of the State of New Jersey having offices at 915 Valley Road, Gillette, New Jersey 07833 (hereinafter the "Township"), and Oratory Preparatory School, located at 1 Beverly Road, Summit, New Jersey 07901 (hereinafter "Oratory Prep").

It is hereby agreed between the Township and Oratory Prep as follows:

1. In consideration of \$35,000, paid by Oratory Prep to the Township at the signing of this Agreement, the receipt and sufficiency of which is hereby acknowledged, Oratory Prep shall have the option of extending its license agreement dated _____, 2015, to use the Township's turf field located at the Matthew G. Kantor Memorial Park for an additional term of three (3) years (commencing _____, 2027) at the yearly license fee of \$40,000, payable in semiannual installments of \$20,000 (for a three-year total of \$120,000.00).
2. Such option shall be exercisable by notice in writing by Oratory Prep to the Township at any time within _____ from the date hereof, and if and when so exercised then the Township shall grant and Oratory Prep shall accept an extension of its license agreement of the turf field at the Matthew G. Kantor Memorial Park at the rent set forth above and under these same terms and conditions as the License Agreement which is being executed simultaneously herewith.
3. If Oratory Prep exercises this option, the \$35,000 consideration set forth in paragraph 1 above shall be applied toward Oratory Prep's rent payments that will become due during the extended term of the License Agreement. If Oratory Prep does not exercise this option Oratory Prep shall forfeit the \$35,000 it paid to the Township pursuant to this agreement.

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In witness whereof, the parties hereto have set their hands and seals the day and year first above written.

Attest:

Cathy Reese, RMC, CMR

Attest:

Title: _____

Township of Long Hill

By: _____
Brendan P. Rae, Mayor

Oratory Preparatory School

By: _____
Title: _____