

**TOWN OF NORTH HEMPSTEAD
BOARD MEETING**

Special Meeting

AGENDA



July 18, 2023

9:00 AM

RESOLUTIONS:

TABLED ITEMS:

1. A RESOLUTION AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT WITH CHAMINADE TO CONSTRUCT A BUILDING AT NORTH HEMPSTEAD BEACH PARK, PORT WASHINGTON.

Supervisor DeSena offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

RESOLUTION NO. 455 - 2023

A RESOLUTION AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT WITH CHAMINADE TO CONSTRUCT A BUILDING AT NORTH HEMPSTEAD BEACH PARK, PORT WASHINGTON.

WHEREAS, the Town of North Hempstead owns and operates certain real property known as North Hempstead Beach Park located on West Shore Road in Port Washington (the “Park”); and

WHEREAS, Chaminade High School (“Chaminade”), currently utilizes a portion of the Park for its rowing activities; and

WHEREAS, the Town Supervisor has proposed that the Town enter into an agreement with Chaminade to permit Chaminade to construct and maintain a new crew storage building at the Park on the terms and conditions contained in Exhibit A attached hereto and made a part hereof (the “Agreement”); and

WHEREAS, the Board wishes to authorize the execution of the Agreement.

NOW, THEREFORE, BE IT

RESOLVED that the Supervisor be and hereby is authorized and directed to execute the Agreement on behalf of the Town, which Agreement shall be on file with the Office of the Town Clerk, and to take such other action as may be necessary to effectuate the foregoing; and be it further

RESOLVED that the Town Attorney be and hereby is authorized and directed to continue negotiating non-material terms and conditions of the Agreement, including, but not limited to, the inclusion of an exhibit showing the location of the building consistent with the Agreement, prior to execution by the Supervisor; and be it further

RESOLVED that the Office of the Town Attorney be and hereby is authorized and directed to oversee the execution of the Agreement, and to take such other action as may be necessary to effectuate the foregoing.

Dated: Manhasset, New York

July 18, 2023

The vote on the foregoing resolution was recorded as follows:

Ayes: Councilperson Adhami, Councilperson Dalimonte, Councilperson Lurvey, Councilperson Troiano, Councilperson Walsh, Councilperson Zuckerman, Supervisor DeSena.

Nays: None.

cc: Town Attorney Comptroller

Exhibit A
LICENSE AGREEMENT

THIS AGREEMENT (the "Agreement" or this "License") made as of the date this agreement is executed on behalf of the Town by and between the TOWN OF NORTH HEMPSTEAD, (hereinafter referred to as the "Town" or the "Licensor"), a municipal corporation duly organized and validly existing under the laws of the State of New York, with offices at 220 Plandome Road, Manhasset, New York 11030 and CHAMINADE HIGH SCHOOL (hereinafter referred to as the "Licensee"), having its principal place of business at 340 Jackson Avenue, Mineola, New York 11501 (the Town and the Licensee are hereinafter referred to, jointly, as the "Parties", and each is, severally, a "Party").

W I T N E S S E T H:

WHEREAS, the Town owns certain real property known and designated as North Hempstead Beach Park located at 175 West Shore Road, Port Washington, New York (the "Park"); and

WHEREAS, the Licensee has, along with other Town of North Hempstead-based schools and not-for-profit entities, used and enjoyed the Park for many years, benefiting from the location of the Park on Hempstead Harbor as a venue for its popular crew program enjoyed by many students and others;

WHEREAS, the Licensee stored its rowing equipment in a building at the Park, which building, after many years of use, deteriorated to the point where it was recently condemned;

WHEREAS, the Licensee now desires to obtain a license to continue to use a portion of the Park, as such portion is shown on Exhibit A attached hereto (the "Premises"), to replace the old and now condemned storage building and construct, use and maintain in the same location, all at the Licensee's sole cost and expense, a new and improved, similarly-sized structure to house the equipment of the Licensee used in connection with its crew program (the "Use"); and

WHEREAS, upon completion of construction, the new storage facility will, at the Town's option, become the property of the Town;

WHEREAS, pursuant to Resolution No. ____-2023, duly adopted at its meeting held on July 18, 2013, the Town Board authorized the execution of a license agreement with the Licensee for the aforesaid Use of the Premises; and

WHEREAS, the Licensee is willing to abide by and carry out the conditions and regulations of this Agreement which shall not be considered a lease, but merely a license, revocable on notice.

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

1. GRANT OF LICENSE

(a) Subject to the terms, provisions, covenants and conditions as set forth herein, the Town hereby grants to the Licensee, and the Licensee hereby accepts from the Town, a revocable, non-transferable license (the "License") for the use of the Premises solely for the Use stated above and in Section 2(a) below.

(b) The Town shall not be liable for any property damage, loss or theft of any machinery, equipment, supplies, and other personal property of Licensee or Licensee's Agents, whether stored in the Premises or otherwise. Licensee agreed that all machinery, equipment, supplies, and other personal property of Licensee or Licensee's Agents stored at the Premises shall be stored at the Licensee's own risk. Licensee agrees that it is the sole responsibility of the Licensee and Licensee's Agents to secure, insure and protect the aforesaid property from damage, loss or theft and to secure the Premises. The Town shall have no duty or liability to protect or insure such property. The Town specifically disclaims, and the Licenser specifically releases the Town from, any liability to the Licensee or any other person or entity for the loss of any machinery, equipment, supplies, and other personal property of Licensee or Licensee's Agents, whether stored in the Premises or otherwise. This disclaimer and release from liability shall be absolute and not subject to limitation by any fact or circumstance.

(c) The License shall also include permission for the Licensee to access the Park and to use the driveways and pathways at the Park to access of the Premises. Notwithstanding the foregoing, the Licensee shall be permitted to access the Building and the Premises only at such times have been specifically agreed to by the Department of Parks and Recreation. The Licensee shall not be provided with keys to any gates securing the Park or any other means of independently accessing the Premises outside of the times agreed to by the Department of Parks and Recreation.

2. USE OF PREMISES; CONSTRUCTION; APPROVAL OF TOWN; PERMITS

(a) Consistent with Section 1(a) of this Agreement, the Licensee shall be permitted to use the Premises for the following uses:

(i) The construction, operation and maintenance of a boat house building (the "Building") upon the area marked "building area" on Exhibit A (the "Building Area"). Prior to design of the Building, the Licensee shall perform soil borings at the Premises and perform a utility mark out on the Premises to identify the location of underground utilities. Prior to the construction of the Building, the Licensee shall have detailed plans and specifications for the building created and submitted to the Town Department of Public Works (the "Department") for approval. The Department may forward the plans to the Department of Parks and Recreation, the Department of Building Safety, Inspection and Enforcement or any other agency of the Town for review in addition to review by the Department, which reviews shall be conducted promptly. The Licensee shall also provide the Department a detailed construction

timeline for prior approval along with any other information that may be required by the Department. Licensee shall also provide the Department with the names of any and all contractors hired to construct the Building or to provide any other service on the Premises, and require that the contractors provide the Department with insurance naming the Town as an additional insured. No construction may commence unless and until the written approval of the Department has been received. The Licensee shall perform standard regulated material testing during construction to confirm required compressive strength requirements. The Licensee shall allow the Department to access the Premises and the Building Area at any time deemed necessary by the Department to conduct inspections or reviews of the construction of the building. The Department shall have the right to order that construction of the Building be halted at any point if the Department determines that the Building is not being constructed in accordance with the approved plans or for any reason related to health or safety. Construction of the Building may only begin again once the Licensee has taken measures to alleviate the conditions requiring work to be stopped that have been approved by the Department.

(ii) The storage of rowing equipment of the Licensee.

(b) The Licensee may utilize a dock (the "Dock") located proximate to the Premises on shoreline of Hempstead Harbor on property of the Park known as Bar Beach. The Licensee may use the Dock only at such times as are scheduled with the Department of Parks and Recreation. The Licensee may not interfere with the use of the Dock by any other party. In the event that the Licensee's use of the Dock interferes with the use of the Dock by any other party, the Department of Parks and Recreation may revoke the Licensee's use of the Dock, at which point the Licensee may only launch boats directly from the shoreline of Hempstead Harbor.

(c) The Licensee shall be responsible for applying for, obtaining and maintaining, at its sole cost and expense, any and all permits necessary for the construction of the Building and for any of the uses permitted by this Agreement, including, but not limited to, permits required by the New York State Department of Environmental Conservation, the Army Corps of Engineers, the New York State Department of Health and the Nassau County Department of Health. The failure to obtain such permits and approvals shall constitute a material breach of the terms of this Agreement permitting the Town to terminate this Agreement and require the Licensee to remove all its property from the Premises, without any notice to the Licensee.

(d) The Licensee shall be responsible to maintain the Building in a good, safe and aesthetically pleasing condition at all times during the term of this Agreement.

(e) The Licensee shall cause any contractor retained to construct the Building to furnish, at the Licensee's or the contractor's sole cost and expense, a faithful performance bond for an amount not less than one hundred percent (100%) of the contract

amount and a labor and materials payment bond (for materials in connection therewith) for not less than one hundred percent of the contract amount. The bonds shall stipulate that they are for the contract to construct the buildings and that they will remain in effect for the duration of the contract. The bonds shall be issued by a surety company acceptable to and approved by the Department.

(f) The Licensee shall not hire or retain any Licensee Agent (as such term is defined in Section 6 below) who is registered on a Sex Offender Registry of the New York State Division of Criminal Justice (the "Registry"), and shall, prior to the Town's execution of this Agreement, initiate a search of the Registry to determine whether Licensee or any Licensee Agent is a registered sex offender. The results of such search shall be provided to the Department prior to the Town's execution of this Agreement. It shall be a continuing obligation of the Licensee during the entire Term to confirm that any Licensee Agency is not listed in the Registry and notify the Town if the Licensee or any Licensee Agent becomes registered as a sex offender. Licensee shall provide the Department, on a monthly basis, with a list of Licensee Agents so that the Department may verify compliance with the provisions of this Section 2(g). In addition to Section 4 below, the Town reserves the right to terminate this Agreement upon written notice to the Licensee in the event that the Licensee or a Licensee Agent is or becomes registered as a sex offender or if the Licensee fails to provide the information required to be delivered to the Department in accordance with this Section 2(f).

(g) Title to the Building and any other improvements or alternations made to, installed, attached or affixed to the Building shall pass to the Town, at its option, immediately upon installation, attachment, or affixation thereto, such option exercisable by the Town at any time during the Term.

3. UTILITIES; SERVICES; EXPENSES

(a) The Licensee shall be responsible for all costs and expenses associated with the use of the Premises, including all electric costs. The Licensee shall be solely responsible for, if electric services are needed, for opening account in the Licensee's own name. If electric services are needed, the Licensee shall obtain Electrical Underwriters Certification prior to building occupancy. The Town shall have no responsibility for providing any utility or other services to the Premises, or for paying the costs thereof. In addition, the Licensee shall not provide any utility services, other than electric services, to the Premises unless authorized by the Town in writing.

(b) The Licensee shall be solely responsible for any damage to any utilities currently existing on or around the Premises, and hereby agrees to indemnify and hold harmless the Town against any and all claims, damages and liabilities whatsoever (including attorney's fees) for any property damage or personal injuries resulting from the actions of the Licensee regarding any utilities existing on or around the Premises.

(c) The Licensee shall be responsible for the removal of trash and rubbish from the Premises, janitorial services for the Premises and removal of ice and snow from the Premises.

(d) The Park is currently exempt from the payment of ad valorem real estate taxes. If at any point, the Nassau County Department of Assessment determines that, due to the activities conducted on the Premises by the Licensee or the use of the Premises by the Licensee, that the Park or the Premises shall be restored to the tax rolls, unless the Licensee is entitled to an exemption, the Licensee shall be required to pay such taxes without contribution from the Town.

(e) The Licensee shall not cause, and shall compel its contractors to not cause, any lien of any kind to be placed upon the Premises, the Park or the Building. In the event that the Licensee or any contractor or agent of the Licensee causes a lien to be placed upon the Premises, the Park or the Building, the Licensee shall be solely responsible for assuring that such lien be discharged and for paying any amount necessary to assure that any lien be discharged. The Licensee shall also cause any contractor retained to construct the Building to provide final lien waivers benefitting the Licensee and the Town upon final payment of the contract amount by the Licensee to construct the Building.

4. TERM, REVOCATION AND TERMINATION

(a) The term of this Agreement shall commence upon execution of this Agreement on behalf of the Town and shall continue until the license granted in this Agreement is revoked or terminated as provided in this Section 4.

(b) The Licensee recognizes that this Agreement is a license which is freely revocable at will. As such, the Town may revoke this Agreement at any time for any reason, in its sole and absolute discretion, not to be exercised in an arbitrary or capricious manner, including, but not limited to, reasons relating to the public interest of the Town, failure of the Licensee to comply with any term or condition of this Agreement or with any law or regulation which is applicable to the Licensee or this Agreement, or due to the existence of any health or safety emergency which may cause loss of life or damage to property.

(c) If the Town decides to revoke this Agreement, the Town shall notify Licensee of its intent to revoke, in writing, at least one hundred and eighty (180) days before the date of revocation. However, if the reason for revocation involves a health or safety emergency which may cause loss of life or damage to the premises, or if the reason involves a breach of Section 2(b) of this Agreement, the Town may revoke this Agreement immediately without any action by or notice to the Licensee. In the event that the Town exercises its right to revoke this Agreement, the Town shall pay to the Licensee the unamortized costs of the construction of the Building, which costs the Licensee shall verify with the Town by submitting invoices and other documentation reasonably satisfactory to the Town in all respects, as such verified costs are reduced by the amount of one-twentieth a year for each full year which shall have expired prior to the revocation of this Agreement.

(d) Termination by Licensee. The Licensee may terminate this Agreement by giving not less than thirty (30) days written notice to the Department of Parks and

Recreation, specifying the reasons for termination and the effective date of termination.

(e) Vacating of Premises upon Termination. Upon the termination of this Agreement, the Licensee shall quietly and peacefully remove himself/herself and his/her property from the Premises and cause the removal of all persons and property therefrom without recourse to any action or proceeding at law or in equity, and on failure to do, the Licensee agrees that the Town, by its officers, employees and agents, may cause such property to be removed and stored at the cost and expense of the Licensee, and the Town shall have a lien thereon in the amount of the cost and expense of storage. Said Premises shall be left in the same condition as when the Licensee first occupied the Premises, reasonable wear and tear expected. The Licensee agrees that, upon termination of this License, the Licensor shall have the option of allowing the Building to remain on the Premises. If the Licensor chooses to allow the Building to remain on the Premises after termination of the License, the Licensor shall provide written notice of its intent to do so, upon which the Building shall be deemed granted to the Town. If the Licensor does not so provide notice to the Licensee of its intent to allow the Building to remain on the Premises, the Licensee shall cause the Building to be removed from the Premises upon revocation or termination of this Agreement.

5. CONSIDERATION

The Licensee shall pay the Town the sum of Five Hundred and 00/100 Dollars (\$500.00) per year for each year of the term of this License (the "License Fee"). Such License Fee shall be made payable to the Town of North Hempstead and shall be delivered to the Town Comptroller at 220 Plandome Road, Manhasset, New York on or before the first day of each year.

6. INDEPENDENT CONTRACTOR

The Licensee is an independent contractor of the Town. The Licensee shall not, nor shall any officer, director, employee, servant, participants, agent or independent contractor of the Licensee (a "Licensee's Agent"), be: (i) deemed a Town employee, (ii) commit the Town to any obligation, or (iii) hold itself, himself, or herself out as a Town employee or Person with the authority to commit the Town to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

7. COMPLIANCE WITH LAW

The Licensee shall comply with any and all applicable and relevant Federal, State and local Laws, including those relating to conflicts of interest, discrimination, and confidentiality, in connection with its performance under this Agreement. As used in this Agreement the word "Law" means any and all statutes, rules, regulations, orders, ordinances, writs, injunctions, official resolutions, official interpretations, or decrees, as the same may be amended from time to time, enacted, adopted, promulgated, released, or issued, by or on behalf of any government or political subdivision thereof, quasi-

governmental authority, court, or official investigative body.

8. ASSIGNMENT; AMENDMENT; WAIVER

(a) This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended or (iii) waived, without the prior written consent of the Supervisor and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a Party hereunder to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

(b) It shall be a condition to the consent of the Supervisor to any assignment that the Person to or with whom or which such assignment is made agrees in writing that, except as provided in the following sentence with respect to amounts payable by the Town, such Person shall be bound by the terms and conditions of this Agreement as though an original party hereto. Unless the action being approved is an assignment of every right and obligation of the Licensee under this Agreement: (i) the Licensee shall remain responsible for the full performance of its obligations under this Agreement, and (ii) no amounts payable by the Town under this Agreement shall be or become payable by the Town to any Person other than the Licensee.

9. LEGAL PROVISIONS DEEMED INCLUDED; SEVERABILITY; CONFLICTS; CONSTRUCTION

(a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either Party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either Party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this sub-clause will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

(d) Each Party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either Party as drafter.

10. CONDITION OF THE PREMISES: TITLE

(a) The Licensee represents and acknowledges that it has inspected the Premises, has knowledge of its condition and of any fixtures and other appliances therein or thereon owned by the Town and to be used by the Licensee, and has found the Premises to be suitable for its permitted use as provided herein. The Licensee acknowledges and represents to the Town that neither the Town nor any agent or representative of the Town has made any statements or representations regarding the quality, nature, adequacy or physical condition of the Premises, the uses which can be made of the same, its compliance with any environmental or occupational protection laws, rules, regulations or requirements, the state of title, or any other matter or thing affecting or relating to the Premises. The Licensee is accepting the Premises in its "AS IS" condition "WITH ALL FAULTS" as of the date of this Agreement.

(b) The Licensee acknowledges that this Agreement is a license solely for the Premises and nothing contained herein is intended to transfer to the Licensee any rights with respect to the land under or adjacent to the Premises. Licensee acknowledges that this Agreement merely grants to the Licensee a license to use the Premises that does not run with the land.

(c) The Licensee covenants that it will keep the Premises in a condition equal to that at the beginning of its occupancy under this Agreement, ordinary wear and tear excepted, and that it will surrender and give up the Premises to the Town upon the termination of this Agreement. The Licensee further covenants that upon vacating the Premises, it will forthwith remove all personal property belonging to it from the Premises; and that it will deliver the keys to the office of the Department of Parks and Recreation, on the date that it surrenders the Premises, and that it thereupon will execute a full release to the Town for any damages which may have resulted either to its property arising out of or due to its occupancy of the Premises. The Licensee acknowledges that any personal property remaining on the Premises after the expiration, or sooner termination, of this Agreement, is intended by the Licensee to be abandoned. The Licensee shall remain liable to the Town for any damages should the Licensee fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date.

11. REPAIRS, MAINTENANCE AND UTILITIES

It is understood by the Licensee that the Licensee shall be responsible for keeping the Premises and the Building in a neat, orderly and safe condition at all times and shall keep the Premises and the Building in good repair. Licensee shall promptly report any and all maintenance problems to the Town. Any work performed by the Licensee shall be performed in a good and workmanlike manner and in compliance with applicable Law.

12. INDEMNIFICATION

(a) To the fullest extent permitted by Law, the Licensee:

(i) shall be solely responsible for and shall indemnify and hold harmless the Town, and its officers, employees, agents, and servants (collectively, the "Indemnified Parties"), from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements), and damages (collectively, "Losses"), including Losses attributable to acts or omissions of the Licensee or Licensee's Agents, arising out of or in connection with this Agreement, including Losses incurred in connection with any investigation, litigation or other proceeding, or preparing a defense to or prosecuting the same; except, however, that the Licensee shall not be held liable when an occurrence results solely from the negligence of the Town;

(ii) shall, upon the Town's demand and at the Town's direction, promptly and diligently defend, at the Licensee's sole risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more of the Indemnified Parties and which arise out of the negligent performance of the Licensee, or its subcontractors, in connection with this Agreement, and the Licensee shall pay and satisfy any judgment, decree, loss, or settlement in connection therewith; and

(iii) shall, and shall cause the Licensee's Agents, to cooperate with the Town in connection with the investigation, defense, or prosecution of any action, suit, or proceeding arising out of or in connection with this Agreement.

(b) The obligations of the Licensee pursuant to Section 12(a) hereof shall not be limited by reason of enumeration of any insurance coverage provided under this Agreement.

(c) Nothing in this Section 12 or elsewhere in this Agreement shall create or give to third parties any claim or right of action against the Town beyond that which legally exist regardless of the provisions of this Agreement.

(d) The Licensee shall cause any contractor hired to construct the Building or to provide any other service on the Premises to indemnify and hold harmless the Town in substantially similar fashion as described above.

(e) The Licensee's indemnification obligation hereunder shall survive the expiration or termination of this Agreement.

13. INSURANCE

Licensee agrees to procure and maintain, and shall cause its contractors to procure and maintain, with a New York State admitted carrier holding an "A" rating from AM Best Company or equivalent, the following insurance policies during the term of this Agreement and furnish certificates of insurance evidencing its procuring of said policies:

(a) Commercial General Liability Insurance from a New York State admitted carrier covering the liability of the Licensee including Contractual insurance defending, indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Agreement with a combined single limit (bodily injury/property damage) of TWO MILLION (\$2,000,000.00) DOLLARS and each occurrence of ONE MILLION (\$1,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

(b) Workers' Compensation Insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to the State Workers' Compensation Law §57 (2).

(c) Disability Benefits Insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law §220 (8).

The Town shall be entitled to thirty (30) days' advance written notice of the cancellation or termination of any and all policies listed above at (a) through (c).

The Licensee shall cause any contractor hired to construct the Building or to provide any other service on the Premises to name the Town as an additional insured and procure and maintain certificates of insurance in substantially similar fashion as described above.

14. INSPECTION

The Licensee shall permit the Town to make inspections of the Premises upon reasonable notice. If any conditions in or about the Premises exist which are to be corrected under this agreement by the Licensee, such corrections shall be corrected within thirty (30) days of written notice to Licensee by the Town and the failure to so make the corrections shall constitute a default by the Licensee under this Agreement.

15. PERSONAL PROPERTY RISK TO LICENSEE

The risk of loss or destruction to furniture, fixtures, equipment or other personal property of the Licensee while on the Premises shall be borne by the Licensee. It is further understood that the Licensee waives any right to subrogation or contribution against the Town for loss or destruction as described above, except in cases due to any active negligence of the Town, its employees, officers and agents.

16. POSSESSION

If for any reason whatsoever (including, but not limited to, strikes, lockouts, fire, the previous Licensee's delay in vacating or act of God) the Town is unable to give Licensee possession of the Premises on the date this Agreement is to start, the Town shall not be liable or responsible in any respect for any loss, delay or inconvenience to Licensee, who shall take possession on the date when the Premises shall be ready for occupancy, of

which fact the Town shall be the sole judge. In such event, the term of this Agreement shall start from the date determined by the Town.

17. NO WAIVER OF TOWN'S RIGHTS

The failure of the Town at any time to demand strict performance by the Licensee of any of the terms, covenants or conditions set forth herein shall not be construed as a continuing waiver or relinquishment thereof and the Town may, at any time, demand strict and complete performance by the Licensee of said terms, covenants and conditions or of any other term and conditions of this Agreement.

18. SUCCESSORS AND ASSIGNS

The covenants and agreements herein contained shall be binding upon and inure to the benefit of the Town and the Licensee and their respective permitted successors and assigns.

19. MODIFICATIONS

(a) The Town may modify this Agreement and any and all terms hereof, including, but not limited to, Agreement fees, obligations of the Licensee to repair and maintain, and provision of security for the Premises.

(b) Licensee shall be given notice of such modification. Such modification shall be deemed accepted and agreed to by the Licensee unless within twenty (20) days after such notice is mailed, the Licensee notifies the Town that it elects to terminate the Agreement, in which event the Agreement shall expire thirty (30) days after the date of the mailing of the notice by the Licensee to the Town of the Licensee's election to terminate the Agreement.

20. NOTICES

Any notice, request, demand or other communication required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) deemed given or made on the date the delivery receipt was signed by a Town employee, three (3) business days after it is mailed or one (1) business day after it is released to a courier service, as applicable, (d) to the Town Attorney's Office at 220 Plandome Road, Manhasset, New York 11030, and (e)(i) if to the Department of Public Works, to the attention of the Commissioner of the Department at 285 Denton Avenue, New Hyde Park, New York 11040, (ii) if to the Department of Parks and Recreation, to the attention of the Commissioner of the Department of Parks and Recreation at 1801 Evergreen Avenue, New Hyde Park, New York 11040; (iii) if to Supervisor, to the attention of the Supervisor at 220 Plandome Road, Manhasset, New York 11030, (iv) if to the Comptroller, to the attention of the Comptroller at 220 Plandome Road, Manhasset, New York 11030, and (v) if to the Licensee, to the attention of the person who executed

this Agreement on behalf of the Licensee at the address specified above for the Licensee, or in each case to such other persons or addresses as shall be designated by written notice.

21. ENTIRE AGREEMENT

This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

22. HEADINGS

The headings of the Sections of this Agreement are for purposes of identification only and are not intended to limit the terms hereof or proscribe the rights and responsibilities of the Town or the Licensee provided for herein.

23. CONSENT TO JURISDICTION AND VENUE; GOVERNING LAW

Unless otherwise specified in this Agreement or required by Law, all claims or actions with respect to this Agreement shall be resolved exclusively by a court of competent jurisdiction located in Nassau County, New York, and the parties expressly waive any objections to the same on any grounds, including venue *and forum non conveniens*. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of the State of New York, without regard to the conflict of laws provisions thereof.

24. LIMITATIONS ON ACTIONS AND SPECIAL PROCEEDINGS AGAINST THE TOWN

No action or special proceeding shall lie or be prosecuted or maintained against the Town upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Licensee shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Supervisor for adjustment and the Town shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Licensee shall send or deliver copies of the documents presented to the Supervisor under this Section to the Town Attorney (at the address specified above for the Town) on the same day that documents are sent or delivered to the Supervisor. The complaint or necessary moving papers of the Licensee shall allege that the above-described actions and inactions preceded the Licensee's action or special proceeding against the Town.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, or (ii) the time specified in any other provision of this Agreement.

25. REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES

(a) The undersigned representative of the Town hereby represents and warrants that the undersigned is an officer, director or agent of the Town with full legal rights, power and authority to sign this Agreement on behalf of the Town and to bind the Town with respect to the obligations enforceable against the Town in accordance with its terms.

(b) The undersigned representative of the Licensee hereby represents and warrants that the undersigned is an officer, director or agent of the Licensee with full legal rights, power and authority to sign this Agreement on behalf of the Licensee and to bind the Licensee with respect to the obligations enforceable against the Licensee in accordance with its terms.

26. EXECUTORY CLAUSE

Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The Town shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all relevant and required Town approvals have been obtained, including, if required, approval by the Town Board, and (ii) this Agreement has been executed by the Supervisor (as defined in this Agreement).

(b) Availability of Funds. The Town shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement.

27. MERGER

All understandings and agreements previously had between the parties are merged into this Agreement which fully and completely contains the entire terms of the Agreement. Both the Licensee and the Town have entered into this Agreement after full investigation and neither Party has relied upon any statement or representation not embodied within this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

LICENSOR:

TOWN OF NORTH HEMPSTEAD

BY: _____
Jennifer DeSena, Town Supervisor

LICENSEE:

CHAMINADE HIGH SCHOOL

By: _____

APPROVED AS TO FORM:

Town Attorney

Comptroller

Commissioner Department of Public Works

Commissioner Department of Parks and Recreation

ACKNOWLEDGEMENTS

State of New York)
)ss.:
County of Nassau)

On the day of in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Jennifer DeSena, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

State of New York)
)ss.:
County of Nassau)

On the day of in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

License Agreement - Exhibit A
Site Plan

