

RECORD AND RETURN TO:
Denise Szabo, Township Clerk
Bernards Township
One Collyer Lane
Basking Ridge, New Jersey 07920

Prepared By:

John P. Belardo, Esq
Bernards Township Attorney

AMENDED UTILITY AND ACCESS EASEMENT

THIS AMENDED EASEMENT is made on the ____ day of _____, 2014, between:

THE TOWNSHIP OF BERNARDS, a Municipal Corporation of the County of Somerset, State of New Jersey, having its principal offices at One Collyer Lane, Basking Ridge, New Jersey 07920, hereinafter called the "Grantor", and

THE BERNARDS TOWNSHIP BOARD OF EDUCATION, an autonomous, not-for-profit local school district, having its principal offices at 101 Peachtree Road, Basking Ridge, New Jersey 07920, hereinafter called the "Grantee".

WITNESSETH:

WHEREAS, Grantor is the fee simple title owner of that certain tract of land lying and being in the Township of Bernards, County of Somerset and State of New Jersey, which tract of land is identified as Lot 35 in Block 2801 (*formerly identified as Lot 2 in Block 103*) on the Tax Map of the Township of Bernards, in the County of Somerset and State of New Jersey, commonly known as 262 South Finley Avenue, which land is currently utilized to house the Bernards Township Health Department offices (hereinafter the "Property"); and

WHEREAS, Grantee is the fee simple title owner of that certain tract of land adjacent to the Property, which tract of land is identified as Lot 33 in Block 2801 (*formerly identified as Lot 3 in Block 103*) on the Tax Map of Township of Bernards, in the County of Somerset and State of New Jersey, commonly known as 268 South Finley Avenue, which land is currently utilized by and for Ridge High School (hereinafter "Ridge High Property"); and

WHEREAS, the Grantor has previously conveyed to Grantee a Utility and Access Easement, which was duly recorded in the Office of the Somerset County Clerk on October 11, 2007, in Deed Book 6075 at Page 2008 (hereinafter "Existing Easement"); and

WHEREAS, by mutual agreement, the parties wish to expand the area of the Existing Easement as set forth herein; and

WHEREAS, the Grantor in consideration of the public good, and at no cost to itself, has agreed to convey this Amended Easement; and

WHEREAS, the portion of the Property subject to this Amended Easement is more particularly described by a metes and bounds description entitled "Access and Utility Easement

within Block 2801, Lot 35, Bernards Township, Somerset County, New Jersey" delineating an area of 0.33± acre, dated September 18, 2013, which description is attached hereto as **Schedule A** and made a part hereof, and as shown on a plan entitled "Access & Utility Easement, Ridge High School in Bernards Township, Tax Map Sheet 28 - Block 2801, Lots 33 & 35", dated September 18, 2013 (hereinafter the "Plan"), which Plan is attached hereto as **Schedule B** and made a part hereof; which description and Plan were prepared by Pamela L. Mathews, Professional Engineer, Land Surveyor, New Jersey, License No. 41181, of Hatch Mott MacDonald (hereinafter the portion of the Property subject to this Amended Easement is referred to as the "Amended Easement Area").

NOW, THEREFORE, Grantor, in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, convey and confirm unto Grantee, its successors and assigns, a perpetual easement across the Amended Easement Area on the Property for utility and access rights, as follows:

(1) Grantee is hereby given a continuous and perpetual right-of-way and utility easement through, over, upon, under, in, across and along the Amended Easement Area for installation, construction, use, operation, inspection, protection, maintenance, improvement, betterment, repair, reconstruction and replacement of utilities, pavement and drainage facilities, as well as all necessary and related surface and subsurface appurtenances and equipment (the "Improvements"), the perpetual right to do within the Amended Easement Area all that may be necessary for the reconstruction, replacement, extension, improvement, betterment, maintenance, inspection, protection, operation and use of the improvements and access thereto within the Amended Easement Area, including all incidental rights to protect and preserve installed improvements such as the right to subjacent lateral support, the right to construct and maintain rip rap at stream crossings and at other places where such protection may be required to protect installed utilities, appurtenances and equipment from erosion, the right to reasonably limit loads traversing or bearing upon the surface of the right of way to protect the Improvements from stress or damage due to weight, shock, vibration or other similar phenomena, the right to take any reasonable action that may be necessary to protect installed utilities from infiltration, the perpetual right to use the Amended Easement Area for the purposes aforesaid and remove all buildings, structures and obstructions of whatsoever kind or character now or hereafter found on or within the Amended Easement Area and also the perpetual right of free and unobstructed access thereto, use and possession thereof with all manner of men, machinery, supplies, materials and equipment for the accomplishment of any and all of the foregoing purposes within the Amended Easement Area.

(2) Grantee shall further have a continuous and perpetual right of free access to, across and over the Amended Easement Area for the purpose of the ingress and egress of buses, students, employees and visitors to the Ridge High Property, Block 2801 Lot 33, by means of the Amended Easement Area.

(3) In conjunction with its installation of Improvements in the Amended Easement Area, the Grantee shall be solely responsible for all costs in connection with its construction, installation, maintenance, inspection, operation, use, repair, replacement, or permanent removal of the Improvements within the Amended Easement Area.

(4) Any and all construction or replacement of any portion of the Improvements by Grantee shall be (a) in accordance with plans submitted by the Grantee to, and approved by, the Grantor; and (b) subject to the review and approval of the Bernards Township Engineer. Furthermore, as an express condition of the granting of this Amended Easement, the Grantee is required, at its sole cost and expense, to construct, and maintain in perpetuity, the Improvements within the Amended Easement Area to the reasonable satisfaction of the Bernards Township Engineer.

(5) Should any damage to the Property not part of the Amended Easement Area occur due to any action of the Grantee or its agents or contractors, or due to the use of the Amended Easement Area by any buses, students, employees or visitors to the Ridge High Property, the Grantee shall be responsible for the costs of repair or replacement of the portion of the Property so damaged.

(6) Upon completion of any work by Grantee, Grantee shall remove, or shall cause to be removed, all materials, tools, equipment, building supplies and debris from the Amended Easement Area. In the event Grantee repairs, reconstructs or replaces any portion of the Improvements, Grantee shall restore the surface area over the Amended Easement Area to a clean, operable and useable condition to the satisfaction of the Bernards Township Engineer. No obstruction (including but not limited to parking of vehicles or buses within the Amended Easement Area) or deterioration of the Improvements shall be permitted to remain which would in any way interfere with, obstruct or disturb the use of and access to the Amended Easement Area by the Grantor or its employees or visitors to the Property.

(7) This easement grant and all provisions herein are subordinate to the right of the Grantor, expressly reserved, to access and use the Improvements, the driveway within the Amended Easement, and its own utility connections. The Grantor further reserves the right within the Amended Easement Area to clear, grade, excavate and fill in order to construct or maintain the driveway and any utility connections located on the Property.

(8) Members of the public shall have the right to use the driveway over the Amended Easement Area. Neither Grantor nor its successors assume any responsibility for any loss, damage or injury to the public from Grantee's use of the Amended Easement Area. It is understood by the parties hereto that the use of the Amended Easement Area by the public shall prohibit objectionable

activities including, but not limited to, speeding, drag racing, use of alcohol or drugs, excessive noise or littering.

(9) The Grantee shall add the Grantor as an additional insured on its insurance policy, and shall annually provide the Grantor with a Certificate of Insurance naming Grantor as an additional insured,

The Grantor covenants that it is lawfully seized of the Property and the Amended Easement Area and that they have the right to restrict and convey the same. Grantor may convey, mortgage, lease or otherwise transfer title or interest in the lands subject to this Amended Easement with written notice to the Grantee provided, however, that the covenants and conditions herein remain superior to such conveyance, mortgage, lease, or transfer it being the intention of the parties that this Amended Easement and the terms and conditions set forth herein shall become a part of the chain of title and shall run with the land. Grantor agrees to incorporate the terms of this Amended Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest,

It is understood and agreed that this Amended Easement confers upon the Grantee no rights of title to the Amended Easement Area, and nothing herein shall be construed to permit public access to or use of any portion of the Property not within the Amended Easement Area, Nothing herein shall be construed to limit the Grantor's right of access to and use of the Amended Easement Area.

It is agreed by and between the Grantor and Grantee that mere lack of use or interruption of use of the Amended Easement Area by the public for an indefinite time shall not be constituted as an abandonment or other extinguishment of the easement except as may be subsequently agreed in a separate easement extinguishment agreement which may be entered into between the Grantor or its successors and assigns and the Township of Bernards and its successors and assigns.

Grantee hereby agrees to indemnify, defend, and hold Grantor harmless from and against any claim or expense (including, reasonable attorneys' fees) caused by or arising out of damage or injury to property or persons arising from or in connection with the Grantee's negligence. Grantee shall not be obligated to indemnify, defend and/or hold Grantor harmless with respect to any other claim not arising from or in connection with the Grantee's negligence, including but not limited to, claims proximately related, connected or arising out of the alleged negligence and/or intentional misconduct of the Grantee, its agents, representatives or employees or the Grantor or its agents, representatives or employees.

In the event of any violation of the covenants and conditions contained in this Amended Easement, the Grantor or its designee shall be entitled to exercise all remedies provided at law or in equity and further shall be entitled to recover, in any action to enforce the terms hereof, reasonable attorney's fees.

Wherever in this instrument any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words

"heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of, and shall bind, the respective parties hereto and their heirs, executors, administrators, personal or legal representatives, successors and assigns, respectively.

In all references herein to any party, the use of any particular gender of the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

This Amended Easement shall in all respects be governed by, and construed in accordance with, the laws of the State of New Jersey.

The provisions of this Agreement may not be amended, modified, or terminated without the express written consent of the Grantor, and no such amendment, modification, or termination shall be effective for any purpose unless set forth in writing and signed by the appropriate municipal officials.

IN WITNESS HEREOF, the parties hereto have caused this document to be signed by their proper corporate officers and their corporate seal to be set hereto.

ATTEST:

**BERNARDS TOWNSHIP
BOARD OF EDUCATION**

Name:
Title:

By: _____
Name: Robin McKeon
Title: Board President

Date: _____, 2014

ATTEST:

TOWNSHIP OF BERNARDS

Name: Denise Szabo
Title: Township Clerk

By: _____
Name: John Carpenter
Title: Mayor

Dated: _____, 2014

STATE OF NEW JERSEY)
) ss:
COUNTY OF SOMERSET)

I CERTIFY that on _____, 2014, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- a) this person is the School Business Administrator of **THE BERNARDS TOWNSHIP BOARD OF EDUCATION**, the local school district mimed in this document;
- b) this person is the attesting witness to the signing of this document be the proper board officer who is ^, the President of the Board of Education;
- c) this document was signed and delivered by the local school district as its voluntary act duly authorized by a proper resolution of its Board members;
- d) this person knows the proper seal of the local school district which was affixed to this document; and
- e) this person signed this proof to attest to the truth of these facts.

Name: Rod McLaughlin
Title: School Business Administrator

Signed and sworn to before me on this
_____ day of _____, 2014
Name: _____
Title: _____

STATE OF NEW JERSEY)
) ss:
 COUNTY OF SOMERSET)

I CERTIFY that on _____, 2014, personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Clerk of the **TOWNSHIP OF BERNARDS**, the municipal corporation named in the attached document;
- (b) this person is the attesting witness to the signing of this document by the proper municipal officer who is John Carpenter, the Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) this person knows the proper seal of the municipal corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts,

 Denise Szabo, Township Clerk

Signed and sworn to before me on this
 _____ day of _____, 2014
 Name: _____
 Title: _____