

**AGREEMENT FOR THE USE AND OCCUPANCY
OF CHALK HILL MIDDLE SCHOOL BY THE
TOWN OF NEWTOWN AND THE NEWTOWN
BOARD OF EDUCATION**

THIS AGREEMENT made this 17th day of December, 2012, by and among the Town of Newtown, Connecticut, a municipal corporation with its office at 3 Primrose Street, Newtown, Connecticut (“Newtown”), the Newtown Board of Education, with an office at 3 Primrose Street, Newtown, Connecticut (“Newtown Board of Education”), and the Town of Monroe, Connecticut, a municipal corporation with its office at 7 Fan Hill Road, Monroe, Connecticut (“Monroe”).

WHEREAS, as a consequence of the tragic events occurring at the Sandy Hook elementary school on Friday, December 14, 2012, it has become necessary for the Newtown Board of Education to vacate the school immediately;

WHEREAS, Monroe has offered Newtown and the Newtown Board of Education the use and occupancy of the Chalk Hill Middle School, located at 375 Fan Hill Road, Monroe, Connecticut;

WHEREAS, Newtown and the Newtown Board of Education are willing to accept said offer in accordance with the terms and conditions more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual premises hereinafter contained, the parties hereto agree as follows:

ARTICLE I
Premises

1.1 Monroe, in consideration of the Use and Occupancy payments hereinafter reserved, and of the agreements and covenants herein contained on the part of Newtown and

Newtown Board of Education to be kept, performed and fulfilled, by these presents does hereby grant to Newtown and Newtown Board of Education the right to use and occupy those portions of the premises located in the Chalk Hill Middle School, at 375 Fan Hill Road, Monroe, Connecticut, more particularly shown on Exhibits A and A-1 attached hereto and made a part hereof (the "Premises"), together with the fields, playgrounds, driveways and parking lots associated with said school, on the terms and subject to the limitations and conditions herein expressed. (Rooms 107, 108, 109, 110 and 111 are reserved for Monroe.)

ARTICLE II
Term and Option to Extend

2.1 The term of this Agreement shall commence on December 17, 2012, and shall terminate on June 30, 2013, unless such initial term is extended pursuant to the provisions of Section 2.2 below.

2.2 In the event that Newtown and Newtown Board of Education determine that the Sandy Hook Elementary School is not suitable for occupancy and that reasonably satisfactory substitute facilities are unavailable, the parties shall mutually agree upon an extension of this Agreement.

ARTICLE III
Use and Occupancy Payments

3.1 Use and Occupancy Payments. In consideration of the granting of use and occupancy of the Premises as aforesaid, Newtown and Newtown Board of Education shall pay all of the costs associated with their use and occupancy as more particularly set forth in Exhibit B attached hereto and made a part hereof (the "Use and Occupancy Payments").

ARTICLE IV
Repairs and Maintenance, Etc.

4.1 Repairs and Maintenance. Newtown Board of Education covenants, throughout the term of this Agreement, at Newtown Board of Education's sole cost and expense, to take good care of the Premises and all improvements now or at any time erected on thereon, the sewage disposal, heating, plumbing and electrical systems serving same, if any. Newtown Board of Education, at its sole cost and expense, shall keep and maintain all portions of the sidewalks, ramps and steps adjoining same, in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice, provided, however, Monroe shall plow the parking lot and maintain the lawns and shall be reimbursed for the cost thereof by Newtown Board of Education. Monroe shall be responsible for structural repairs and replacements (roof, boiler, heating systems, electrical systems, and the structural shell of said Premises).

4.2 Changes or Alterations. Newtown Board of Education, at its sole cost and expense, shall have the right, at any time and from time to time during the term of this Agreement, to make changes, alterations and improvements to the Premises, or any portion thereof. Newtown Board of Education shall obtain any and all governmental (including, without limitation, land use) approvals and/or permits relative to any commencement of any work, shall conform all such work to the requirements of the State of Connecticut Building Code, and shall obtain a certificate of occupancy for any such work upon its completion, if required by law, all at its sole cost and expense. Notwithstanding the foregoing, no external work shall be performed on or to the Premises without the prior approval of Monroe, which approval shall not be unreasonably withheld. Newtown Board of Education shall be permitted to place directional signs at its cost and expense on and about the Premises.

4.3 Payment for Services. Newtown Board of Education shall pay or cause to be paid all charges for gas, fuel, oil, water, sewer, electricity, light, heat, power, telephone or other communication service or other utility or service used, rendered or supplied to, upon or in connection with the building on the Premises (except for the portions of the building retained by Monroe as set forth above) throughout the term of this Agreement, and shall, and hereby does, indemnify Monroe and save it harmless against any liability or damages on such account. The schedule for payment of said expenses shall be mutually agreed upon by the parties.

4.4 Newtown and Newtown Board of Education, at their sole expense, shall maintain liability insurance coverage on the Premises with monetary limits acceptable to Monroe, and Newtown and Newtown Board of Education shall indemnify Monroe and save Monroe harmless from and on account of all claims made by any person (including, without limitation, Monroe) and/or other entity resulting from personal injury, death and/or property damage arising during the period of use and occupancy of the Premises by Newtown and Newtown Board of Education.

Newtown and Newtown Board of Education, at their expense, shall also maintain hazard insurance coverage on the Premises with a monetary amount of at least the replacement value of the building and other improvements located on the Premises during the period of use and occupancy of the Premises by Newtown and Newtown Board of Education.

This right of indemnification shall include Newtown and Newtown Board of Education being totally responsible for all court costs and fees, including reasonable attorney's fees incurred by Monroe in enforcing its rights under this Agreement. This right of reimbursement shall also apply to any appellate actions taken by Monroe in this matter.

ARTICLE V

Use

5.1 Newtown and Newtown Board of Education shall use the Premises for a Kindergarten-through-Fourth-Grade elementary school.

ARTICLE VI

Covenant Against Waste

6.1 Covenant Against Waste. Newtown and Newtown Board of Education covenant not to do or suffer any waste or damage, disfigurement or injury to the Premises. Nothing in this Article shall be construed to prevent Newtown and Newtown from making changes and alterations permitted under this Agreement.

ARTICLE VII

Surrender of Premises

7.1 Surrender. Upon the expiration of the term of this Agreement by lapse of time or upon the earlier termination of this Agreement for any reason whatsoever (except as a consequence of default hereunder by Monroe), Newtown and Newtown Board of Education shall and will surrender and deliver up the Premises into the possession and use of Monroe immediately.

ARTICLE VIII

Default

8.1 Default. If Newtown and Newtown Board of Education shall: (a) default in the payment of use and occupancy payments reserved herein or any additional payments herein mentioned, or any part of either, or in making any other payment herein provided, for a period of

30 days or more from the date payment is due; or (b) default in the observance of any of the other material terms, covenants and conditions of this Agreement and such default shall continue for more than 30 days after written notice of such default; or (c) upon the happening of any one or more of the defaults or events above mentioned in this Article 8.1, this Agreement and the term hereof shall, at Monroe's option, upon the date specified in a notice, which date shall not be less than 30 days after the date of receipt of such notice by Newtown and Newtown Board of Education, wholly cease and expire, with the same force and effect as though the date so specified were the date hereinabove first set forth as the date of the expiration of the term of this Agreement (but Newtown and Newtown Board of Education shall remain liable to Monroe as hereinafter provided); and thereupon, or at any time thereafter, Monroe may re-enter the Premises, either by force or otherwise, and have the possession thereof in the manner prescribed by the statute relating to summary proceedings, or similar statutes.

ARTICLE IX
Damage or Destruction

9.1 Damage. In the event that the Premises are damaged to the extent that the Premises can no longer be used as a school, the parties reserve the right to terminate this Agreement. In the event of termination hereunder, Newtown and Newtown Board of Education shall be responsible to pay all expenses or reimbursements up to the date of loss.

ARTICLE X
Technology

10.1 Technology, including, but not limited to, wiring, telephones and computers, shall be the responsibility of Newtown and Newtown Board of Education (with such assistance by the

State of Connecticut as may from time to time be available). Monroe shall have no responsibility for equipment or costs for any technology item set forth above. Upon termination hereof, Newtown and Newtown Board of Education shall remove all technology items and return the Premises to its prior condition, unless otherwise agreed among the parties hereto.

ARTICLE XI
Security

11.1 Newtown and Monroe shall mutually agree upon external security of the school, provided that Newtown and Monroe agree to cooperate relative to the internal security as to the portions of the building to be used by Monroe or its lessees.

ARTICLE XII
Notices

12.1 Notices. All notices, demands and requests which may or are required to be given by either party shall be in writing. All notices, demand and requests by Monroe to Newtown and Newtown Board of Education shall be sent by Federal Express or similar overnight courier or United States mail, postage prepaid, or hand-delivered, addressed to the parties as follows:

Town of Monroe
First Selectman's Office
7 Fan Hill Road
Monroe, CT 06468

Town of Newtown
First Selectman's Office
3 Primrose Street
Newtown, CT 06470

Newtown Board of Education
Office of the Superintendent
3 Primrose Street
Newtown, CT 06470

or at such other place as the parties may from time to time designate in a written notice to the other party.

ARTICLE XIII
Covenants to Bind and Benefit Respective Parties

13.1 Binding Effect. The covenants and agreements herein contained shall bind and inure to the benefit of Monroe and Newtown and Newtown Board of Education, and their respective successors and assigns, except as otherwise provided herein.

ARTICLE XIV
Disputes of Agreement

14.1 Disputes arising from the operations or interpretation of this Agreement that cannot be resolved by Newtown and Newtown Board of Education and Monroe shall be submitted first to non-binding mediation and then to litigation in the Connecticut courts.

ARTICLE XV
Governance

15.1 This Agreement shall be governed by the laws of the State of Connecticut. Any changes to the Agreement shall be in writing in a document duly executed by Newtown, Newtown Board of Education, and Monroe. The parties may separately execute counterpart originals of this Agreement (and any amendments thereto), which together shall be deemed to constitute one and the same agreement.

ARTICLE XVI
Acknowledgements

16.1 The parties further hereby acknowledge that (a) they have fully reviewed this contract; (b) they have had the opportunity to consult with legal counsel of their choice; and (c) this contract shall not be construed against any party as if it were the drafter of the contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, as of the day and year first above written.

TOWN OF MONROE

By: 
Stephen J. Vavrek, First Selectman

TOWN OF NEWTOWN

By: 
E. Patricia Llodra, First Selectman

NEWTOWN BOARD OF EDUCATION

By: 
Debbie Leidlein, Chairman