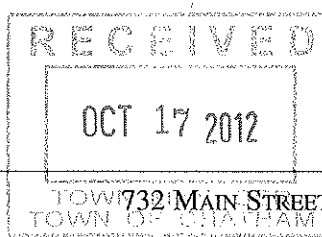


**OFFICE OF THE TOWN ADMINISTRATOR**

**JAMES R. MERRIAM**, *Town Administrator*  
**NAN BALMER**, *Assistant Town Administrator*



PHONE (508) 430-7513  
FAX (508) 432-5039

HARWICH, MA 02645



October 3, 2012

Mr. Brian Widegren, Chairman  
Monomoy Regional School Committee  
425 Crowell Road  
Chatham, MA 02645

Re: Lease Agreement

Dear Mr. Widegren:

At a public meeting of the Board of Selectmen held on Monday, October 1, 2012, the Board reviewed the final draft Monomoy Regional School District Lease Agreement. The Board of Selectmen is in agreement with the language of the Lease and subsequently voted to approve.

Sincerely,

James R. Merriam  
Town Administrator

Enclosure

CC: Superintendent Carolyn Cragin (w/out enclosure)  
Chatham Board of Selectmen (w/out enclosure)

# **LEASE AGREEMENT BETWEEN THE TOWNS OF HARWICH AND CHATHAM AND THE MONOMOY REGIONAL SCHOOL DISTRICT**

THIS LEASE AGREEMENT (hereinafter "Lease") is effective this 1st day of July, 2012 by and between the Towns of Harwich ("Harwich") and Chatham ("Chatham"), governmental entities established under state law and having their principal place of business at 732 Main Street, Harwich Massachusetts 02645 and 549 Main Street, Chatham, Massachusetts 02633 (hereinafter collectively "the Towns") and the Monomoy Regional School District, a governmental entity created pursuant to M.G.L., Chapter 71, having a usual address of 425 Crowell Road, Chatham, Massachusetts 02645, acting by and through its duly constituted School Committee (hereinafter "the School District").

WHEREAS, the Towns entered into a Regional School District Agreement on or about December 6, 2010 which created the regional school district known as the Monomoy Regional School District; and,

WHEREAS, Harwich is the owner of certain real estate and buildings known as the Harwich High School located at 75 Oak Street, Harwich, MA, the Harwich Middle School located at 204 Sisson Road, Harwich, MA and the Harwich Elementary School located at 263 South Street, Harwich, MA and Chatham is the owner of certain real estate and buildings known as the Chatham High School and the Chatham Middle School both located at 425 Cromwell Road, Chatham, MA and the Chatham Elementary School located at 147 Depot Road, Chatham, MA (hereinafter the land, the building, and any appurtenance thereto are collectively known as "the Leased Premises"); and,

WHEREAS, the Towns wishes to lease the Leased Premises to the School District for a twenty-year period on the terms and conditions set forth herein, with a right to renew the lease for an additional twenty years at the option of the School District;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **ARTICLE I: LEASED PREMISES**

1.1 Leased Premises. The Towns do hereby demise and lease unto the School District the Leased Premises, as described above except that the baseball field known as Centeio/Baldwin Little League Field which is part of the Harwich High School property and is shown on the June 20, 2012 Sketch No L1 attached hereto as Exhibit A shall be excluded from the Lease

The Leased Premises are delivered to the School District, and the School District accepts, the Leased Premises in their present condition, "AS IS," it being agreed that the School District has had an opportunity to examine and inspect the Leased Premises in all respects, that the Towns have made no representations or warranties of any kind with respect thereto, and that the

Towns, except as required by law, or as provided herein, shall have no obligation to do any work on, or make any improvements to the Leased Premises or the condition thereof.

If at any time any of the parcels of land with the buildings thereon which comprise the Leased Premises, cease to be used by the School District for the Permitted Uses as hereinafter defined, then the School District shall declare the particular parcel as surplus property and said parcel shall then be excluded from this Lease and revert to the control of the Town where the parcel is located. Notwithstanding the foregoing, the present Harwich Middle School may only be used as a middle school by the School District. If the Harwich Middle School is no longer needed by the School District to serve as a middle school, the School District shall declare the Harwich Middle School as surplus property and the school building shall revert to the custody and control of the Town of Harwich.

1.2 Permitted Uses. The School District shall use the Leased Premises for School District educational purposes.

## **ARTICLE II: TERM OF LEASE**

2.1 Term. This Lease shall commence on July 1, 2012 (the "Commencement Date") and, unless sooner terminated as provided herein, shall expire on the twentieth (20<sup>th</sup>) anniversary thereof ("the Initial Term"), with the School District having the right to extend the term of the Lease for an additional term of twenty (20) years ("the Extension Term"), for a total maximum term of forty (40) years, by giving the Towns written notice thereof ninety (90) days prior to the expiration of the Initial Term. The Initial Term and, if exercised, the Extension Term, are referred to herein as "the Term".

## **ARTICLE III: RENT**

3.1 Payment of Rent. The School District shall not be required to pay rent to the Towns for the use of the Leased Premises for the Term of this Lease.

3.2. Responsibility of School District. The Towns and the School District acknowledge and agree that the School District shall have the sole responsibility with regard to maintaining the Leased Premises, except as provided herein. Except as provided otherwise, all costs, expenses and obligations of any kind relating to the maintenance of the Leased Premises, including without limitation all alterations, repairs, restoration, reconstruction, and replacements as hereinafter provided, which may arise or become due during the Term hereof, or thereafter, so long as the School District or anyone claiming by, through or under the School District, shall remain in occupancy of the Leased Premises, shall be paid by the School District at the School District's sole cost and expense.

#### **ARTICLE IV: UTILITIES**

4.1 Delivery of Utilities. The Towns shall not be responsible for providing or paying for utilities to the Leased Premises, or for general maintenance of the Leased Premises. The School District agrees to pay promptly, as and when the same become due and payable, all charges for water, sewer, electricity, gas, heat, steam, hot and/or chilled water, air conditioning, ventilating, lighting systems, and other utilities supplied to the Leased Premises during the term of the Lease. If the School District fails to pay for the utilities furnished to the Leased Premises, the Towns shall have the right, but not the obligation, to pay the same, and the School District shall reimburse the Towns promptly upon demand for all costs, expenses and other sums of money in connection therewith.

4.2 Additional Utilities. In the event the School District requires additional utilities or equipment, all costs incurred in connection therewith, including installation, maintenance, and repairs of the same, shall be the School District's sole obligation, provided that such installation shall be subject to the prior written consent of the town in which the real estate is located, and shall be installed in conformity with plans and specifications provided by the School District and approved by said town, said consent not to be unreasonably withheld, conditioned, or delayed.

4.3 School District Not to Exceed Capacity of Feeders or Wiring. The School District covenants and agrees that its use of electric current shall never exceed the capacity of the feeders to the Leased Premises, or the wiring installations therein.

#### **ARTICLE V: ALTERATIONS AND ADDITIONS**

5.1 Construction of Improvements. The School District shall not make any alterations or additions to the Leased Premises without the Towns prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing the parties hereto expect that a new regional High School will be constructed by the School District on the Leased Premises in Harwich. All such allowed or required alterations or additions shall be at the School District's sole expense, shall be in accordance with all applicable laws and codes, and shall be in quality at least equal to the present construction. The parties hereto agree to cooperate to facilitate the construction and financing of the new High School including amending this Lease as may be required to complete the construction and renovation.

5.2 Compliance with Laws. The School District shall procure all necessary permits before undertaking any work on the Leased Premises, including without limitation any structural alterations, and shall cause all such work to be performed in a good and first-class workmanlike manner, and in accordance with the requirements of insurers, employing new materials of prime quality, and shall defend, hold harmless, exonerate, and indemnify the Towns from all injury, loss or damage to any person or property occasioned by such work. The School District shall at all times comply with (i) Massachusetts public bidding laws, and all laws, rules, orders, and regulations of governmental authorities having jurisdiction thereof, in effect at the time of application for permits for such work; (ii) orders, rules, and regulations of any Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing

insurance rating bureaus; and (iii) plans and specifications (which shall be prepared by, and at the expense of, the School District, and approved by the Towns prior to beginning any work). The School District agrees to employ responsible contractors for such work, and shall cause such contractors to carry workers' compensation insurance in accordance with statutory requirements; and to carry comprehensive public liability insurance and automobile liability insurance covering such contractors when on or about the Leased Premises, in amounts reasonably acceptable to the Towns and naming the Towns as an additional party insured; and agrees to submit certificates evidencing such coverage to the Towns prior to the commencement of, and during, the continuance of any such work.

5.3 Liens and Encumbrances. The School District shall not permit any mechanics' liens, or similar liens, to remain upon the Leased Premises for labor and material furnished to the School District, or claimed to have been furnished to the School District, in connection with work of any character performed or claimed to have been performed at the direction of the School District; and shall cause any such lien to be released of record without cost to the Towns within twenty (20) days after the School District receives notice of filing of same. In connection with the foregoing, the School District agrees to indemnify, save, defend, and hold harmless the Towns against, of, and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom. If the School District shall fail to discharge such liens within such period, or fail to furnish security therefor, then the Towns may, but shall not be obligated to, discharge the same, and the School District agrees to reimburse the Towns promptly upon demand for all costs, expenses, and other sums of money in connection therewith, with interest. All materialmen, contractors, artisans, mechanics, laborers, and any other persons now or hereafter, who contract with the School District for the furnishing of any labor, services, materials, supplies, or equipment with respect to any portion of the Leased Premises, are hereby charged with notice that they must look exclusively to the School District to obtain payment for same. The School District agrees that it will, on request from the Towns, comply with any and all reasonable requirements of the Towns with respect to the work performed or materials furnished by the School District or its agents, contractors, and sub-contractors on the Leased Premises.

5.4 Insurance for School District's Work. The School District shall have and maintain in force comprehensive public liability insurance,, property and casualty insurance, builder's risk insurance for any new construction or substantial renovation, which insurance shall name the Towns as additional insureds. The School District shall also maintain workers' compensation insurance affording applicable statutory coverage, and containing statutory limits. All such policies shall comply with the provisions of Article IX hereof.

5.5 Ownership of Improvements. All capital and/or structural alterations and additions made by the School District shall become the exclusive property of the town in which the real estate is located upon completion. All other nonstructural alterations and additions made by the School District that are not affixed to the Leased Premises or can be removed without material damage, shall remain the exclusive property of the School District. The School District may at any time, at its sole option, remove any such alteration or addition, provided that removal does not damage the Leased Premises, and that the School District restores the Leased Premises to the same conditions that existed prior to such alteration or addition.

## **ARTICLE VI: USE OF LEASED PREMISES**

6.1 Permitted Uses. The School District shall use the Leased Premises solely for the Permitted Uses. The School District shall keep the Leased Premises in good order, reasonable wear and tear and damage by fire or other casualty only excepted, and shall not commit or permit the School District's servants, agents, or invitees to commit waste to the Leased Premises. The School District agrees not to erect any signs on the Leased Premises, including on the exterior of the buildings, without the prior written consent of the town in which the real estate is located, which consent shall not be unreasonably withheld.

6.2 Use of Leased Premises by Towns for Emergencies. The Towns reserve the right to use the Leased Premises, in the case of emergencies officially declared by any public body for any use normally associated with such emergencies (emergency shelters, storage of emergency supplies, etc.), free of any charges by the School District. The Towns and the School District shall, upon execution of this Lease, develop and approve a policy defining the use of the Leased Premises for emergencies.

6.3 Use of Leased Premises by Towns for Towns-wide Meetings. The Towns reserve the right to use the Leased Premises for town-wide meetings, including annual and special town meetings. The Towns shall reimburse the School District for any additional costs directly related to the use of the Leased Premises by the Towns. The Towns and the School District shall, upon execution of this Lease, develop and approve a policy defining the use of the Leased Premises for town-wide meetings and reimbursement for costs..

6.4 Compliance with Laws, Regulations, and Codes: Hazardous Substances. The School District acknowledges that no trade or occupation shall be conducted on the Leased Premises, or use made thereof, that will be unlawful, improper, offensive, or contrary to any federal, state, or local laws, regulations, codes and ordinances, including, but not limited to, those that relate to health and safety, and those of the Board of Fire Insurance Underwriters. Without limiting the generality of the foregoing, the School District shall not bring, or permit to be brought or kept, on the Leased Premises, or elsewhere on the Leased Premises, any hazardous, toxic, inflammable, combustible, or explosive fluid, material, chemical, or substance, including without limitation any item defined as hazardous pursuant Chapter 21E of the Massachusetts General Laws and federal and other state laws ("Hazardous Substances"). The School District hereby agrees to indemnify and hold harmless the Towns, and those claiming by, through, and under the Towns, from and against any and all liability, loss, damage, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands, or judgments of any nature in any way suffered, incurred, or paid as a result of any release or threatened release of Hazardous Substances on or from the Leased Premises that is caused or exacerbated by the School District, its agents, employees, contractors, representatives, or invitees, except to the extent caused by the negligent acts or omissions of the Towns. The provisions of this Section shall survive the expiration or earlier termination of the Lease.

6.5 Assignment and Subleasing. The School District shall not assign, sublet, or underlet r (collectively referred to as "Transfer") this Lease without the Towns prior written consent, which consent shall not be unreasonably withheld , conditioned or delayed .. Consent by the Towns, whether express or implied, to any Transfer shall not constitute a waiver of the Towns' right to prohibit any subsequent Transfer. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of the School District's interest in the Lease by operation of law.

## **ARTICLE VII: MAINTENANCE**

7.1. School District's Responsibility. The School District shall be responsible, at its sole expense, for the general maintenance of the Leased Premises, except as provided herein. The School District shall keep the Leased Premises, including, without limitation, the electrical fixtures, windows, halls, stairwells, lavatories, the landscaping, the parking areas of the Leased Premises, all pipes, wiring and lighting, all plumbing and utility lines serving the Leased Premises, the boilers and the heating and ventilating system and the fire protection equipment and systems serving the Leased Premises, in good and safe order, condition and repair, excepting only reasonable use and wear, and damage by fire or other casualty. The School District shall also, at its sole expense, keep and maintain the Leased Premises and all sidewalks, curbs and drives on or adjoining the same in a clean and orderly condition, free of dirt, rubbish, and unlawful obstructions. The School District shall not permit the Leased Premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste. The School District shall be responsible for removing trash from the Leased Premises, and the collection and disposal thereof. The School District shall not allow rubbish or trash to accumulate on or about the Leased Premises. The School District agrees to keep, operate, use and maintain every part of the Leased Premises in conformity with all requirements of the law and applicable fire underwriting and related regulations, and to do all other work necessary to comply with the foregoing covenant.

7.2 Towns' Responsibility. . The Towns shall be responsible for removing snow and ice from the driveways and parking areas for the Leased premises within their respective town, while the School District shall be responsible for removing snow and ice from the sidewalks and walkways.

7.3 School District's Failure to Maintain. If the School District shall fail to keep the Leased Premises in the condition required herein, or if repairs are required to be made by the School District pursuant to the terms hereof, within thirty (30) days after notice by either Harwich or Chatham (or without notice in any emergency, immediately threatening life or property), Harwich or Chatham shall have the right (but shall not be obligated) to make such repairs or replacements, or perform maintenance work or any other work required of the School District pursuant to this Lease, and charge the reasonable cost thereof to the School District, with interest.

## **ARTICLE VIII: INDEMNIFICATION; RELEASE**

### **8.1     Indemnification.**

To the extent permitted by law, the School District shall, during the term hereof, assume and maintain exclusive control of the Leased Premises and defend, indemnify, and save harmless the Towns from and against all claims, expenses, or liability of whatever nature arising from any act, omission, or negligence of the School District, the School District's contractors, agents, employees, customers, and invitees, or anyone claiming by, through, or under the School District, or arising, directly or indirectly, from any accident, injury to any person, or to the property of any person, occurring after the School District enters the Leased Premises, and until the end of the term of this Lease and, thereafter, so long as the School District occupies the Leased Premises, or arising from any accident occurring outside the Leased Premises, but within the general area of the Leased Premises, where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of the School District or the School District's contractors, agents, employees, customers, and invitees, or anyone claiming by, through, or under the School District.

The foregoing indemnity and hold harmless agreement shall include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including reasonable attorneys' fees, and the defense thereof with counsel acceptable to the Towns, or counsel selected by an insurance company that has accepted liability for any such claim.

**8.2     Release.** The School District agrees to use and occupy the Leased Premises at the School District's own risk, and, except for liabilities or losses resulting from the negligent acts or omissions of the Towns or either town, the Towns shall have no responsibility or liability for any loss or damage to fixtures, or other personal property of the School District, or any person claiming by, through or under the School District. Without limitation, the School District agrees that the Towns shall not be responsible or liable to the School District, or those claiming by, through or under the School District, for any loss or damage resulting to the School District or those claiming by, through or under the School District, its or their property from the breaking, bursting, stopping, or leaking of electric cables and wires, and water, gas, or steam pipes.

The provisions of this Article shall survive any termination of this Lease.

## **ARTICLE IX: INSURANCE**

**9.1     School District's Insurance.** The School District shall obtain and keep in force at its own expense so long as this Lease remains in effect, and thereafter so long as the School District, or anyone claiming by, through or under the School District, uses or occupies the Leased Premises or any part thereof, policies of insurance for the benefit of the School District and the Towns, in the amounts, and in the manner and form set forth in this Section; provided, however, that amounts of insurance coverage may from time to time be increased. The School District shall furnish certificates evidencing each such insurance coverage to the Towns prior to



the execution of this Lease naming the Towns as an additional party insured (to the extent such insurance is appropriate at such time), and providing that the insurer shall give the Towns written notice at least thirty (30) days in advance of any termination, expiration, or any and all changes in coverage. The kinds and amounts of such insurance coverage shall not be less than the kinds and amounts designated herein, and the School District agrees that the stipulation herein of the kinds and minimum amounts of insurance coverage, or the acceptance by the Towns of certificates of insurance indicating the kinds and limits of coverage, shall in no way limit the liability of the School District to any such kinds and amounts of insurance coverage.

(a) General Liability Insurance: A commercial general liability policy insuring against claims for damages for bodily injury or death occurring upon, in, or about the Leased Premises, such insurance to afford protection in limits of not less than \$1,000,000 in respect to personal injury or death to any one person, and \$3,000,000 in respect to personal injury or death to any number of persons in any one occurrence; and \$1,000,000 for property damage. Such comprehensive general liability insurance may be effected by a policy or policies of blanket insurance which may cover other property in addition to the Leased Premises, provided that the protection afforded thereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the Leased Premises, and provided further that in all other respects any such policy shall comply with the other provisions of this Article IX. The Towns, its officers, agents, servants, and employees shall be named as additional insureds.

(b) Property Insurance: A commercial property policy covering the buildings and improvements thereon, in an amount equal to at least one hundred percent (100%) of the replacement cost of such property shall be obtained and maintained by the School District, at its own expense. The Towns, its officers, agents, servants and employees shall be named as additional insureds.

(c) Workers' Compensation Insurance: The School District and any subtenants, as applicable, shall provide Workers' Compensation Insurance required by law, and Employer's Liability insurance for at least the amounts of liability for bodily injury by accident of \$100,000 each accident; bodily injury by disease for each employee of \$100,000; and a bodily injury by disease policy limit of \$500,000; or such greater amount as may be required from time to time by the laws of the Commonwealth of Massachusetts

(d) Umbrella/Excess Liability Insurance: An Umbrella/Excess Liability insurance policy on an occurrence basis "following form" of the primary coverage with a limit of liability of \$5,000,000.00 shall be obtained and maintained by the School District, at its own expense. The Umbrella/Excess Liability insurance policy shall include, but not be limited to, the following coverages for bodily injury, property damage, and personal injury: (i) Leased Premises - Operations Liability; (ii) Contractual Liability; (iii) Automobile Liability for owned, non-owned, and hired vehicles. The Towns, its officers, agents, servants and employees shall be named as additional insureds.

(e) Should the School District choose to make improvements to the building as discussed in Section VI, the School District will be required to provide the town where the building is located, evidence that the School District has required its contractors to maintain: (i)

worker's compensation insurance in the amounts required by law (or reasonably comparable insurance if such insurance is no longer available); (ii) builder's risk insurance (or such reasonably comparable insurance) on an "all risk" basis (including collapse) insuring against casualty to such construction for the full replacement value of the work performed, and the equipment, supplies, and materials furnished and stored; (iii) automobile liability insurance in the minimum amounts required by law, with limits of liability not less than \$1,000,000 per occurrence for property damage and \$2,000,000 combined single limit; (iv) Employer's Liability Insurance affording protection in the amount of not less than \$500,000 per accident and \$500,000 for disease; (v) public liability insurance within limits in an amount not less than \$3,000,000 comprehensive general liability total, with a limit of \$1,000,000 per occurrence; and (vi) Professional/Environmental Impairment Liability Insurance providing coverage for environmental contamination, bodily injury, and/or property damage arising out of acts and omissions of the School District or its contractors, employees, or agents in the performance of the Permitted Uses, or any other activities or failures to act, at or with respect to, the Leased Premises in the amount of \$1,000,000 for each claim and \$1,000,000 in the aggregate (which insurance, unlike the other insurance noted above, may be made on a claims made basis). The School District shall require that the Towns, and its officers, agents, servants, and employees be named as additional insureds on all sub-tenant's, subcontractor's, and independent contractor's insurance, excluding Worker's Compensation.

The Towns shall have the right to require the School District to increase such limits when, during the term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Leased Premises by responsible owners or tenants are more or less generally increased, it being the intention of this sentence to require the School District to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Leased Premises.

9.2 Personal Property. The School District agrees that the Towns shall have no responsibility or liability for any loss or damage or injury to or from any cause whatsoever, including theft or otherwise, of fixtures, improvements, or other personal property, of the School District, unless caused by the negligent acts or omissions of the Towns or either town. The School District agrees that it shall continuously keep its fixtures, merchandise (if any), equipment, and other personal property from time to time located in, on, or about the Leased Premises, and all leasehold improvements to the Leased Premises constructed or installed by the School District, insured by reputable, duly licensed insurance companies against loss or damage by fire, with the usual extended coverage endorsements. Within a reasonable time after the School District enters the Leased Premises, and no less often than annually thereafter, and at any other time upon the request of Towns, the School District shall furnish to the Towns evidence of such continuous insurance coverage, satisfactory to Towns. It is understood and agreed that the School District assumes all risk of damage to its own property arising from any cause whatsoever, including, without limitation, loss by theft or otherwise.

9.3. General Requirements. The Towns shall be named as an additional insured on all insurance policies. All required insurance shall be written with such companies qualified to do business in Massachusetts as the School District shall select, and the Towns shall approve, which approval the Towns agree not to unreasonably withhold. Without limiting the Towns' other

rights under any other provisions of this Lease, if the School District shall fail to keep the Leased Premises insured as provided herein, and if such failure shall continue for a period of ten (10) days following written notice by the Towns to the School District thereof, then the Towns or either town, without further notice to the School District, may take out and pay for such insurance, and the amount of such payment shall become due and payable to Towns or either town on demand.

The School District hereby waives any and all rights of recovery that it might otherwise have against the Towns, its agents, employees, and other persons for whom the Towns may be responsible, for any loss or damage to the School District's property or improvements on the Leased Premises that are either required to be insured under the terms of this Lease, or that the School District, in the absence of any such requirement, elects to insure, notwithstanding that the loss or damage may result from the negligence, willful act, or default under the terms of this Lease, by the Towns, its agents, employees, contractors, or other persons for whom the Towns may be responsible.

#### **ARTICLE X: CASUALTY: EMINENT DOMAIN**

(a) For the purposes of this Article X, "substantial part" shall be defined as that portion of the Leased Premises which, if damaged or taken by eminent domain, would materially affect the use of the Leased Premises for the Permitted Uses.

(b) If a substantial part of the Leased Premises shall be destroyed or damaged by fire or other casualty and cannot be repaired within a reasonable period of time, or if a substantial part of the Leased Premises shall be taken by any public or quasi-public agency or authority including the Towns, for any public or quasi-public use under governmental law, or by right of eminent domain, and the taking would materially interfere with the use of the Leased Premises for the Permitted Uses, then this Lease shall amended to exclude the affected property from the Lease on such terms as are acceptable to the Towns and the School District.

(c) If any part of the Leased Premises is damaged by fire or other casualty, the School District shall apply available insurance proceeds and shall repair and restore the Leased Premises, to the conditions prior to such damage or destruction.. The School District shall make such repairs within a reasonable time, to the extent of its insurance proceeds, and consistent with the School District's's budgetary appropriation and borrowing requirements, and its obligation to comply with legal requirements relating to public building projects and public procurement.

(d) In the event of a taking by eminent domain, the Towns shall have, and hereby reserves and excepts, and the School District hereby grants and assigns to Towns, all rights to recover for damages to the Leased Premises and the leasehold interest hereby created, and to compensation accrued, or hereafter to accrue, by reason of such taking or damage. The School District covenants to deliver such further assignments and assurances thereof as the Towns may

from time to time request, hereby irrevocably designating and appointing either Harwich or Chatham as its attorney-in-fact to execute and deliver in the School District's name and behalf all such further assignments thereof. Nothing contained herein shall be construed to prevent the School District from prosecuting in any condemnation proceedings a claim for the value of any of the School District's usual trade fixtures installed in the Leased Premises by the School District at the School District's expense, and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by the Towns from the taking authority.

#### **ARTICLE XI: TERMINATION; DEFAULT**

In the event that the School District shall default in the observance or performance of any of the School District's covenants, agreements, or obligations hereunder, and such default shall not be corrected within thirty (30) days after written notice (or any shorter period, if specified herein), Harwich and Chatham shall have the right thirty (30) days thereafter, while such default continues, to re-enter and take complete possession of the Leased Premises located within their town, to declare the Term of this Lease ended, and remove the School District's effects, without prejudice to any other remedy that may be available to either Harwich or Chatham. To the extent permitted by law, the School District shall indemnify the Towns against all payments that the Towns may incur by reason of such termination during the residue of the Term which obligation shall survive termination of this Lease.. If the School District shall default, after reasonable notice thereof, in the observance or performance of any conditions or covenants on the School District's part to be performed or observed by virtue of any of the provisions of any provision of this Lease, the Towns, without being under any obligation to do so, and without thereby waiving such default, may remedy such default for the account, and at the expense of, the School District. If Harwich or Chatham make any expenditures, or incur any obligations for the payment of money in connection with the School District's default, including but not limited to, reasonable attorneys' fees in instituting, prosecuting, or defending any action or proceeding, such sums paid, or obligations incurred, shall be paid to Harwich or Chatham by the School District.

Without limiting any of the Towns' rights and remedies hereunder, and in addition to all other amounts the School District is otherwise obligated to pay, it is expressly agreed that the Towns shall be entitled to recover from the School District all costs and expenses, including reasonable attorneys' fees, incurred by the Towns in enforcing this Lease from, and after the School District's default.

#### **ARTICLE XII: MISCELLANEOUS**

12.1 Changes in Lease. None of the covenants, agreements, provisions, terms, and conditions of this Lease shall in any manner be changed, altered, waived, or abandoned, except by a written instrument signed, sealed, and mutually agreed upon by all the parties hereto, and approved as required by law. Such instrument shall not be void for want of consideration.

12.2 Quiet Enjoyment. The Towns hereby warrant and covenant that the School District shall have peaceful and quiet use and possession of the Leased Premises without hindrance or interruption on the part of the Towns, or by any other person(s) for whose actions the Towns are legally responsible, or by any person claiming by, through or under the Towns, except as herein provided.

12.3 Towns' Entry. The Towns or its agents may, at reasonable times and without interfering with the School District's business operations, enter the Leased Premises from time to time to make repairs, or to inspect the Leased Premises. The Towns shall give the School District a minimum of twenty-four (24) hours notice of such visits, provided however that the Towns may enter the Leased Premises at any hour, and without prior notice, in the case of an emergency affecting the Leased Premises.

12.4 Yield Up at Termination of Lease. The School District shall, at the expiration or other termination of this Lease, remove all the School District's effects from the Leased Premises. The School District shall deliver the Leased Premises to the Towns in the condition in which the School District is required to maintain the same, as set forth in this Lease, reasonable wear and tear excepted, and fire and other casualty excepted.

12.5 Holding Over. If the School District, or anyone claiming under the School District, shall remain in possession of the Leased Premises, or any part thereof, after the expiration of the Term hereof, without any agreement in writing between the Towns and the School District with respect thereto, the person remaining in possession shall be deemed the tenant at sufferance. After acceptance by the Towns of any payments made under this Lease, the person remaining in possession shall be deemed the tenant from month-to-month, subject to the provisions of this Lease insofar as the same may be made applicable to the tenant from month-to-month, which occupancy or use may at any time be terminated by either party by one (1) month's written notice to the other party.

12.6 Binding Agreement; Covenants, and Agreements; Governing Law; Personal Liability. This Lease shall bind and inure to the benefit of the parties hereto and their respective representatives, successors, and assigns. All covenants, agreements, terms, and conditions of this Lease shall be construed as covenants running with the land. This Lease contains the entire agreement of the parties, and may not be changed or modified, except by a written instrument in accordance with the provisions herein. This Lease shall be governed by the laws of the Commonwealth of Massachusetts. The provisions of those laws shall not be deemed waived by any provision of this Lease.

The failure of either party to seek redress for violation, or to insist upon the strict performance of any covenant or condition of this Lease, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party to be bound thereby.

No mention in this Lease of any specific right or remedy shall preclude the Towns or the School District from exercising any other right, or from having any other remedy, or from maintaining any action to which it may otherwise be entitled either in law or in equity.

No official, employee, or consultant of Harwich or Chatham shall be personally liable to the School District, or any successor in interest, or person claiming through or under the School District, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease, or any amendment or extension entered into pursuant hereto.

12.7 Notice. Any notice relating to the Leased Premises, or to the occupancy thereof, shall be in writing, and shall be deemed duly served when mailed by registered or certified mail, postage prepaid, addressed to the other party at the addresses first listed above, or at such other addresses as the parties may from time to time designate by written notice to the other party.

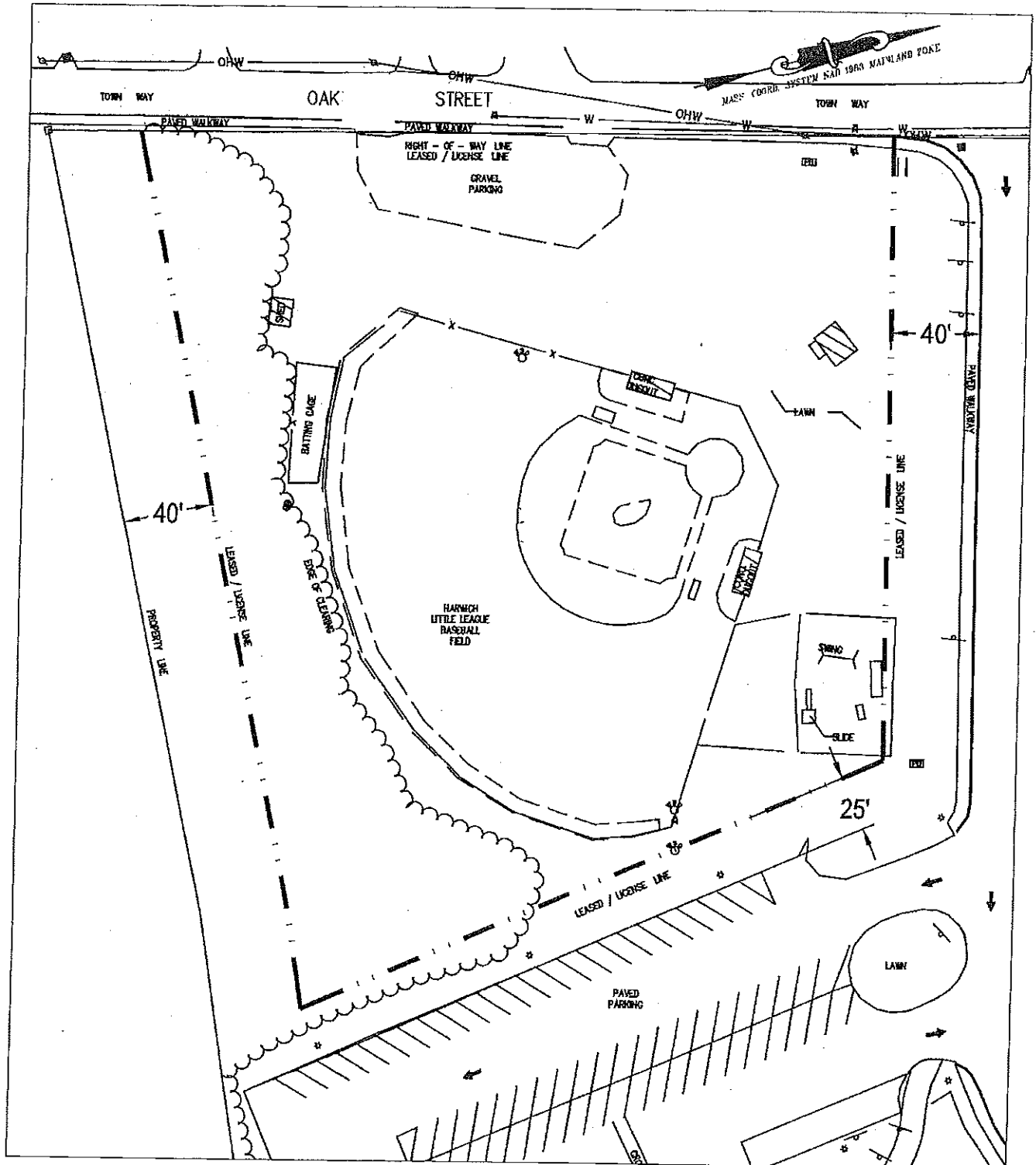
12.8 Early Termination by School District. The School District shall have the right to terminate this Lease prior to the expiration of the Lease Term, provided that the School District is not in default, and provided that the School District gives to the Towns twelve (12) months written notice of its intent to terminate the Lease.

12.9 Early Termination by Towns. Harwich or Chatham shall have the right to terminate this Lease prior to the expiration of the Lease Term if either Town withdraws from the School District as provided in the Regional School District Agreement between the parties.

12.10 Termination of the School District. In the event that there is a termination of the School District for any reason, then this Lease shall terminate on the effective date of the termination of the School District.

### **ARTICLE XIII: SEVERABILITY**

13.1 Severability. If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision, provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.



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MONOMOY REGIONAL HIGH SCHOOL  
SKETCH TITLE: LEASED / LICENSED AREA  
PREPARED BY MARSHALL/GARY LLC

SCALE: 1"=60'

DATE: JUNE 20, 2012


DRAWN BY: JAM

SKETCH NO.

L1

IN WITNESS WHEREOF, the parties, having authorized the respective Chairs to sign on the party's behalf, agree as indicated by the signatures below.

Town of Harwich,  
by its Board of Selectmen Chair,  
duly authorized:

  
Signature

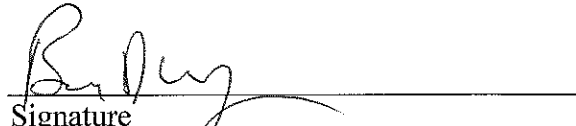
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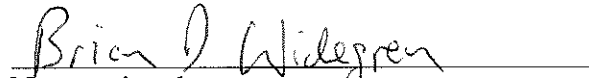
\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Towns Counsel Signature

Monomoy Regional School District,  
by its the School District Chair,  
duly authorized:

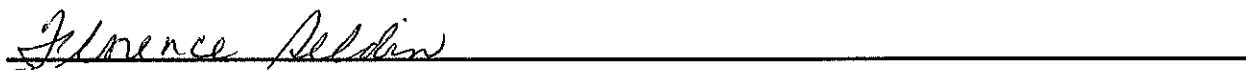
  
Signature


  
Name printed


  
Date

\_\_\_\_\_  
Date

Town of Chatham,  
By its Board of Selectman Chair,  
Duly authorized:

  
Signature

  
Name Printed

  
Date

Approved as to form:

\_\_\_\_\_  
Town Counsel Signature

\_\_\_\_\_  
Date