

~~DRAFT~~ ~~DRAFT~~ ~~DRAFT~~ DRAFT 1/29/16 Stewart

Comment [a1]: Stewart: revisions shown in RBD are by Andy Stewart, 1/29/16 others by John Edwards

**SECOND AMENDED USE AGREEMENT
BETWEEN THE TOWN OF ORANGETOWN
and**

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THE ORANGETOWN MIGHTY MIDGETS ATHLETIC CLUB

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(Amended as of January , 2016)

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This Agreement by and between the Town of Orangetown, a municipal corporation (hereinafter referred to as the "Town") and The Orangetown Mighty Midgets Athletic Club (hereinafter referred to as the "OMM"), a not for profit corporation, for the use of an area of land and improvements, more particularly described on Exhibit "A" attached hereto, so that OMM may carry out a sports program for the community.

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BACKGROUND

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WHEREAS, in or about 2003, the Town of Orangetown ~~has acquired~~ 348± surplus acres from the State of New York, of which a minimum of 216 acres was required to be ~~must be~~ used for community recreation and open space purposes; and

WHEREAS, in or about 2005, OMM, is an established youth serving organization in the Orangetown community, proposed to wishing to utilize a portion of this land, together with the Town, in a manner that would ~~to~~ provide a valuable public service to the residents, and, in particular, to the youth of the Town, offering both to improve the Town's property, largely at its own cost and expense, and, thereafter, and thereon, to provide for youth recreation opportunities to the Town's youth, and others ~~desires to utilize the land and contemplated improvements for recreation purposes; and~~

WHEREAS, by resolution No. 558 of 2005, duly adopted the 12th day of September 2005, the Town of Orangetown, ~~in or about November 2005~~, specifically recognizing the valuable public service and contribution to Orangetown recreation provided by the OMM program on a town-wide basis and the need to provide recreation fields and facilities, the Town Board, approved ~~authorized~~ the execution of a Use Agreement to provide OMM with the long term use of the premises and facilities described in Exhibit "A" to the extent permitted by New York State Law; and

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WHEREAS, in recognition of the benefits secured to the Town by and under the said Use Agreement, and a desire to continue and expand the programs and facilities developed at the RPC complex, on August 23, 2011, the Town Board, by resolution No. 472 of 2011, approved an Amended Agreement between the Town and OMM, as thereafter executed; and

WHEREAS, in the intervening years since the Use Agreement was first approved, OMM, with

the consent and approval of the Town, has made improvements to the Town fields and facilities at a cost to OMM of more than \$32 Million Dollars, allowing the fields and other on site community facilities to be used and enjoyed by young and old alike; and

WHEREAS, in furtherance of its mission of service to the Orangetown community, OMM and the Town now wish to again amend the said Use Agreement, in the manner set forth herein,

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE I

PURPOSE OF AGREEMENT

The purpose of this Agreement is to:

1. Provide the terms and conditions under which OMM can use the area and improvements (hereinafter called the "premises") defined and more particularly shown on Exhibit A (attached hereto and made a part hereof) for practice, league activities, and tournament play.
2. Define operational and maintenance responsibilities of the parties.
3. Identify responsibility for costs and provide a process to provide improvements and upgrades.

ARTICLE II

LICENSE TO USE

OMM shall have use of all parts of the licensed premises subject to the following terms and conditions:

1. OMM shall have the use of the licensed premises from ~~March~~ July 1 through December 31, of each year, provided, however, that, in the event OMM shall establish a spring soccer program, then, and in that event, OMM shall have the use of the premises from ~~March~~ through July 1 for that purposes stated herein. Weather permitting, and subject to availability and the approval of the Superintendent of Parks, Recreation & Buildings, OMM may use the turf fields during the months of January and February.
2. Notwithstanding the aforesaid, it is expressly understood that the Town of Orangetown shall always retain the right of first use of the facilities for the Town of Orangetown youth recreation programs that are run directly by or through the Orangetown Department of Parks and Recreation.

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3. OMM shall make all decisions and determinations, in the first instance, regarding the cancellation of OMM games or activities as the result of weather and/or field conditions. It is understood that, in doing so, OMM will exercise sound judgment to prevent damage to the fields and injury to the players and personnel of the League. The Town reserves the right to cancel use of the fields due to inclement weather and/or poor field conditions.

4. The Town shall make all decisions and determinations concerning the cancellation of Town recreation program games or activities as a result of weather and/or field conditions. It is understood that the Town will exercise sound judgment to prevent damage to the fields and injury to players and persons using the fields.

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ARTICLE III

EFFECTIVE DATE AND TERMINATION

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This Agreement is in the nature of a revocable license, effective upon adoption by the Town Board of the Town of Orangetown and the OMM Board of Directors, and terminable by either party upon written notice of termination to the other.

Notwithstanding the aforesaid, recognizing the magnitude of the OMM program and the number of resident youth serviced thereby, and the need for such a program to have a firm commitment as to the availability of fields at the outset of any given program year, the Town of Orangetown agrees that it will not revoke, or otherwise terminate, this license except upon sixty (60) days written notice, which shall not be effective until the last day of the season during which such notice shall have been given, unless a decision, order or judgment of a court of competent jurisdiction shall require that the license be terminated earlier.

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ARTICLE IV

PERMITTED USES

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Except as may be required for use by the Town for Town activities, OMM shall be allowed the use of the identified premises use is allowed under the following conditions:

1. The land shall be used and occupied by OMM for recreational soccer, travel soccer and related activities, and other not for profit youth recreational sports programs, including but not limited to, lacrosse and flag football. OMM shall not use or permit the site to be used for any other purpose without the prior written approval of the Town Superintendent of Parks and Recreation. Related activities are further deemed to include, but are not necessarily limited to, OMM sponsored events, such as camps, tournaments, games and exhibitions by NCAA "Friendlies" and visits from the United States National Team for which no fee shall be charged by OMM.

The term "Friendlies" shall mean outside teams, principally at the college level, but may also include U.S. National Teams, which participate in OMM sponsored events for the benefit of the OMM Program, but shall not include teams of any type which use the Town facilities for the benefit of the outside team's program.

All non-OMM league events, including OMM sponsored "Friendlies" events, must be scheduled and permitted through the Town Department of Parks and Recreation. Permit fees shall be paid to the Town Department of Parks and Recreation in accordance with the Town's Permit Fee schedule.

2. Within fourteen (14) days of the beginning of each season, OMM will provide both the number of teams and participants in its league, and its schedule of games, to the extent then known, to the Town Superintendent of Parks and Recreation.

2A. Within fourteen (14) days of the beginning of each season, OMM will provide to Town Superintendent of Parks and Recreation a "dummy team schedule" composed of 10 hours of field use in the Complex per week for the season, that Parks shall allocate as it sees fit, with appropriate notification to OMM, with any unused portion of this "dummy team" schedule reverting to OMM on a weekly basis.

Comment [a2]: Stewart: this is a simple way of insuring the Parks department and OMM can accommodate third party groups seeking to plan ahead to use the Complex with a minimum of confusion.

2C. By 2 pm on the Monday of any week OMM is occupying the Complex, OMM will provide Parks Superintendent with a schedule for the coming week, including any vacant field hours OMM needs to retain for purposes of flexibility and any vacant field hours OMM is not using, which latter field hours shall be considered open for scheduling by the Parks Superintendent, unless OMM is notified otherwise.

Comment [a3]: Stewart: this is a simple way of insuring the Parks Dept and OMM can accommodate third party groups seeking short-term or last-minute use of the Complex, given the need for flexibility inherent in sports logistics.

3. OMM may furnish, install and erect the following improvements to the premises; field house, one or more storage sheds, field lighting, rest rooms, snack bar or refreshment stand, public announcement system, turf, scoreboards -and bleachers. OMM shall obtain approval from the Town Superintendent of Parks and Recreation before erecting such physical improvements, which approval shall be in the sole discretion of the Town of Orangetown. The installation and/or erection of any such improvement shall be subject to all reasonable conditions that may be required or imposed by the Town of Orangetown, or otherwise required under Federal, State or Local Law.

4. All such improvements once installed shall be gifts to the Town of Orangetown and shall become the property of the Town of Orangetown (at no cost or expense to the Town) and OMM shall have no further rights to such improvements. It is further understood and agreed that, in the event this license, or any provision of this license shall be declared invalid, or, in the event the Town shall revoke or otherwise terminate this license for any reason or no reason, OMM shall not be entitled to a refund, reimbursement or other compensation for, or toward any improvements that it may have made or paid for, on or relating to the premises.

5. OMM shall pay for the actual cost of the electrical usage and water usage throughout

the period of its use, i.e., during any month, or portion of any month, during which the OMM program utilizes the premises.

- 6. The field house, snack bar or refreshment stand, if constructed, shall be equipped and maintained by OMM which shall have the use thereof at all times. The hours of operation of the snack bar or refreshment stand shall be at the discretion of OMM, but shall be subject to reasonable adjustments by the Town Superintendent of Park and Recreation.
- 7. Notwithstanding the provisions of Article IV(6), above, the Blauvelt/Orangeburg Senior Club shall have the use of the field house facility constructed on site for meetings and other activities on Thursday mornings and afternoons (except during the summer months when the OMM camp programs are in session), and at such other times as the Superintendent of Parks, Recreation and Buildings may approve in consultation with OMM.

OMM shall have no responsibility in connection with, or liability as a result of, the use by any Senior Club or other non-OMM user of the field house, or field house premises.

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ARTICLE V
OTHER IMPROVEMENTS

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Any other improvements proposed by OMM must be approved by the Town Superintendent of Parks and Recreation. No improvements will be installed or provided by OMM without the written permission of the Town of Orangetown. Any permanent improvements made under this paragraph shall be considered a gift to the Town of Orangetown. Should an improvement be made without the permission of the Town, the Town has the right to direct OMM to remove the improvement within thirty (30) days at OMM's cost. If the improvement is not removed within 30 days, the Town may remove the improvement and bill OMM for all related costs and will be entitled to full payment for those costs.

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ARTICLE VI
MAINTENANCE

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- 1. Maintenance by OMM:
 - a) The premises shall be maintained by OMM throughout the entire year, at its own cost and expense, to a standard that takes into consideration the fact that

the premises are a part of a Town owned facility serving the general public. Maintenance shall include, but not be limited to, field mowing and raking, cleaning of restrooms.

Notwithstanding the aforesaid, the Town shall provide for (i) dumpster/litter barrels and the removal of all litter and trash; (ii) all major system repairs and replacements; and (iii) all snow plowing, as required, and related snow and ice removal from the sidewalk areas. The Town shall further provide two (2) port-o-johns on site at all times.

- b) The Superintendent of Parks and Recreation shall meet with the OMM President each year to compile a list of items, which in the Town's opinion, need or are anticipated to need maintenance, and OMM shall provide the needed maintenance.
- c) OMM shall provide litter control to the licensed premises daily during the practice, league play and tournament season and shall keep the area free of litter. If the Town of Orangetown determines litter control is not being done effectively, the Town will provide 48 hours notice to OMM to clean up the litter. If it is not done satisfactorily, the Town will provide the service and bill OMM for the cost of service and OMM will pay all costs related to this service.
- d) Except as provided above and in paragraph (e) below, the Town of Orangetown shall be responsible for the repair or replacement of all improvements to the premises.
- e) OMM for the full term of this agreement shall be responsible for maintaining and repairing the field house, pursuant to Article V above, which the parties contemplate will house rest rooms, snack bar or refreshment stand, announcer's facility, storage, office and meeting room.
- f) OMM, on an annual basis, shall provide the Town with proof of the servicing of the ANSUL system in the kitchen and the building's sprinkler system.

2. Maintenance by OMM to a higher standard:

OMM may provide maintenance or services to a higher or more frequent standard than identified herein, providing OMM assumes all related costs resulting from the higher or more frequent standard than identified and complies with any present or future federal, state, or Town laws and policies with regard to pesticide/herbicide use, chemical applications, and energy and water consumption.

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ARTICLE VII
FACILITIES' EXPENSES

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Although the Town recognizes that the programs operated by OMM provide a significant recreational benefit to the residents of the Town, that OMM has made both physical improvements to the Town owned facilities at significant cost to OMM as an organization, as well as a significant commitment to the maintenance needs of the facilities in the future, the parties nevertheless agree, in view of the magnitude of the OMM Program, and the extent of its use of the facilities hereunder, that the operating expenses associated with the facilities should be shared by both parties in an equitable manner. More specifically, the parties agree that the expenses relating to the facilities and their operations shall be shared as follows:

	Town	OMM
Electricity (Fields)	4_0%	<u>100</u> 60%
Electricity (Clubhouse)	0%	100%‡
Garbage removal	100%	0%‡‡
Port-a-Johns (2)	100%	0%
Water costs (fields)	10_0%	<u>100</u> 0%
Water costs (field house)	0%	100%
Natural Gas	0%	100%
Irrigation System (open/close)	0%	100%
Building Insurance (Prop./Liab.)	100%	0%‡‡‡
Building Contents Ins.		-0%Each to insure its own contents*
		100%

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‡-Where OMM is fully responsible for a cost hereunder, such costs may be billed by the Vendor directly to OMM, which OMM shall timely pay; provided, however, OMM shall provide copies of such bills, together with receipts, canceled checks, or other evidence of the payment thereof, on at least a quarterly basis to the Town Superintendent of Parks for his records.

‡‡-The Town will pick up and dispose of solid waste delivered by OMM to the appropriate receptacles on site.

‡‡‡ OMM must otherwise meet the liability and other insurance obligations hereinafter set forth and required under Article XIV.

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ARTICLE VIII
PARKING AND TRAFFIC CONTROL

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Traffic and parking management and control: During league and tournament season, OMM

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will assign as many members, of suitable age, of its organization as necessary to manage and control parking. OMM shall make every reasonable effort to prevent cars from parking in any "No Parking" areas, to keep fire lanes and access for emergency vehicles clear, to minimize congestion in the parking lot(s), and to protect the handicapped parking spaces for appropriate use.

ARTICLE IX

RULES, LAWS AND ORDINANCES

1. OMM agrees to abide by and uphold the Laws and ordinances of the Town of Orangetown, laws of the State of New York, and the regulations and policies of the Town of Orangetown Parks and Recreation Department.
2. OMM agrees to ensure that games are over and field lighting is turned off by 11:00 p.m. However, the Town of Orangetown retains the right to permit special recreational use after closing hours.
3. OMM agrees to limit the use of the public address system to an acceptable level and at acceptable times.
4. OMM agrees to abide by the laws of the Town of Orangetown and of the County of Rockland which regulates the operation of food and beverage serving facilities.

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ARTICLE X

FUNDRAISING BY OMM

OMM intends to make improvements to the premises as provided in Articles V and VI above by engaging in private fundraising. In connection with such fundraising efforts, OMM shall be permitted to erect permanent donor plaques, the design and location of which shall be subject to Town of Orangetown approval.

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ARTICLE XI

RIGHT TO ENTER

The Town shall have the right to enter all facilities for any reasonable purpose including, but not limited to, safety inspections and ensuring code compliance.

ARTICLE XII

SCHEDULED MEETINGS

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A minimum of once per year, at a mutually convenient time during the winter, and prior to the commencement of the OMM season, the OMM President shall schedule and meet with the Superintendent of Parks and Recreation for purposes of, among other things, reviewing and planning; OMM number of participants; maintenance needs; planned improvements; concerns, if any, expressed by abutting property owners; and policies and practices to be followed.

The parties shall also meet annually during the month of August (and otherwise as required) during the Town's regular budget cycle to discuss issues relating to capital, operational and other expenses of the facilities, known or anticipated, needed to be considered as part of the budget process.

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ARTICLE XIII
NON-DISCRIMINATION

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OMM agrees not to discriminate in providing its services consistent with all applicable Federal, State and Local Laws.

ARTICLE XIV
LIABILITY

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1. OMM shall secure and maintain commercial general liability insurance for the entire term of this Agreement to cover all OMM uses of the site and related uses. Said insurance shall be in the amount of not less than ~~Two~~ Million dollars (\$2,000,000) per occurrence. The Town of Orangetown shall be named additional insured for said policy or policies, and such policies shall provide for notice by the insurance company to the Town of any termination or cancellation of a policy at least thirty (30) days in advance.

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2. The Town reserves the right to review and adjust the minimum amount of insurance coverage required of OMM.

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ARTICLE XV
AMENDMENTS/MODIFICATIONS

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The provisions of this Agreement may be amended only upon the mutual consent of the Parties. No additions to, or alterations of the terms of this Agreement shall be valid unless

made in writing and formally approved and executed by the duly authorized agents of both Parties.

ARTICLE XVI
INDEMNIFICATION

OMM shall indemnify and hold harmless the Town of Orangetown, its officers, agents, and employees or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omissions of OMM, its officers, agents, and employees, or any of them, in performing its obligations under this Agreement.

ARTICLE XVII
ENTIRE AGREEMENT

This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior Agreement shall be effective to the contrary.

ARTICLE XVIII
NON-RESIDENT POLICY

1. ~~OMM agrees that it shall be responsible to comply with any Town of Orangetown policies and permit requirements regarding non-resident use of Town fields which are in effect at such time. Compliance with residency requirements shall be determined on the basis of OMM's overall membership, and not by reference to an individual event. Specific reference is made to the latest Parks and Recreation Field Use Policy, approved by Resolution No. _____ of the Town Board, duly adopted at a Regular Board Meeting held on _____, as may be amended.~~

2. Non-resident Fee. OM agrees that it shall charge a non-resident fee to all non-Town residents who play at the Town facility as a part of any OMM Program, except that those who participate as a part of OMM's Buddy Ball Program shall not be required to pay such additional fee.

The non-resident fee shall be 5% of the cost of enrollment in the Program in which the non-resident registers to participate. All non-resident fees collected shall be turned over to Town within one-month following the close of registration, to be utilized by the Town for park purposes, in its sole discretion, as it deems appropriate.

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ARTICLE XIX
SEVERABILITY

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If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS THEREOF, the Town of Orangetown and OMM have caused this Agreement to be executed in their respective names by their duly authorized officers and have cause this Agreement to be dated as of the _____ day of _____, 2011.

THE TOWN OF ORANGETOWN:

By: _____ Date: _____
_____ Andrew Y. Stewart, Paul Whalen, Town Supervisor

THE ORANGETOWN MIGHTY MIDGETS ATHLETIC CLUB:

By: _____ Date: _____