

**JOINT RECREATIONAL FACILITIES AGREEMENT BETWEEN  
THE BOROUGH OF METUCHEN AND  
THE METUCHEN BOARD OF EDUCATION**

This Joint Recreational Facilities Agreement (“Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2025 by and between the **BOROUGH OF METUCHEN** (“Borough”), a Municipal Corporation of the County of Middlesex, State of New Jersey, with offices at 500 Main St., Metuchen, New Jersey 08840 and the **METUCHEN BOARD OF EDUCATION** (“BOE”), a New Jersey School District, whose principal address is 400 Grove Avenue, Metuchen, NJ 08840. The Borough and BOE are collectively referred to as the “Parties.”

**WHEREAS**, pursuant to *N.J.S.A. 40:12-9*, a municipality and a school are permitted to jointly “improve, operate and maintain on existing property, any playgrounds, completely inclusive playgrounds, playfields, gymnasiums, public baths, swimming pools or indoor recreation centers;” and

**WHEREAS**, *N.J.S.A. 40:12-9* further authorizes a municipality to appropriate money for this purpose and to pay to the school money so appropriated; and

**WHEREAS**, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “Local Redevelopment and Housing Law”), as amended and supplemented provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

**WHEREAS**, by way of Resolution No. 2020-50, adopted February 3, 2020, the Borough’s governing body (the “Borough Council”) formally declared the entirety of the Borough as an “Area in Need of Rehabilitation” (the “Rehabilitation Area”) in accordance with the Local Redevelopment and Housing Law; and

**WHEREAS**, by way of Ordinance No. 2020-10, adopted May 11, 2020, the Borough Council adopted a redevelopment plan entitled “Redevelopment Plan for the Rehabilitation Area in the Borough of Metuchen March 2020,” as amended or supplemented, which sets forth, inter alia, the plans for the planning, development, redevelopment, and rehabilitation of the Rehabilitation Area in accordance with the Local Redevelopment and Housing Law; and

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law, via Resolution No. 2015-226 adopted on September 8, 2015, the Borough Council designated Block 37, Lots 5.03, 5.05, 5.12, 5.22, 6, 7.01, 7.02, 13, 14, 15.01, 16.02, 16.03, 17.01 & 17.02; Block 42, Lots 1-7; and, Block 66, Lots 1-3 as a “Non-Condemnation Redevelopment Area” (the “Redevelopment Area”); and

**WHEREAS**, by way of Ordinance No. 2021-19, adopted on September 13, 2021, the Borough Council adopted in accordance with the Local Redevelopment and Housing Law a more specific redevelopment plan for the Redevelopment Area, entitled, “Gulton Tract Redevelopment Plan,” prepared by LRK, Inc.; and

**WHEREAS**, by way of Ordinance No. 2022-04, adopted on March 28, 2022, the Borough Council adopted the “Amended Gulton Tract Redevelopment Plan,” prepared by LRK, Inc., dated March 11, 2022, which superseded all previously adopted redevelopment plans for the Redevelopment Area (as amended, the “Redevelopment Plan”); and

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law and Resolution 2022-128, adopted May 23rd, 2022, the Borough and 212 Durham Urban Renewal, LLC entered into a Redevelopment Agreement (the “Redevelopment Agreement”), designating 212 Durham Urban Renewal, LLC (the “Redeveloper”) as redeveloper of a portion of the Redevelopment Area as specified in the Redevelopment Agreement, and setting forth the terms and conditions to which such portion is to be redeveloped; and

**WHEREAS**, pursuant to the Redevelopment Agreement, the Redeveloper proposes to undertake a project consisting of two components, a Residential Project consisting of five (5) story single structure with up to two hundred and seventy-two (272) residential units, fifteen percent (15%) of which shall consist of affordable housing units and associated amenities and Open Space Improvements, a portion of which shall be financed with governmental bonds (collectively, the “Project”); and

**WHEREAS**, by way of Ordinance No. 2022-09, adopted May 23, 2022, the Borough entered into a Financial Agreement for a Long-Term Tax Exemption with the Redeveloper (the “Financial Agreement” or “PILOT Agreement”) in order to memorialize the terms and conditions by which the Redeveloper will pay an Annual Service Charge in lieu of real property taxes on the Project Improvements and Land (“PILOT Payments”); and

**WHEREAS**, *N.J.S.A.* 40A:12A-22(m) authorizes a municipality to enter into contracts with a public agency to have the public agency provide and maintain parks, recreation centers, schools and other facilities adjacent to or in connection with a redevelopment area, and *N.J.S.A.* 40A:12A-22(o) authorizes a municipality to enter into all contracts necessary and incidental to the performance of duties authorized in the Local Redevelopment and Housing Law; and

**WHEREAS**, *N.J.S.A.* 40A:12A-39(b) authorizes any public body (which includes a school district) to cause recreational facilities to be furnished adjacent to or in connection with a redevelopment project and *N.J.S.A.* 40A:12A-39(e) authorizes any public body (which includes a school district) to enter into an agreement “which may extend over any period, notwithstanding any provision or rule of law to the contrary,” with a redevelopment entity; and

**WHEREAS**, the Borough and BOE desire to jointly improve, operate and maintain certain recreational facilities within the Borough of Metuchen, including Edgar, Charles and Myrtle fields owned by the Borough (“Borough Recreation Facilities”), and Campbell School Field, the artificial Metuchen High School field, the gymnasiums and classrooms owned by the BOE (“BOE Recreation Facilities”); and

**WHEREAS**, it is acknowledged that BOE will incur additional expense to accommodate the increased needs related to the Redevelopment Area and the Borough proposes to share a percentage of the PILOT revenue received pursuant to the Financial Agreement for the Project to defray the additional costs to the BOE in the manner set forth herein; and

**WHEREAS**, the Borough and the BOE wish to enter into an agreement to set forth their respective rights and obligations with regard to the joint improvement, operation and maintenance of said recreational facilities, both for the benefit of the residents of the Borough and the public, and in connection with the redevelopment of the Redevelopment Area, in a manner that does not interfere with the educational uses of the BOE facilities ; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. **Payments to Defray BOE Costs.** During the Term of this Agreement, the Borough agrees to make payment to the BOE in an amount equal to fifteen percent (15%) of the Net PILOT Revenue received by the Borough (the “Recreation Payment”). The Borough’s “Net Pilot Revenue” is defined as the PILOT Payments received by the Borough pursuant to the Financial Agreement for the Project less any statutorily required payments to any other governmental entity, any statutorily required land tax credits or other statutorily required credits that may be applied against the PILOT Payment. The Borough will send the Recreation Payment to the BOE within 90 days of the Borough’s receipt of a PILOT Payment. In the event that the Borough does not receive a PILOT Payment pursuant to the Financial Agreement for any reason, the Borough shall have no obligation to send a Recreation Payment to the BOE.
2. **Use of Municipal Recreation Facilities.** During the Term of this Agreement, the BOE shall have a right to use the Borough Recreation Facilities for school sports and other school purposes during times that do not interfere with the Borough’s normal and customary use of the Municipal Recreation Facilities in accordance with this Agreement and a schedule to be jointly agreed upon by the Borough Administrator and BOE Business Administrator, recognizing that Borough use will take priority in scheduling. There shall be no charge to the BOE for such use.
3. **Use of BOE Recreation Facilities.** During the Term of this Agreement, the Borough shall have a right to use the BOE Recreation Facilities for recreation, summer camps, community and other municipal purposes during times that do not interfere with the BOE’s normal and customary use of the school facilities in accordance with this Agreement and a schedule to be jointly agreed upon by the Borough Administrator and BOE Business Administrator, recognizing that BOE use will take priority in scheduling.

There shall be no charge to the Borough for such use except to the extent such use requires BOE custodian overtime in any year in excess of 20 hours, and such charge to the Borough for such custodial services will only be forgiven in years when the Recreation Payment exceeds the amount to be paid for the custodial overtime. The BOE will issue an invoice to the Borough of any such amount due and owing. Notwithstanding the foregoing, in the event the Borough’s use of the BOE facilities would cause a substantial increase in cost to the BOE, the Borough and the BOE will agree to work in good faith to reach a mutually agreeable arrangement for cost sharing.

4. **Term and Termination.** This Agreement shall begin on the date the Project receives a Certificate of Occupancy and shall remain in effect for as long as the Borough is entitled to

receive PILOT Payments under the Financial Agreement, and shall expire upon the Borough's delivery of the Recreation Payment for the last PILOT Payment received by the Borough under the Financial Agreement ("Term"). In no event shall the term last longer than thirty (30) years from the date the PILOT Payments commence under the Financial Agreement. In the event the Borough is no longer receiving any PILOT Payment for any reason, including but not limited, to the expiration or termination of the Financial Agreement, or the Project no longer qualifies for a tax exemption under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et. seq., either the Borough or the BOE may terminate this Agreement. Unless otherwise agreed to in writing by both Parties, this shall be the only basis for which either the BOE or the Borough may terminate this Agreement. This Agreement may be terminated or amended only in writing pursuant to resolutions duly adopted by the governing body of the Borough and the BOE.

5. **Default.** An Event of Default shall have occurred whenever either Party fails to observe and perform any covenant or condition in this Agreement, and said failure continues for a period of thirty (30) days, after receipt by the defaulting Party of written Notice from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the failure of any such covenant or condition is one which cannot be completely remedied within the thirty (30) days after such written Notice has been given, it shall not be an Event of Default as long as the defaulting Party is proceeding with due diligence to remedy the same as soon as practicable, but in no event later than one hundred twenty (120) days after such written Notice.

In the event that an Event of Default occurs, then, subject to all other provisions herein for Notice and cure, the non-defaulting Party may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants, as applicable, under this Agreement, including the seeking of damages.

Where the Event of Default is refusal of access to the BOE Recreation Facilities or refusal of access to the Borough Recreation Facilities in accordance with this Agreement, and it is impossible or impracticable to provide a thirty (30) day cure period, the non-defaulting Party shall have the right to immediately file a cause of action for specific performance, without the need for a cure period.

6. **Force Majeure.** It shall not be an Event of Default if the failure to observe and perform any covenant or condition in this Agreement, where any such failure is a result of act, event or condition shall be beyond the reasonable control of the Party relying thereon, which may include the following ("Force Majeure"):

(a) An act of God, such as severe natural conditions such as landslides, lightning strike, earthquake, flood, hurricane, blizzards, tornado, or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence; or civil disturbance outside of the control of the party, such as release of nuclear catastrophe, explosion, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence;



With a Copy to:

Andrea L. Kahn, Esquire  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068  
(973) 622-5171 (office)  
[AKahn@MSBNJ.COM](mailto:AKahn@MSBNJ.COM)

Any party may change its address for notices by notice theretofore given in accordance with this Section 7 and shall be deemed effective only when actually received by the other party.

8. **Waiver.** No waiver made by any such Party with respect to the performance, or manner or time thereof, or any obligation of any other Party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of any other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of any other Party.
9. **Documentation Request.** The BOE hereto agrees to cooperate in providing all necessary and reasonable documentation requested by the Borough in furtherance of this Agreement and the Recreation Payments.
10. **Counterparts.** This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.
11. **No Assignment.** This Agreement shall not be assigned without the specific written consent of all of the Parties hereto.
13. **Incorporation of Preamble.** The Preamble to this Agreement is hereby incorporated herein.

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

ATTEST:

BOROUGH OF METUCHEN

\_\_\_\_\_  
Deborah Zupan, Borough Clerk

\_\_\_\_\_  
JONATHAN BUSCH, Mayor

ATTEST:

METUCHEN BOARD OF EDUCATION

\_\_\_\_\_  
HAZEL-ANNE M. JOHNSON-MARCUS,  
President