

NAMING RIGHTS
AGREEMENT

This AGREEMENT is dated February 12, 2009 between the **New Hartford Central School District Foundation**, having an address, c/o Foundation President, New Hartford Central School District, 33 Oxford Road, New Hartford, New York 13413 (the "Foundation") and **New Hartford Central School District**, having an address c/o Robert Nole, Superintendent, New Hartford Central School District, 33 Oxford Road, New Hartford, New York 13413 (the "School District").

WHEREAS, the Foundation is a 501(c)(3) corporation which was formed in order to look to the private sector as well as other available public funding to enable the School District to provide educational program enhancements which could not be provided if the School District were solely dependent upon public financing; and

WHEREAS, it is a primary purpose of the Foundation to enhance the educational program of the School District by funding programs and capital projects that cannot be readily financed by means of the annual school budget; and

WHEREAS, pursuant to the terms of a Purchase and Sale Agreement dated October 1, 2008 (the "Purchase Agreement") by and between the Foundation and O.W. Hubbell & Sons, Inc. (the "Seller"), the Foundation is acquiring a 22-acre parcel of vacant land (the "Real Property") at a cost of \$250,000 for the benefit of the School District as well as the community at large; and

WHEREAS, it is the intention of the Foundation to gift the Real Property to the School District, subject to the conditions contained herein; and

WHEREAS, it is the intention of the School District, in concert with the Town of New Hartford and other community organizations, subject to the limitations of funding, need and other factors relevant to the overall well being of the community served by the School District and the Town of New Hartford, to develop the Real Property as a community park, the artist's rendition of which currently include athletic fields, tennis courts, playgrounds, picnic areas and a walking trail, more generally described on the drawing attached hereto as Exhibit A ("Higby Park"); and

WHEREAS, the Foundation has funded the acquisition of the Real Property through a community fundraising campaign (the "Capital Campaign"); and

WHEREAS, as part of that Capital Campaign, the Foundation made certain representations and promises to contributors regarding the intended use of the Real Property and the naming opportunities associated with their contributions, which representations and promises must be honored to the extent financially practicable in the ultimate design and development of the Real Property.

NOW THEREFORE, in consideration of the mutual agreements set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. In the event that it is feasible for the School District and the Town of New Hartford to develop the Real Property as Higby Park, the School District agrees to use its best efforts to develop the Real Property and incorporate designs and concepts as set forth as Exhibit A, subject to the discretion of the School District to make such modifications it deems reasonably necessary to the design, development and financial feasibility of the project in cooperation with the Foundation.
2. Attached hereto as Exhibit B is a schedule of naming commitments (the "Naming Commitments") that the Foundation has promised to certain contributors, in the event Higby Park is developed, in consideration of their contributions. In the event Higby Park is developed, the School District agrees to honor and adhere to the Naming Commitments or to make appropriate adjustments thereto, subject to the prior written consent of the Foundation, as may be necessary to account for any revisions that may occur to the design and development of Higby Park.
3. The District's obligation to honor and adhere to the Naming Commitments shall continue for the duration thereof, as specified on Exhibit B; provided, however, that the School District shall be entitled to cease honoring a Naming Obligation with respect to a particular contributor upon written notice to the Foundation in the event that the contributor engages in conduct which is unethical, unlawful or adverse to the reputation of the School District.
4. The School District may not offer any additional naming rights with respect to Higby Park without the prior written consent of the Foundation.
5. The School District shall work in conjunction with F. Eugene Romano, Linda E. Romano and/or John F. Romano in connection with the design and signage of the park entrance. Such signage of park entrance shall be mutually agreeable.
6. The School District agrees to erect temporary signage at the Perry Junior High School at a mutually agreed upon location in substantially the same form and design as set forth on Exhibit C attached hereto.
7. The School District agrees that, in the event there are excess funds in the Capital Campaign after the development of the Real Property, said excess funds shall be devoted first and foremost to the signage referred to in Paragraph 6 above.
8. The School District shall not be liable for failure to perform any duty or obligation under this Agreement, if such failure is occasioned by any act of God, unavoidable casualty to Higby Park, fire, inevitable accident, war, terrorist attack (or threat thereof), or any other cause outside the District's reasonable control; provided, however, that the District shall resume performance in accordance with the otherwise applicable terms and conditions of this Agreement as soon as practicable following abatement of such cause. It is expressly understood

that the inability to ultimately develop the park, subject to the good faith efforts of the School District to do so, shall not constitute a breach of this Agreement.

9. The School District understands that a breach of this Agreement by the School District may result in irreparable harm to the Foundation. Accordingly, in the event of a breach or threatened breach of any of the provisions hereof by the School District, the Foundation shall be entitled to appropriate equitable relief, including injunctive relief and specific performance, in addition to any other remedy available at law. This Agreement is an agreement between the School District and the Foundation for the mutual benefit of the parties and no entities other than the School District and the Foundation will be a third party beneficiary or will have any claim against the School District by virtue of this Agreement.

10. This Agreement shall commence as of the School District's acceptance of the Real Property and shall continue in effect until expiration of all Naming Obligations in accordance with their respective terms.

11. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the remaining provisions of this Agreement shall not be affected, and such provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.

12. This Agreement represents the entire understanding of the parties with respect to its subject matter, and it supersedes all prior agreements, understandings or representations, whether oral or written, by either party. No amendment or modification of this Agreement, or waiver of any provision hereof, shall be valid or enforceable unless made in writing and signed by the parties.

13. This Agreement shall be construed in accordance with the laws of the State of New York.

[signature page follows]

IN WITNESS WHEREOF, the parties set forth their hands as of the date first above written.

NEW HARTFORD CENTRAL SCHOOL
DISTRICT FOUNDATION

By: Andrea F. Dimerstein
Name: Andrea F. Dimerstein
Title: President - NHCSDF Foundation

NEW HARTFORD CENTRAL SCHOOL
DISTRICT

By: [Signature]
Name:
Title: