

Draft

TENANCY IN COMMON AGREEMENT

THIS TENANCY IN COMMON AGREEMENT (this "Agreement") is made this _____ day of _____, 2021 (the "Effective Date"), by and between the **VILLAGE OF ELK RAPIDS**, a Michigan municipal corporation, whose address is 315 Bridge Street, P.O. Box 398, Elk Rapids, Michigan 49629 (the "Village"), and the **TOWNSHIP OF ELK RAPIDS**, a Michigan municipal corporation, whose address is 315 Bridge Street, P.O. Box 365, Elk Rapids, Michigan 49629 (the "Township", and together with the Village, may be referred to herein collectively as "Co-Tenants" and individually, as a "Co-Tenant").

WITNESSETH:

- A. Katharine Dexter McCormick ("**Donor**") donated to the Village certain real property located in Antrim County, Michigan, more particularly described in attached Exhibit A (the "**Property**"), pursuant to that certain Deed dated as of April 29, 1948, and recorded on May 18, 1945, in Liber 103, Page 298, Antrim County Register of Deeds (the "**Village Deed**"). The Deed is subject to a restriction limiting the Property to use by the public as a park, library, place of assembly, village hall, or for community center purposes generally (the "**Deed Restriction**").
- B. The electors of the Village voted by annual election held on March 14, 1960, for the Village to convey a one-half undivided interest in the Property to the Township. Such conveyance was effected through that certain Deed dated as of May 9, 1960, and recorded on May 25, 1960, in Liber 134, Page 403, Antrim County Register of Deeds (the "**Township Deed**"). The Township Deed is subject to the Deed Restriction.
- C. Donor consented to the foregoing conveyance pursuant to that certain Affidavit of Katharine Dexter McCormick dated April 21, 1959, and recorded on March 29, 1961, in Liber 139, Page 345, Antrim County Register of Deeds.
- D. Co-Tenants desire to enter into this Agreement for purposes of, among other things, setting forth their respective rights and obligations with respect to the ownership, management, development, operation, repair, maintenance, leasing and disposition of the Property and any improvements constructed thereon from time to time.
- E. Notwithstanding the interest of the parties in the efficient management and operation of the Property, the parties specifically intend to hold their respective interests as tenants

in common, independent of each other with no restrictions on sale and not as partners, joint adventurers or members in a common entity.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Co-Tenants agree as follows:

1. **Ownership Interest.** Each Co-Tenant owns the following individual interests in the property:

Township	50%
Village	50%

2. **Term.** The term of this Agreement shall continue until the first to occur of the following:

- a) Upon the sale by all Co-Tenants of their entire interest in the Property if determined that the Property is no longer needed for a public purpose in accordance with the statutes of the State of Michigan and the Deed Restriction;
- b) The acquisition by one Co-Tenant of the entire interest in the Property after it is determined that the Property is no longer needed for a public purpose in accordance with the statutes of the State of Michigan and the Deed Restriction;
- c) The written consent of all Co-Tenants; or
- d) The date that is four (4) years after the Effective Date.

3. **Maintenance.** The Village, at the Village's sole cost and expense, shall be responsible for all maintenance, repair, and replacement of the Property and all improvements located thereon, including, without limitation, landscaping and snow removal.

4. **Use; Leasing; Revenue.** The Village shall have the exclusive right to use, manage, operate and/or lease the Property and to collect and retain all rent and other revenue therefrom during the term of this Agreement, provided that all such uses by the Village shall be consistent with the Deed Restriction and the statutes of the State of Michigan. The Village shall not make any use of the Property which is contrary to applicable law, permit anything to be done which constitutes a nuisance, or commit or suffer to be committed any waste upon the Premises.

5. **Insurance.** The Village, at the Village's sole cost and expense, shall provide and keep in force during the term hereof (i) a commercial general liability insurance policy providing coverage for bodily injury, personal injury, sickness and death, and property damage, loss and destruction, resulting from each occurrence on the Property, with the limits of at least Two Million Dollars (\$2,000,000) per occurrence, and (ii) an umbrella liability policy with limits of at least Five Million Dollars (\$5,000,000). Such policies shall name the Township as an additional named insured. The Village shall provide the Township with certificates indicating that the insurance is in effect from time to time upon written request.

6. **Taxes.** The Property is exempt from real property taxes as of the Effective Date. To the extent applicable, Village shall be responsible for the payment of (i) all real property ad valorem taxes levied against the Property, (ii) all special assessments levied against the Property, and (iii) taxes levied on any personal property located on the Property.
7. **Notices.** Any and all notices provided for in this Agreement shall be given in writing and delivered in person or by registered or certified mail, return receipt requested, or by a nationally recognized courier which guarantees next business day delivery, addressed to the relevant Co-Tenant at its address set forth above.
8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and upon their successors or assigns.
9. **Entire Agreement.** This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between the Co-Tenants. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as set forth in this Agreement. No alteration, amendment, change or addition to this Agreement shall be binding upon the Co-Tenants unless reduced to writing and signed by all of the Co-Tenants whose names appear below.
10. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Michigan.
11. **Transfer Tax.** This Agreement is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively.
12. **Titles and Subtitles/Severability.** Titles of the paragraphs of this Agreement are for convenience only and shall not have the effect of modifying, amending or changing the expressed terms and provision of this Agreement. In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the voided parts were deleted.
13. **Counterparts/Waiver.** This Agreement may be executed in any number of counterparts, each of which shall be taken as the original. No waiver of any provisions of this Agreement shall be valid unless in writing or signed by the person or party against whom charged.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first above written.

CO-TENANTS:

VILLAGE OF ELK RAPIDS,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____

STATE OF MICHIGAN)
)
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by _____, the _____ of the Village of Elk Rapids, a Michigan municipal corporation, on behalf of the corporation.

Notary Public, _____ County, Michigan
My commission expires: _____
Acting in the County of: _____

TOWNSHIP OF ELK RAPIDS,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____

STATE OF MICHIGAN)
)
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by _____, the _____ of the Township of Elk Rapids, a Michigan municipal corporation, on behalf of the corporation.

Notary Public, _____ County, Michigan
My commission expires: _____
Acting in the County of: _____

Drafted by and after Recording Return to:
Matthew D. Zimmerman, Esq.
Varnum LLP
PO Box 352
Grand Rapids, MI 49501-0352
616-336-6000

18646875

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The land referred to herein below is situated in Antrim County, State of Michigan, and is described as follows:

Government Lot Four (4) of Section Twenty (20) in Town Twenty-Nine (29) North of Range 9 West and containing four and eighty-two one hundredths (4.82) acres of land, more or less, according to the United States survey thereof, including all easements, rights of way and private roads, appurtenances thereto, and burdens in connection therewith, as specified in detail in the deed from Elk Rapids Iron Company to Josephine Dexter dated April 10, 1926, and recorded in the office of the Register of Deeds for Antrim County in Liber 67 of deeds on pages 385 et seq.

Also, a piece of land situated on Lot one (1) of Section twenty (20) in said Town Twenty-Nine (29), North of Range Nine (9) West, described as follows: Commencing on the North line of River Street of the Village of Elk Rapids at a point on the North line of River Street, twenty (20) feet West of West line of Pine Street extended north to the North line of said River Street, thence run North fifteen degrees (15°) East parallel to the said West line of Pine Street extended North to the North shore of Elk River; thence run Easterly along the North shore of said Elk River to a point where the East line of said Pine Street extended North would intersect the North shore of said Elk River; thence run south fifteen degrees West (15° W) along the said East line of said Pine Street so extended North to the North line of River Street; thence run Westerly along the North line of River Street to the place of beginning, subject, however, to the right and easement of the Village of Elk Rapids and its successors, to maintain a sewer along the westerly part of said parcel of land.

Tax Parcel No. 05-43-020-005-00