

NONEXCLUSIVE ACCESS AND USE EASEMENT

THIS NONEXCLUSIVE ACCESS AND USE EASEMENT (the "Easement") is made this _____ day of _____, 2010, by and between the **CITY OF ROCHESTER HILLS**, a Michigan municipal corporation, whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309 (hereinafter the "Grantor"), and the **ROCHESTER COMMUNITY SCHOOL DISTRICT**, a Michigan general powers school district, whose address is 501 W. University Drive, Rochester, Michigan 48307 (hereinafter the "Grantee").

RECITALS:

A. On the same date as this Easement, Grantee has conveyed to Grantor approximately 0.676 acres of land legally described as Lots 23 and 24, Stoney Creek, as recorded in Liber 3, Page 21 of Plats, Oakland County Records, Parcel ID No. 15-01-352-007, and commonly known as 1045 Washington Road, Rochester Hills, Michigan 48306 (the "Premises").

B. The Premises are improved with a school building and associated structures, parking lots and an access drive (the "Improvements"). The school building located on the Premises has been designated a historical site by the State of Michigan (the "Premises" and "Improvements" are hereinafter referred to as the "School").

C. As part of the consideration of the transfer of the School by Grantee to Grantor, Grantee desired to retain a perpetual nonexclusive access and use easement over the School to enable the Grantee to use the School and the Improvements for its educational purposes.

D. Grantor has agreed to grant Grantee such access and use easement upon the terms and conditions set forth herein.

E. This Easement is exempt from real estate transfer taxes pursuant to MCL §207.505(h), and §207.526(h)(i), being a transfer where grantor is a municipality of the State of Michigan.

NOW, THEREFORE, in consideration of the foregoing, the execution of this Easement by the parties hereto, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, it is agreed as follows:

1. **Access Easement; Use.** Grantor grants to Grantee a permanent, nonexclusive easement over the School to enable the Grantee to use the School for its educational purposes at the times mutually agreeable to the Grantor and Grantee. This Easement shall be for the benefit of the Grantee and the School may be used only for educational/historical purposes in connection with the activities and operations of the Grantee. This Easement may be terminated by the Grantee at any time, in its sole and absolute discretion, by filing/recording the appropriate documentation with the Oakland County Register of Deeds.

2. **Scheduling Use of School.** Grantee shall contact the Grantor's Representative of the Rochester Hills Museum in order to notify the Grantor and schedule usage of the School. On or before June 1st of each year, the Grantee shall provide to the Grantor the Grantee's request for use for the next school year. After May 1st, the Grantor shall have the ability to schedule use as needed, and any additional requests for by Grantee will be on an "as available" basis.

3. **Encumbrances.** Grantee acknowledges that the easement granted herein is subject to all easements, rights-of-way, building, use and occupancy restrictions and all other restrictions and encumbrances affecting the School. Grantee further acknowledges that Grantor may grant other easements and encumbrances over the School, provided that they do not interfere with Grantee's use of the School.

4. **Reservation of Rights.** Grantor reserves for itself and its successors and assigns, the right to use the School that would not interfere with the uses permitted to Grantee hereunder.

5. **Maintenance of School.** The Grantor shall use and maintain the School as a historical school site (and such other educational, historical, cultural, recreational and community use and programs not inconsistent with the current historical school site use), including, but not limited to: (i) maintenance and repair of the Improvements; (ii) maintenance and upkeep of the Premises (including snow removal, grass cutting, landscaping etc.); (iii) all custodial and other cleaning requirements; and (iv) repair and replacement of any electrical, plumbing and mechanical systems and components.

6. **Grantee's Insurance Requirements.** At all times during the term of this Easement, Grantee shall purchase and maintain liability insurance of the types and in the amounts normally carried by the Grantee for its educational operations. Insurance policies shall afford primary coverage only for the purpose and to the extent of Grantee's activities on the School and the Grantor shall be named as an additional insured on all applicable insurance policies. All such uses of the School by the Grantor or its authorized users in accordance with this Easement shall not be covered by any insurance policies of the Grantee. All such policies shall contain a provision that the coverages afforded shall not be modified or canceled until at least ten (10) days prior written notice has been given to the Grantor.

7. **Consideration for Easement.** In consideration for the Easement, Grantee agrees to pay Grantor Ten Thousand and 00/100 Dollars (\$10,000.00) per year during the first three (3) years this Easement is in effect (2010/2011; 2011/2012; 2012/2013) to offset the cost of utilities and custodial services for the School (the "Initial Fee"). The Grantee shall pay the Initial Fee to the Grantor by September 1 of each respective year. At the end of this three (3) year period, the Grantee shall pay to the Grantor, by September 1 of each year, the amount of Four Thousand and 00/100 Dollars (\$4,000.00) for the Grantee's continued use of the School (the "Annual Fee") for the next seven (7) school fiscal years (ending at the 2019/2020 school fiscal year). Prior to the end of the 2019/2020 school fiscal year, the Grantor and Grantee shall convene to negotiate and establish a mutually agreeable new annual fee for subsequent years, provided however, that any new annual fee shall not exceed \$4,000.00 (as that amount may be adjusted for inflation in the year 2020). It is understood by the Grantor and Grantee that if the Grantor's operation of the School is self-sustaining (through rentals or other permitted usage), the new annual fee to be paid by the Grantee shall be substantially reduced, with the intent of the Grantor and Grantee being the new annual fee being reduced to Zero and 00/100 Dollars(\$0.00).

8. **Notices.** Any notice desired or required to be given to Grantor under this Easement, except for notices regarding scheduling set forth above, shall be sent postage prepaid, registered or certified mail, return receipt requested, to the following address:

City of Rochester Hills
Attention: Rochester Hills Museum Director
1005 Van Hoosen Road
Rochester Hills, Michigan 48306

Any notice desired or required to be given to Grantee under this Easement shall be sent postage prepaid, registered or certified mail, return receipt requested, to the following address:

Rochester Community School District
Attn: Assistant Superintendent for Business
501 W. University
Rochester, Michigan 48307

Either party may, by written notice, designate a different address to which notices may be sent and, by written notice, designate not more than one additional party to whom copies of all notices must be sent.

9. **Successors and Assigns.** The nonexclusive easement granted herein, and the rights and obligations set forth herein, shall run with the land and be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and permitted assigns.

10. **Severability.** The invalidity or unenforceability of any provision of this Easement shall not affect or impair the validity or enforceability of any other provision or term hereof.

11. **Entire Agreement.** This Easement, including attached Exhibits, if any, contains the entire agreement between the parties and all of the terms and conditions to which the parties have agreed and supersedes all prior oral or written agreements or understandings concerning the subject matter.

12. **Exhibits.** All exhibits referred to herein and attached hereto are incorporated by this reference and shall be deemed part of this Easement.

13. **Governing Law.** This Easement shall be construed in accordance with the laws of the State of Michigan and any applicable federal laws and regulations.

14. **Waiver.** No waiver of any term or condition of this Easement shall be valid or binding on either party unless the same shall have been mutually assented to in writing by both parties. The failure of either party to enforce at any time any of the provisions of this Easement, or the failure to require at any time performance by the other party of any of the provisions of this Easement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.

15. **Recording of Easement.** This Easement shall be executed in recordable form and shall be recorded with the Oakland County, Michigan Register of Deeds.

16. **Grantee Representative.** The Grantee shall appoint an individual to act as the Grantee's representative, who will be required to attend meetings of the Grantor's museum board four (4) times per year.

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

CITY OF ROCHESTER HILLS

By: _____

Its: _____

ROCHESTER COMMUNITY SCHOOL DISTRICT

By: _____

Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ___ day of _____ 2010, by _____, the _____ of the Rochester Community School District, a Michigan general powers schools, on behalf of said school district.

Notary Public, State of Michigan, County of ____
My commission expires: _____.
Acting in the County of Kent.

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this ___ day of _____ 2010, by _____, the _____ of the City of Rochester Hills, a Michigan municipal corporation, on behalf of said municipal corporation.

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

This Instrument Drafted By:
Jeremy S. Motz, Esq.
CLARK HILL PLC
151 S. Old Woodward Ave., Suite 200
Birmingham, MI 48009

When Recorded Return to:
Grantee

Recording Fee: _____
Transfer Tax: *Exempt pursuant to MCL 207.505(h) and 207.526(h)(i)*