

AMENDMENT TO SHARED COSTS AND MAINTENANCE AGREEMENT

THIS AMENDMENT is entered into as of the ____ day of _____, 2019, by and among MARTHA'S VINEYARD COMMUNITY SERVICES, INC., a Massachusetts non-profit corporation with an address of 111 Edgartown Road, Oak Bluffs, MA 02557 ("MVCS"), ISLAND ELDERLY HOUSING, INC., a Massachusetts non-profit corporation with an address of 60 B Village Road, Oak Bluffs, MA 02557 ("IEH"), and YMCA OF MARTHA'S VINEYARD, INC., a Massachusetts non-profit corporation with an address of 111R Edgartown Vineyard Haven Road, Vineyard Haven, MA 02568 ("YMCA").

WHEREAS, MVCS and IEH are parties to that certain Shared Costs and Maintenance Agreement dated as of April 6, 1992 and recorded with the Dukes County Registry of Deeds, Book 591, Page 51 (the "Agreement"), regarding their agreement to share the costs of repair and maintenance of the Existing Road (as defined in the Agreement) located on property owned by Martha's Vineyard Regional High School District Committee, a body politic (the "School District"), a portion of which property is leased from the School District to MVCS pursuant to the Original Lease and Amendment to Lease (each as defined in the Agreement), as amended by that certain _____ dated _____ and recorded with said Deeds, Book _____, Page _____ (as amended, the "MVCS Lease") and for which Existing Road and Extension (as defined in the Agreement) IEH holds an easement from the School District as set forth in that certain Easement dated as of January 7, 1991 and recorded with said Deeds, Book 591, Page 47 (as amended from time to time, the "IEH Easement");

WHEREAS, pursuant to Paragraph C of the Amendment to Lease, the School District may grant additional parties non-exclusive rights to use the Existing Road together with MVCS and other easement holders, in which event such additional parties shall participate with MVCS and such easement holders in the sharing of costs of maintenance of the Existing Road;

WHEREAS, pursuant to that certain Ground Lease dated November 6, 2006, a notice of which ground lease is recorded with said Deeds, Book 1213, Page 256 (the "YMCA Ground Lease"), YMCA ground leases certain property owned by the School District and located adjacent to the Existing Road;

WHEREAS, YMCA desires to become a party to the Agreement by entering into this Amendment in order to participate in such cost-sharing pursuant to Paragraph C of the Amendment to Lease;

WHEREAS, under and in accordance with the terms of the IEH Easement, IEH has constructed the Extension;

WHEREAS, under the terms of Section 3 of the Agreement, MVCS may use a portion of the Extension for access to a driveway entrance across the northerly boundary of the MVCS premises subject to the MVCS Lease (the "MVCS Leased Premises"), and, pursuant the MVCS Lease, MVCS intends to so use a portion of the Extension for access to one or more driveway entrances across the northerly boundary of the MVCS Leased Premises; and

WHEREAS, MVCS and IEH desire to amend the Agreement to provide for the addition of YMCA as a party thereto and to establish each party's proportionate share of the costs of repair and maintenance of the Existing Road and the Extension (together, the "Road") as set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MVCS and IEH hereby amend the Agreement, and MVCS, IEH and YMCA agree as follows:

1. Capitalized Terms. Capitalized terms used in this Amendment but not otherwise defined or modified herein shall have the meaning ascribed to such terms in the Agreement.

2. YMCA as a Party. YMCA, for itself and its successors and assigns under the YMCA Ground Lease, hereby agrees to be bound by the terms of the Agreement as amended by this Amendment.

3. Sharing of Maintenance and Repair Costs. Section 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

“3.1 IEH, MVCS and YMCA agree to maintain and repair the portion of the Existing Road shown as "Tri-Party Area" on the sketch plan attached to this Amendment as Exhibit A and to share the costs of maintaining and repairing the same ("Maintenance Costs"). Commencing on the date of this Amendment and continuing through the duration of the YMCA Ground Lease and any extensions thereof, MVCS, IEH and YMCA shall each pay one third (1/3) of all such Maintenance Costs, as and when such Maintenance Costs are incurred. Following the expiration or earlier termination of the YMCA Ground Lease and any extensions thereof, MVCS and IEH shall each pay one half (1/2) of all such Maintenance Costs through the duration of the MVCS Lease and any extensions thereof.

3.2 During any period when one or more additional parties other than MVCS, IEH or YMCA (collectively, the "Additional Tri-Party Area Parties") is obligated to contribute to Maintenance Costs incurred for the Tri-Party Area, under the MVCS Lease, the YMCA Ground Lease or one or more separate agreements with MVCS, IEH or YMCA (collectively, the "Additional Tri-Party Area Agreements"), MVCS, IEH and YMCA shall each pay one third (1/3) of the sum arrived at by subtracting from the sum of all such Maintenance Costs incurred, the amount, if any, which represents the total amount which Additional Tri-Party Area Parties are obligated to contribute to such Maintenance Costs under Additional Tri-Party Area Agreements. Following the expiration or earlier termination of the YMCA Ground Lease and any extensions thereof, MVCS and IEH shall each pay one half (1/2) of all such Maintenance Costs through the duration of the MVCS Lease and any extensions thereof.

3.3 MVCS and IEH agree to maintain and repair the portion of the Extension shown as the "MVCS Additional Access Area" on the sketch plan attached to this Amendment as Exhibit B and to share the Maintenance Costs associated with the same.

Commencing on the date of this Amendment and continuing for as long as MVCS continues to use the MVCS Additional Access Area to access the MVCS Leased Premises, MVCS and IEH shall each pay one half (1/2) of all such Maintenance Costs, as and when such Maintenance Costs are incurred.

3.4 During any period when one or more third parties other than MVCS or IEH (collectively, the “Additional MVCS Access Area Parties”) is obligated to contribute to Maintenance Costs incurred for the MVCS Additional Access Area, under the MVCS Lease, the YMCA Ground Lease or one or more separate agreements with MVCS, IEH or YMCA (collectively, the “Additional MVCS Access Area Agreements”), MVCS and IEH shall each pay one half (1/2) of the sum arrived at by subtracting from the sum of all such Maintenance Costs incurred, the amount, if any, which represents the total amount which Additional MVCS Access Area Parties are obligated to contribute to such Maintenance Costs under Additional MVCS Access Area Agreements.

3.5 The Road will be maintained in a condition reasonably comparable to its condition as of the date of this Amendment. All maintenance and repair work on the Road shall be performed in a good, safe, reasonable, expeditious and workmanlike manner, without unreasonable interference with the use thereof by any party hereto or access to the property owned by IEH or the property subject to the MVCS Lease or the YMCA Ground Lease, respectively, free of liens and in compliance with all applicable laws, statutes, ordinances, orders and regulations.

3.6 IEH shall, in the first instance, perform or cause to be performed all maintenance and repair work on the Road as reasonably necessary for the use thereof pursuant to the requirements of this Agreement, including snow removal as reasonably required. Upon completion of any such maintenance and repair work, (i) MVCS shall pay to IEH, within thirty (30) days after receipt of an invoice therefor from IEH, (A) fifty (50%) of the costs thereof allocable to maintenance or repair of the MVCS Additional Access Area and (B) thirty-three and 33/100 percent (33.33%) of the costs thereof allocable to maintenance or repair of the Tri-Party Area, and (ii) YMCA shall pay to IEH, within thirty (30) days after receipt of an invoice therefor from IEH, thirty-three and 33/100 percent (33.33%) of the costs thereof allocable to maintenance or repair of the Tri-Party Area. Following the expiration or earlier termination of the YMCA Ground Lease and any extensions thereof, MVCS and IEH shall each pay one half (1/2) of all such Maintenance Costs through the duration of the MVCS Lease and any extensions thereof.

3.7 In the event that IEH does not perform or cause to be performed the maintenance or repair work required under this Section 3 within ten (10) days after receipt of notice thereof from either MVCS or YMCA, then either MVCS or YMCA may perform or cause to be performed such maintenance or repair work, and IEH shall pay to the such performing party, within thirty (30) days following receipt of an invoice therefor from such performing party, (i) fifty percent (50%) of the costs thereof allocable to the MVCS Additional Access Area and (ii) thirty-three and 33/100 percent (33.33%) of the costs thereof allocable to the Tri-Party Area. Following the expiration or earlier

termination of the YMCA Ground Lease and any extensions thereof, MVCS and IEH shall each pay one half (1/2) of all such Maintenance Costs through the duration of the MVCS Lease and any extensions thereof.

3.8 At no time shall MVCS be obligated to pay any sums for the cost of construction of the Extension nor for repair or maintenance of the Extension other than the MVCS Additional Access Area as provided above.

3.9 At no time shall YMCA be obligated to pay any sums for the cost of construction of the Extension nor for repair or maintenance of the Existing Road or the Extension other than the Tri-Party Area as provided above.”

4. Dispute Resolution. Section 4 of the Agreement is hereby amended by adding at the end thereof after the words “IEH and MVCS” the words “and YMCA.”

5. Binding Agreement. Section 5 of the Agreement is hereby deleted in its entirety and replaced with the following:

“The Agreement as amended shall be binding upon and inure to the benefit of IEH and its successors in title and shall run with the land which is described in the IEH Easement and the IEH Deed for so long as the IEH Easement is in effect. The Agreement as amended shall be binding upon and inure to the benefit of MVCS and its successors and assigns under the MVCS Lease for the duration of the MVCS Lease and any extensions thereof. The Agreement as amended shall be binding upon and inure to the benefit of YMCA and its successors and assigns under the YMCA Ground Lease for the duration of the YMCA Ground Lease and any extensions thereof.”

6. Indemnification.

6.1 IEH shall indemnify and hold harmless MVCS and YMCA from and against any and all claims of loss or damage, including reasonable attorney’s fees, arising from the use of the Road by IEH, its employees, agents, contractors, lessees, licensees, or invitees.

6.2 MVCS shall indemnify and hold harmless IEH and YMCA from and against any and all claims of loss or damage, including reasonable attorney’s fees, arising from the use of the Road by MVCS, its employees, agents, contractors, lessees, licensees, or invitees.

6.3 YMCA shall indemnify and hold harmless IEH and MVCS from and against any and all claims of loss or damage, including reasonable attorney’s fees, arising from the use of the Road by YMCA, its employees, agents, contractors, lessees, licensees, or invitees.

6.4 Nothing herein shall be construed to impose upon the parties to this Amendment any liability for indirect, consequential, punitive or other special damages.

7. Miscellaneous. The following provisions shall apply with respect to this Amendment:

7.1 No amendment, modification, encumbering, subordination, termination or cancellation of the Agreement shall be effective until an instrument of amendment, modification, encumbrance, subordination, termination or cancellation signed by IEH, MVCS and YMCA is recorded. The Agreement as amended by this Amendment contains the entire understanding of the parties with respect to the subject matter contained herein, and supersedes any prior or contemporaneous terms, representations, statements, or agreements, whether made orally or in writing, with respect to said subject matter.

7.2 No delay or omission by IEH, MVCS or YMCA in the exercise of any right accruing under the Agreement as amended shall impair such right or be construed to be a waiver thereof, unless expressly waived in writing. A waiver by IEH, MVCS or YMCA of a breach of, or a default in, any of the terms and conditions of the Agreement as amended shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of the Agreement as amended. Exercise by IEH, MVCS or YMCA or the beginning of the exercise by any such party, of any one or more of the rights or remedies provided for in the Agreement as amended, or now or hereafter existing at law or in equity, shall not be considered as an election of remedies so as to preclude the simultaneous or subsequent exercise by such party of any other right or remedy for such breach.

7.3 If any term or provision of the Agreement as amended or the application thereof to any person or circumstance shall, to any extent, be declared to be invalid or unenforceable, then the remainder of the Agreement as amended or the application of such term or provision to other persons or circumstances, other than those as to which it would become invalid or unenforceable, shall not be affected thereby, and each term and provision of the Agreement as amended shall be valid and enforceable to the fullest extent permitted by law.

8. Remaining Terms of the Agreement. Except to the extent modified by this Amendment, the Agreement remains in full force and effect. To the extent of any inconsistency between this Amendment and the Agreement, the terms and conditions of this Amendment shall control.

9. Counterpart Signatures. This Amendment may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one document.

10. Incorporation. This Amendment shall be incorporated into and made a part of the Agreement, and all provisions of the Agreement not expressly modified or amended hereby shall remain in full force and effect.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, MVCS, IEH and YMCA have executed this Amendment as of the date first written above.

MARTHA'S VINEYARD COMMUNITY SERVICES, INC.

By: _____
Name: _____
Title: _____

ISLAND ELDERLY HOUSING, INC.

By: _____
Name: _____
Title: _____

YMCA OF MARTHA'S VINEYARD, INC.

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

Before me, the undersigned notary public, on this ____ day of _____, 2019, personally appeared _____, who is personally known to me or was proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the person whose name is signed to the foregoing instrument and acknowledged to me that [he/she] signed it voluntarily as [his/her] free act and deed and the free act and deed of Martha's Vineyard Community Services, Inc., as _____ of Martha's Vineyard Community Services, Inc., for its stated purpose.

[notary seal]

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

Before me, the undersigned notary public, on this ____ day of _____, 2019, personally appeared _____, who is personally known to me or was proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the person whose name is signed to the foregoing instrument and acknowledged to me that [he/she] signed it voluntarily as [his/her] free act and deed and the free act and deed of Island Elderly Housing, Inc., as _____ of Island Elderly Housing, Inc., for its stated purpose.

[notary seal]

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

Before me, the undersigned notary public, on this ____ day of _____, 2019, personally appeared _____, who is personally known to me or was proved to me through a current document issued by a federal or state government agency bearing a photographic image of the signatory's face and signature, to be the person whose name is signed to the foregoing instrument and acknowledged to me that [he/she] signed it voluntarily as [his/her] free act and deed and the free act and deed of YMCA of Martha's Vineyard, Inc., as _____ of YMCA of Martha's Vineyard, Inc., for its stated purpose.

[notary seal]

EXHIBIT A

Sketch Plan – Tri-Party Area

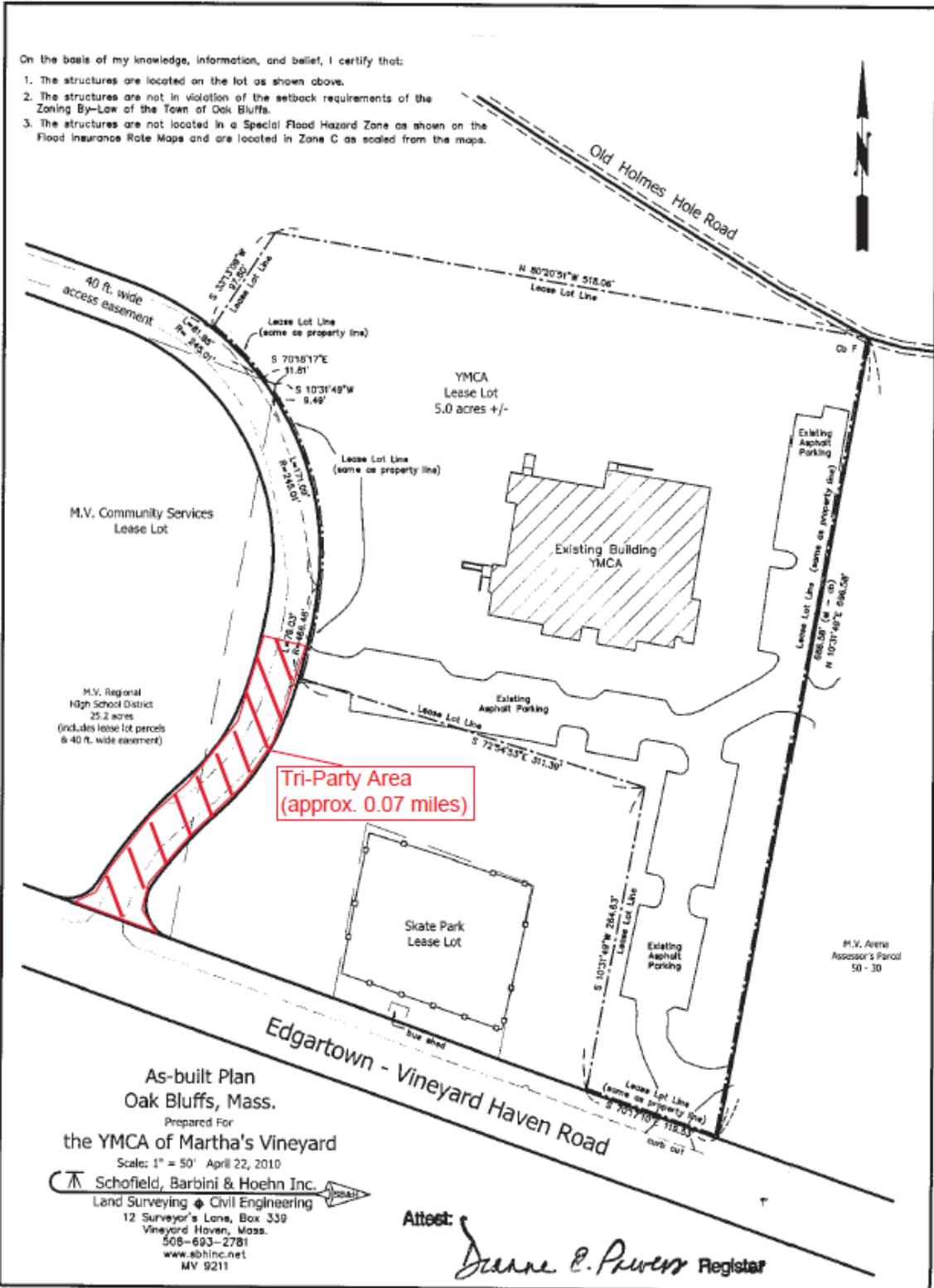


EXHIBIT B

Sketch Plan – MVCS Additional Access Area

