

## LEASE AGREEMENT

LEASE made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between **ACME TOWNSHIP**, a Michigan Township, whose address is 6042 Acme Road, Williamsburg, MI 49690, hereinafter referred to as "Acme"; and **GRAND TRAVERSE METRO FIRE DEPARTMENT**, an Intergovernmental Fire Department formed by the Townships of Acme, East Bay, and Garfield, whose address is 897 Parsons Road, Traverse City, MI 49686, hereinafter referred to as "Metro."

### **RECITALS**

- A. Acme owns the improved real property described in Section 1 (which is herein referred to as the "Premises").
- B. Metro desires to rent the Premises from Acme to operate a fire station on the Premises.
- C. Acme desires to rent the Premises to Metro on the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, the parties mutually agree as follows:

### **AGREEMENT**

1. **Premises.** Acme hereby leases to Metro and Metro hereby rents from Acme a portion of the premises situated in the Township of Acme, County of Grand Traverse and State of Michigan, more particularly identified as the fire station portion of the building located at 6042 Acme Road, Williamsburg, MI 49690, not including the office currently used as a community policing office. (A diagram of the premises depicting the rental premises is attached hereto and incorporated herein by reference.) The leased area shall be referred to as "the Premises."
2. **Term.** The original term of this Lease shall be for a period of one (1) year, commencing on January 1, 2008, and continuing until December 31, 2008, regardless of actual entry date, subject to the provisions of this Lease. This Lease shall be automatically extended for periods of one (1) year so long as Metro is in full compliance with all of the covenants and conditions contained in this Lease, unless either party presents notice to the other of an intent to terminate the Lease, which notice must be given in writing not less than one hundred twenty (120) days prior to date of termination of any existing term.
3. **Fixed Annual Rent.** The fixed annual rent for the Premises during the term of this Lease shall be One Dollar (\$1.00), payable by Metro to Acme.
4. **Assignment and Subletting.** Metro may not assign this Lease or any part thereof or sublet the demised premises or any part thereof without written consent of Acme. If Metro dissolves or if Acme, East Bay, or Garfield Township withdraws from Metro, then there shall be deemed to be an assignment of this Lease, which assignment shall require the prior written consent of Acme. Assignment of this lease without Acme's consent constitutes a breach of this lease.

5. **Utilities.** Metro shall pay all charges for electricity, heat, telephone, sewer, water, gas, waste collection, and all other utilities used on the Premises during the term of this Lease. Further, any cable or satellite reception intended for Metro's use of the Premises shall also be its obligation and expense. The parties acknowledge that the Premises is part of a building also used by Acme for Township offices and other purposes, and utilities are generally not separately metered. Therefore, Acme and Metro will allocate the apportionment of utility costs on an annual basis by separate agreement, a copy of which is attached hereto and incorporated herein by reference. Annual updates to this attachment will be by mutual agreement.

6. **Use of Premises.** Metro shall use and occupy the Premises for the purpose of operating a fire station, together with any use consistent with fire services provided by Metro, and for no other purpose without the prior written consent of Acme. Acme represents to Metro that the Premises are suitable for Metro's intended use. Metro agrees to keep the premises clean and neat at all times and deliver same to Acme at the end of the term in like condition as when occupied, ordinary wear and tear and damage by the elements excepted.

7. **Maintenance and Repair.** Metro shall, at its expense, maintain the interior of the Premises, including glass windows, in good repair and condition. Metro shall also be responsible for repairs of items located completely on the Premises.

Acme shall retain responsibility for repairs to common elements (i.e. those structures and systems servicing the Premises but also utilized by other areas of the building, including but not necessarily limited to the boiler, roof, and plumbing and electrical systems) which shall be allocated as follows: On a prorated basis 30% of the cost of repair to be paid by Acme and 70% to be paid by Metro. Acme shall be responsible for contracting for the repairs, and shall invoice Metro its appropriate share after submitting the proposed repair to Metro for approval in advance of completing the repairs; said approval shall not be unreasonably withheld.

Notwithstanding the above, for any repair or capital investment paid for by Metro which exceeds the cost of \$10,000, Metro's pro rata portion of the repair or improvement shall be amortized over 20 years, and in the event that this lease terminates within twenty (20) years of such repair, Acme shall reimburse Metro an amount equal to 1/20 of the cost of the repair or capital investment for each year remaining in the amortization schedule.

Acme and Metro will allocate the apportionment of costs for yard maintenance and snow removal by separate agreement referenced in paragraph 5 herein.

8. **Insurance.** Metro agrees to procure at its own expense a liability insurance policy with limits equal to similarly situated premises, and Metro shall name Acme Township, Garfield Township, and East Bay Township as additional insureds to said policy, which shall require notice of fifteen (15) days to Acme prior to cancellation. Metro shall also provide Acme with a copy of said policy during the term of this Lease. Further, Acme shall pay the costs of all fire, extended coverage and other hazard insurance on the building and Metro shall pay the costs of all insurance carried upon the contents of the building or property brought on the premises by Metro.

9. **Waiver of Subrogation.** Acme and Metro hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property caused by fire or any of the extended coverage perils, even if such fire or other casualty shall have been caused by the fault or negligence of the other party or anyone for whom such party may be responsible; provided, however, that this

waiver shall be applicable and in force and effect only with respect to loss or damage occurring during such time as Acme and Metro policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releaser to recover thereunder.

10. **Mutual Indemnification**. Metro will indemnify and defend Acme against all claims for bodily injury or property damage relating to its use of the Premises. The claims covered by this indemnification include all claims for bodily injury or property damage relating to (a) the condition of the Premises; (b) the misuse of the Premises by Metro, its agents, contractors, or invitees; or (c) any event on the Premises, whatever the cause. Metro's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Acme or for Acme's intentional misconduct. Acme will indemnify and defend Metro against all claims for bodily injury or property damage relating to the Acme's portion of the property. Claims covered by this indemnification include all claims for bodily injury or property damage relating to (a) the condition of Acme's portion of the property; (b) the use or misuse of Acme's portion of the property by Acme or its agents, contractors or invitees; or (c) any event within Acme's portion of the property whatever the cause. Acme's indemnification does not extend to liability for damages resulting from the sole or gross negligence of Metro or for Metro's intentional misconduct. For purposes of this paragraph, "Acme's portion of the property" includes areas of the building housing the fire station and township offices and the property on which it sits that are not defined as "the Premises" in paragraph 1.

11. **Trade Fixtures and Alterations**. Metro may, at its option, improve the area described herein with fixtures and appurtenances providing, however, that prior written approval for the same has been obtained from Acme, and said approval shall not be unreasonably withheld. Trade fixtures and equipment brought into the leased premises shall not be considered as improvements, and shall remain the property of Metro subject to removal at the expiration of the lease term, and any extension.

12. **Destruction of Premises**. If the demised premises shall be partially destroyed by fire or by the elements, then Metro's obligations shall be abated until the premises have been put in complete repair, unless such partial destruction by fire or the elements shall not make the premises entirely unusable by Metro, in which event Metro shall perform related obligations as to the part of the premises that may be used for Metro's business. Acme may elect whether or not to repair the premises.

If the demised premises are totally destroyed by fire or the elements, Metro and Acme shall each have the option of canceling this Lease. If Acme elects to rebuild said building, Acme shall grant to Metro the right of first refusal for the rental of said restored building on such terms and conditions as the parties may then agree. If Acme is made whole for the cost of pro rata amortized repairs and improvements specified in paragraph 7 herein through insurance or other means, Acme shall waive any future contractual reimbursement from Metro as required by paragraph 7.

13. **Legal Interference**. If, during the term of the Lease, the right of Metro to use said Premises for any lawful business shall be denied or prohibited by lawful authority, except for the default, neglect and/or omissions of Metro; or if the premises herein demised, or a part thereof sufficient to interfere with Metro's business, shall be condemned or otherwise acquired for the widening of streets or for other public improvements, or be otherwise taken in the exercise of the right of eminent domain, or if the use of said premises shall be for any cause so restricted or interfered with as to make them unfit or undesirable for the conduct of said business, Metro shall have the option of terminating and canceling this Lease upon thirty (30) days' notice to Acme of its

decision so to do; and, in the event of such termination and cancellation for any cause enumerated in this Article, Metro shall be liable only for rents and other charges earned to the date of its surrender of possession of said premises to Acme and for the performance of any other obligations maturing prior to said date.

14. **Signs.** Metro shall not erect exterior signs on or about the Premises, without Acme's prior written consent. Acme hereby consents to all signs currently located on the Premises.

15. **Laws and Regulations.** Metro shall, at its own cost and expense, comply with all of the requirements of all laws and regulations, municipal, state and federal, now in force, or which may come into force (*e.g.*, by way of example and not limitation, the Americans With Disabilities Act and the Michigan Persons With Disabilities Civil Rights Act) pertaining to Metro's use and occupancy of the Premises, such that if any leasehold improvements or other alterations are required to be made in order to comply with such laws and regulations, Metro shall timely do so at its own cost and expense.

16. **Breach or Default.** In the event that Metro shall be in default of the payment of rental or other charges hereunder, or otherwise shall breach its covenants or obligations hereunder, and shall remain in default for a period of thirty (30) days after written notice from Acme to it of such default, Acme shall have the right and privilege of terminating this Lease and declaring the same at an end, and of entering upon and taking possession of said premises, and shall have the remedies now or hereafter provided by law for recovery of rent, repossession of the premises, and damage occasioned by the breach or default.

Failure of either party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon the other party imposed, shall not constitute or be construed as a waiver or relinquishment of such party's right to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

17. **Surrender of Premises.** Upon the expiration or the termination of the term of this Lease, Metro shall surrender the Premises to Acme in good order and condition, ordinary wear and damage by the elements excepted. Upon such expiration or termination, Acme may without further notice enter upon and re-enter the Premises and possess and repossess the Premises by Summary Proceedings, and may dispossess and remove Metro and all other persons and property from the Premises. Metro shall remove all of its property, including but not limited to trade fixtures, so long as such removal can be accomplished without damage to the Premises. In the event any such removal would result in damage to the Premises, Metro may remove such property only with the written consent of Acme. Any property of Metro, or of anyone claiming under Metro, which remains on the Premises after the expiration or termination of the Lease term shall be deemed to have been abandoned by Metro, and either may be removed by Acme as its property or may be disposed of in such manner as Acme may see fit, and Acme shall not be responsible for such property. Reasonable costs of any such removal may be chargeable to Metro, in Acme's sole discretion. Any improvements to or installations on the Premises made by Metro shall become the property of Acme and shall remain on the Premises at the termination of the Lease.

18. **Notice.** Notices required under this Lease shall be deemed proper if duly sent by United States first class mail and addressed to the parties at the following addresses:

Acme Township  
Attention: Wayne Kladder  
Township Supervisor  
6042 Acme Road  
Williamsburg, MI 49690

Grand Traverse Metro Fire Department  
Attention: Pat Parker, Fire Chief  
897 Parsons Road  
Traverse City, MI 49686

Each party will be responsible to provide notice of any change in the above address in writing to the other party.

19. **No Waiver.** The failure of either party to enforce any covenant or condition of this Lease shall not be deemed a waiver of the right of either party to enforce each and every covenant and condition of this Lease. No provision of this Lease shall be deemed to have been waived unless such waiver is in writing and signed by both parties.

20. **Quiet Enjoyment.** Acme covenants with Metro that upon Metro's timely payment of the rent and observing and performing all the terms, covenants and conditions on Metro's part to be performed and observed, Metro may peaceably and quietly enjoy the Premises.

21. **Entire Agreement.** This Lease and its referenced attachments contain and fully integrate the entire agreement between the parties and it shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application of the Lease to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each remaining term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

22. **Construction.** This Lease shall be governed by and construed under the laws (statute and common) of the State of Michigan. Section headings are for convenience only. In no event shall any such title or caption be deemed to be part of this Lease or interpretive of any of its language or intent. No provision of this Lease is to be interpreted for or against any party because that party or that party's legal representative drafted this Lease or any of its provisions. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires. Time is of the essence of this Lease and all the provisions relating to timely performance shall be strictly construed.

23. **Voluntary Execution.** The parties acknowledge that they have read this Lease, understand its terms, and that their execution of this Lease is voluntary.

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

Signed in the presence of:

Acme Township

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

Signed in the presence of:

Grand Traverse Metro Fire Department

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF GRAND TRAVERSE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, the \_\_\_\_\_, of Acme Township, on behalf of the Township.

\_\_\_\_\_  
Notary Public  
Grand Traverse County, Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF GRAND TRAVERSE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_ the \_\_\_\_\_, of the Grand Traverse Metro Fire Department, on behalf of the Fire Department.

\_\_\_\_\_  
Notary Public  
Grand Traverse County, Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_

Prepared by:  
Smith Haughey Rice & Roegge  
202 E. State Street  
Suite 100  
Traverse City, MI 49684  
231-929-4878