

**STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CHARTER TOWNSHIP OF OAKLAND**

**BIRCH GROVE PROPERTIES, LLC SPECIAL LAND USE APPLICATION**

**AGREEMENT REGARDING CONTINUED CONSTRUCTION AND  
RESTORATION OF PROPERTY**

THIS AGREEMENT, dated this 18th day of June, 2021, is by and between **BIRCH GROVE PROPERTIES, LLC**, a Michigan limited liability company, whose address is 27101 Schoenherr Rd., Ste. 100, Warren, MI 48088 ("Birch Grove"), and the **CHARTER TOWNSHIP OF OAKLAND**, a Michigan municipal corporation ("Township") to allow construction certain improvements in connection with the development a school located in Oakland Township on property, described as 2878 N. Rochester Road, Oakland Township, MI 48363, Parcel ID Number 10-15-400-014, prior to approval of a special land use application.

**RECITATIONS:**

Birch Grove is the owner of all legal and equitable title to the Property. Birch Grove has obtained from the State of Michigan Bureau of Construction Codes a building permit and site plan approval for the development of a private school on the Property. Pursuant to Oakland Township's Zoning Ordinance, Birch Grove now seeks Township special land use approval to develop the Property for a private school (the "Special Land Use").

The Township and Birch Grove disagree as to whether the Township's Zoning Ordinance prohibits Birch Grove from commencing and continuing construction of the school on the Property prior to receiving approval of the Special Land Use. Birch Grove has begun construction on the Property prior to obtaining Special Land Use approval in reliance on its position that construction may commence under its state-issued building permit. The Township has filed a complaint in Oakland County Circuit Court and a motion for preliminary injunction to enjoin further construction until the Special Land Use has been approved by the Township Board of Trustees. The motion for preliminary injunction is scheduled for hearing on June 23, 2021.

Because the parties wish to avoid the uncertainties of litigation and, in particular, a judicial decision on the Township's motion preliminary injunction, Birch Grove has offered to provide, and the Township is willing to accept, certain assurances that it will restore the property to a vacant lot in the event that Birch Grove's application for special land use is denied and is not reversed in a subsequent timely appeal. Such assurances include financial security in the form of funds deposited in escrow sufficient to restore the Property to a vacant lot and its agreement to the provisions set forth below, providing for the security and a schedule for submission of and any necessary revisions to the application for special land use. In exchange, the Township will indefinitely adjourn the hearing on its preliminary injunction motion long enough provide Birch Grove sufficient time to obtain special land use approval.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Restoration of Property. If the Township denies Birch Grove Special Land Use approval to construct a private school on the Property and such decision is not reversed or otherwise set aside by a court, Birch Grove will restore the Property to the condition of a vacant lot with vegetated top soil and no improvements, consistent with the condition of the Property prior to the start of Birch Grove's construction on the Property. Once the obligation to restore the Property arises, Birch Grove will complete the restoration within 9 months of the expiration or close of all appeals of the Township's denial.

2. Provision of Security. Before July 6, 2021, Birch Grove will deposit \$60,000 as financial security into an escrow account held by a third-party escrow agent, which amount has been determined by the Township as sufficient to cover the costs of restoring the Property, as described above. The escrow agreement will be substantially the same as the agreement in Exhibit A to this Agreement.

3. Completion of the Special Land Use Approval Process. Birch Grove will timely submit its Special Land Use application for the Planning Commission for consideration at the July 6, 2021 hearing. Unless a later date is approved by the Township staff, Birch Grove's application will be considered timely if submitted on or before June 23, 2021. If the Planning Commission recommends denial, approval or approval with conditions at the July 6, 2021 hearing, it will then send the application to the Township Board for a final decision. If the Planning Commission does not vote on a recommendation because it requires additional information, Birch Grove will provide the information within 2 weeks of the Planning Commission's hearing, unless the required information requires approvals from other governmental authorities, in which case Birch Grove will diligently pursue such approvals and shall provide such approvals within 90-days of the Planning Commission's hearing.

4. Adjournment of Preliminary Injunction Hearing and Continued Construction. The Township will adjourn the preliminary injunction hearing scheduled for June 23, 2021 in Oakland County Circuit Court and will continue to adjourn the hearing as necessary to provide Birch Grove sufficient time to complete the Special Land Use application process described in paragraph 3. The Special Land Use application process will be considered complete when the Township Board has issued a final decision on whether to approve the Special Land Use for the Property or Birch Grove has failed to comply with the paragraph 3 above. While the Special Land Use application is in process and prior to the preliminary injunction motion hearing being held, the Township will not prevent Birch Grove from continuing construction on the Property for purposes of developing a school.

5. Conditions for Release of Escrowed Funds to Birch Grove. In the event that the Township Board approves the Special Land Use for Birch Grove, Birch Grove will be entitled to receive the escrowed funds, and the parties to this Agreement will sign a notice directing the Escrow Agent to release the funds in escrow to Birch Grove. Once the funds have been released to Birch Grove, this Agreement will terminate.

6. Conditions for Release of Escrowed Funds to Township. In the event that Birch Grove is required to restore the Property and fails to do so within the time allowed in paragraph 1,

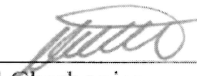
the Township will provide Birch Grove written notice of such failure. If Birch Grove does not complete the restoration within 30 days of such notice, or within such additional time as the Township may allow, the Township will be entitled to receive the escrowed funds, and parties to this Agreement will sign a notice directing the Escrow Agent to release the funds in escrow to the Township. The Township may use the released funds for the sole purpose of restoring the Property in accordance with paragraph 1. Once restoration has been completed in accordance with paragraph 1, the Township will return any of the released escrow funds not spent on restoration of the Property to Birch Grove.

7. Lawful Agreement. Birch Grove and Township agree that this Agreement and its terms, conditions, and requirements are, in all respects, lawful and consistent with the intent and provisions of local ordinances, state and federal law, and the Constitutions of Michigan and the United States of America. Birch Grove has offered and agreed to comply with the obligations set forth in this Agreement to protect the public health, safety and welfare and to provide Birch Grove an opportunity to construct improvements prior to Special Land Use approval. It is further agreed and acknowledged that the terms, condition, obligations, and requirements of this Agreement are, without exception, clearly and substantially related to the Township's legitimate interests in protecting the public health, safety, and general welfare and within the Township's authority to resolve disputes in litigation.

8. Delay in Enforcement. A delay in enforcement of any provision of this Agreement shall not be construed as a waiver or estoppel of the Township's right to eventually enforce the terms of this Agreement.

9. Effective Date. This Agreement is deemed effective as of the date on which it is shown below to have been signed by Birch Grove.

BIRCH GROVE PROPERTIES, LLC, a  
Michigan limited liability company

By:   
Del Charbonier

Its: Managing Member

STATE OF MICHIGAN     )  
                                      : ss.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of June,  
2021, by Del Charbonier, who is the sole managing member of Birch Grove  
Properties, LLC, a Michigan limited liability company, on behalf of the company.



Notary Public, \_\_\_\_\_ County, Michigan

Acting in \_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

MICHELLE L. HARDY  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
MY COMMISSION EXPIRES Jun 10, 2025  
ACTING IN COUNTY OF Macomb



CHARTER TOWNSHIP OF OAKLAND

By: [Signature], Supervisor

By: Robin Buxar, Clerk

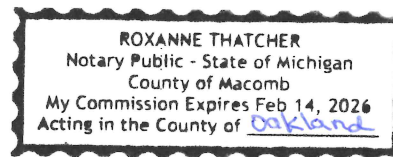
STATE OF MICHIGAN     )  
                                  ss.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of June, 2021, by Dominic Abbate, who is Supervisor of the Charter Township of Oakland and Robin Buxar, who is Clerk of the Charter Township of Oakland.

[Signature]

Notary Public, Macomb County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires: 02-14-26

21862505



# Exhibit A

**ESCROW AGREEMENT  
(Holdback)**

THIS ESCROW AGREEMENT ("Escrow Agreement") has been made as of 18<sup>th</sup> day of June, 2021 by **BIRCH GROVE PROPERTIES, LLC**, a Michigan limited liability company, whose address is 27101 Schoenherr Rd., Ste. 100, Warren, MI 48088 ("**Birch Grove**"), the **CHARTER TOWNSHIP OF OAKLAND**, a Michigan municipal corporation ("**Township**"), whose address is 4393 Collins Road, Rochester Michigan 48306, and **TRANSNATION TITLE AGENCY OF MICHIGAN GRAND RAPIDS DIVISION, LLC**, a Michigan limited liability company, whose address is 921 Division Avenue, Grand Rapids, Michigan 49503 ("**Escrow Agent**"), based on the following facts:

A. Birch Grove and Township entered into an Agreement Regarding Continued Construction and Restoration of Property ("**CCRP Agreement**"), attached as **Exhibit A**.

B. The CCRP Agreement provides that Birch Grove will deposit in escrow with Escrow Agent Sixty Thousand Dollars (\$60,000) as security for the performance of Birch Grove's obligations under the CCRP Agreement.

C. Birch Grove and Township desire to designate Escrow Agent as the escrowee of the Escrow Fund deposited under the CCRP Agreement.

**ACCORDINGLY, BIRCH GROVE AND TOWNSHIP AGREE:**

1. **Escrow Agent.** Birch Grove and Township designate Escrow Agent as escrowee for the purposes set forth in this Agreement. Escrow Agent agrees to act as the escrowee as set forth in this Agreement.

2. **Deposit of Escrow Fund.** Birch Grove delivers to Escrow Agent the Escrow Fund, to be held by Escrow Agent under this Agreement, and Escrow Agent acknowledges receipt of the Escrow Fund.

3. **Termination of Escrow.** This Agreement shall terminate and the Escrow Fund shall be delivered out of escrow upon the first to occur of any of the following events:

(a) The receipt by Escrow Agent of a written notice signed by both Birch Grove and Township directing it to release the Escrow Fund;

(b) The receipt by Escrow Agent of a court order governing disposition of the Escrow Fund; or

(c) June 20, 2024, unless Birch Grove and Township extend this date, or Escrow Agent receives notice that ownership of the Escrow Fund is the subject of a dispute.

If this Agreement terminates under subparagraphs (a) or (b) above, the Escrow Fund shall be paid as directed in such notice or order. If this Agreement terminates under subparagraph (c) above, the Escrow Fund shall be paid to Birch Grove.

4. **Liability of Escrow Agent.** Upon making delivery of the Escrow Fund and performing its obligations and services under this Agreement, Escrow Agent shall be released from any further liability under this Agreement. Escrow Agent shall have no obligation under this Agreement except to exercise good faith and ordinary care. Escrow Agent may act upon receipt of any certificate or other written document, and shall have no responsibility to determine or inquire into or otherwise corroborate the happening or occurrence of any event or condition described in such certificate or document.

In the event of any disagreement or controversy under this Agreement or if Escrow Agent in good faith is in doubt as to what action it should take with respect to the Escrow Fund, Escrow Agent shall have the absolute right at its election to take any or all of the following actions:

(a) To hold the Escrow Fund until Birch Grove and Township agree upon the proper disposition of it; or

(b) To hold the Escrow Fund until Escrow Agent receives a court order concerning the disposition of the Escrow Fund in form and substance satisfactory to Escrow Agent; or

(c) To file a suit in interpleader in an appropriate court naming Birch Grove and Township and all other claimants and interested parties as parties, and deposit the Escrow Fund with the clerk of such court in full satisfaction of its responsibilities under this Agreement.

5. **Account.** All funds received in this escrow, and any other funds received by Escrow Agent in connection with this Escrow Agreement, shall be deposited with other escrow funds in one or more non-interest bearing escrow accounts of Escrow Agent in a state or national bank selected by Escrow Agent. Escrow Agent shall have no obligation to account in any manner to the parties to this escrow for the value or any benefit received by Escrow Agent, directly or indirectly, by reason of the deposit of any such funds or the maintenance of such accounts with such bank, nor shall Escrow Agent have any obligation to pay any benefit to said parties. Such benefits may include, without limitation, credits allowed by such bank on loans to Escrow Agent or its parent company, and credits on accounting, reporting, and other services and products of such bank. Any such benefits shall be deemed additional compensation of the Escrow Agent for its services and products of such bank. Escrow Agent shall not be liable for any loss or impairment of said funds due to bank failure, insolvency or suspension.

6. **Expenses.** Birch Grove will pay a flat fee of \$150 to Escrow Agent for performance this Agreement, except where a dispute arises between Birch Grove and the Township regarding release of the funds. In the event of such a dispute, all expenses and costs as may be incurred by the Escrow Agent, including, without limitation, reasonable attorneys' fees incurred by it in

connection with the administration of this Agreement, will be shared equally by Birch Grove and the Township.

7. **Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by Birch Grove and Township and their respective successors, heirs, personal representatives, and assigns.

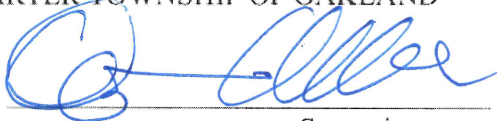
8. **Notices and Amendments.** All notices or other communications to be given under this Agreement shall be deemed to have been duly given, made, and received when delivered personally or mailed by certified mail, first-class postage prepaid, to Birch Grove's and Township's addresses set forth above, or to such other addresses as may be designated by a similar written notice. No waiver or amendment of this Agreement or any provision of this Agreement shall be effective unless in writing signed by Birch Grove and Township.

9. **Counterparts.** This Agreement may be signed in two or more counterparts, which together shall comprise one and the same instrument.

Birch Grove and Township have signed this Agreement as of the date set forth above.

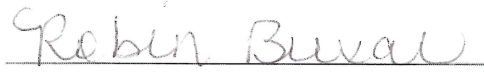
CHARTER TOWNSHIP OF OAKLAND

By:



, Supervisor

By:



, Clerk

BIRCH GROVE PROPERTIES, LLC, a  
Michigan limited liability company

By: Del Charbonier

By:



TRANSNATION TITLE AGENCY OF  
MICHIGAN GRAND RAPIDS DIVISION,  
LLC

By \_\_\_\_\_

Its \_\_\_\_\_

**Escrow Agent**