

ASSET AND SERVICE TRANSFER AGREEMENT

This Asset and Service Transfer Agreement (this "**Agreement**") is entered into effective as of _____, 2021 (the "Effective Date"), among GIVEN MEMORIAL LIBRARY INC., a North Carolina corporation having an office at 150 Cherokee Road, Pinehurst, NC (the "Corporation"), and the VILLAGE OF PINEHURST, a North Carolina incorporated municipality having an office at 395 Magnolia Road, Pinehurst, NC (the "Village"). The Corporation and the Village are each referred to herein as a "Party" and, collectively, as the "Parties".

RECITALS

A. Corporation owns and operates a library in the Village of Pinehurst, including library-related real and personal property and activities conducted by Corporation in connection with the library (the "Given Memorial Library" or the "Library") and Corporation also operates an archive of historic materials in the Village of Pinehurst and owns the real property and some of the personal property used in the archives (the "Tufts Archives" or the "Archives"). The Given Memorial Library and the Tufts Archives are collectively referred to as the "Facilities" and "Services". The Facilities and Services are located upon parcels of real property at 150 Cherokee Road, Pinehurst, North Carolina 28374 (collectively, the "Premises").

B. Corporation also operates a used bookshop in rented premises (the Old Post Office Building) at a separate location. Net profits from the bookshop have been used to support the Given Memorial Library.

C. Corporation also separately owns and manages an endowment fund with a current value of approximately \$-2.8- million which has in the past assisted in the funding for the Facilities, the Services, and the Premises.

On and subject to the terms and conditions in this Agreement, and as authorized by N.C. Gen. Stat. § 153A-263, *et. seq.*, the Corporation has agreed to transfer and convey various assets owned by the Corporation to the Village in consideration of the commitments made to the Corporation by the Village as hereinafter set forth.

The Parties agree as follows:

AGREEMENT

1. **Definitions.** Definitions of certain terms used in this Agreement are contained on Appendix A.

2. **Transferred Assets.** Subject to the terms and conditions set forth in this Agreement, on the future date agreed to by the parties (but not later than April 15, 2022), the Corporation will transfer and convey ownership of the Premises and those other assets owned by the Corporation to the Village as set forth in detail on Schedule 1 hereof (the "Transferred Assets").

3. **Excluded Assets.** Notwithstanding anything to the contrary contained in this Agreement, the property, assets, and rights set forth on Schedule 2 hereof which are used in or

related to the Library or the Archives will be retained by the Corporation (the "Excluded Assets") as the sole and separate property of the Corporation subsequent to the date the Transferred Assets are transferred to the Village and are specifically excluded from the transfer contemplated by this Agreement and will not be received by, or otherwise transferred to, the Village as part of this Agreement.

4. The Endowment. The Corporation is the sole owner of an endowment which includes assets with an approximate value of \$2.8 million as of the date of this Agreement, as such amount may increase or decrease from time to time as contemplated herein (the "Endowment"). The Endowment will remain the sole property of the Corporation subsequent to the transfer of the Transferred Assets subject to the restrictions contained in Schedule 3 hereof.

5. Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, the Village will assume and agree to pay, perform, and discharge only the Liabilities of Corporation (collectively the "Assumed Liabilities") set forth on Schedule 4 hereof, and no other Liabilities. The Village will assume all rights, obligations and interests of the Corporation in respect of the contracts listed on Schedule 5 (the "Assumed Contracts").

6. Excluded Liabilities. Other than the Assumed Liabilities and Assumed Contracts, Corporation will pay, perform, discharge, and satisfy timely and in full, and the Village will not assume, perform, or discharge, any Liability of Corporation, whether or not arising before, on, or after, or maturing before, on, or after, the Transfer Date (collectively, the "Excluded Liabilities").

7. Transfer and Conveyance of Assets. Subject to the terms and conditions of this Agreement and in reliance on the mutual covenants set forth herein, the Corporation will transfer and convey ownership of the Transferred Assets, other than the Excluded Assets, to the Village subject to the following conditions precedent:

- (a) The Village will have a due diligence period through October 15, 2021 to inspect the Transferred Assets (the "Due Diligence Period"). The Village may terminate this agreement for any reason or no reason during this due diligence period. Otherwise, the Village will advise the Corporation in writing that it will accept all the Transferred Assets in an "AS IS, WHERE IS WITH ALL FAULTS" condition with no warranties being made by the Corporation of any nature (other than its warranty of ownership of the Transferred Assets) and specifically excluding any warranties of fitness for a particular purpose.
- (b) The Village, prior to completion of its due diligence period, has approved, adopted, and presented to Corporation (i) a Resolution (#21-10) adopted by the Village Council on June 8, 2021, and attached to this Agreement as Schedule 6, whereby the Village committed \$1 million of the Village's fund balance to paying the cost of enhancement of the Facilities, Library Services and Premises. Anticipated purposes for that \$1 million include: (1) appropriations of \$275,000 for ADA compliance upgrades and \$50,000 for Internet fiber to the library as part of the fiscal year 2022 Village Budget Ordinance; (2) \$400,000 for design and engineering costs as part of the

fiscal year 2022 Budget Ordinance to fund the creation of the Library Expansion Capital Fund to begin design planning no later than the second half of fiscal year 2022; and (3) the balance of unspent funds from this \$1 million total sum will remain on the financial statements as Committed Fund Balance until the Village Council approves a resolution or ordinance to use the funds for future library enhancement projects; and (ii) and Corporation acknowledges that Resolution #21-10 has been fully executed by the Village and contains terms which are reasonably satisfactory to the Corporation.

8. Village's Operation of the Library Facilities and Library Services. Upon transfer of the Transferred Assets, the Village will own, operate, and manage all the Transferred Assets as a public library, as authorized by N.C. Gen. Stat. § 153A-263, et. seq., and in a manner which it deems best serves the interests of the residents of the Village of Pinehurst, North Carolina with respect to the Library and the Archives.

9. Future of the Library and Archives:

- (a) Within six (6) months after the Transferred Assets are transferred to the Village, the Village will undertake to do the following things: determine a strategic framework to embark on improvements to the existing Premises, consistent with all applicable legal requirements and long-term plans, which the Village determines will best serve the residents of Pinehurst, North Carolina; and initiate planning for a potential expansion of the library and archives facilities and services, with the following general expectations:
 - i. the Village, using its best efforts, will explore the implications on its National Historic Landmark designation on any future expansion of the Premises which the Village determines will best serve the residents of Pinehurst;
 - ii. the Village will explore potential partnerships with the USGA and Pinehurst Resort for the Tufts Archives;
 - iii. the Village will determine utilization of the expansion, as well as its location, scope, size, and estimated budget;
 - iv. the Village will identify temporary relocation requirements during an expansion that continues to serve residents while the Premises are in transition;
 - v. the Village will seek ways to best expand and house the Given Memorial Library, the Tufts Archives, and the current collection of approximately 17,000 library books and archival materials;
 - vi. the Village will begin design planning no later than the second half of

fiscal year 2022;

- vii. the Village will begin capital funding upon finalizing a design plan no later than fiscal year 2023 and complete capital accrual in fiscal year 2024; and
 - viii. the Village will begin construction of facility expansion after the 2024 U.S. Open.
- (b) All of the references in this Section 9 to the Village's future operation of, improvements to and expansion of the Library and Archives are based upon the Village's good faith intentions as of the date of this Agreement, and none of the references constitute promises or contractual obligations to the Corporation..

10. Old Post Office Building:

Upon the Transfer Date, the Village will assume the lease for the Old Post Office Building located at 95 Cherokee Road, Pinehurst, and continue the sublease for the Roast Office concurrent with the 10-year lease that expires in 2025. Corporation will operate the Given Book Shop located therein for as long as both the Corporation and the Village agree that it is necessary or beneficial. Any profits from the book shop will be given to the Village to support the Library and Archives.

11. Certain Covenants of the Corporation:

- (a) On the date mutually agreed to be the effective date of the Corporation's transfer of the Transferred Assets to the Village as determined pursuant to Section 2 above, (the "Transfer Date"), the Corporation agrees to transfer and convey the Transferred Assets to the Village at no cost and pursuant to the terms of this Agreement.
- (b) Between the Effective Date and the Transfer Date, the Corporation will cooperate with the Village's employees and agents during the due diligence process; will encourage Ms. Audrey Moriarty to become a Village of Pinehurst employee, and will encourage other current employees of Corporation to apply to become Village of Pinehurst employees in related roles.
- (c) (c) After the Transfer Date, the Corporation will continue to manage the Endowment according to the terms of Schedule 3. The Corporation will organize and lead a capital campaign to raise funds exclusively for the expansion of the Library and Archives referred to in Section 9. The Corporation will, consistent with all applicable federal and state law, engage in fundraising efforts and other customary philanthropic activities suitable for an all-volunteer organization to promote, encourage and receive charitable donations which donations (less fundraising expenses) will be deposited in the Endowment or paid over to the Village for purposes of supporting the Library and Archives, subject in each case to the donors'

instructions, if any. The Corporation will amend its Articles of Incorporation and Bylaws to reflect the Corporation's purposes and activities subsequent to the Transfer Date including that upon the dissolution of the Corporation, the assets then owned by the Corporation shall either be transferred to the Village of Pinehurst subject to the restrictions of the Schedule 3 hereof and provided the transfer to the Village constitutes a charitable contribution under Section 170(c)(1) of the Internal Revenue Code, or transferred to a non-profit corporation who shall be required to manage the Endowment pursuant to the terms of Schedule 3 for the benefit of the Village, in its operation of the Library and Archives.

- (d) (d) Corporation's yearly Endowment support payable to the Village may be withdrawn only in three (3) circumstances: (1) the completion of the process for considering expansion of the Library and the Archives does not occur in accordance with each of the provisions of Section 9 (a) (i-vii) hereof; (2) if the actual construction or expansion of the library facilities does not begin by July 1, 2025 in accordance with the proposed design; or (3) within 15 years after the Transfer Date, the Transferred Assets are not used for the purpose of providing library and/or archives services, unless new or renovated facilities are constructed elsewhere in accordance with the approved design. Provided, however, that if the Corporation's yearly endowment support is ever withdrawn for any of the 3 reasons set forth above, the Village will retroactively receive those previously withheld funds if the provisions are thereafter later met.

12. Certain Covenants of the Village:

- (a) After the Transfer Date, and for a period of fifteen (15) years thereafter, the Village must use the Transferred Assets for the purpose of providing library and/or archive services unless new facilities are built elsewhere to provide expanded library and archives services. Upon the expiration of this 15-year period, there shall exist no restriction upon the manner in which the Village uses the Transferred Assets which were imposed on the Transferred Assets by the Corporation.
- (b) The name of the Library (whether or not it continues to operate on the Premises) shall always include in a prominent manner the word "Given".
- (c) The name of the Archives shall always include in a prominent manner the word "Tufts".
- (d) The Village will honor the various naming rights awarded in the past by the Corporation to various donors, such as "The Eric Nelson Room".
- (g) If the Village creates a Library Board pursuant to NCGS 153A-266, Corporation members may apply for open board seats.

13. Corporation's Transfer Date Deliveries. On the Transfer Date, Corporation will deliver, or cause to be delivered, to the Village:

- (a) Possession of and fee simple title to the Transferred.
- (b) A duly executed copy of the Commemoration of Transfer of Assets document contained in Exhibit A.

14. The Village's Transfer Date Deliveries. On or before the Transfer Date, the Village will deliver, or cause to be delivered, to Corporation:

- (a) A duly executed copy of the Commemoration of Transfer of Assets document contained in Exhibit A.

15. Conditions Precedent to the Transfer of Assets.

- (a) Conditions Precedent to the Village's Obligations. The obligation of the Village to complete the transactions contemplated by this Agreement is subject to the fulfillment (or written waiver by the Village), before or on the Contribution Date, of each of the following conditions:

- i. Corporation will have made the deliveries required under Section 13;
- ii. Corporation will have received copies, acceptable to the Village in form and substance, of all material consents, waivers, amendments, modifications, approvals, authorizations, Permits, and licenses that are required to be obtained by Corporation to effectuate this Agreement and to transfer the Transferred Assets to the Village, including all Third-Party Consents, and will have delivered copies to the Village;
- iii. The Village will have received a certificate executed by a duly authorized officer of Corporation, in form and substance reasonably satisfactory to the Village, certifying (A) the fulfillment of the conditions set forth in this Section 15(a), (B) that attached thereto are true, complete, and correct copies of the resolutions of the Board of Directors of Corporation authorizing the execution, delivery, and performance of this Agreement and each other document delivered pursuant to this Agreement, and the transactions contemplated by this Agreement, in each case as are then in full force and effect, and (C) that attached thereto is a true, complete, and correct copy of a certificate of good standing for Corporation issued by the Secretary of State of the State of North Carolina;
- iv. all representations made by Corporation in this Agreement, or in any other transaction document to which Corporation is a party were true in all material respects (except for such representations that contain a materiality qualifier, which representations as so qualified will be true in all respects) as of the Effective Date, and will be true in all material

respects as of the Transfer Date as though such representations and warranties had been made on and as of the Transfer Date;

- (b) Conditions Precedent to the Corporation's Obligations. The obligation of the Corporation to complete the contribution of the Transferred Assets contemplated by this Agreement is subject to the fulfillment of each of the following conditions:
 - i. The Village's Due Diligence Period: Expiration of the Village's Due Diligence Period and the Village's continued interest in completing the transfer of the Transferred Assets by the Corporation to the Village and compliance by the Village of its obligations set forth in Section 7 hereof.

16. Representations of Corporation. Corporation represents to the Village that the statements contained in this Section 16 are true and correct as of the Effective Date and as of the Transfer Date:

- (a) Organization; Authority; Binding Effect. Corporation is a non-profit corporation, duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Corporation has all necessary corporate capacity, authority, and power to execute and deliver this Agreement and each other transaction document to which Corporation is a party, and to consummate the transactions contemplated hereby and thereby, and has taken all action required to be taken by it to authorize the execution, delivery, and performance of this Agreement and each of the other transaction documents to which Corporation is a party. Corporation has all necessary power and authority to own, possess, and operate the Library Facilities, the Library Services, the Tufts Archives, and the Premises. This Agreement has been duly executed and delivered by Corporation and constitutes a valid and binding obligation of Corporation, enforceable against Corporation in accordance with its terms. As of the Transfer Date, each of the other transaction documents to which Corporation is a party will have been duly executed and delivered by Corporation and will constitute valid and binding obligations of Corporation, enforceable against Corporation in accordance with its terms.
- (b) Absence of Certain Conflicts. Neither the execution and delivery of this Agreement or the other transaction documents, nor the consummation of the transactions contemplated hereby and thereby, will do any of the following:
 - i. conflict with or result in a breach of any provision of the organizational documents of Corporation or resolutions adopted by the Board of Trustees of Corporation;
 - ii. result in (A) the imposition or creation of any Encumbrance upon or with respect to any Transferred Asset, or (B) a default (or give rise to any right of termination, cancellation, or acceleration), with or

without notice or lapse of time, under any Permit or Assumed Contract;

- iii. require Corporation to obtain any Third-Party Consent, including any consent, approval, authorization, or permit of, or make any filing with or provide any notification to, any Governmental Authority; or
 - iv. violate any judgment, decree, order, or injunction binding upon Corporation, or any Law applicable to Corporation, and/or the Assets.
- (c) Transferred Assets. Corporation has, and will transfer and convey to the Village on the Transfer Date, good and marketable title to the Transferred Assets, free and clear of all Encumbrances or other material defects in title.
- (d) Tax Matters. Corporation has timely filed or caused to be timely filed all federal and state income Tax returns and all other material Tax returns that it was required to file. All such Tax returns are true, complete, and accurate in all material respects and, as so filed, disclose all Taxes required to be paid for the periods covered. All Taxes due and owing by Corporation (whether or not shown on any Tax return) have been paid.
- (e) Intellectual Property. All intellectual property consistent with the definition in Appendix A which is owned by the Corporation and is transferrable will transfer to the Village.

17. Additional Agreements.

- (a) Access and Investigation. During the Due Diligence Period and up to the Transfer Date, Corporation will allow the Village and its representatives reasonable access, at times and dates mutually agreed upon by the Village and Corporation, to the Premises, and to Corporation's books, records, personnel, contracts, Permits, and other documents and data, so long as the Village exercises such rights of access in a manner that does not unreasonably interfere with the operations of the Library and Archives and until after the Transfer Date such information is not subject to the any "freedom of information" request directed to the Village.
- (b) Conduct or Practice Before the Transfer Date. From the date hereof until the Transfer Date, the Corporation will continue to operate the Library and the Archives in their ordinary and customary manner.
- (c) Risk of Loss. Corporation assumes all risk of destruction, loss, or damage due to fire or other casualty up to the Transfer Date, and Corporation agrees to maintain all current policies of insurance for such hazards until the Transfer Date. If this destruction, loss, or damage is such that the Transferred Assets are substantially damaged or destroyed, then the Village

will have the right to terminate this Agreement upon written notice to the Corporation. If the destruction, loss, or damage is such that the Transferred Assets are substantially damaged or destroyed, and the Village chooses to continue this agreement, then in that event the Corporation shall assign to the Village all insurance proceeds.

- (d) Further Assurances. Corporation agrees, at the request of the Village, at any time and from time to time after the Effective Date, to promptly execute and deliver all such further documents, and promptly to take and forbear from all such action, as may be reasonably necessary or appropriate in order more effectively to confirm or carry out the provisions of this Agreement.

18. Transfer Taxes. The Village and the Corporation acknowledge and agree that no transfer taxes will be due with respect to the transfer of the Transferred Assets by the Corporation to the Village.

19. Termination.

- (a) Events of Termination. This Agreement may be terminated at any time before the Contribution Date:
 - i. by the mutual written consent of the Parties;
 - ii. by the Village by written notice to Corporation at any time prior to the expiration of the Village's Due Diligence Period referenced above for any or no reason;
 - iii. in accordance with the terms hereof.

20. Miscellaneous.

- (a) Notices. All notices required or permitted to be given under this Agreement will be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by email, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices will be deemed delivered upon receipt or, if later, three days after mailing, properly addressed. Couriers notices will be deemed delivered on the date that the courier warrants that delivery will occur. Faxed, emailed, or other telecommunicated notices will be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery will be effective when accomplished. Unless a Party changes its address by giving notice to the other Party as provided herein, notices will be delivered to the Parties at addresses and numbers set forth on the signature page.
- (b) Interpretation. All pronouns will be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the person or persons require.

Section and other headings contained in this Agreement are for reference purposes only. The words “includes” and “including” are deemed to be followed by the phrase “without limitation.” The term “person” includes individuals, corporations, partnerships, limited liability companies, associations, and all other natural and legal persons. Each party has had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms.

- (c) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its choice of law principles.
- (d) Severability. Any provision of this Agreement that is deemed invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Agreement.
- (e) Integration; Amendment. This Agreement constitutes the entire agreement of the Parties relating to the subject matter of this Agreement. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement. This Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the subject matter of this Agreement, including that certain letter of intent executed by the Village and Corporation. This Agreement may not be amended except in writing executed by the Parties.
- (f) Assignment; Binding Effect. Neither Party may assign this Agreement, in whole or in part, without the express written consent of the other Party. This Agreement will bind and inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.
- (g) Counterparts; Signatures. This Agreement may be signed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Electronically transmitted signatures (such as PDF) will be deemed original signatures for all purposes under this Agreement. This Agreement may be delivered electronically, and any such delivery will have the same effect as physical delivery of a signed original.
- (h) Attachments. The exhibits, schedules, and appendices referenced in this Agreement are part of this Agreement.

(The remainder of this page has intentionally been left blank; signature page follows)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CORPORATION:

GIVEN MEMORIAL LIBRARY.

By: _____
Name: Stuart L. Mills
Title: Chair

Notice:
Address:
Address:
Attn:
Facsimile: _____
Email: _____

THE VILLAGE:

VILLAGE OF PINEHURST.

By: _____
Name: John C. Strickland
Title: Mayor

Notice:
395 Magnolia Road
Pinehurst, NC 28374
Attn: Village Manager
Facsimile: _____
Email: _____

SIGNATURE PAGE – ASSET AND SERVICE TRANSFER AGREEMENT

APPENDIX A

Defined Terms

1. Definitions. The following terms, when used in this Agreement, will have the following meanings:

(a) "Asset" and "Assets" mean any and all property owned by the Corporation and having value, including but not limited to, current assets, fixed assets, tangible and intangible assets, operating and non-operating assets, cash, checking accounts, savings accounts, accounts receivable, inventory, buildings, machinery, equipment, computers, supplies, furniture, webpages, and Library Facilities and Services. "Asset" and "Assets" shall not mean or include any Excluded Assets, or the Corporation's Endowment.

(b) "Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal, or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income, or exercise of any other attribute of ownership.

(c) "Excluded Liabilities" means those liabilities of the Corporation as of the Transfer Date which are not part of the Assumed Liabilities listed on Schedule 4 hereof and which include but are not limited to the payment of the PPP Loan to the extent such loan is not forgiven by the Small Business Administration, those expenses of the Corporation for salaries, utility bills, insurance and similar items which relate to periods of time prior to the Transfer Date and for those expenses of the Corporation for tax and legal services incurred in connection with this Agreement.

(d) "Governmental Authority" means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction..

(e) "Intellectual Property" means any and all of the following and similar intangible property and related proprietary rights, interests, and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (i) trademarks, service marks, trade names, brand names, logos, trade dress, and other proprietary indicia of goods and services, whether registered, unregistered, or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (ii) internet domain names, whether or not they constitute trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority; (iii) original works of authorship in any medium of expression, whether or not published, including all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions, and renewals of such registrations and applications; (iv) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes,

compositions, and other trade secrets, whether or not patentable; and (v) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations, and renewals of such patents and applications.

(f) “Law” or “Laws” means any statute, rule, common law, ordinance, regulation, order, writ, judgment, injunction, decree, determination, or award enacted or promulgated or followed by a Governmental Authority.

(g) “Liability” means any debt, obligation, duty, or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several, or secondary liability).

(h) “Library Facilities” and “Library Services” collectively mean and includes, without limitation, books, plates, pictures, engravings, maps, magazines, pamphlets, newspapers, manuscripts, films, transparencies, microforms, recordings, or other specimens, works of literature, or objects of art, historical significance, or curiosity, and all amenities, properties, apparatuses, implements, instruments and equipment customarily used to preserve, store, organize, display, and make accessible such materials for public use and enjoyment.

(i) “Permits” means any permit, license, approval, certification, endorsement, or qualification of any Governmental Authority or any other person or entity.

(j) “Premises,” or “the Premises,” means all of that real property currently owned by Corporation, and all fixtures and improvements upon said real property, as more particularly described in the following recordings of the Moore County Registry: Parcel # 99000481 and Parcel #99000482; Book 270, Page 360; Book 379 Page 52; Book 498, Page 614; Book 15, Page 648; Map Book 1, Page 30; and Plat Cabinet 15, Slide 648. All such real property and fixtures are located at 150 Cherokee Road, Pinehurst, North Carolina.

(k) “Taxes” means (i) any federal, state, local, and foreign taxes, charges, fees, levies, imposts, duties, and other similar assessments or charges of any kind whatsoever imposed by any Governmental Authority, including income taxes (whether imposed on or measured by net income, gross income, income as specially defined, earnings, profits, or selected items of income, earnings, or profits), capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, value added taxes, goods and services taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, excise taxes, severance taxes, social security premiums, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, ad valorem taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, and customs duties, together with all interest, penalties, fines, additions to tax, or other amounts imposed with respect to the foregoing; (ii) any Liability for any amounts of the type described in clause (i) as a result of being or ceasing to be a member of any tax group (including any Liability under Treasury Regulation Section 1.1502-6 or any comparable provision of state, local, or foreign law); and (iii) any Liability for any amounts of the type described in clause (i) or (ii) arising under contract, by operation of law, by reason of being a successor or transferee, or otherwise.

(l) Transferred Assets,” or “the Transferred Assets,” collectively means all Assets being transferred and conveyed from Corporation to the Village under this Agreement except the Excluded Assets defined in Section 2 hereof.

SCHEDULE 1

Transferred Assets

All assets belonging to the Corporation and not listed in Schedule 2 will be transferred. These assets include, but are not limited to:

1. Building, improvements and property contained in Parcel ID 99000481/PIN 856209062391.
2. Property within Parcel ID 99000482/PIN 856209062243
3. All furniture, fixtures and equipment owned by the Corporation contained in the building included in asset 1 above.
4. All library and archive collections owned by the Corporation contained in the building included in asset 1 above, including any collections that may qualify as intellectual property.
5. All furniture, fixtures and equipment used for library programming in the Old Post Office building (Parcel ID 00029526/PIN 855212967100)

SCHEDULE 2

Excluded Assets

- i)** The Endowment (as defined in Schedule 3)
- ii)** Assets belonging to the Tin Whistles (custodial responsibilities for these assets will transfer to the Village of Pinhurst, but ownership will remain with the Tin Whistles)
- iii)** Used books collection and all furniture, fixtures, and equipment used for the sale of used books in the Old Post Office Building.
- iii)** Any cash on hand or in bank accounts as of the Transfer Date. Such cash may be used to discharge the transaction costs incurred in connection with this Agreement, and/or to discharge any Excluded Liabilities, but the remaining balance of such cash up to \$75,000.00, less \$20,000 which the Corporation shall keep as initial working capital, shall be returned to the Village no later than six months after the Transfer Date.

SCHEDULE 3

Terms Relating to the Endowment

The term "Endowment" refers to all the funds held by the Corporation at Vanguard on the Effective Date, the balance in such accounts at the opening of the financial markets on the Effective Date being \$_____ (refer to the attached pages printed from the Vanguard website on the Effective Date).

1. From the Effective Date to the Transfer Date:
 - (a) The Endowment funds will remain invested at Vanguard or any other similar accounts as the Corporation deems advisable.
 - (b) During such period, funds may only be released from the Endowment for purposes of supporting operations of the Library and Archives.
 - (c) The Corporation will report to the Village (with supporting documentation from Vanguard) the balance in the Endowment as of the Transfer Date.
2. After the Transfer Date:
 - (a) The remaining balance in the Endowment, and any future principal, income and contributions (less any losses or permitted expenses), shall be managed by the Corporation, which shall have complete discretion over investment of such funds.
 - (b) Withdrawals from the Endowment may only be made for the following purposes:
 - i. To pay reasonable expenses associated with maintaining the Endowment, including expenses associated with maintaining the corporate existence and non-profit status of the Corporation, with fundraising for the Endowment including licenses fees required for fundraising activities, with Directors and Officers liability insurance premiums, with fees for accountants and bookkeepers and other normal and customary fees and expenses incurred by the Corporation in accordance with the terms herein as such expenses relate to the Library and the Archives.
 - ii. To make payments to the Village for support of the Library and Archives (the "Endowment Payments").
 - iii. To pay the Excluded Liabilities of the Corporation.
 - iv. The annual cost to operate the Book Shop not covered by the Village or by income from the operation of the Book Shop.
 - v. Sufficient funds to repay the outstanding PPP Loan in the event some or all of such loan balance is not forgiven by the Small Business Administration.

(c) The Corporation will make Endowment Payments to the Village as follows:

- i. During each of the Village's fiscal years, the Corporation will make annual Endowment Payments to the Village equal to 4% of the Average Balance. The Average Balance is the average of the actual balance in the Endowment at the beginning of such fiscal year and the two preceding fiscal years. Such payments to the Village will be used for the provisions of services to the Library and the Archives.
- ii. During each of the Village's fiscal years, the Corporation may (but will not be required to) make additional Endowment Payments to the Village for purposes of supporting the Library and Archives on its own initiative or at the request of the Village.

(d) Within 5 months of the end of each of the Corporation's fiscal years, the Corporation will prepare a report to the Village Manager describing the investment performance of the endowment and detailing the withdrawals from the Endowment and how such withdrawals were applied in such fiscal year, including a calculation of the Average Balance.

SCHEDULE 4

Assumed Liabilities

NONE

SCHEDULE 5

Assumed Contracts

1. Lease for Old Post Office
2. Sublease with Mark Elliot to allow operation of the Roast Office
3. ATCOM Business Technology VOIP Managed Services Agreement dated November 11, 2020.
4. Canon Lease Agreement for copiers.
5. Two (2) Tri County Business Machines, Inc. Maintenance Agreement for Canon copiers.
6. Central Security Services, Inc. Security System .Monitoring Contract.
7. Fields Plumbing & Heating Co., Inc. contract for routine HVAC systems seasonal cleaning.

SCHEDULE 6

[JD Notes; SM Notes]

JUNE 8, 2021 RESOLUTION OF THE VILLAGE OF PINEHURST (#21-10)

RESOLUTION #21-10:

A RESOLUTION TO COMMIT A PORTION OF FUND BALANCE IN THE GENERAL FUND (GIVEN MEMORIAL LIBRARY & TUFTS ARCHIVES BUILDING AND OPERATIONAL IMPROVEMENTS).

THAT WHEREAS, the Governmental Accounting Standards Board (GASB) has issued Statement No. 54 establishing a hierarchy clarifying the constraints that govern how a government entity can use amounts reported as fund balance; and

WHEREAS, the Village Council is the highest level of decision-making authority, and has the authority to commit, assign, or evaluate existing fund balance classifications and identify the intended uses of committed or assigned funds; and

WHEREAS, the committed fund balance classification reflects amounts subject to internal constraints self-imposed by the Village Council; and

WHEREAS, once the committed fund balance constraints are imposed, it requires the constraint to be removed by the Village Council prior to redirecting the funds for other purposes; and

WHEREAS, the Village Council and the Given Memorial Library/Tufts Archives Board signed a non-binding agreement on March 1, 2021 outlining the future they see for the library and archives; and

WHEREAS, in accordance with the proposed actions and commitments outlined in the initial agreement, the Village Council has determined it will commit \$1,000,000 of General Fund fund balance for the year ending June 30, 2021 for the purpose of funding improvements to the existing Given Memorial Library & Tufts Archives building and other operational improvements.

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Pinehurst, North Carolina, in regular meeting assembled this 8th day of June, 2021, as follows:

SECTION 1. In accordance with the provisions of GASB 54, Village Council hereby commits \$1,000,000 of General Fund fund balance as of June 30, 2021 for improvements to the existing Given Memorial Library & Tufts Archives building and other operational improvements within that, as indicated by the committed fund balance classification, cannot be used for any purpose other than directed above, unless the Village Council adopts another resolution or ordinance to remove or change the constraint.

THIS RESOLUTION passed and adopted this 8th day of June, 2021.



Attest:

Kelly Chance
Kelly Chance, Village Clerk

VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: John C. Strickland
John C. Strickland, Mayor

Approved as to form:
Michael J. Newman
Michael J. Newman, Village Attorney

EXHIBIT A

Form of Commemoration

COMMEMORATION OF TRANSFER OF ASSETS

This Commemoration of Transfer of Assets (dated June __, 2021, is executed and delivered by GIVEN MEMORIAL LIBRARY ("Corporation"), to the VILLAGE OF PINEHURST ("the Village"), a North Carolina municipal corporation, pursuant to the Asset and Service Transfer Agreement, dated ____, 2021, among Corporation and the Village. All capitalized terms used but not defined in this Commemoration of Transfer of Assets have the meanings assigned to them in the Asset and Service Transfer Agreement.

The parties agree as follows:

1. Transfer and Assignment. Corporation transfers, assigns, and conveys to the Village all of its right, title, and interest in and to the Transferred Assets, free and clear of all Encumbrances.
2. North Carolina Law. This Commemoration of Transfer of Assets is executed and delivered in and will be construed under the substantive law of the State of North Carolina, without regard to its conflict of laws provisions.

CORPORATION:

GIVEN MEMORIAL LIBRARY

By: _____
Name:
Title:

ACKNOWLEDGMENT OF ACCEPTANCE OF

TRANSFERRED ASSETS

BY VILLAGE OF PINEHURST

By: _____

Mayor Village of Pinehurst

This ____ day of __, 2021.

