

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this 4th day of October , 2023 by and between **HERA PROPERTY REGISTRY, LLC**, a Florida Limited Liability Company with an address at 1900 S. Harbor City Blvd., Ste 211, Melbourne, FL 32901 (“HERA”) and the **TOWN OF ELSMERE, DELAWARE**, with an address at 11 Poplar Avenue, Elsmere, DE 19805, (“Elsmere”).

WITNESSETH:

I. SCOPE OF REPRESENTATION

1. Elsmere is retaining HERA to represent Elsmere in providing property registration services for Elsmere’s foreclosure and vacant property registration ordinance, Chapter 209 of the Code of the Town of Elsmere, “Vacant Property” (the “Ordinance”).

2. As is further set forth herein, Elsmere hereby authorizes HERA to represent Elsmere’s interests in providing a property registration service pursuant to the Ordinance.

II. DUTIES OF HERA

Ordinance Registration Services

1. HERA shall provide an online foreclosure and vacant property registration service for Elsmere pursuant to the Ordinance.

2. HERA shall monitor mortgage defaults and other property registration triggers under the Ordinance and shall send notice to the mortgagee or other responsible party of a duty to register the property.

3. Collections made by HERA will be deposited immediately into a separate account maintained in a federally insured bank for Elsmere.

4. All registration fees collected by HERA shall be remitted to Elsmere, less HERA’s collection costs, by the Fifteenth (15th) day of each month, for all monies collected for the previous

monthly period, net of expenses and costs which will be calculated in accordance with the terms of this Agreement.

III. PAYMENT FOR HERA'S SERVICES.

1. In consideration of the cost of registration services rendered by HERA, Elsmere hereby agrees to pay HERA one hundred dollars (\$100.00) of the total registration fee for each property registration fee collected by HERA. Should there be a fee required for public/official record data acquisition integral to the performance of the duties required under this contract, those charges shall be deducted from the remittance for the actual costs of said charges or subscriptions. If said charges or subscription fees are for the entire county, the fee shall be divided equally between all communities partnered with HERA within the county at that time. If there is a change in the number of communities partnered with HERA in the county during the contract period, the county public record access fee will be adjusted accordingly to maintain an even cost-sharing by all communities within the county.

2. If Elsmere's Ordinance requires payment of late fees as part of the registration requirements, HERA shall collect all applicable late fees, retaining 20% of the fee and remit the balance to Elsmere pursuant to the monthly remittance schedule.

3. When HERA collects registration fees, HERA shall remit the collected registration fees to Elsmere in accordance with this Agreement.

IV. INSURANCE

HERA shall maintain insurance coverage as required by Elsmere, and at a minimum general liability insurance of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

V. INDEMNIFICATION: DEFENSE: COOPERATION

In addition to, and not in limitation of the insurance requirements, HERA agrees:

1. HERA shall indemnify, defend, and hold harmless Elsmere, its officers, employees, elected officials, and agents (the "Indemnified Parties") from and against any and all liabilities arising directly out of or in connection with malpractice or negligent acts under this Agreement by HERA or any of its agents, provided, however, that the HERA shall not be responsible for that portion, if any, of a loss that is caused by the negligence of Elsmere. Elsmere shall indemnify, defend, and hold harmless HERA, its officers, employees, elected officials, and agents from any and all acts performed by HERA if done at the direction of Elsmere or in connection with the administration of this Agreement. HERA shall not be responsible for that portion, if any, of a loss that is caused by any challenge to Elsmere Ordinance in a competent court of jurisdiction or any action which Elsmere directs HERA to perform.

2. HERA shall, upon Elsmere's demand and at Elsmere's direction, promptly and diligently defend, at HERA's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties caused by malpractice or negligent acts for which HERA is responsible under this Section and, further to HERA's indemnification obligations, HERA shall pay and satisfy any judgment, decree, loss, or settlement in connection therewith.

3. In all instances where Elsmere will indemnify HERA for a loss caused by the negligence of Elsmere or a loss caused by any challenge to Elsmere's Ordinance, Elsmere shall pay the cost of their own defense and may select counsel of their own choosing, so long as a conflict does not exist.

4. HERA shall, and shall cause its agents to, cooperate with Elsmere and in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement, including the acts or omissions of HERA in connection with this Agreement.

5. The provisions of this Section shall survive the termination of this Agreement.

VI. SUPPORT AND MAINTENANCE

HERA shall provide all support and maintenance required in connection with the Services, including but not limited to:

1. Training and support for community staff and responsible parties;
2. Collection and remittance of registration fees and any late fees or penalties;

VII. OWNERSHIP AND USE OF DOCUMENTS

All documents, records, applications, files and other materials produced by HERA in connection with the services rendered pursuant to this Agreement shall be the property of Elsmere, and shall be provided to community upon request. HERA shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Hera Property Registry, LLC's endeavors. In the event of termination of this Agreement, any reports, records, documents, forms, and other data and documents prepared by HERA whether finished or unfinished shall become the property of Elsmere, and shall be delivered by HERA to the appropriate person within seven (7) days of termination of this Agreement by either party. Any compensation due to HERA shall be withheld until all documents are received as provided herein.

VIII. COMMUNITY DATA

Elsmere acknowledges registering Properties governed by the Ordinance prior to this Agreement. On a date agreed upon by the Parties and prior to the Effective Date of this Agreement, Elsmere will provide HERA a digital file in a format agreeable to the Parties containing all of the information of all Properties registered by Elsmere. All registrations and fees received by Elsmere during the period from the data delivery date to the Effective Date of this Agreement will be submitted to HERA and considered registrations by HERA under the terms of this Agreement. If

Elsmere is unable to provide the agreed upon digital file, then Elsmere will provide HERA all property registration information, including but not limited to registration forms, for manual entry into HERA's database. If manual entry of this information is required, Elsmere agrees to compensate HERA \$5.00 per property.

IX. SURVIVAL

The expiration or termination of this Agreement will not extinguish the rights of either party that accrue prior to expiration, termination or any obligations that extend beyond termination or expiration, either by their inherent nature or by their express terms.

X. AUDIT AND RECORDS

HERA shall maintain records pertaining to this Agreement for a period of seven years from final payment. Such records shall be subject to audit by Elsmere on reasonable advanced, written notice. The audit shall be conducted at the premises of Elsmere on business days only and during normal working hours.

XI. GOVERNING LAW

The validity, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without giving effect to the principles of conflicts of laws.

XII. EXPENSES

During the term of this Agreement, HERA shall be responsible for all expenses and costs associated with the service.

XIII. TERMINATION

HERA and Elsmere each expressly reserve the right to withdraw from this Agreement at any time upon 60 days written notification to the other party, subject to any applicable ethical rules. HERA shall cooperate fully with Elsmere and replacement third-party administrator, if any, to return all files, information, as more fully set forth herein, which obligation shall survive

termination of this Agreement. Upon termination, HERA shall cease all work performed under this Agreement and forward to Elsmere any registration fees owed to Elsmere.

XIV. INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that HERA is an independent contractor under this Agreement and not Elsmere's employee for all purposes, including but not limited to the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. This Agreement shall not be construed as creating any joint employment relationship between Elsmere and HERA and Elsmere shall not be liable for any obligation incurred by HERA, including but not limited to unpaid minimum wages and/or overtime premiums.

XV. EQUAL OPPORTUNITY ACT

In the performance of this Agreement, HERA shall not discriminate against any firm, employee, or applicant for employment or any other firm or individual in providing services because of sex, age, race, color, religion, ancestry, or national origin.

XVI. ALL LEGAL PROVISIONS DEEMED INCLUDED: SEVERABILITY

1. Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

2. In the event that any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

3. Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

XVII. SECTION AND OTHER HEADINGS

The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

XVIII. ENTIRE AGREEMENT

This Agreement represents the full and entire understanding and Agreement between the parties with regard to the subject matter hereof and supersedes all prior Agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

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**XIX. ELSMERE'S SIGNATURE HEREON SHALL CONSTITUTE HERA'S
AUTHORITY TO PROCEED WITH THIS REPRESENTATION**

Elsmere hereby acknowledges that all of the terms of this Agreement have been fully explained to Elsmere, and that Elsmere fully understands all of the provisions herein.

DATED THIS 4th day of October,
2023.

TOWN OF ELSMERE, DELAWARE

By: 
Name: STEVEN MARTIN
Title: Town of Elsmere

DATED THIS 4th day of October, 2023.

HERA PROPERTY REGISTRY, LLC

By: 
Name: Clifford J. Johnson
Title: CEO