

LICENSE AGREEMENT FOR USE OF REAL PROPERTY

This License Agreement for Use of Real Property ("Agreement") is executed to be effective (as stated below) the __ day of _____, 20__ ("Effective Date"), between the City of Lorain ("City") and the Lorain Port Authority ("Port Authority"), and ending on the __ day of _____, 20__.

WHEREAS, Port Authority is the owner of certain real property located in the City of Lorain, known as part of Original Black River Township Lot Number Four, Tract One and adjacent to an existing dock line of the City of Lorain on the Black River, which is legally described on attached Exhibit A ("Port Property"); and

WHEREAS, the City desires to enhance the Black River Landing and Heron Rookery Habitat through bank stabilization, riparian stabilization, and aquatic habitat restoration on a portion of the Port Property, as described in this Agreement; and

WHEREAS, Port Authority is willing to grant the City a license to use the Port Property for the uses described above.

THEREFORE, in consideration of the following mutual covenants and conditions, it is hereby agreed as follows:

1. PORT PROPERTY

The Port Property is the land located on parcel number 02-01-004-101-067, located in the City of Lorain, known as part of Original Black River Township Lot Number Four, Tract One and adjacent to an existing dock line of the City of Lorain on the Black River.

2. REPRESENTATIONS AND WARRANTIES

- A. The Port Authority represents and warrants to the City that: (i) the Port Authority, and its authorized signatory, has full right, power and authority to execute this Agreement; and (ii) Port Authority's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on City.
- B. The City represents and warrants to the Port Authority that: (i) the City, and its authorized signatory, has full right, power and authority to execute this Agreement; and (ii) the City's execution and performance of this Agreement will not violate any laws, ordinances, covenants, mortgages, licenses or other agreements binding on the Port Authority

- C. The City has studied and inspected the Port Property and accepts the same "AS IS" without any express or implied warranties of any kind, other than those warranties contained in subsection (A) above, including any warranties or representation by the Port Authority as to title or its condition or fitness for any use.

3. GRANT OF LICENSE; TERM

- A. Nothing in this Agreement shall be construed as granting the City the authority to use any property that is owned by any person or entity other than the Port Authority. The City assumes sole responsibility for ensuring the placement of its fish sculpture, for purposes of this license, is on property owned by the Port Authority.
- B. This License Agreement is not intended to represent permission granted in perpetuity. Either party may terminate this Agreement without cause by giving ninety (90) days' advance written notice to the other of intent to terminate.
- C. If the City continues to occupy the Port Property after the expiration or termination of this Agreement, holding over will not be considered to operate as a renewal or extension of this Agreement.
- D. Notwithstanding any provision in this Agreement to the contrary or any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, the City's rights in the Port Property are limited to the rights created by this Agreement, which create only a license in the Port Property, which is revocable only as set forth expressly herein. The Port Authority and the City do not by this instrument intend to create a lease, easement or other real property interest. The City has no real property interest in the Port Property. The City rights are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the Port Property. The City's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or later having jurisdiction over the Port Property or the City's use of the Port Property.
- E. This License Agreement is specific to the City, and may not be transferred or assigned in any manner, without the prior written approval of the Port Authority.

4. FEES

The Port Authority will provide the Port Property for no cost to the City to use to enhance the Black River Landing and Heron Rookery Habitat through bank stabilization, riparian stabilization, and aquatic habitat restoration during the terms of this Agreement.

5. USE RESTRICTIONS

- A. The City shall not remove, damage or alter in any way any existing improvements or personal property of the Port Authority within the Port Property without the Port Authority's prior written approval, which shall not be unreasonably withheld. The City shall repair any damage or alteration to Port's property to the same condition that existed before the damage or alteration, reasonable wear and tear excepted.
- B. The City shall use the Port Property solely for the purpose of enhancing the Black River Landing and Heron Rookery Habitat through bank stabilization, riparian stabilization, and aquatic habitat restoration
- C. The City shall have a non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for the authorized use, which right shall be exercised so as to not unreasonably interfere with any Port Authority operations.
- D. The City shall keep the Port Property maintained, orderly and clean at all times.
- E. Subject to the terms set forth herein, the City acknowledges that City's use of the Port Property shall be subject and subordinate to, and shall not adversely affect, the Port Authority's use of the Port Property.

6. CONSTRUCTION AND MAINTENANCE

- A. The City has, at its own cost, all responsibilities for the installation of all improvements proposed by the City to the Port Property as depicted on Exhibit B, including costs associated with installation and maintenance, unless damage thereto is caused by the Port Authority or its agents or contractors;
- B. All improvements made by the City to the Port Property pursuant to the terms of this Agreement are subject to and must be in compliance with all applicable codes, ordinances and laws.

- C. The City shall not permit any liens to be placed or remain on the Port Property by virtue of any work performed under this Agreement.

7. INDEMNIFICATION

The City shall defend, indemnify and hold harmless the Port Authority and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as "the Port Authority" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation (collectively, "Damages"), that arise out of any act or omission of the City of Lorain or its agents, employees and invitees (hereinafter referred to collectively as "the City" in this Section) in connection with the City's operations in the Port Property and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that are caused by the failure of the City to comply with any provision of this Agreement except to the extent the Damages are caused by the Port Authority, or its agents' gross negligence, fault or willful misconduct. The Port Authority shall give the City prompt notice of any claim made or suit instituted that may subject the City to liability under this Section, and the City shall have the right to compromise and defend the same to the extent of its own interest. The Port Authority shall have the right, but not the duty, to participate in the defense of any claim or litigation with attorneys of the Port Authority's selection and at the Port Authority's sole cost without relieving the City of any obligations under this Agreement. The City's obligations under this Section survive any termination of this Agreement or the City's activities in the Port Property.

8. DAMAGE OR DESTRUCTION

The Port Authority has no obligation to reimburse the City for the loss of or damage to fixtures, equipment or other personal property, except for loss or damage as is caused by the negligence or fault of the Port Authority or its officers, employees or agents. The City may insure all fixtures, equipment or other personal property for its own protection if it so desires.

9. SURRENDER OF POSSESSION

Upon the expiration or termination of this Agreement, the City's right to occupy the Port Property and exercise the privileges and rights granted under this Agreement shall cease, and it shall surrender and leave the Port Property in good condition, normal wear and tear and casualty not caused by the City excepted.

10. SEVERABILITY

If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations;

in the event of material prejudice, then the adversely affected party may terminate this Agreement.

11. RULES AND REGULATIONS

The City shall at all times comply with all federal, state and local laws, ordinances, rules and regulations which are applicable to its operations and the Port Property, including all laws, ordinances, rules and regulations adopted after the Effective Date. The City shall display to the Port Authority, upon request, any permits, licenses or other evidence of compliance with the law.

12. RIGHT OF ENTRY RESERVED

- A. The Port Authority may, at any time, enter upon the Port Property for any lawful purpose, so long as the action does not unreasonably interfere with the City's use or occupancy of the Port Property.

- B. Without limited the generality of the foregoing, the Port Authority and any furnisher of utilities and other services shall have the right, at their own cost, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the Port Property at all times to make repairs, replacements or alterations thereto that may, in the opinion of the Port Authority, be deemed necessary or advisable and from time to time to construct or install over, in or under the Port Property the systems or parts thereof and, in connection with maintenance, use the Port Property for access to other parts in and around the Port Property; provided that in the exercise of the right of access, repair, alteration or new construction, the Port Authority shall not unreasonably interfere with the use and occupancy of the Port Property by the Port Authority.

13. OWNERSHIP OF EQUIPMENT

It is expressly understood and agreed that the City retains title to all equipment installed by it and may modify, replace or remove such equipment when necessary.

14. AGREEMENT AS LICENSE

The Parties intend and mutually agree that this Agreement shall be construed as a mere license by the Port Authority to the City to operate on the described Port Property. This Agreement shall not be construed as a lease, sublease, rental agreement or easement. It is understood and mutually agreed that the City has not interest whatsoever in the Port Property.

15. MISCELLANEOUS

This agreement constitutes the entire agreement between the parties concerning the subject matter stated and supersedes all prior negotiations, understandings and agreements between the parties concerning those matters. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. No provision of this Agreement may be waived or modified except by a writing signed by the party against whom the waiver or modification is sought to be enforced. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument. The terms of this Agreement are binding upon and inure to the benefit of the parties' successors and assigns.

EXECUTED to have an Effective Date as of the date of the signature last affixed below.

Derek Feuerstein
Chief of Staff
City of Lorain

Richard Novak
Director
Lorain Port Authority