



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: December 2, 2019

MEMO TO: Jessica Vealitzek, Chair
Operations Committee

Agenda Item# 9.5

Terry Wilke, Chair
Finance Committee

FROM: James E. Ballowe
Director of Facilities

RECOMMENDATION: Recommend approval of an Ordinance Approving an Amendment to the License Agreement with Brushwood Center at Ryerson Woods (“Brushwood”) for the occupation and use of the Brushwood Home and grounds (the “Building”) at Edward L. Ryerson Conservation Area.

STRATEGIC DIRECTION SUPPORTED: Organizational Sustainability

FINANCIAL DATA: Financial terms of the License Agreement will not be changing but as partial consideration for the District entering into this amendment, Brushwood is paying the sum of \$3,750.00 towards the District’s attorney’s fees in connection with the negotiation and preparation of the amendment.

BACKGROUND: In 2017, the District entered into a new License Agreement with Brushwood that allows Brushwood to continue to occupy and use the Building to provide public programming focused on nature and environmental education (the “License Agreement”).

The License Agreement does not require Brushwood to repair the Building in the event of a fire or other casualty. That omission was intentional by the District, so that it could retain discretion whether to repair or replace the Building in the event of a casualty. Consistent with the goal of retaining discretion, the License Agreement allows the District to terminate the license if any “Major Repairs” exceed 25% of the value of the Building, subject to Brushwood’s right to step in and make the Major Repair at its cost, in which case the license would not terminate.

Brushwood has requested an amendment to the License Agreement that would require it to repair the Building in the event of a casualty. The reason for this request is that, according to Brushwood’s insurance carrier, without such a requirement, they do not have an “insurable interest” in the Building and, without an insurable interest, they cannot purchase casualty insurance on the Building.

While Brushwood’s desire to purchase and maintain casualty insurance for the Building is understandable, District staff recommends that the District retain some discretion in determining whether to re-build the Building in the event of casualty. After lengthy negotiations with Brushwood, staff is recommending the attached amendment, which would (i) require Brushwood to repair the Building in the event of casualty, (ii) require Brushwood to insure the Building at all times in an amount equal to the full replacement cost of the building, (iii) give the District discretion to terminate the Agreement if casualty damages the Building by 50% or more of its value, and (iv) give the District discretion to terminate the Agreement if a Major Repair (unrelated to casualty) would cost 50% or more of the Building’s value, subject to Brushwood’s right to step in and make the Major Repair, in which case the license would not terminate.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance and Corporate Counsel.

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**AN ORDINANCE APPROVING AND AMENDMENT TO THE
BUILDING USE AND MANAGEMENT LICENSE AGREEMENT
WITH BRUSHWOOD CENTER AT RYERSON WOODS**

WHEREAS, the Lake County Forest Preserve District (the "District") previously entered into a license agreement with Brushwood Center at Ryerson Woods ("the Licensee") dated January 1, 2017 (the "Existing Agreement") for the use and management of the Brushwood building at Ryerson Woods Conservation Area; and

WHEREAS, pursuant to Section 7b of the Downstate Forest Preserve Act, 70 ILCS 805/7b, the District is authorized to issue licenses for any activity reasonably connected with the purposes for which the District was created; and

WHEREAS, the Licensee's mission, which is to promote "the importance of nature for nurturing personal and community well-being, cultivating creativity and inspiring learning" and to "honor the legacy of those who came before us on this land and champion a region where people will care about and for nature", is reasonably connected with the purposes for which the District was created; and

WHEREAS, it is in the best interests of the District, to approve an amendment to the License Agreement in substantially the form attached (the "License Agreement Amendment"); and

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois, **THAT**:

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Ordinance by this reference.

Section 2: Approval of License Agreement Amendment. The License Agreement Amendment is hereby approved in substantially the form attached hereto. The President and Secretary of the District are hereby authorized and directed to execute and attest to, on behalf of the District, the License Agreement Amendment in substantially the form attached hereto.

Section 3: Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2019

AYES:

NAYS:

APPROVED this _____ day of _____, 2019

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District
Exhibit No. _____

**FIRST AMENDMENT TO LAKE COUNTY FOREST PRESERVE DISTRICT
BUILDING USE AND MANAGEMENT LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO LAKE COUNTY FOREST PRESERVE DISTRICT BUILDING USE AND MANAGEMENT LICENSE AGREEMENT (the “Amendment”) is entered into as of January 1, 2019 (the “Effective Date”) by and between the **LAKE COUNTY FOREST PRESERVE DISTRICT**, an Illinois unit of local government and a political subdivision, organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/01 *et seq.*, with its principal office located at 1899 West Winchester Road, Libertyville, Illinois 60048 (the “District”), and **BRUSHWOOD CENTER AT RYERSON WOODS**, an Illinois not-for-profit corporation, formerly known as “Friends of Ryerson Woods,” organized and existing under the General No for Profit Corporation Act of 1986, 805 ILCS 105/101.01 *et seq.* (“Licensee”).

RECITALS

A. The District and Licensee are parties to that certain Lake County Forest Preserve District Building Use and Management License Agreement dated as of January 1, 2017 (the “Agreement”) whereunder District granted a license to use the building located at 21850 North Riverwoods Road, Deerfield, Illinois 60015 (the “Building”), as more particularly provided in the Agreement.

B. The District and Licensee desire to amend the Agreement as to certain of the parties' rights and obligations with respect to insurance and casualty.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants and agreements set forth below, the parties do hereby agree as follows:

1. RENOVATION AND IMPROVEMENTS TO BUILDING AND GROUNDS.

Section 8 of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“SECTION 8. RENOVATION AND IMPROVEMENTS TO BUILDING AND GROUNDS. Licensee may make improvements to the Licensed Premises at its sole cost, but only (i) with prior, express, written approval by the District’s Executive Director for any such improvements which approval may be withheld in the District’s sole and absolute discretion (“Approved Work”), (ii) Major Repairs in accordance with Section 16.B.ii, or (iii) Casualty Repairs in accordance with Section 31. Notwithstanding the foregoing to the contrary, the District shall not unreasonably withhold its consent to improvements to the Licensed Premises which are strictly cosmetic in nature, do not affect the structure or systems of the building, and do not require a permit.”

2. INSURANCE.

Section 13 of the Agreement is hereby amended to add a new Subsection F. as follows:

“F. Property Insurance. Licensee shall maintain, at all times during the Term, “all risk” property insurance on the Building on a “Special Form” basis in an amount equal to the full replacement cost of the Building. The policy or policies evidencing such insurance shall be written by a company or companies that are authorized to do business in the State of Illinois and shall provide that losses shall be paid to Licensee.”

3. DISTRICT TERMINATION NOTICE.

Section 16.B.i of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“i. District Termination Notice. The District may terminate this Agreement on at least thirty (30) days’ notice (a “District Termination Notice”) if the District determines that one or more District Repairs to Structural Elements are required for any reason other than fire or casualty (in which case the parties’ rights and obligations are addressed in Section 31), including without limitation deterioration and wear and tear, and (i) will have a cost that, in the District’s sole discretion, is excessive in light of the District’s other present and future capital improvement needs; or (ii) will have a cost that is at least 50% of the value of the Building (collectively, a “Major Repair”). If the District sends a District Termination Notice, the District will not be required to perform the Major Repair, or any other District Repairs to the Building or Licensed Premises or provide to Licensee any other building or location for Licensee to use.”

4. APPLICABLE LAW.

Section 24 of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“SECTION 24. APPLICABLE LAW.

A. General Requirements. This Agreement shall be interpreted under and governed by the Laws of the State of Illinois, without regard to conflict of law principles.

B. Work; County Building Codes. In accordance with Section 20 of the Downstate Forest Preserve District Act, 70 ILCS 805/20, and District Ordinance No. 2257 enacted pursuant thereto, Licensee shall perform Licensee’s Maintenance Work, any Approved Work, any Major Repairs that Licensee elects to perform, and any Casualty Repairs in accordance with the building codes and regulations of the County of Lake, and not that of any municipality.

i. Prevailing Wage; Public Bonds. If any Licensee's Maintenance Work, Approved Work, Major Repairs, or Casualty Repairs that are performed by Licensee would, if performed by the District, be subject to the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 (the "Prevailing Wage Act") then Licensee shall procure each contract for such covered work in accordance with the Prevailing Wage Act. Without limiting the preceding sentence, Licensee shall notify all bidders for such covered work that they will be required to pay prevailing hourly wages to all laborers, mechanics and other workers for all covered work. If any Licensee's Maintenance Work, Approved Work, Major Repairs, or Casualty Repairs that are performed by Licensee would, if performed by the District, be subject to the Illinois Public Construction Bond Act, 30 ILCS 550/0.01 (the "Bond Act"), then Licensee shall procure each contract for such covered work in accordance with the Bond Act. Without limiting the preceding sentence, Licensee shall require each contractor performing the covered work to obtain and post a completion bond and material and labor payment bond."

5. FIRE OR OTHER CASUALTY.

The following is hereby inserted as Section 31 of the Agreement:

"SECTION 31. FIRE OR OTHER CASUALTY. If the Building is damaged by fire or any other casualty, Licensee, at its expense, shall promptly repair the damage, except as hereinafter provided, pursuant to plans approved in writing by the District ("Repair Plans"), which approval shall not be unreasonably withheld, delayed or conditioned as hereinafter provided, and using contractors that are reasonably acceptable to the District ("Casualty Repairs"). However, if the Building is damaged by fire or any other casualty to an extent that the Casualty Repairs would cost fifty percent (50%) or more of the value of the Building as determined by the District, the District may elect to terminate this Agreement upon giving notice of such election in writing to Licensee within ninety (90) days after the occurrence of the fire or casualty causing the damage, whereupon this Agreement shall terminate and shall be of no further force or effect. If this Agreement is terminated pursuant to this Section 31, all rights granted to Licensee hereunder shall immediately revert to the District, and the District shall immediately upon such termination have the full right to re-license the Licensed Premises or to use the Licensed Premises in any manner whatsoever." Notwithstanding anything set forth herein to the contrary, the District shall not be deemed to have unreasonably withheld its consent to the Repair Plans if all of the following conditions have not been satisfied: (i) none of the new Building improvements, systems or equipment set forth in the Repair Plans shall be more expensive to maintain than those located in the Building immediately prior to the casualty or otherwise increase the District's costs under the Agreement, (ii) the design and aesthetic of the Building as set forth in the Repair Plans shall be substantially similar to that to the Building immediately prior to the casualty, and (iii) the design and aesthetic of the Building as set forth in the Repair Plans shall be in keeping with the character of the District's environment and mission.

6. ATTORNEY'S FEES.

As consideration for Landlord entering into this Amendment and as a condition thereto, Licensee shall pay to the District concurrently with the execution and delivery of this Amendment the sum of \$3,750.00, as reimbursement for fifty percent (50%) of the attorney's fees incurred by the District in connection with this Amendment.

[SIGNATURE PAGE FOLLOWS]

The parties have caused this Amendment to be executed on the dates set forth below, but effective as of the Effective Date.

BRUSHWOOD CENTER AT RYERSON WOODS

By: Angelia G. Stumm
Name: A. Gail Stumm
Title: Board Chair

WITNESS:

By: Catherine Game
Name: Catherine Game
Title: Executive Director

**LAKE COUNTY FOREST PRESERVE
DISTRICT**

By: _____
Name: Angelo D. Kyle
Title: President

WITNESS:

By: _____
Name: Julie Gagnani
Title: Board Secretary