REVOCABLE LICENSE AGREEMENT FOR PRIVATE ENCROACHMENT ONTO PUBLIC PROPERTY

between
The Village of Fairport
and,
Fairport Public Library

THIS AGREEMENT made effective the ________ day of August, 2015, by and between the VILLAGE OF FAIRPORT, a municipal corporation organized and existing under and by virtue of the Laws of the State of New York and being one of its political subdivisions, having its principal place of business at 31 South Main Street, Fairport, New York, 14450, Monroe County, New York, hereinafter called “LICensor”, and FAIRPORT PUBLIC LIBRARY, with its principal office located at 1 Fairport Village Landing, Fairport, New York 14450, hereinafter designated as "LICENSEE".

The Village of Fairport, the Licensor, in consideration of granting a Temporary Encroachment on Public Property to the Fairport Public Library, the Licensee, will allow it to use and maintain an encroachment over the public properties listed herein and the terms set forth within the agreement.

WHEREAS, Licensee is the current tenant of the real property and improvements at 1 Fairport Village Landing, Fairport, New York; and

WHEREAS, the Licensor is the current owner of the real property and improvements at the Fairport Public Parking Garage, in the Fairport Village Landing, 50 South Main Street, Tax ID#153.13-1-1.1/B; and

WHEREAS, the parties are desirous of entering into a revocable license agreement for the purposes of providing mutual benefit to the respective properties; and

WHEREAS, SWBR Architecture, Engineering & Landscape Architecture, P.C., a licensed engineering firm, has prepared and certified an engineering study, design and structural analysis of the proposed book drop off construction project (betterment) located in the Fairport Public Parking Garage dated July 14, 2015, a copy of which is attached hereto and made a part hereof as Appendix “A”; 

NOW, THEREFORE, IN CONSIDERATION of the aforementioned encroachment, and the public purpose it serves, the parties hereto agree as follows:

1. That the engineering and structural analysis attached hereto and made a part hereof as Appendix “A” was prepared for the Licensee’s book drop off and betterment located in the Fairport Public Parking Garage.
2. That none of the parties hereto make any claim to any of the property except that which is contained within the boundary lines as reflected on the engineering report attached hereto and made a part hereof as Appendix “A”.

3. That Licensee agrees to maintain said betterment in its present location and the Village has no objection to the present location of the betterment, provided, however, should the betterment ever be subsequently demolished and replaced, they will be reconstructed in kind, in the same manner, placement and style unless otherwise agreed to by the Village of Fairport.

The Encroachment at this location includes the area currently used as a structural wall to the Fairport Public Library and Fairport Public Parking Garage. Such encroachments must not be positioned to interfere with or obstruct the regular and usual flow of vehicular or pedestrian traffic in said parking or public area.

Licensee is responsible for all costs related to the acquisition, construction and installation of the aforementioned betterment as well as any material or signage required as part of this encroachment. All construction, materials and signage must be approved by the Village of Fairport. In addition to said use of public space, all public property disturbed, modified, manipulated or changed must be brought back to original condition, reasonable wear, tear and casualty damage excepted, per the Village of Fairport, upon termination of this agreement, unless otherwise agreed to by the Village of Fairport.

**TERM.** The term shall commence on July 1, 2015 and terminate on June 30, 2028 unless otherwise terminated by either party. Agreement shall run with the Licensee and inure to the benefit of and be binding upon the parties. Renewals after the initial term are at the discretion of the Village of Fairport.

Licensee further recognizes that the license hereby granted is revocable by the Village of Fairport for good cause shown upon request by the Village Manager with sixty (60) days written notice to the Licensee. Licensee agrees that any and all encroachments will be removed within sixty (60) days of notification from the Village Manager that said license is revoked. If Licensee fails to remove such encroachment within sixty (60) days of notice of revocation then the Village of Fairport is hereby authorized to cause the same to be removed at the Licensee’s expense, hereby waiving any provision of law or ordinance requiring further notice.

Licensee agrees to maintain and use the temporary encroachment in such a way as will not interfere with the rights and duties of the Village of Fairport as relates to the property. Said interference shall be additional grounds for revocation of the license for encroachment. Licensee further agrees that any encroachment shall only be that which is approved by the Village Board and shall not be expanded in any manner in, on, or over the surrounding property not subject to this agreement.

Licensee agrees to comply with the laws, ordinances, and regulations of New York State and the Village of Fairport relative to the construction, installation, and use of this encroachment. Licensee understands that granting of this license does not negate
Licensee’s obligation to obtain any necessary permits or inspections in order to comply with said laws. Failure to comply with the laws of New York State or the Village of Fairport or to otherwise comply with the terms of this license agreement is grounds for revocation of this agreement.

INSURANCE. Licensee agrees to maintain insurance as specified by attached Appendix “B” and shall provide to the Village of Fairport Clerk-Treasurer with a certificate of insurance naming the Village of Fairport as an additional insured. Self-employed persons must carry such workers’ compensation coverage as directed by the Clerk-Treasurer. If Workers’ Compensation Insurance is required by law and licensee fails to provide it then this Agreement shall be void and of no effect unless the person or corporation making or performing the same shall secure compensation for the benefit of, and keep insured during the life of said contract, such employees, in compliance with the provisions of such law. The cost of obtaining any additional insurance shall be the responsibility of licensee. Said insurance may not be cancelable or expirable while Licensee holds title to the property. Licensee further agrees that its rights and/or obligations hereunder may not be assigned except upon approval by the Village of Fairport.

HOLD HARMLESS. Licensee shall at all times hold harmless the Village of Fairport, its officers, and its employees, together with their officers, agents, servants, and employees, from and against any and all liability, losses, claims, suits, causes of action, costs, expenses, damages or judgments or for the defense or payment thereof, based on any claim, action or cause of action whatsoever, including any action for libel, slander, or personal injury, or any affiliated claims, by reason of any act or failure to properly act on the part of Licensee or its agents, officers, employees and/or sub-contractors and in particular as may arise from Licensee’s performance under this contract, except those arising out of any willful misconduct or negligent act of Village.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

VILLAGE OF FAIRPORT

Dated: _________________________ BY: ______________________________________
Frederick H. May
Village Mayor

FAIRPORT PUBLIC LIBRARY

Dated: _________________________ BY: _______________________________________
Name:
Title:

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On the _____ day of __________, 2015 before me, the undersigned, a Notary Public in and for said State, FREDERICK H. MAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public

STATE OF NEW YORK )
COUNTY OF ___________ ) ss:

On the _____ day of __________, 2015 before me, the undersigned, a Notary Public in and for said State, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public
July 14, 2015

Mr. Bryan L. White  
Village Manager  
Village of Fairport  
31 S. Main Street  
Fairport, NY 14450

Re: Fairport Public Library Renovations  
SWBR Project No. 13481.00

Dear Bryan:

As part of the architectural and engineering design for the Fairport Public Library renovations currently in progress, SWBR Architects performed an engineering review of the existing Fairport Village Landing’s structural support system as it relates to the project. Specifically, as it relates to the proposed addition of a through-wall book depository between the Public Parking Garage and the Library offices, SWBR reviewed the penetration of the approximately one foot thick reinforced concrete wall in order to create a rectangular opening for the book drop equipment. This wall supports the second floor framing of the area above both areas, and also third floor and roof structure loads.

The book depository (book drop) will require an opening approximately 18” high by 18” wide for installation. Our Structural Engineering department has reviewed this proposed modification and has found that it will not generate adverse effects or create any unsafe structural conditions. The nature of reinforced concrete is that it performs best under compression loading, and disperses load forces through its area. An opening of this modest size will not require the addition of any supplementary reinforcement or bracing, as loads will naturally “bridge” around the opening, and will have no negative impact on the structural integrity of the wall as it exists today. The method that the General Contractor will use to cut the opening utilizes a powered concrete saw, which will have far less vibration impact as compared to other methods.

Sincerely,

Randal R. Sickler, AIA  
Senior Associate

RRS:lc

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