

**CITY OF XENIA, OHIO
RESOLUTION 2018 – L**

**AUTHORIZING THE CITY MANAGER TO EXECUTE A USE AGREEMENT WITH
DEVIL WIND BREWING FOR THE USE OF CITY PROPERTY LOCATED ADJACENT
TO 130 S. DETROIT STREET**

WHEREAS, Section 723.121 of the Ohio Revised Code grants to the legislative authority of a municipal corporation the authority to permit the use of, for such period as it shall determine, any lands owned by municipality not needed for street or highway purposes;

WHEREAS, Devil Wind Brewing, LLC, has approached this Council regarding a desire to use approximately 320 square feet of land owned by the City adjacent to 130 S. Detroit Street for an outdoor seating/patio area for its business; and

WHEREAS, this Council has determined that this City-owned property is not currently needed for any public purpose and that permitting Devil Wind Brewing, LLC, to use the requested area for purposes relating to its business at 130 S. Detroit Street should not interfere with any future street plans the City currently has.

NOW, THEREFORE, THE CITY OF XENIA HEREBY RESOLVES, at least four (4) members of the City Council concurring, that:

Section 1. The City Manager is hereby authorized to execute a Use Agreement with Devil Wind Brewing, LLC, to allow Devil Wind Brewing, LLC, to use the portion of City-owned property located adjacent to 130 S. Detroit Street (approximately 320 square feet) that is shown on Exhibit A of the Use Agreement, subject to the terms and conditions of the Use Agreement.

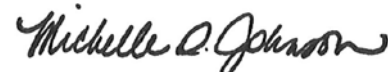
Section 2. In no case shall the City of Xenia be liable for any damages that may arise through, or because of, Devil Wind Brewing, LLC's use of the City's property, and the Use Agreement authorized pursuant to Section 1. of this Resolution, above, shall contain an indemnification clause in favor of the City of Xenia and the public reflecting the same.


Section 3. It is hereby found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4. This Resolution shall become effective immediately upon its passage.

Introduced: April 26, 2018
Passed: May 10, 2018

Attest:


Michelle D. Johnson
City Clerk


Michael D. Engle
President, Xenia City Council

City of Xenia, Ohio

AGREEMENT FOR USE OF CITY PROPERTY

This Agreement is entered into this ____ day of _____, 2018, by and between the **City of Xenia**, State of Ohio, whose mailing address is 107 E. Main Street, Xenia, Ohio 45385, hereinafter “City,” by the authority of the Xenia City Manager, as provided in the Codified Ordinances of the City of Xenia, Ohio, and as approved by the Council of the City of Xenia on May 10, 2018, and **Devil Wind Brewing, LLC**, by authority of its members, whose mailing address is 130 S. Detroit Street, Xenia, Ohio 45385, hereinafter “DWB.”

WITNESSETH, that for and in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. **Permit to Use.** The City hereby permits DWB to use the City’s property, described herein as “the premises,” which is adjacent to the property located at 130 S. Detroit Street, Xenia, Ohio.
2. **Premises.** The premises which are the subject of this Agreement consist of approximately 320 square feet of a permanent legal right-of-way and street and municipal utility easement located on a tract of land contained by a boundary described as follows, and as shown in Exhibit A:

Starting at the Point of Beginning which is described as the northeastern corner of an existing building with an address of 130 South Detroit Street, also located at the point at which the tract of land identified as parcel number M40000100090011200 abuts the public right-of-way of South Detroit Street, proceeding roughly eastward, perpendicular to and toward South Detroit Street, for a distance of 10 feet, then proceeding roughly southward, parallel to South Detroit Street, for a distance of 31 feet, then proceeding roughly westward, perpendicular to and away from South Detroit Street for a distance of 8 feet, then proceeding roughly southward, parallel to South Detroit Street for a distance of 5 feet, then proceeding roughly westward, perpendicular to and away from South Detroit Street, for a distance of 2 feet, then proceeding roughly northward, parallel to South Detroit Street, for a distance of 36 feet to the Point of Beginning.

3. **Term.** This Agreement shall take effect on the date first above written and shall remain in full force and effect until such time as the City notifies DWB in writing that the City has need of the premises for street, utility, or other purposes, or that the City is abandoning said right-of-way, or until otherwise terminated in accordance herewith.
4. **Condition Subsequent.** DWB shall provide to the City plans and specifications for its contemplated use of the premises, which must be approved by the City as not interfering with the City’s uses of the premises for its purposes and not unduly endangering the public. The City shall not unreasonably withhold approval of such plans, specifications, and contemplated use.
5. **Use.** DWB is hereby granted permission to erect fencing and patio furniture on the premises; however the City shall have no duty to maintain and/or keep in good repair any paved, surfaces fencing or patio furniture and DWB assumes sole responsibility for the maintenance and repair of any such fencing, patio furniture or other structures DWB erects which have been approved by the City.

6. Indemnification. DWB hereby agrees that it will assume all risk of injuries to property or persons, including death, resulting from or arising out of its use of the premises, or in connection therewith, or appertaining thereto, whether sustained by DWB, the employees of the DWB, its customers, its visitors, or any other person. DWB does hereby agree to protect, indemnify and hold harmless the City against any and all actions, claims, demands or liabilities for death, personal injuries or property damage arising from DWB's use of the premises by any person for any cause whatsoever, regardless of any negligence on the part of the City, its representatives or employees, unless the City or its representatives or employees are determined by the Greene County Court of Common Pleas to be solely negligent. In addition, DWB shall pay all expenses which the City may incur in the investigation and/or defense of any such claim, including counsel fees and court costs. DWB hereby agrees to give the City prompt notice of any claim or suit that may result in a judgment against the City.

7. Termination.

A. By the City: In addition to any other right of termination under this Agreement or by law, the City may terminate this Agreement if any of the following occur:

- (1) The City determines it has need of the premises for street or utility purposes;
- (2) The City decides to abandon or otherwise dispose of the premises;
- (3) DWB assigns or attempts to assign its rights or interests, or any part thereof, under this Agreement to any other party without the prior written consent of the City;
- (4) DWB voluntarily abandons its operations at 130 S. Detroit Street, Xenia, Ohio, for a continuous period of six (6) months; or
- (5) DWB defaults under any condition of this Agreement, and the default is not cured within thirty (30) days after written notice of default. If the default is such that it cannot reasonably be corrected within thirty (30) days, it will be considered timely cured if DWB begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is fully corrected within a reasonable time.

B. By DWB: In addition to any other right of termination under this Agreement or by law, DWB may terminate this Agreement if any of the following occur:

- (1) DWB is prevented by court order from using the premises, or a substantial part thereof, for a continuous period of six (6) months; or
- (2) The City defaults under any condition of this Agreement, and the default is not cured within thirty (30) days after written notice of default. If the default is such that it cannot reasonably be corrected within thirty (30) days, it will be considered timely cured if the City begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is fully corrected within a reasonable time.

C. Notice of Termination; Effective Date. In order to exercise a right of termination under this section, the party entitled to terminate this Agreement shall give the other party written notice of cancellation, specifying the reason under division A. or B. of this section, and specifying the date termination becomes effective, which shall be not less than thirty (30) nor more than ninety (90) days from the date of the notice. At any time before the effective date of termination specified in the notice, the notice of cancellation may be rescinded in writing by the party giving it, in which case the parties shall be in the same position as if notice of cancellation had not been given.

8. Surrender of Premises. At the end of the term of this Agreement, or upon termination of this Agreement by either party, DWB shall surrender use of the premises to the City.

9. Miscellaneous.

A. Neither party shall assign, sublet, or transfer their interest in this Agreement without the express written consent of the other party.

- B. This Agreement represents the entire and integrated agreement of the parties, and supersedes all prior negotiations, representations, and/or agreements, written or oral.
- C. This Agreement may be only be amended or modified upon the written agreement of the parties, as evinced by an Addendum to this Agreement.
- D. This Agreement and all rights and obligations of the parties hereunder, shall be construed and governed by the laws of the State of Ohio.

Witness our signatures on the date first above written.

Devil Wind Brewing, LLC

City of Xenia, State of Ohio

By: _____
David Hatfield, Member

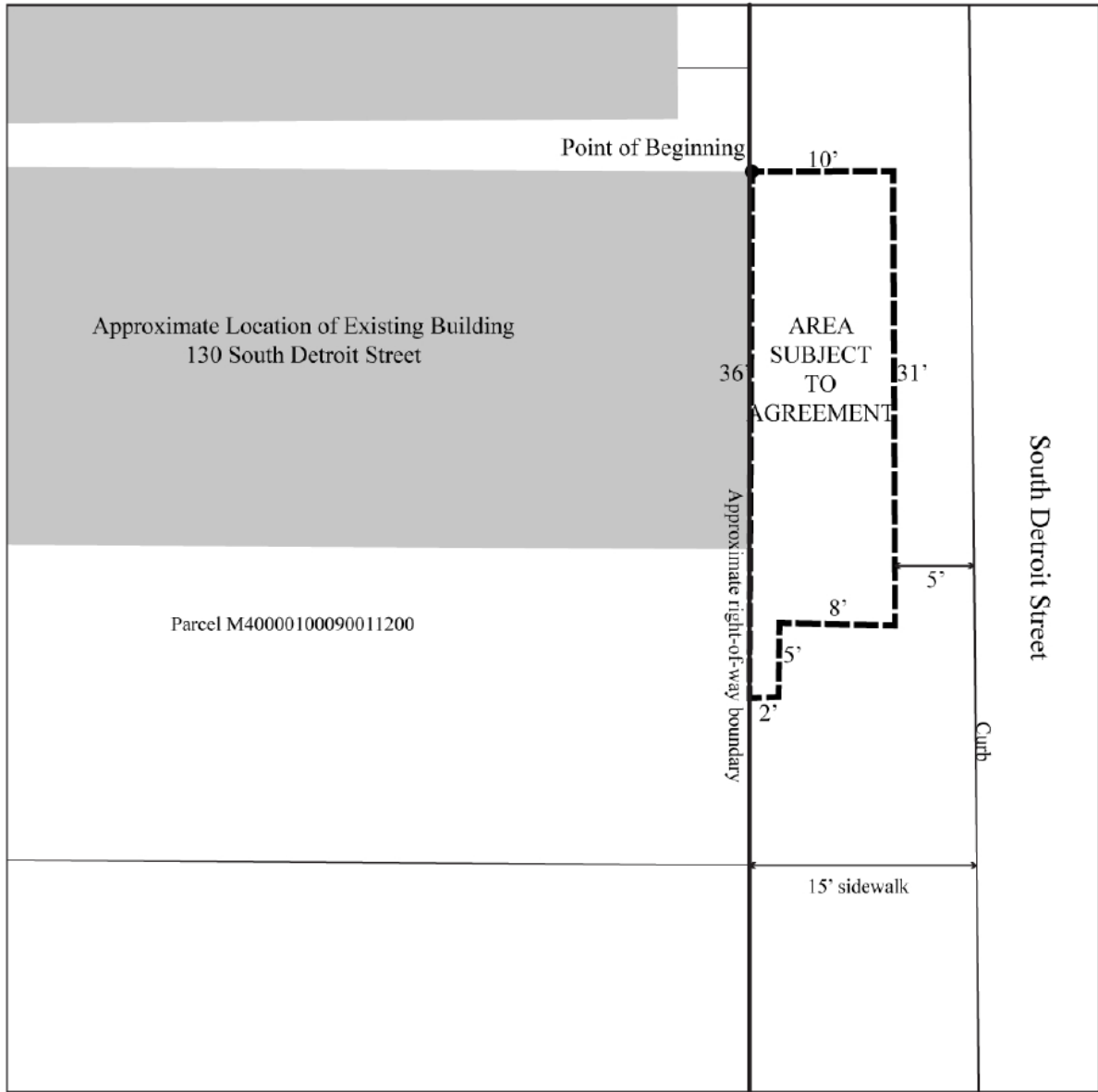
By: _____
Brent W Merriman, City Manager

By: _____
Perry Wyatt, Member

Witnessed by:

Witnessed by:

Exhibit A: Area Subject to Agreement



Scale: 1 inch equals 10 feet