

## LEASE

This Lease is made and executed, this \_\_\_\_\_ day of \_\_\_\_\_, 2001 by and between the City of Gahanna hereinafter referred to as "Landlord", and Rails-to-Trails Conservancy, Ohio Chapter, 4371 Cherrybottom Road, Gahanna, Ohio 43230, hereinafter referred to as "Tenant".

### WITNESSETH:

1) **PREMISES LEASED.** The Landlord does hereby demise and let unto the Tenant, and the Tenant does hereby lease and hire from the Landlord, for the term and under the terms and conditions herein set forth in this lease for those certain premises, consisting of:

The House at 4390 Cherrybottom Road and the grounds surrounding that lies within the City's split rail fence as outlined in Exhibit "A".

2) **TERM.** The term of this lease shall be for a period of five (5) years, commencing on \_\_\_\_\_ (hereinafter referred to as the "commencement date", fully to be completed and ended.

3) **RENTAL.** Tenant agrees to pay to Landlord at its office or to such other person or persons or at such other place as Landlord shall designate in writing, as rental for the said premises as follows:

- a) **Fixed Minimum Rental:** A fixed minimum rental for the herein described leased premises of one thousand dollars (\$1,000.00) per year, payable upon the 1st day of December during the term of this lease.
- b) **Penalty for Delinquent Rental Payments:** Any sums owing hereunder by Tenant which are not paid when due shall bear interest at the rate of one and one-half percent (1-1/2%) or twenty-five and no/100 dollars (\$25.00), whichever is greater, per month from the due date until paid.
- c) This lease may be terminated by the "Landlord" within one hundred eighty (180) days of written notice and by the "Tenant" within ninety (90) days of written notice.

4) **USE OF PREMISES.** Tenant covenants and agrees that said premises shall be used and occupied for the operation of the business office for ***Rails-to-Trails Conservancy, Ohio Chapter***, and Landlord approved subleases, and for no other purpose without the written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall properly comply with all laws, ordinances and

lawful orders and regulations affecting the premises and the use thereof. Tenant further covenants and agrees that it will conduct its business during normal business hours for such type of business.

5) **CARE OF PREMISES**. Tenant shall not permit, allow or cause any act or deed to be performed or any practice to be adopted or followed in or about said premises which shall cause or be likely to cause injury or damage to any person or to said premises or to the building or to the sidewalks and pavements adjoining the leased premises. Tenant shall not permit, allow or cause any noxious, disturbing or offensive odors, fumes, gases, smoke, dust, steam, vapors or disturbing noise, sound or vibration, excluding that caused by repairs to the property, to originate in or to be emitted from said premises. Tenant agrees to permit no waste of the leased premises, but rather to take good care of same and, upon termination of this lease, to surrender without notice in as good condition as the commencement of the term, reasonable use and wear thereof excepted.

6) **UTILITIES**. Tenant shall procure and shall pay the cost when due of **gas and electric** utilities rendered or furnished to the leased premises during the term of this lease.

7) **MAINTENANCE AND REPAIR**. Landlord agrees to keep and maintain all City owned properties outside fenced in lot as shown in Exhibit "A". Landlord shall not be responsible for damages caused by roof leaks, backups of sewers, toilets or lavatories. Tenant, at its sole cost and expense, whether the same shall be the property of Tenant or Landlord, shall perform routine maintenance of the leased premises and all its appurtenances and equipment, including, but not limited to, heating units, air conditioning equipment, electrical fixtures (including light bulbs) and equipment, electrical installation, plumbing equipment and fixtures, all machinery, all hardware, all interior paint or decoration of every kind. Tenant shall promptly replace all broken or damaged glass, including window glass and door glass. Landlord agrees to replace major fixtures and equipment at the end of their useful life.

8) **ALTERATIONS**. No structural changes, additions or substantial alterations shall be made by Tenant without the written consent of Landlord. Tenant shall have the right, at its own cost and expense, to place or install within the leased premises such fixtures, partitions, equipment and trade fixture, together with any additional painting or minor alterations in the leased premises which Tenant may find necessary and deem desirable, for all of which Landlord hereby consents. It is further covenanted and agreed that all fixtures, partitions, equipment, trade fixtures, alterations or changes installed by Tenant shall be and remain personal property, regardless of the manner of their annexation, and shall be removed by Tenant at the termination of this lease or any extension thereof. Any damages to the leased premises caused by the removal thereof shall be repaired by Tenant at the sole cost and expense of Tenant.

9) **INDEMNIFICATION OF LANDLORD**. Tenant covenants and agrees to save Landlord harmless from any liability for injuries or damages to any person or property upon the leased premises, from any cause whatsoever, and agrees to **procure at its own cost and expense public liability insurance** for the benefit of Landlord and Tenant in the sum of One Million and No/100 Dollars (\$1,000,000.00) for damages

resulting to one (1) person and One Million and No/100 Dollars (\$1,000,000.00) for damages resulting from one incident and property damage in the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00). **Tenant shall keep and maintain said insurance in force during the term of this lease and shall make landlord additionally insured.** Tenant will deliver the policy or copy thereof or certificate of insurance evidencing such coverage to Landlord. Landlord shall maintain liability insurance on the building and common areas for the benefit of Landlord and Tenant.

10) **DAMAGE BY FIRE OR OTHER CASUALTY.** If the building shall be damaged or destroyed in whole or in part by fire or other cause and is rebuilt and restored to a good and tenantable condition by Landlord within a reasonable time, the rental shall abate entirely, in case the entire premises are untenable, until same shall be restored to a tenantable condition. If Tenant shall fail to adjust its own insurance within a reasonable time and as a result thereof the repairing and restoration is delayed, there shall be no abatement of rental as above provided during the term of such delay; and the Tenant shall use any part of the leased premises for storage during the period of repair, a reasonable charge for which shall be made against Tenant. In case the building is not repaired or restored, this lease shall be terminated.

11) **REAL ESTATE TAXES.** To be paid by Landlord.

12) **PERSONAL PROPERTY TAXES.** Tenant shall pay all taxes levied against its personal property located within the leased premises during the term of this lease.

13) **EMINENT DOMAIN.** If a part of the leased premises shall be taken by any public authority under the power of Eminent Domain, then the term of this lease shall cease on the part so taken from the date possession of that part so taken shall be required and the rental shall be paid up to that date. In the event that all the leased premises amounting to fifty percent (50%) or more thereof is taken, Tenant shall have the right either to cancel this lease and declare the same null and void or to continue in possession of the remainder of the leased premises under the terms herein provided, except that the rental shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of Landlord, whether such damages shall be awarded as compensation of diminution in the value of the leasehold or of the fee of the premises herein leased.

14) **RESTRICTION AGAINST ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or in any manner transfer this lease or any estate interest or benefit therein, or sublet said premises or any parts thereof or permit the use of same or any part thereof by anyone other than Tenant, **without the the prior written consent of Landlord, which consent shall not be unreasonably withheld.** Consent by Landlord to any assignment or transfer of interest under this lease or subletting of said leased premises or any part thereof shall be limited to the instance stated in such written consent and shall not constitute a release, waiver or consent to any other assignment, transfer of interest, or subletting.

15) **EVENTS OF DEFAULT; RIGHTS OF LANDLORD UPON DEFAULT.** In the event Tenant shall fail or omit to make payment of the rental or any other herein specified item that it is required to make for five (5) days or more after maturity of same,

breaches any of the covenants herein provided, fails to fully and promptly perform any act required of it in the performance of this lease, abandons the premises, becomes insolvent, makes an assignment for the benefit of creditors, is adjudicated bankrupt, has a receiver or trustee appointed for its property as a result of its insolvency or threatened insolvency or is subject to a levy of execution or attachment or other taking of its property or its assets or its leasehold interest in the leased premises by process of law or otherwise in satisfaction of any judgment or debt or claim, Tenant shall be in default. Landlord may, at its option, unless said default is cured within five (5) days after notice of said default is delivered forthwith, terminate this lease and all of the rights of Tenant hereunder and thereupon Landlord shall have the right to enter said premises and remove all persons and property therefrom, or Landlord may, without terminating this lease, enter into said leased premises as the agent of Tenant and re-let the premises with or without any furniture, fixtures, or property of Tenant, or make any repairs, changes, alterations, or additions in or to the said leased premises that may be necessary or convenient, all for the account of Tenant. The re-letting for the Tenant shall be for such rent and upon such terms as shall be satisfactory to the Landlord and Landlord shall credit the proceeds thereof, after paying all the costs and expenses of such re-entry, repairs, changes, alterations and additions and the expense of such re-letting, to the unpaid rent and other amounts falling due hereunder during the remainder of the term of this lease and Tenant shall be and shall remain liable to Landlord for the balance thereof. The foregoing rights preserved to Landlord are in addition to its rights to sue for past due rentals or charges due under this lease five (5) days after notice of said default is delivered to Tenant and Tenant hereby agrees to pay, in addition to the past due rentals and charges, interest on the past due sum in the amount of eighteen percent (18%) per annum, plus all reasonable attorneys' fees, including interest, together with all court costs and expenses incurred by Landlord in the process of collection.

16) **SECURITY INTEREST:**

**COVENANT OF TITLE AND QUIET POSSESSION.** Landlord covenants that it has the right to make this lease for the term aforesaid and that it will put Tenant into possession of the leased premises, free from all encumbrances, liens or defects in the title, for the full term of this lease. Landlord further covenants that there are no restrictive covenants, zoning, or other ordinances or regulations which will prevent Tenant from conducting its usual business or any department thereof in the leased premises. Landlord warrants that Tenant, upon making the payments and performing and keeping the other covenants and agreements of the lease on its part to be kept and performed, shall have quiet and peaceful possession of the leased premises during the term of this lease and any extension thereof.

17) **RIGHT TO EXAMINE PREMISES.** Tenant agrees to allow Landlord, its agents and representatives, free access to the leased premises during reasonable hours for the purpose of **security, maintenance** and examining same; and during the period of three (3) months previous to the expiration of the term of this lease or during the period of three (3) months prior to any renewal hereof, to exhibit same to prospective tenants.

18) **HOLDING OVER.** It is hereby agreed that in the event of Tenant holding over after the termination of this Lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary, and Tenant shall pay to Landlord a monthly occupancy charge equal to five percent (5%) of the rental under Paragraph 3 (plus all other charges payable by Tenant under this Lease) for each day from the expiration or termination of this Lease until the date demised premises are delivered to Landlord in the condition required herein, and Landlord's right to damages for such illegal occupancy still survive.

19) **SUCCESSORS AND ASSIGNS.** The covenants and agreements of this lease shall be binding upon and for the benefit of the successors and assigns of the parties hereto.

20) **PROPER NOTICES.** All notices required or permitted under this lease shall be deemed to be properly served if sent by registered mail to the last address previously furnished by the parties hereto. Until hereafter changed by notice in writing, notices shall be sent to Landlord at: President, 1100 Seventeenth Street, N.W., Washington, D.C. 20036.

21) **WAIVER.** The failure of Landlord to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any of one or more instances, shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall be and remain in full force and effect. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this lease shall be deemed to have been waived by Landlord, unless such waiver by in writing by Landlord.

22) **ENTIRE AGREEMENT.** This lease and the exhibits and addendums, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the leased premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than is set forth herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by the parties hereto.

23) **FORCE MAJEURE.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, civil disturbances, picketing, demonstrations, insurrection, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this lease, then performance of such act shall be excused for the period of the delay and the period equivalent to the period of such delay.

24) **CIVIL DISTURBANCE, DEMONSTRATION, PICKETING, ETC.** It is expressly covenanted and agreed that Landlord may exercise its discretion in determining what measures, if any, are to be taken in the event any civil disturbance, demonstration, picketing or riot takes place on the leased premises or parking areas connected thereto and Landlord shall not be liable for any interruption of business or any injuries or damages to persons or property on or in the leased premises resulting from said civil disturbances, demonstration, picketing or riot or the measures taken by Landlord to control said civil disturbance, demonstration, picketing or riot.

25) **PERSONAL PROPERTY, MERCHANDISE, FURNITURE AND FIXTURES.** Any and all personal property, merchandise, furniture or fixtures placed in or moved upon the leased premises by Tenant shall be at the sole risk of Tenant. Upon termination of this lease or any extension or renewal hereof, Tenant shall have the right to remove all or any portion of such personal property, provided that Tenant shall repair any damage to wall, floors or doors arising from Tenant's removal of said personal property.

26) **TENANT DEFINED; USE OF PRONOUN.** The word *Tenant* shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one Tenant, any notice required or permitted by the terms of this lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals, partnerships or corporations. The necessary grammatical changes required to make the provisions of this lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

27) **PARTIAL INVALIDITY.** If any term, covenant or condition of this lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

28) **HAZARDOUS SUBSTANCES.** Tenant shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Tenant, Tenant's agents, employees, contractors or invites. If hazardous substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises becomes contaminated in any manner for which Tenant is legally liable, Tenant shall indemnify and hold harmless the Landlord from any and all claims, damages, fines, judgments, penalties, cost, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by adverse impact on marketing of space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees, arising during or after the Lease Term and arising as a result of that contamination by Tenant. This indemnification includes, without limitation, and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state or local agency or political subdivision.

Without limitation of the foregoing, if Tenant causes or permits the presence of any hazardous substance on the Premises and that results in contamination, Tenant shall promptly, as its sole expense, take any and all necessary actions to return the Premises to the condition existing proper to the presence of any such hazardous substance of the Premises. Tenant shall first obtain Landlord's approval for any such remedial action.

As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the state of Ohio, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

29) **TITLE III.** Notwithstanding any other provision of this Lease, the parties hereby agree that the demised premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter, the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, and such compliance may be required to operate the demised premises. The Tenant further agrees to indemnify and hold the Landlord harmless against any claims which may arise out of Tenant's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to, reasonable attorneys' fees, court costs and judgments as a result of said claims.

30) **ADDENDA.** Addenda consisting of one page (Exhibit "A").

**IN WITNESS WHEREOF**, the parties hereto have caused this lease to be signed in their respective names by their respective officers and sealed with their respective seals the day and year first above written.

Signed in the presence of:

City of Gahanna

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public

Approved as to form:

\_\_\_\_\_  
Thomas L. Weber, City Attorney

Signed in the presence of:

Rails-to-Trails Conservancy,  
Ohio Chapter

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public



Exhibit "A".

CHERRY BOTTOM ROAD

Drive

Parking

Split Rail Fence

House

