

**RESOLUTION NO. 2019-6**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MUTUAL RELEASE AND SETTLEMENT AGREEMENT AND LICENSE AGREEMENT BETWEEN THE CITY OF HURON AND THE JEAN M. STEWART TRUST, DANIEL STEWART, DESTINY VESTING, LLC, JAMES SEITZ, JR., AND JACKY SEITZ RELATIVE TO THE CITY'S RIGHT OF WAY LOCATED ON HURONIA BEACH DRIVE.**

WHEREAS, a lawsuit was filed in the Court of Common Please, Erie County, Ohio: *The Jean M. Stewart Trust v. The City of Huron, et al., Case No. 2017-CV-0266* concerning City of Huron property identified as Huronia Beach Drive; and,

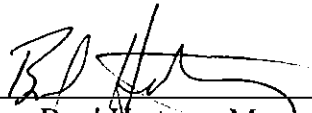
WHEREAS, it is the desire of the parties to settle and forever resolve all of the claims of the lawsuit,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:**

**SECTION 1.** That the City Manager, on behalf of the City of Huron, be, and he hereby is, authorized to enter into a Mutual Release and Settlement Agreement and License Agreement with the Jean M. Stewart Trust, Daniel Stewart, Destiny Vesting, LLC, James Seitz, Jr., and Jacky Seitz relative to the City's right of way located on Huronia Beach Drive, which agreement shall be in the form of "Exhibit A" attached hereto and made a part hereof.

**SECTION 2.** That it is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution and the subject matters set forth herein were adopted in open meetings of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code and the Codified Ordinances of the City of Huron.

**SECTION 3.** This resolution shall be in full force and effect from and immediately after its adoption.

  
\_\_\_\_\_  
Brad Hartung, Mayor

ATTEST:   
Clerk of Council

ADOPTED: 12 FEB 2019

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement, entered into this \_\_\_\_\_ day of January, 2019, by and between The Jean M. Stewart Trust, Daniel Stewart (individually and as Trustee of the Jean M. Stewart Trust), Jean M. Stewart (individually and as Trustee of the Jean M. Stewart Trust), Destiny Vesting, LLC, James Seitz, Jr. (individually as Member of Destiny Vesting, LLC), Jacky Seitz (individually and as Member of Destiny Vesting, LLC) (collectively "Owners") and the City of Huron, Ohio ("Huron"), and all of its employees, former employees, elected and appointed officials in their individual and official capacities, agents, representatives, attorneys and insurers (including but not limited to York Risk Pooling Services, Ohio Township Association Risk Management Authority, Public Entity Risk Services of Ohio, Public Entities Pool of Ohio and American Risk Pooling Consultants, Inc.), is to evidence the following understandings and agreements:

### WITNESSETH

WHEREAS a lawsuit has been filed in the Court of Common Pleas, Erie County, Ohio, captioned *The Jean M. Stewart Trust v. The City of Huron, et al.*, Case No: 2017-CV-0266 (hereinafter "the Lawsuit"), concerning Huron's property identified as Huronia Beach Drive; and

WHEREAS Huron has denied any liability with respect to any and all claims asserted against it; and

WHEREAS it is the desire of the parties hereto to settle and forever resolve all of the claims of the Lawsuit upon the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this action hereby agree as follows:

1. On May 19, 2017 The Jean M. Stewart Trust initiated the Lawsuit against Huron asserting certain claims premised upon allegations including, but not limited to, that it expended resources to develop and improve Huronia Beach Drive and Huron removed certain improvements and prevented access to Lake Erie. The original claims asserted by The Jean M. Stewart Trust against Huron consist of the following: (1) vacation of Huronia Beach Drive pursuant to R.C. 723.09, (2) The Jean M. Stewart Trust's improvements to Huronia Beach Drive created a property interest in the form of an easement and Huron's failure to recognize said property interest constituted a taking under Ohio law, (3) preliminary and permanent injunction stopping Huron

from the further taking of certain improvements performed by The Jean M. Stewart Trust upon the property and barring Huron from further interference with The Jean M. Stewart Trust's purported property rights in Huronia Beach Drive, and (4) the issuance of an order, pursuant to the writ of mandamus process, compelling Huron to institute appropriation proceedings. On April 11, 2018 the Court of Common Pleas, Erie County, issued a Judgement Entry dismissing all claims of The Jean M. Stewart Trust except for the claim seeking the vacation of Huronia Beach Drive pursuant to R.C. 723.09; this Judgement Entry further ordered The Jean M. Stewart Trust to file an Amended Complaint, with respect to the remaining R.C. 723.09 vacation claim, in order to bring into the Lawsuit Destiny Vesting, LLC due to it being the title owner of property abutting Huronia Beach Drive to the West. On April 24, 2018 The Jean M. Stewart Trust filed an Amended Complaint in the Lawsuit for the purpose of naming Destiny Vesting, LLC as a Defendant in the lawsuit.

2. For the purposes of this Mutual Release and Settlement Agreement, the term "Claims" is defined herein to include any and all claims and/or allegations that have been made or may be made in the future by the Owners and/or Huron arising out of the factual basis of the claims referenced in Paragraph 1 of this Mutual Release and Settlement Agreement for themselves and their heirs, executors, administrators, representatives, successors, assigns and agents, trustors, trustees, beneficiaries, officers, directors, members, employees, attorneys, insurers, sureties, consultants, and advisors, and each of them.

3. For and in consideration of the entering into a License Agreement, an executed copy of the same attached hereto as Exhibit A and incorporated herein, Owners and Huron, on behalf of themselves and their heirs, executors, administrators, representatives, successors, assigns and agents, trustors, trustees, beneficiaries, officers, directors, members, employees, attorneys, insurers, sureties, consultants, and advisors, and each of them, do hereby fully release, waive, covenant not to sue, and forever discharge the other and their heirs, executors, administrators, representatives, successors, assigns and agents, trustors, trustees, beneficiaries, officers, directors, members, employees, attorneys, insurers, sureties, consultants, and advisors, from any and all Claims as defined herein. Notwithstanding the foregoing, the obligations of Huron and/or Owner as set forth in the License Agreement are expressly excepted from the foregoing Mutual Release and Settlement Agreement. Further, and notwithstanding the foregoing, Owners and Huron recognize that this is a settlement of disputed Claims, and any and all damages allegedly incurred

in relation to the same, and is not intended to be a general release of future claims other than those Claims defined and expressly released herein.

4. By tendering the aforesaid consideration, Huron does not admit any violation of law, liability, or invasion of any rights and any such invasion or liability is expressly denied by Huron. The terms contained in this Mutual Release and Settlement Agreement are contractual in nature and not merely recitals, and the agreements contained herein and the considerations transferred are to compromise doubtful and disputed claims, to avoid further litigation, and to buy the peace.

5. It is further understood and agreed that the consideration contained in this Mutual Release and Settlement Agreement is the sole and only consideration for this Mutual Release and Settlement Agreement and that no representations, promises, or inducements have been made by the parties hereto other than those that appear in this instrument.

6. It is further understood and agreed that Owners shall dismiss each and every one of their Claims against Huron with prejudice in the Lawsuit.

7. Owners further represent that no part of their claims against Huron have been assigned to any persons, firms, corporations or entities, and that no bankruptcy proceeding is currently pending or has concluded in which Owners are or were a party seeking bankruptcy. In the event Owners do not own the claims being settled and released herein, or are or become a party to bankruptcy proceedings which would affect the rights of any person, firm, corporation or entity released under this document, Owners agree to save, defend and hold Huron harmless from any and all claims and damages of whatever nature that arise therefrom.

8. The undersigned acknowledge and declare that they have read this Mutual Release and Settlement Agreement, have been represented by counsel concerning this matter and fully understand its terms and voluntarily accepts the consideration as set forth hereinabove for the purpose of making a full and complete compromise, adjustment and settlement of all claims and potential claims arising out of the Lawsuit.

9. In light of the acknowledgements, stipulations, and agreements set forth hereinabove, the parties hereto agree as follows:

- a) Each individual/entity executing this Mutual Release and Settlement Agreement has the right, power, legal capacity, and authority to enter into and perform his/her/its obligations under this Agreement;
- b) Each individual/entity executing this Mutual Release and Settlement Agreement has to his/her/its knowledge complied with, and is not in violation

of applicable federal, state, or local statutes, laws, and regulations affecting any transaction contemplated by this Agreement;

- c) Each individual/entity executing this Mutual Release and Settlement Agreement has had the opportunity to consult with legal counsel, has read and understands the terms of this Release and Settlement Agreement, and voluntarily accepts said terms and intends to be bound by them;
- d) Each individual/entity executing this Mutual Release and Settlement Agreement has relied solely on his/her/its knowledge and information and has not relied on any representations, promises or agreements of any kind other than that which is contained in this Mutual Release and Settlement Agreement made by or on behalf of any party released hereby;
- e) This Mutual Release and Settlement Agreement represents the entire Mutual Release and Settlement Agreement between the parties with respect to the subject matter hereof, and supersedes any prior understanding, whether written or oral;
- f) This Mutual Release and Settlement Agreement shall be construed and interpreted in accordance with the law of the State of Ohio;
- g) In the event that one or more of the provisions of this Mutual Release and Settlement Agreement are deemed to be illegal or unenforceable, the remainder of this Mutual Release and Settlement Agreement shall not be affected thereby, and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent by law;
- h) This Agreement may be signed in counterparts, each of which, when taken together, shall constitute one fully executed and binding agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date and year first above written.

**OWNERS:**

\_\_\_\_\_  
The Jean M. Stewart Trust  
By (print name): \_\_\_\_\_

\_\_\_\_\_  
Jean M. Stewart, Individually and as Trustee of The Jean M. Stewart Trust

\_\_\_\_\_

Daniel Stewart, Individually and as Trustee of The Jean M. Stewart Trust

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Destiny Vesting, LLC  
By (print name): \_\_\_\_\_

\_\_\_\_\_  
James Seitz, Jr., Individually and as a Member of Destiny Vesting, LLC

\_\_\_\_\_  
Jacky Seitz, Individually and as a Member of Destiny Vesting, LLC

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

HURON:

The City of Huron, Ohio

By: \_\_\_\_\_  
Andrew D. White, City Manager

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

## LICENSE AGREEMENT

This License Agreement is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between **DESTINY VESTING, LLC, JAMES SEITZ, JR., JACKY SEITZ**, the sole members of Destiny Vesting and husband and wife, **THE JEAN M. STEWART TRUST, JEAN M. STEWART**, individually and as Trustee of the Jean M. Stewart Trust, and **DAN STEWART** (hereinafter collectively referred to as "Licensees") and the **CITY OF HURON, OHIO**, a municipal corporation of Erie County, Ohio (hereinafter referred to as "Licensor").

WHEREAS, Licensor owns the premises described as follows:

Being a portion of the public right-of-way of Huronia Beach Drive located on the northerly side of Superior Street as shown on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "the premises").

WHEREAS, Licensees desire to have use of the premises for the purpose and subject to the terms and conditions as hereinafter set forth; and

WHEREAS, Licensor is willing to permit the Licensees to use the premises for the purpose and subject to the terms and conditions as hereinafter set forth;

NOW, THEREFORE, Licensor and Licensees agree as follows:

1. The premises may be used by Licensees as follows:
  - A. To gain access to their adjoining property in order to improve, repair or maintain the same. Should any such use result in damage to the premises, Licensees shall be solely responsible for the repair of the premises to its previous state.
  - B. For shoreline protection installation but only to the extent the same is first deemed to be acceptable by Licensor and is ultimately approved by Licensor. Licensee shall at all times maintain sole responsibility for the care and maintenance of any shoreline protection installed by Licensee and approved by Licensor.
2. Both Licensor and Licensee understand and agree that Licensor shall remove the wood posts presently existing and install the previously removed rock armour (generally running in an east/west direction north of the end of the pavement) but with the same to be arranged in a manner so as not to impede the public's use of such area within One Hundred Eighty (180) days after the execution of this License Agreement. Licensees shall install stepping stones through such rock armour and level with the ground in order to create a usable pathway and are further permitted to install aesthetically appropriate landscaping around the rock armour. Licensees shall at all times maintain sole responsibility for the care and maintenance the rock armour, and any installed aesthetically appropriate landscaping around the same, including keeping the same in an attractive, neat and clean condition.

3. Both Licensor and Licensees understand and agree that while this License Agreement is in effect Licensor may elect to perform shoreline protection work upon the premises and the same may impact shoreline protection work performed by Licensees prior to (which includes, but is not limited to, any concrete boat ramps or rock armour installed by Licensees) and after the execution of this License Agreement (which includes, but is not limited to, any rock armour installed by Licensees), including but not limited to the complete removal of any such shoreline protection work which will be done solely at the cost of Licensor.
4. Both Licensor and Licensees understand and agree that any trees located on the premises may be maintained, including but not limited to trimming, by Licensor as deemed appropriate. Licensor shall not remove or materially damages any trees located on the premises unless the same becomes necessary due to disease and/or the existence of a hazardous condition.
5. Licensor shall install a sign on the premises that advises the public to stay off the rocks.
6. This License Agreement shall transfer to any subsequent purchaser of Licensees' property which adjoins the premises but any transfer of ownership thereafter shall give rise to the right of either party to terminate this License Agreement for any reason, or for no reason, at any time by giving notice to the other party specifying the date of termination, such termination to be given not less than thirty (30) days prior to the date therein specified.
7. Licensor makes no warranties whatsoever regarding the condition of the premises. During the term of this License Agreement, Licensor shall not be liable, and Licensees hereby release Licensor from all such liability, for any personal injury, death or property damage which Licensees or their guests or invitees may incur, regardless of the cause thereof.
8. The Licensees, for themselves and for their successors and assigns, hereby save the Licensor harmless and indemnifies Licensor (including, but not limited to, its elected officials and employees) from and against any and all claims, damages, losses, suits, judgments, costs and expenses resulting from Licensees' use of the premises covered by this License Agreement.
9. As further security for this indemnification, Licensees, their successors and assigns, shall obtain and keep in full force and effect during the term of this License Agreement general liability insurance of at least One Million Dollars (\$1,000,000.00) for personal injury or death and One Hundred Thousand Dollars (\$100,000.00) for property damage which shall cover Licensees' use and interest in the premises as provided by this License Agreement. The terms of coverage shall be evidenced by certificate of insurance to be furnished to Licensor within sixty (60) days of execution of this this License Agreement.



10. Licensees agree to comply with all applicable federal, state and local laws and regulations.
11. This License Agreement contains the entire agreement of the parties, and no covenants, representations, inducements or promises, oral or otherwise, not embodied herein, shall be in force or effect. This License Agreement may not be modified, nor any of its provisions waived, except by a writing signed by both parties.
12. Each individual/entity executing this License Agreement has the right, power, legal capacity, and authority to enter into and perform his/her/its obligations under this License Agreement.
13. Each individual/entity executing this License Agreement has had the opportunity to consult with legal counsel, has read and understands the terms of this License and Agreement, and voluntarily accepts said terms and intends to be bound by them.
14. This License Agreement will be governed by and construed in accordance with the laws of the State of Ohio. The parties consent to the exclusive jurisdiction of the Erie County, Ohio courts for any dispute arising hereunder.
15. In the event that one or more of the provisions of this License Agreement are deemed to be illegal or unenforceable, the remainder of this License Agreement shall not be affected thereby, and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent by law.

**IN WITNESS WHEREOF**, the parties have hereunto executed this License Agreement this \_\_\_ day of \_\_\_\_\_, 20\_\_.

In the presence of:

(As to all Licensees)

\_\_\_\_\_

\_\_\_\_\_

LICENSEES:

Destiny Vesting, LLC

By \_\_\_\_\_

\_\_\_\_\_  
James Seitz, Jr., Individually

\_\_\_\_\_  
Jacky Seitz, Individually

The Jean M. Stewart Trust

By \_\_\_\_\_  
Jean M. Stewart, Trustee

\_\_\_\_\_  
Jean M. Stewart, Individually

\_\_\_\_\_  
Dan Stewart

LICENSOR:

The City of Huron, Ohio

By \_\_\_\_\_  
Andrew D. White, City Manager

\_\_\_\_\_  
\_\_\_\_\_

STATE OF OHIO    )  
                          ) ss:  
COUNTY OF ERIE    )

Before me, a Notary Public for said county and state, personally appeared **DESTINY VESTING, LLC** by \_\_\_\_\_, its \_\_\_\_\_ who acknowledged he/she did execute the foregoing instrument and that the same was his/her free act and deed and the free act and deed of the said Destiny Vesting, LLC.

In witness whereof, I have hereunto set my hand and seal at Huron, Ohio this \_  
Day of \_\_\_\_\_, 20\_\_.

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

STATE OF OHIO    )  
                          ) ss:  
COUNTY OR ERIE    )

Before me, a Notary Public in and for said county and state, personally appeared **JAMES SEITZ, JR.** and **JACKY SEITZ**, husband and wife, each of whom acknowledged they did execute the foregoing instrument and that the same was their free act and deed.

In witness whereof, I have hereunto set my hand and seal at Huron, Ohio, this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

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

STATE OF OHIO    )  
                          ) ss:  
COUNTY OF ERIE    )

Before me, a Notary Public in and for said county and state, personally appeared **DAN STEWART** and **JEAN M. STEWART**, Jean Stewart both in her capacity as Trustee of the Jean M. Stewart Trust in her individual capacity, each of whom acknowledged they did execute the foregoing instrument and that the same was their free act and deed and the free act and deed of the Jean M. Stewart Trust.

In witness whereof, I have hereunto set my hand and seal at Huron, Ohio, this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

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

STATE OF OHIO    )  
                          ) ss:  
COUNTY OF ERIE )

Before me, a Notary Public in and for said county and state, personally appeared **ANDREW D. WHITE**, City Manager of the City of Huron, who acknowledged that he did execute the foregoing instrument and that the same was his free act and deed and the free act and deed of said municipal corporation.

In witness whereof, I have hereunto set my hand and seal at Huron, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Notary Public

APPROVED AS TO FORM:

---

Law Director, City of Huron