

2D-10)



**City Council Agenda Item**  
**Meeting of January 8, 2013**

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**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James R. O'Connor, City Manager  
**DATE:** December 19, 2012

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**SUBJECT:** License Agreement #2012-LA-0205 – Don & Peggy Rosvold – 15 Marine Drive

**REQUESTED BY:** City Manager/Public Works Department

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The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached supporting documentation.

No action required. (Information only)

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## DEPARTMENTAL CORRESPONDENCE

TO: James R. O'Connor, City Manager  
DEPT: City Manager

VIA: Monte K. Falls, PE, Director  
DEPT: Public Works *MK FALLS 12/17*

FROM: David R. Gay, PSM, Chief Surveyor *DRG*  
DEPT: Public Works

DATE: December 17, 2012

RE: **License Agreement #2012-LA-0205**  
**Don & Peggy Rosvold**  
**15 Marine Drive**

### Recommendation:

Place this item on the agenda for the January 8, 2013 meeting of the City Council.

### Funding:

There is no funding required for this item.

### Background:

As a condition of the Rosvold's proposed dock and boatlift approval the City is requiring that a license agreement be executed for their use of City owned submerged lands behind their house in Vero Isles. Please note that the river bottom behind 15 Marine Drive is owned by the City and currently license agreements are being required for all new improvements. City Council's approval is required as the license area is on city owned land. The City Manager is authorized to approve license agreements in city right-of-ways.

### Attachments

DRG/jb

This instrument prepared by  
and return to:  
City Attorney's Office  
City of Vero Beach  
Courthouse Box 40  
P.O. Box 1389  
Vero Beach, FL 32960-1389

LICENSE AGREEMENT FOR USE OF CITY REAL PROPERTY  
DOCKING FACILITIES — RESIDENTIAL (VERO ISLES)

This License Agreement (hereinafter "Agreement") was made and entered into the date last written below by and between the **City of Vero Beach, Florida**, having an address of **P.O. Box 1389, Vero Beach, FL 32961-1389** (hereinafter "City"), and **Don R. & Peggy T. Rosvold**, having an address of **15 Marine Drive, Vero Beach, FL 32960** (hereinafter "Licensees"). For and in consideration of the mutual promises, covenants, and understandings herein contained, the parties agree as follows:

1. *Premises.* Licensees have requested permission to use certain real property of the City that is situated adjacent to Licensees' residential real property, the location and description of such City real property being as more fully described in Exhibit "A" attached hereto and incorporated herein (hereinafter "Premises"), for purposes of constructing a new dock and boat lift, as well as nonexclusive use of the City owned submerged land adjacent to 15 Marine Drive (hereinafter "Submerged Land") wherein the Premises are situated for ingress and egress and other lawful purposes.

2. *License.* City hereby grants a license to Licensees on a continuing basis to occupy, utilize, and maintain the Premises for the purposes specified in section 1 above and pursuant to the terms and conditions of this Agreement (hereinafter "License"). This License shall be subject to and shall in no way whatsoever diminish the City's right of entry to the Premises by City's employees, contractors, and agents in performance of their duties at any time. The City Manager shall administer the terms and conditions of this Agreement and License for and on behalf of the City.

3. *Improvements.* No improvements, installations, or equipment of any kind or nature shall be constructed or installed on the Premises by or for Licensees without prior review and written approval by the City, as well as compliance with all other reviews, permits, and approvals required by any applicable code, ordinance, law, rule, or regulation. Licensees shall be limited to those approved improvements, installations, and equipment existing on the Premises at the time this Agreement and License are approved and only those additional improvements, installations, and equipment specifically approved by the City in writing. Upon written notice from the City, Licensees shall, at its own cost and expense, immediately remove any improvement, installation, or equipment made or installed without first obtaining all required approvals and permits and repair, clean, and restore the Premises to a reasonably good condition acceptable to the City.

4. *Use of Premises.* Licensees shall occupy, use, and maintain the Premises only for the purposes specified in section 1 above and shall not occupy, use, or maintain or permit the

occupation, use, or maintenance of the Premises or any part thereof for any unlawful or illegal purpose, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any existing or future code, law, rule, requirement, order, ordinance, or regulation.

5. *Termination.* Each party shall have the right and discretion to terminate this Agreement and License with or without cause pursuant to the following:

(a) Except as provided otherwise in this Agreement, the terminating party shall provide the other party written notice of termination at least Ninety (90) days prior to the effective date of the termination.

(b) Should the City determine that the public interest requires expedited termination of this Agreement and License, which determination shall be solely in the City's discretion, the City shall endeavor to provide Licensees written notice of termination at least Fourteen (14) days prior to the effective date of such expedited termination. However, the City may dispense with or reduce the aforesaid notice period should the City determine that the public interest requires more immediate termination.

(c) Except as otherwise agreed by the parties in writing, whenever termination of this Agreement and License is noticed by either party, Licensees shall, at its own cost and expense, remove or cause to be removed from the Premises all improvements, installations, and equipment and repair, clean, and restore the Premises to a reasonably good condition acceptable to the City on or before the termination effective date.

(d) If Licensees fail or refuse to remove or cause the removal of any improvement, installation, or equipment, and/or fails to repair, clean, and restore the Premises by the specified or agreed termination effective date, or fails or refuses to do so when such improvement, installation, or equipment was made or installed without all required written approvals or permits, or if the City has determined that the public interest requires expedited or immediate removal the City may, at Licensees' expense, complete the removal and repair, cleaning, and restoration of the Premises or contract for completion of all or part of such work. Licensees waive any and all right to contest the City's right to recover all such removal, repair, cleaning, and restoration costs and expenses from Licensees. The provisions of this section shall survive termination of this Agreement and License.

6. *Maintenance.* Licensees shall be solely responsible, at its own expense, for maintaining the Premises and all improvements, installations, and equipment in good order and repair, in a safe, clean, secure, sanitary, and presentable condition, and in compliance with the provisions of all applicable codes, ordinances, laws, and regulations. The City shall have no responsibility for the maintenance of the Premises or any improvements, installations, or equipment thereon during the term of this Agreement and License.

7. *No Assignment.* Licensees shall not directly or indirectly, assign, lease, sublease,

hypothecate, sell, mortgage, encumber, or otherwise transfer this Agreement or License or any interest in this Agreement or License or use of the Premises. Any such action or attempted action shall be deemed void and without effect.

8. *Transfer of Licensees' Real Property.* At least Thirty (30) days prior to transfer of any interest in Licensees' real property abutting the Premises, Licensees shall either:

(a) Notify the City Manager of Licensees' intent to terminate this Agreement and License and comply with all of the applicable requirements contained in section 5 above; or

(b) If the proposed transferee desires to occupy and use the Premises, notify the City Manager of Licensees' intent to terminate this Agreement and License and require and facilitate the proposed transferees' application to the City for a new license agreement between the proposed transferee and the City. Licensees acknowledge that the grant or denial of any such application is solely in the City's discretion and determination and shall not give rise to any City liability whatsoever to Licensees, the proposed transferee, or any other person or entity. Absent a City approved license agreement with the proposed transferee, Licensees shall comply with all of the applicable requirements contained in section 5 above unless otherwise agreed by the parties in writing.

No transfer of any or all of Licensees' interest in the abutting real property shall relieve Licensees of any responsibility or obligation under this Agreement unless and until Licensees have complied with the requirements of this section or the Agreement and License have been otherwise terminated as provided in this Agreement.

9. *Assumption of Risk.* Licensees accept the condition of the Premises as is and recognizes and hereby expressly and fully assumes all risks, known and unknown, which arise or might arise incidental to or in any way connected with the condition of, use of, or access to the Premises or the Submerged Land. Licensees acknowledge and agree that the City has not made and makes no warranty of any kind as to the condition of the Premises and the Submerged Land or their fitness for any particular purpose.

*Release and Indemnification (Premises).* Licensees hereby release and forever discharge the City, its elected officials, officers, employees, and agents (hereinafter "Released Parties"), and agrees to indemnify and hold harmless the Released Parties from and against any and all liabilities, claims, demands, damages, actions, lawsuits, costs, and expenses, of any kind or nature, including, but not limited to, costs of investigation and attorneys' fees and costs through trial and appeal, arising out of, incidental to, or in any way connected with the condition of, use of, or access to, the Premises, the Submerged Land, any improvement, installation, or equipment thereon or therein, or otherwise arising under this Agreement or the License. LICENSEES UNDERSTAND AND AGREE THAT THIS RELEASE AND INDEMNIFICATION INCLUDES ANY AND ALL CLAIMS BASED ON THE NEGLIGENCE, ACTIONS, OR INACTION OF THE CITY OR ANY OTHER RELEASED PARTY AND INCLUDES ANY OTHER CAUSE OR CONDITION

WHATSOEVER, AND COVERS, BUT IS NOT LIMITED TO, ANY CLAIMS FOR BODILY INJURY, DEATH, OR PROPERTY DAMAGE.

*Indemnification (Use).* Licensees agree to indemnify and hold the Released Parties harmless from and against any and all liabilities, claims, demands, damages, actions, lawsuits, judgments, penalties, losses, costs, or expenses, of any kind or nature, including, but not limited to, costs of investigation and attorneys' fees and costs through trial appeal, arising out of, incidental to, or in any way connected with Licensees' use, occupancy, or maintenance of the Premises, and the Submerged Land, or any act or omission of Licensees or any employee, representative, agent, family member or relative, guest, invitee, contractor, or sub-contractor of Licensees, or otherwise arising under this Agreement or the License.

*Release and Indemnity (Public Improvements and Utilities).* Licensees' release and agreement to indemnify and hold the Released Parties harmless shall also include any claim for damage that any utility, whether publicly or privately owned, may sustain or receive by reason of Licensees' use, occupancy, or maintenance of the Premises, the Submerged Land, or any improvements, installations, or equipment of Licensees. Licensees waive all claims of any kind or nature whatsoever against the Released Parties for damages that Licensees may suffer by reason of the installation, construction, reconstruction, operation and/or maintenance of any public improvement or utility, whether presently in place or which may in the future be constructed or installed, including, but not limited to, any water and/or sewer mains, lines, pipes or other facilities, storm water structures, pipes or other facilities, electric lines, conduit or other facilities, and whether such damage is due to pollution, flooding, infiltration, backflow or seepage caused by the failure of any installation, natural causes, or from any other cause of whatsoever kind or nature.

*Intent and Effect.* It is the intent and effect of the provisions contained in this section, and a condition in consideration for approval of this Agreement and granting of the License by the City, that Licensees' release and indemnification shall be and include a full and total release and indemnification of the Released Parties against any kind or nature of claim whatsoever that is or may be asserted by reason of or as a consequence of the City having granted permission to Licensees to occupy, use and maintain the Premises and use the Submerged Land. Licensees' release and indemnification obligations shall survive the termination of this Agreement and License for any matter arising prior to the effective date of the termination or the date Licensees no longer occupy, use, or maintain the Premises, whichever is later.

10. *Insurance.* Licensees shall at all times during the term of the License and at Licensees' own expense, procure and maintain liability insurance coverage to protect Licensees and the City against personal injury and property damage from an insurance company authorized to do business in the State of Florida providing protection for any and all claims for damages to persons or property as a result of or arising out of the occupancy, use, or maintenance of the Premises or the improvements, installations, and equipment in connection therewith or located thereon. Licensees understand and acknowledge that the

obligation to provide and maintain the required insurance is a continuing responsibility of Licensees and failure to do so will be deemed detrimental to the public interest and can result in immediate termination of this Agreement and the License.

11. *No Interest in Premises.* Licensees understand and acknowledge that the License granted hereunder does not “run with the land”, whether as to the Premises, the Submerged Land, or Licensees’ abutting real property. The License provides Licensees with no leasehold or any other property interest in the Premises or the City owned submerged land and merely provides permission, personal to Licensees, to occupy, use, and maintain the Premises and use the Submerged Land as stated herein solely at Licensees’ risk and at the City’s sufferance and convenience. This Agreement may be recorded in the public records of Indian River County at Licensees’ expense. Licensees agree to promptly reimburse the City for the costs of such recording plus any administrative fee assessed.

12. *Notices.* Any notice or request required or permitted pursuant to this Agreement shall be in writing and may be delivered personally, by courier such as FedEx, UPS, or Priority Mail, or by United States First Class registered or certified mail, return receipt requested. Such notices and requests may be provided to the respective party at their address set forth above. Any notice or request the delivery of which is refused by the recipient shall be deemed given as of the date it is mailed or sent.

IN WITNESS WHEREOF, the parties has executed this Agreement on the date last entered below and the parties hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of execution of this Agreement duly authorized to execute this Agreement.

[THIS SECTION INTENTIONALLY LEFT BLANK]

WITNESS:

Karen Breur  
KAREN BREUR

Print:

LICENSEES:

Don R. Rosvold

Don R. Rosvold

Peggy T. Rosvold

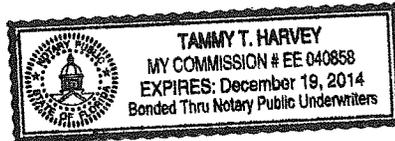
Peggy T. Rosvold

Date: 12/13/2012

STATE OF FLORIDA  
COUNTY OF Indian River

The foregoing License Agreement for Use of City Real Property was acknowledged before me this 13 day of December 2012 by Don R. Rosvold and Peggy T. Rosvold they ✓ are personally known to me OR \_\_\_\_\_ produced \_\_\_\_\_ as identification.

Tammy T. Harvey  
NOTARY PUBLIC  
Print Name: Tammy T. Harvey  
Commission No.: EE 040858  
My Commission Expires: 12-19-14



ATTEST:

CITY OF VERO BEACH

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

By: \_\_\_\_\_  
A. Craig Fletcher  
Mayor

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing License Agreement for Use of City Real Property was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2013 by A. Craig Fletcher, as Mayor and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

\_\_\_\_\_  
NOTARY PUBLIC

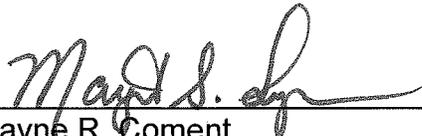
Print name:

Commission No.

My Commission Expires:

Approved as to form and  
legal sufficiency:

Approved as to technical  
requirements:

  
\_\_\_\_\_  
Wayne R. Coment  
City Attorney

  
\_\_\_\_\_  
Monte K. Falls  
Public Works Director

*for*

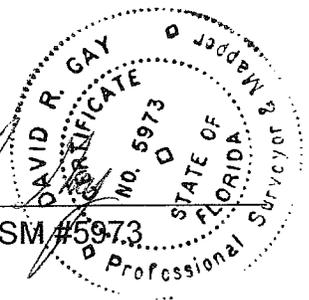
**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**  
**LICENSE TO USE CITY PROPERTY 2012-LA-0205**  
**LOT 3, BLOCK 2, VERO ISLES PLAT NO. 3**  
**Parcel #32-40-31-00003-0020-00003.0**

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Canal No. 1, Vero Isles, Plat No. 3, as recorded in Plat Book 3, Page 95 of the Public Records of Indian River County and being more particularly bounded and described as follows:

The west 45 feet of City owned submerged lands described in Deed Book 32, Page 549 of the Public records of Indian River County, Florida lying adjacent to Lot 3, Block 2, Vero Isles Plat No. 3;

Said license area containing 4,120 square feet more or less.

  
David R. Gay, PSM #5973



The seal is circular with a double border. The outer border contains the text "DAVID R. GAY" at the top and "Professional Surveyor" at the bottom. The inner border contains "STATE OF FLORIDA" at the top and "LICENSE NO. 5973" at the bottom. The center of the seal contains the word "CERTIFICATE" and a small "D" symbol.

MARINE DRIVE  
(50' R/W)

LOT 4

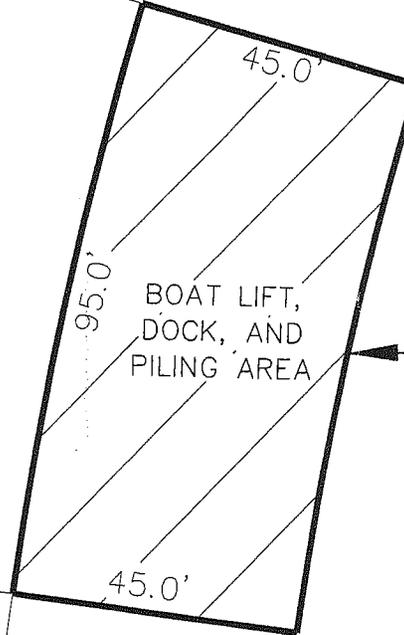
VERO ISLES, PLAT #3  
PLAT BOOK 3, PAGE 95

BLOCK 2  
LOT 3

15 MARINE DRIVE

PARCEL ID # 32-40-31-00003-0020-00003.0

LOT 2



BOAT LIFT,  
DOCK, AND  
PILING AREA

INDIAN RIVER  
CITY OWNED  
SUBMERGED LAND

SCALE 1" = 30'

NOTE: SUBMERGED LANDS OWNED BY THE CITY OF VERO BEACH, DEED BOOK 32, 549, 10-15-1941.

**THIS SKETCH IS NOT A SURVEY**



DAVID GAY, P.E.

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS SURVEY DIVISION	SKETCH OF PROPERTY DESCRIPTION LICENSE TO USE CITY PROPERTY BLOCK 2, VERO ISLES, PLAT No. 3 30 SEA GULL AVENUE	EXHIBIT "A"		REV. NO.	PROFESSIONAL ENGINEER	DATE
		CITY PROJECT NO. 2012-LA-205		DRWN BY	BMM	DATE
		DATE 03/2010	DRWN BY BMM	CHKD BY DG	DESCRIPTION	