

**LEASE**  
**Warren County - Big Pine Creek Boat Access**

THIS LEASE (the "Lease") is made effective as of the November 1, 2019 (the "Effective Date"), by and between **Warren County, Indiana**, and **NICHES Land Trust, Inc.**, an Indiana nonprofit corporation ("NICHES").

WITNESSETH:

For and in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and adequacy of which are mutually acknowledged, Warren County and NICHES agree as follows:

1. **Premises.** Warren County does hereby lease, let, and convey to NICHES for the period described in Section 2 below, certain parcels of land and improvements thereon, if any, located in Warren County, Indiana. Parcel #1 hereinafter identified as Right-of-Way at Warren County Bridge # \_\_\_ containing 0.277 acres, more or less, and Parcel #2 hereinafter identified as Right-of-Way at Warren County Bridge # \_\_\_ containing 0.021 acres, more or less, both parcels in accordance with the legal description included on Exhibit A attached hereto and hereby made a part hereof (collectively, the "Premises"). The Premises shall be leased subject to all easements, restrictions, and other matters of record affecting title to the Premises. Warren County covenants with NICHES that, so long as NICHES performs the covenants and obligations on its part to be kept and performed under this Lease, NICHES shall peaceably and quietly have, hold, and enjoy the Premises during the Term (as defined in Section 2), without disturbance.

2. **Term.** Unless earlier terminated or renewed as provided herein, the term of this Lease (initially, and if renewed as provided herein, as renewed, the "Term") shall be for a period commencing on the Effective Date written above and ending on the anniversary of the Effective Date, at which time the Term of this Lease shall end. Provided it is not in default hereunder in any material respect, NICHES shall have the right to request that the Commissioners of Warren County extend this Lease for an additional five (5) year period ending on the fifth (5th) anniversary of the Effective Date, by providing Warren County at least ninety (90) days prior written notice of Niches intent to request the extension. Thereafter this Lease may be renewed for additional periods only upon mutual agreement of the parties.

Notwithstanding anything in this Lease to the contrary, Warren County shall have the right to terminate this Lease at any time without cause upon at least ninety (90) days prior written notice to NICHES. NICHES shall have the ability to terminate this Lease at any time without cause upon at least ninety (90) days prior written notice to Warren County.

3. **Rent.** NICHES shall pay to Warren County, as rent hereunder, in advance, the sum of One Dollar (\$1.00) per year.

4. **Utilities.** There are no electric or potable water utilities present for either Parcel #1 or Parcel #2.

5. **Use.** NICHES shall be entitled to use the Premises for the operation of a boat access to Big Pine Creek with associated access to parking as mutually agreed to. NICHES shall not use

the Premises in violation of any applicable laws, rules, ordinances, restrictions, or regulations of any governmental authority. Warren County acknowledges and agrees that NICHES will have access to the waterfront adjoining the Premises and not beyond. Entry or encroachment in any manner upon adjoining landowner's property without proof to Warren County of landowner's prior approval may result in immediate termination of this Lease.

6. **Maintenance and Repair.** NICHES accepts the Premises in an as-is condition and agrees that Warren County has no obligation to make any repairs or improvements thereto. NICHES shall, at its sole cost, maintain the Premises in good condition and repair, reasonable wear and tear excepted.

7. **Modifications and Alterations to the Premises.** NICHES may not make any modification nor alteration, to the Premises or any improvements on the Premises without prior written consent from Warren County. If any such modification or alteration is approved, such modification or alteration shall be completed in accordance with all applicable codes and regulations, and NICHES shall not permit Warren County's interest in the Premises to become subject to any mechanics' or materialmen's lien or charge.

8. **Occasional and Periodic Use of the Waterfront Access to the Premises.** Warren County in no manner extends any rights within this Lease to enable overnight camping, placing or storing equipment upon the property beyond single day use (24 hours) by the public. No overnight parking is permitted within the terms of this agreement. NICHES shall assume all responsibility for adherence to the expectations contained within this section.

9. **Condemnation.** If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purpose herein leased, shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then, in any of such events, the term of this Lease shall terminate. Such termination, however, shall be without prejudice to the rights of either Warren County or NICHES to recover from the condemnor compensation and damage caused by condemnation. It is further understood and agreed that neither Warren County nor NICHES shall have any rights in any award made to the other by any condemnation.

10. **Removal of Improvements.** Provided it is not in default hereunder in any material respect, NICHES may, prior to or no later than ninety (90) days after the expiration or other termination of the Term, remove all improvements that NICHES has placed on the Premises. If not so removed by NICHES, such improvements shall become the property of Warren County.

11. **Taxes and Assessments.** NICHES shall pay all ad valorem taxes and other similar charges that may be assessed against its improvements, equipment, and other property located on the Premises and erected by or belonging to NICHES. The payment of all applicable taxes and charges as provided for herein shall be made promptly by the respective parties before the final authorized date for such payment unless such taxes or charges are contested in good faith by the responsible party in accordance with applicable tax procedures. NICHES' obligations under this section shall continue during the Term of this Lease and thereafter until such improvements, equipment, and other property is removed from the Premises by NICHES or becomes the property of Warren County.

12. **Insurance.** NICHES will carry, at NICHES' own expense, insurance coverage on all improvements, equipment, and other personal property on the Premises. NICHES shall procure, maintain, and keep in full force and effect at all times during the Term, general commercial public liability insurance indemnifying Warren County and NICHES against all claims and demands for injury to, or death of, persons, or damage to property which may be claimed to have occurred upon the Premises, in an amount not less than \$1,000,000 per occurrence of coverage for injury (including death) to one or more persons attributable to a single occurrence and for property damage. All such policies shall name Warren County as an additional insured. All insurance provided for in this Lease shall be procured under policies issued by insurers of recognized responsibility licensed to do business in the State of Indiana. NICHES shall cause a certificate evidencing such insurance coverage to be forwarded to Warren County within fifteen (15) days of the Effective Date of this Lease, and annually thereafter to indicate such insurance is still in full force and effect.

13. **Environmental Protection.** NICHES covenants that its assets and business on the Premises will be located, operated, and maintained on the Premises so as to be and remain in compliance with all applicable federal, state, or local statutes, regulations, rules, ordinances, codes, licenses, approvals, permits, orders, decrees, judgments, or injunctions relating to pollution or the protection of the environment (the "Environmental Laws"). Without limiting the rights of Warren County, NICHES agrees to correct or satisfy immediately any non-compliance with the Environmental Laws caused by NICHES' assets and/or business on the Premises, upon written notice of the same from any governmental authority or Warren County. In no event shall NICHES have any responsibility for any new or preexisting conditions caused by Warren County.

14. **Indemnity.** NICHES will indemnify and hold Warren County and its shareholders, officers, directors, employees, and agents, and their respective heirs, devisees, beneficiaries, legatees, legal representatives, successors, and assigns, harmless from and any all actions, claims, costs, demands, judgments, liens, fines, expenses, fees (including, but not limited to, reasonable attorneys' fees), assessments, injuries, or damages (collectively, "Losses") to the extent arising out of or in connection with (i) NICHES' or its invitees', licensees', agents', or contractors' location, operation, use, or maintenance of its assets and business, (ii) any negligent acts or omissions of NICHES, its invitees, licensees, agents, or contractors, (iii) NICHES' or its invitees', licensees', agents', or contractors' violation of any applicable law, (iv) NICHES' breach of any provision of this Lease, and (v) without limiting the generality of the foregoing, any condition in, on, or of the Premises created or occurring during NICHES' possession of the Premises (other than a condition created by Warren County).

15. **Assignment and Subletting.** NICHES shall not assign this Lease, by operation of law or otherwise, or sublet all or any portion of the Premises, without the prior written consent of Warren County, which consent shall not be unreasonably withheld.

16. **Termination.**

a. Should Warren County require utilization for rehabilitation or reconstruction of county bridges adjacent to the properties described herein, Warren County reserves the right, upon thirty (30) days' notice to NICHES to suspend this Lease until such rehabilitation or reconstruction is complete. If said need for rehabilitation or reconstruction is

required for any reason subject to presenting an immediate threat to public safety, Warren County reserves the right to terminate this Lease without prior notice.

b. Failure to conform to the any terms of the Lease described herein may result in immediate termination by the Warren County.

c. Whenever under the terms of this Lease Warren County is entitled to possession of the Premises, NICHES shall at once surrender such possession to Warren County and shall remove all of NICHES' personal property from the Premises. Any personal property left by NICHES shall be deemed abandoned property and may, at the election of Warren County, become the property of Warren County. Alternatively, Warren County may remove any or all of such personal property from the Premises and charge NICHES for the same. Upon surrender, the Premises shall be in good condition and repair, reasonable wear and tear excepted. NICHES shall have the rights provided in Section 10 with respect to the removal of any improvements that NICHES has placed on the Premises.

#### 17. **Miscellaneous.**

a. Notices. Each notice under this Lease shall be in writing and given either in person, or a nationally recognized next business day delivery service all costs prepaid, to the address of the party being given notice set forth below to such other address as a party may furnish to the other as provided in this sentence; and if notice is given pursuant to the foregoing of a permitted successor or assign, then notice shall thereafter be given pursuant to the foregoing to such permitted successor or assign.

1. If to Lessor: Warren County Auditor  
Warren County Courthouse  
125 N. Monroe Street, Suite 7  
Williamsport, Indiana 47993

Copy to: Barce & Redlin, P.C.  
103 N. Jackson Ave. - PO Box 252  
Fowler, Indiana, 47944

2. If to Lessee: Gus Nyberg, Executive Director  
NICHES Land Trust, Inc.  
PO Box 2790  
West Lafayette, Indiana 47996

b. Remedies. The remedies of a party provided in this Lease are cumulative and do not exclude any other remedies to which any party may be lawfully entitled, under this Lease or applicable law, and the exercise of a remedy is not an election excluding any other remedy (any such claim by the other party being hereby waived). **If it becomes necessary for a party to commence legal action to enforce the terms of this Lease, the prevailing party shall be entitled to receive its reasonable attorneys' fees.**

c. Integration; Amendment; Waiver. This Lease constitutes the entire agreement of the parties to it with respect to its subject matter, supersedes all prior agreements, if

any, of the parties with respect to its subject matter, and may not be amended except in writing signed by the party against whom the change is being asserted. The failure of any party at any time or times to require the performance of any provisions of this Lease shall in no manner affect the right to enforce the same; and no waiver by any party of any provision (or of a breach of any provision) of this Lease, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Lease.

d. Controlling Law. This Lease is governed by, and shall be construed and enforced in accordance with the laws of the State of Indiana.


e. Venue. The parties agree that the venue of any action arising out of this agreement shall be in Warren County, Indiana.

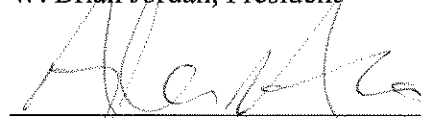
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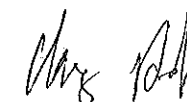
IN WITNESS WHEREOF, WARREN COUNTY, INDIANA and NICHES have executed this Lease as of the day and year first above written.

**LESSOR:**

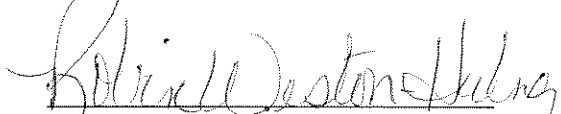
BOARD OF COMMISSIONERS OF WARREN  
COUNTY, INDIANA

  
\_\_\_\_\_  
W. Brian Jordan, President

  
\_\_\_\_\_  
Adam Hanthorne, Vice President

  
\_\_\_\_\_  
Clay Andrews

**ATTEST:**

  
\_\_\_\_\_  
Robin Weston-Hubner  
Warren County Auditor

**LESSEE:**

**NICHES Land Trust, Inc.**

By: \_\_\_\_\_ (SEAL)  
Name: Gus Nyberg, Executive Director

## **EXHIBIT A**

### **PREMISES**

Part of the Northwest Quarter of Section Four (4), Township Twenty-two (22) North, Range West, Liberty Township, Warren County, Indiana, more particularly described as follows: Beginning at a 5/8" x 24" capped rebar marked Deckardsurvey LIC#20000203, (hereinafter referred to as a Deckard rebar) on the South line of said Northwest Quarter, 1826.00 feet South 89 Degrees 54 Minutes 49 Seconds East of a magnetic spike marking the Southwest corner of said Northwest Quarter; THENCE North 13 Degrees 11 Minutes 54 Seconds East for a distance of 87.95 feet to a Deckard rebar; THENCE North 89 Degrees 58 Minutes 33 Seconds East for a distance of 121.24 feet to a Deckard rebar; THENCE South 20 Degrees 03 Minutes 26 Seconds East for a distance of 44.90 feet to a concrete headwall; THENCE South 06 Degrees 46 Minutes 09 Seconds West along said headwall for a distance of 22.70 feet; THENCE leaving said headwall and running South 25 Degrees 23 Minutes 14 Seconds West for a distance of 23.43 feet to a Deckard rebar on said South line; THENCE North 89 Degrees 54 Minutes 49 Seconds West along said South line for a distance of 144.00 feet to the place of beginning, containing 0.277 acres (12063.841 Square Feet), more or less.

Together with an easement for the purpose of ingress and egress to and from County Road 450N and the North line of the above described 0.277 acre tract and beginning 22.06 feet North 89 Degrees 58 Minutes 33 Seconds East of the Northwest corner of said 0.277 acre tract; THENCE North 31 Degrees 03 Minutes 12 Seconds West for a distance of 38.31 feet to the South edge of the paved portion of County Road 450N; THENCE North 66 Degrees 15 Minutes 20 Seconds East along said South edge for a distance of 34.79 feet; THENCE leaving said South edge and running South 01 Degrees 52 Minutes 10 Seconds West for a distance of 46.85 feet to the North line of said 0.277 acre tract; THENCE South 89 Degrees 58 Minutes 33 Seconds West along said North line for a distance of 10.56 feet to the place of beginning, containing 0.021 acres (908.089 Square Feet), more or less.

Also, together with and subject to all other rights of way, covenants, easements and restrictions of record.

## LEASE

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Copy to: Barce & Redlin, P.C.  
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Fowler, Indiana, 47944

2. If to Lessee: Gus Nyberg, Executive Director  
NICHEs Land Trust, Inc.  
PO Box 2790  
West Lafayette, Indiana 47996

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d. Controlling Law. This Lease is governed by, and shall be construed and enforced in accordance with the laws of the State of Indiana.

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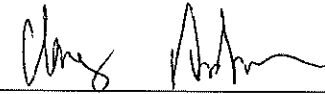
BOARD OF COMMISSIONERS OF WARREN  
COUNTY, INDIANA



W. Brian Jordan, President

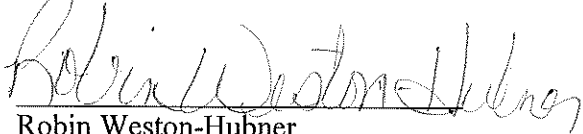


Adam Hanthorne, Vice President



Clay Andrews

**ATTEST:**



Robin Weston-Hubner  
Warren County Auditor

**LESSEE:**

**NICHES Land Trust, Inc.**

By: \_\_\_\_\_ (SEAL)

Name: Gus Nyberg, Executive Director

## EXHIBIT A

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