



**Resolution 2003-065**

**A RESOLUTION TO ENTER INTO AN AGREEMENT WITH THE HISTORICAL SOCIETY TO RELOCATE THE SMOCK HOUSE AND AMENDING RESOLUTION 2002-039**

**WHEREAS**, the City recognizes the importance of preserving our historical heritage; and

**WHEREAS**, the Sherwood Historical Society is attempting to preserve a part of the City's heritage known as the Smock House; and

**WHEREAS**, the City owns the property called Veterans Park and the property called Morback house; and

**WHEREAS**, by this resolution the City amends Resolution 2002-039 the location set for the Smock house site; and chooses to site the Smock house:

- Location A: Facing the alley between Main and Park Street  
 Location B: Facing Park Street

**NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:**

Section 1: The City shall enter into an agreement substantially like that attached as Exhibit A and as approved by the City Manager.

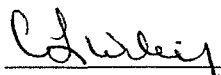
Section 2: As stated in Resolution 2002-039 approved on August 13, 2002, the City Manager is authorized to waive all permit and inspection fees for this project.

Section 3: This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 26th day of August 2003.**

  
Mark O. Cottle, Mayor

ATTEST:

  
C.L. Wiley, City Recorder

RESOLUTION 2003-065, EXHIBIT A

Date: August 26, 2003

CITY: City of Sherwood

Sherwood, Oregon

Society : The Sherwood Historical Society

CITY leases to Society , and Society leases from CITY, the real property (the "Premises") described on Exhibit A to this document attached and incorporated in this Lease by this reference. The Premises are leased for a term of 1 year (subject to an option to extend for 2 years as set forth in Section 22) commencing on the date of this Lease.

CITY and Society agree as follows:

1. Movement of Smock House onto Premises.

Society intends to move onto the Premises the structure known as the Smock House (the "Building") which (along with any related improvements) are referred to in this Lease as the "Project". The Project (and any future alterations, additions, replacements, or modifications thereto) during the Term of this Lease are referred to in this Lease as the "Improvements". The preliminary plans and specifications for the Project are attached as Exhibit B and incorporated in this Lease by this reference. Society shall construct the Project in accordance with the final plans and specifications approved by CITY which approval shall not be unreasonably withheld or delayed. Society shall (subject to acts of God, strikes, or other reason beyond the reasonable control of Society ) diligently prosecute all work related to the to completion of the Project no later than 180 days after it is commenced. The work shall be performed in accordance with any and all legal requirements in a good and workmanlike manner. For purposes of this Lease, the term "Legal Requirements" includes all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments.

2. Minor Encroachments.

In the event of any minor encroachment by the Building, CITY shall amend the description of the Premises to include the encroached-upon area in the Premises with a corresponding adjustment to all items in this Lease based on the area of the Premises. Society shall use reasonable efforts to minimize any disruption of the use of the property adjacent to the Premises and to avoid excessive dust, rubble, debris, or odors.

3. Rental Payment.

Society covenants and agrees to pay to CITY, promptly when due, without notice or demand and without deduction or setoff of any amount whatsoever, \$1.00 per month as Rent for the Premises from the date the condition stated in Section 1 of this Lease is satisfied or waived. All Rent shall be paid in advance on the first day of each month during the Term. All amounts payable under Section 5 above, as well as all other amounts payable by Society to CITY under the terms of this Lease, shall be paid at the office of CITY set forth in Section 31 .

4. Compliance with conditions.

Society shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, privileges, franchises and concessions that now apply to the Premises or that have been granted to or contracted for by CITY or Society in connection with any existing or presently contemplated use of the Premises or the Improvements.

5. Additional Sums to be Paid by Society.

Society shall also pay without abatement, deduction, or setoff all sums, costs and/or other payments which Society in any of the provisions of this Lease assumes or agrees to pay, and in the event of any nonpayment, CITY shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law in the case of nonpayment of Rent.

6. Use of the Premises.

Society shall use the Premises and the Improvements continuously during the Term for the operation of a Living History Museum. The Premises may not be used for any other purpose, operated under any other name, or be the subject of a change in concept without the written consent of CITY, which consent shall not be unreasonably withheld. Society shall not use or occupy, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied:

- for any unlawful or illegal business, use, or purpose;
- in any such manner to constitute a nuisance of any kind;
- for any purpose or in any way in violation of the certificate of occupancy; or
- for any business, use, or purpose deemed disreputable.

7. No creation of liens.

Society shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of CITY or on any interest of CITY in the Premises. Society shall not suffer or permit any liens to attach to the interest of Society in all or any part the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Society or anyone occupying or holding an interest in all or any part of the Improvements on the Premises through or under Society . If any such lien shall at any time be filed against the Premises, Society shall cause the same to be discharged of record within 30 days after the date of filing the same.

8. No Implied Consent to create liens.

Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of CITY, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Society any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against CITY's interest in the Premises or against CITY's interest, if any, in the Improvements.

9. Society to Pay Charges.

Society shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of

every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general, or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing which, at any time during the Term, shall be or become due and payable and which:

- Shall be levied, assessed, or imposed against the Premises or the Improvements or any interest of CITY or Society under this Lease; or
- Shall be or become liens against the Premises or the Improvements or any interest of CITY or Society under this Lease; or
- Shall be levied, assessed, or imposed on or against CITY by reason of any actual or asserted engagement by CITY or Society, directly or indirectly, in any business, occupation, or other activity in connection with the Premises or the Improvements; or
- Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises or the Improvements,

it being the intention of the parties that, insofar as the same may lawfully be done, CITY shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Society is obligated to pay being collectively called "Tax" or "Taxes").

#### 10. Insurance Requirements.

Society shall keep the Premises together with any and all Improvements placed thereon continuously insured through an insurance company authorized to do business in Oregon.

- Society shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Society and the City, its Councilors, employees and agents insuring Society and the City against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of Society on or from the Premises with insurance of not less than \$1,000,000 combined single limit.
- Society shall maintain Workers' Compensation insurance, including coverage for Employer's Liability.
- All insurance shall name the City, its Council, employees and agents as additional insureds with the stipulation that this insurance, as to the interest of the City only therein, shall not be invalidated by any act or neglect or breach of contract by Society.
- The certificate provided to the City shall, at a minimum, evidence the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than thirty days' written notice to the City and Society before such policies may be revised, nonrenewed, or cancelled.
- All insurance policies shall be written as primary policies and not be contributing with or be in excess of the coverage that either CITY or Society may carry. All such insurance policies shall be issued in the name of Society with CITY being included in the insurance policy definition of who is an additional insured and shall be primary to any insurance available to CITY.

### 11. Indemnification.

Society covenants and agrees to indemnify, save and hold harmless, the City, its Councilors, employees and agents from and against any and all actual or potential liability claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of action (collectively "Costs") which may be imposed upon or incurred by the City due to the acts or omissions of any person or entity whatsoever and which:

- arise from or are in any way connected with Society 's use, occupation, management or control of the Premises whether or not due to Society 's act or omission and whether or not occurring on the Premises; or
- results from any breach, violation, or nonperformance by Society of any of its obligations under this Lease.

### 12. Environmental Indemnification.

In addition to the indemnity provided above, Society agrees to indemnify, hold harmless, and defend the City from and against all Costs incurred by or assessed against the City under Environmental Laws. As used herein, "Costs" include (but are not limited to):

- all claims of third parties, including governmental agencies, for damages, response costs, or other relief;
- the cost, expense or loss to the City of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the City or the Premises;
- all expenses of evaluation, testing, analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts;
- all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws;
- any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.
- "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances (as defined below) or relate to the protection of human health, safety or the environment. "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are defined or designated as hazardous or similar term in any of the Environmental Law (including asbestos) and any other substance that because of its quantity, concentration, physical, chemical, or infectious characteristics may threaten a present or potential hazard to human health or the environment when improperly used, stored or handled.
- Promptly upon written notice from the CITY or from any governmental entity, Society shall remove from the Premises (including without limitation the soil or water table thereof), at its own cost and expense, all Hazardous Substances for which Society is liable under the terms of this Lease, whether in existence prior to the commencement date of this Lease or thereafter, and shall restore the Premises to clean, safe, good, and serviceable condition.
- Society shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth above which may be brought against the City or in which the City may be impleaded, and shall satisfy, pay, and discharge any and

all judgments, orders, and decrees that may be entered against the CITY in any such action or proceeding.

### 13. Failure of Society to Perform.

If Society at any time fails to make any payment or perform any act to be made or performed required of Society, then CITY after 10 days' notice to Society (or without notice in case of an emergency) may (but shall be under no obligation to):

- Pay any Tax payable by Society pursuant to the provisions of this Lease; or
- Make any other payment or perform any other act on Society's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take all such action, as may be necessary.

All sums so paid by CITY and all costs and expenses incurred by CITY (including reasonable attorney fees) in connection with the performance of any such act, together with, if Society does not pay the same within the 30-day period after notice from CITY, interest from the date of such payment or incurrence by CITY of such cost and expense until paid, at the annual rate of 18%, shall constitute additional rent and shall be paid by Society to CITY on demand.

### 14. Legal Compliance.

Throughout the Term, Society shall promptly comply with all Legal Requirements that apply to the Premises or the use of the Premises or Improvements.

### 15. Repairs.

Society shall maintain, repair and replace the Premises and the Improvements as necessary to keep them in good order, condition, and repair throughout the entire Term. Society's obligations shall extend to both structural and nonstructural items and to all maintenance, repair and replacement work.

### 16. No Discrimination.

Tenant shall not discriminate based upon race, color, religion, sex, national origin/ancestry, age, disability, sexual orientation, military status, parental status or source of income in the use or occupancy of the Premises or any part thereof. Tenant further agrees to comply with all federal, state and local laws, rules and regulations with regard to accessibility standards for the physically disabled.

### 17. Title to Improvements

Title to Improvements shall be and remain in Society until the expiration of the Term, unless this Lease is terminated sooner as provided. Upon such expiration or sooner termination, title to the Improvements shall automatically pass to, vest in, and belong to CITY without further action on the part of either party and without cost or charge to CITY. During the Term, Society shall be entitled for all taxation purposes to claim cost recovery deductions and the like on the Improvements.

### 18. Inspection and Access

Society shall permit CITY or the authorized representative(s) thereof to enter the Premises and the Improvements at all reasonable times during usual business hours for the purposes of inspecting the same and making any repairs or performing any work that Society has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of CITY to do any such work or to make any Improvements of any kind whatsoever to the Premises. The performance of any work by CITY shall not constitute a waiver of Society's default in failing to perform the same.

#### 19. Default; Remedies

The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Society :

- If Society defaults in the payment of Rent due and payable by Society , and such default continues for 30 days after CITY has given Society a notice specifying the same; or
- If Society , whether by action or inaction, is in default of any of its obligations under this Lease (other than a default in the payment of Rent by Society ) and such default continues and is not remedied within 60 days after CITY has given Society a notice specifying the same, or, in the case of a default that can be cured but not within a period of 60 days, if Society has not (1) commenced curing such default within such 60-day period; (2) notified CITY of Society 's intention to cure the default; or (3) continuously and diligently completed the cure of the default.

Upon the occurrence of an event of default, CITY may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease.

Whether or not CITY retakes possession or relets the Premises, CITY has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by CITY in restoring the Premises or otherwise preparing the Premises for reletting, and all costs incurred by CITY in reletting the Premises.

#### 20. Strict Performance Not Required.

No failure by CITY to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Society , and no breach by Society , shall be waived, altered, or modified except by a written instrument executed by CITY. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

#### 21. Cumulative Rights.

Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or existing at law, in equity, by statute or otherwise and the exercise by CITY of any one or more of those rights or remedies shall not preclude the simultaneous or later exercise by CITY of any or all other right(s) or remedy(ies).

#### 22. Option to Extend Lease

The Term may be extended, at the option of Society , for additional period of 2 years. Such option shall be exercised by giving written notice to CITY not more than 12 months nor less than 6 months before the initial Term expires.

#### 23. Quiet Enjoyment

Society , on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term without hindrance or molestation by anyone claiming by, through, or under CITY as such, subject, however, to the exceptions, reservations, and conditions of this Lease.

#### 24. Surrender

Except as otherwise provided, Society, on the last day of the Term, shall surrender and deliver up the Premises and all Improvements to the possession and use of CITY without fraud or delay, free and clear of all liens and encumbrances.

- Any personal property of Society or any sublessee that shall remain on the Premises after the termination of this Lease may, at the option of CITY be deemed to have been abandoned and may either be retained by CITY as its property or be disposed of, without accountability, in such manner as CITY may see fit.

#### 25. Nonresponsibility for loss

CITY shall not be responsible for any loss or damage occurring to any property owned by Society or any sublessee.

#### 26. Survivability

The provisions of this section shall survive any termination of this Lease.

#### 27. Invalidity of Particular Provisions

If any term or provision of this Lease or the application of the Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

#### 28. No Representations

Society acknowledges that it has examined the Premises and that no representations as to the condition of the Premises have been made by CITY or any agent or person acting for CITY (except as expressly provided in this Lease). Before any construction commences on the Premises, Society shall conduct tests of the subsurface and soil conditions to ascertain the suitability of the Premises for the contemplated Project and shall furnish such fill and take such other steps as may be required before the commencement of construction. CITY shall have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land, that might affect Society's construction.

#### 29. Force Majeure

If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Legal Requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind.

#### 30. Notices

Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:



If to CITY: Sherwood City Manager  
City of Sherwood  
Sherwood OR 97140

If to Society : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt. Notwithstanding anything in this section to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this section shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

31. Costs and Attorney Fees

If either party brings an action to recover any sum due or for any breach and obtains a judgment or decree in its favor, the court may award to such prevailing party its reasonable costs and reasonable attorney fees, specifically including reasonable attorney fees incurred in connection with any appeals (whether or not taxable as such by law).

32. Entire Agreement

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Society and CITY that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease.

33. Applicable Law

This Lease shall be governed by, and construed in accordance with, the laws of the state of Oregon.

34. Covenants to Bind and Benefit Parties

The covenants and agreements contained in this Lease shall bind and inure to the benefit of CITY, its successors and assigns, and Society, its successors and assigns.

35. Captions and Table of Contents

The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

36. Statutory Warning

The following disclaimers are made pursuant to ORS 93.040:

**THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

37. Consent

In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

IN WITNESS WHEREOF, Society and CITY have caused this Lease to be executed by their duly authorized officers.

CITY:

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

Society :

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