



## RESOLUTION 2009-062

### **A RESOLUTION DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE SHERWOOD HISTORICAL SOCIETY FOR THE SMOCK HOUSE PREMISES**

**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

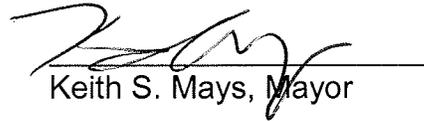
**WHEREAS**, the City owns the premises and has previously leased said premises to the Sherwood Historical Society for locating the Smock House; and

**WHEREAS**, the Historical Society and the City have verbally agreed to the terms of the lease in Attachment A;

### **NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

The City Manager is authorized to enter into a lease agreement with the Sherwood Historical Society for the premises of the Smock House as described in Attachment A.

**Duly passed by the City Council this 4th day of August 2009.**

  
Keith S. Mays, Mayor

ATTEST:

  
Sylvia Murphy, City Recorder

## LEASE

This Lease is between the City of Sherwood, a municipal corporation of the State of Oregon (City), and The Sherwood Historical Society, an Oregon non-profit corporation (Society).

### LEASE

1. City leases to Society and Society leases from City the real property (Premises) at 22564 SW Park Street in Sherwood Oregon.

### TERM

2. The term of this Lease is five years beginning August 1, 2009, and ending as of July 31, 2014.

3. City agrees to review this Lease and the progress of the Center and notify the Society by April 1st whether it will enter into a new Lease upon mutually agreed terms. The City will enter into a new Lease with Society upon mutually agreed conditions if all obligations of this Lease have been met. The City does not anticipate that it will be necessary, but it retains the right to move the building to another location within the City. If it is not possible because of age or other good reason to move the building, this Lease will terminate.

### MOVEMENT OF SMOCK HOUSE ONTO PREMISES

3. Society has previously moved onto the Premises the structure known as the Smock House (Building). Any alterations, additions, replacements, or modifications to the Building during the Term are referred to as the Improvements. The Building and any Improvements are referred to as the Project. Society will continue to maintain the Project in accordance with the plans as shown in and specifications approved by City.

### RENT

5. Society agrees to pay to City \$1.00 per month as Rent for the Premises from the date the Term begins. All Rent will be paid annually in advance on the first day of the Term. All amounts payable under this Lease by Society to City will be paid at the office of the City.

### CONDITIONS

6. Society will comply with all conditions and requirements necessary to preserve and extend any rights and privileges that now apply to the Premises. This includes any rights granted or contracted by City or Society in connection with any use of the Premises, Building or Improvements.

### ADDITIONAL PAYMENTS

7. Society will pay all costs and other payments it agrees to pay in any Lease provision. If there is any nonpayment, City has all the rights and remedies provided for in this Lease or by law for the nonpayment of Rent.

### USE OF PREMISES

8. Society will use the Premises, Building and Improvements continuously during the Term for the operation of a living history museum. The Premises may not be used for any other purpose or operated under any other name without the written consent of City. Society will not use, occupy or permit any part of the Premises, Building or Improvements:

- 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.

#### NO LIENS

9. Society will not create any lien, mortgage, or other encumbrance on any interest of City in the Premises. Society will not allow any liens to attach to the interest of Society in the Premises. If any lien is filed against the Premises, Society will discharge it within 30 days of its filing.

#### CHARGES

10. Society will pay and discharge 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, public improvement assessments, and all other governmental impositions and charges of every kind and nature. This includes any of the foregoing that become due and payable at any time during the Term and that:

- Are levied, assessed, or imposed against the Premises, Building or Improvements or any interest of City or Society under this Lease; or
- Become liens against the Premises, Building or Improvements or any interest of City or Society under this Lease; or
- Are imposed against City by reason of any actual or asserted engagement by City or Society in any business, occupation, or other activity in connection with the Premises, Building or Improvements; or
- Are imposed in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises, Building or Improvements.

The parties intend to make the City free from all expenses, taxes, fees, and all other impositions and charges of every kind and nature.

#### INSURANCE

11. Society will keep the Premises and the Building and all Improvements continuously insured through an insurance company authorized to do business in Oregon.

- Society will maintain coverage from commercial general liability insurance for the protection of Society and the City, its Councilors, employees and agents.
- The Society will at its cost secure a Certificate of Insurance for the following amounts:
  - General Liability - \$3,000,000 (which should include products, personal injury for each occurrence)
  - Excess Liability - \$3,000,000 (each occurrence umbrella form)

- The Society will be named as the insured and The City of Sherwood will be named as the Certificate Holder and Additional Insured.
- Society will maintain Workers' Compensation insurance, including coverage for Employer's Liability for any Society employees.
- Society will provide City with a certificate showing the date, amount, and type of insurance procured for this Lease. All policies of insurance will remain in full force during the Term and will provide for not less than 30 days' written notice to the City and Society before they may be revised, nonrenewed, or cancelled.
- All insurance policies will be written as primary policies. All insurance policies will be issued in the name of Society with City named an additional insured. This insurance is primary to any insurance available to City.

#### INDEMNIFICATION

12. Society agrees to indemnify and hold harmless the City, its councilors, employees and agents from all actual or potential liability claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, proceedings, and actions that may be imposed upon or incurred by the City due to the acts or omissions of any person or entity that:

- Arises 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 obligation under this Lease.

City agrees to indemnify and hold harmless the Society, its members and agents from all actual or potential liability claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees) that results from any breach, violation, or nonperformance by City of any obligation under this Lease.

#### ENVIRONMENTAL INDEMNIFICATION

13. Society also 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 here, "costs" include:

- 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 Environmental Laws;
- Any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal or any administrative proceeding or appeal whether or not taxable as costs, including attorneys' and paralegal fees, witness fees), deposition costs, copying and telephone charges and other expenses; and any damages, costs, liabilities and expenses that are claimed to be owed by any federal or state regulating and administering agency.

- "Environmental laws" include any and all federal and state statutes, regulations, rules, and local ordinances now or hereafter in effect, as amended, that govern Hazardous Substances or relate to the protection of human health, safety or the environment. "Hazardous Substances" 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 any governmental entity, Society must remove from the Premises (including the soil or water table thereof), at its own cost and expense, all Hazardous Substances, and restore the Premises to clean, safe, good, and serviceable condition.
- Society will defend all actions and proceedings relating to matters covered by this indemnity that are brought against the City or in which the City is impleaded, and will satisfy, pay, and discharge all orders and judgments that may be entered against the City in any such action or proceeding.

#### FAILURE TO PERFORM

14. If at any time Society fails to make any payment or perform any act required under this Lease, then after 10 days notice to Society City may:

- Pay any tax, fee or charge payable by Society under this Lease; or
- Make any other payment or perform any other act on Society 's part 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 paid and all costs and expenses incurred by City (including reasonable attorney fees) in connection with the performance of any such act are additional rent and must be paid by Society to City upon demand. If Society does not pay the same within 30-days after notice from City, interest will be charged at an 18% annual rate from the date of City payment. It will constitute additional rent and must be paid by Society to City.

#### LEGAL COMPLIANCE

15. Throughout the Term, Society will promptly comply with all legal requirements that apply to the Premises or the use of the Premises, Building or Improvements.

#### REPAIRS

16. Society will maintain, repair and replace the Premises, Building and Improvements as necessary to keep them in good order, condition, and repair throughout the entire Term. Society 's obligations extend to both structural and nonstructural items and to all maintenance, repair and replacement work. The City will be responsible for mowing, but other landscaping will be the responsibility of the Society.

#### NO DISCRIMINATION

17. Society will not discriminate based upon race, color, religion, sex, national origin/ancestry, age, disability, sexual orientation, military status, parental status or source of income in any use

or occupancy of the Premises. Society agrees to comply with all federal, state and local laws, rules and regulations with regard to accessibility standards for the physically disabled.

#### TITLE TO IMPROVEMENTS

18. Title to the Building and Improvements will be with Society until the expiration of the Term, unless this Lease is sooner terminated. Upon end of Term or termination, title to the Building and Improvements will automatically pass to City without further action by either party. During the Term, Society is entitled for all taxation purposes to claim cost recovery deductions on the Improvements.

#### INSPECTION AND ACCESS

19. Society will permit City and its authorized representatives to enter the Premises and the Improvements at all reasonable times during usual business hours to inspect and make any repairs or perform any work that Society neglects or refuses to perform. The City has no duty or obligation to perform any such work or to make any Improvements to the Premises. The performance of any work by City does not waive Society 's default in failing to perform.

#### REMEDIES

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

- Default in the payment of Rent, and such default continues for 30 days after City gives notice to Society; or
- Default of any other obligation under this Lease that continues and is not remedied within 60 days after City gives notice to Society.

If there is a breach, City may exercise any one or more of the remedies of this section, any other section of this Lease, or any remedy available under applicable law. Whether or not City retakes possession or relets the Premises, City has the right to recover its damages, including rent, all legal expenses, all costs incurred in restoring the Premises or otherwise preparing the Premises for re-letting, and all costs incurred in re-letting the Premises.

#### PERFORMANCE

21. The failure of City to insist on the strict performance of any provision of this Lease or to exercise any right or remedy upon breach or the acceptance of Rent during any breach does not constitute a waiver of any breach or provision. No provision of this Lease nor breach by Society may be waived, altered, or modified except by a written agreement executed by City. No waiver of any breach affects or alters this Lease. All provisions of this Lease continue in force and apply to any other or subsequent breach.

#### CUMULATIVE RIGHTS

22. Each right and remedy provided for in this Lease is cumulative and in addition to every other right or remedy provided in this Lease or law. The exercise by City of any one or more of those rights or remedies does not preclude the exercise of any or all other right or remedy.

#### OPTON TO EXTEND

23. The Term may be extended at the option of Society and the concurrence of the City for an additional five year period. This option may be exercised by giving written notice to City not more than 12 months nor less than six months before the initial Term expires.

#### QUIET ENJOYMENT

24. Society has the right to quietly enjoy the Premises during the Term without hindrance or molestation by anyone claiming by or through City subject to the provisions of this Lease.

#### SURRENDER

25. Unless it exercises its option to extend, Society will surrender and deliver the Premises, Building and all Improvements to the possession and use of CITY on the last day of the Term without delay and free of all liens and encumbrances.

- Any personal property that remains on the Premises after the termination of this Lease at the City's option may be deemed abandoned and either retained by CITY or disposed of in any manner by City.

#### LOSS

26. City is not responsible for any loss or damage occurring to any property owned by Society or anyone else on the Premises.

#### SEVERABILITY

27. If any term or provision of this Lease is held invalid or unenforceable, the remainder of this Lease is not affected. Each term and provision remains valid and enforceable to the fullest extent permitted by law.

#### FORCE MAJEURE

28. If the performance by either of the parties of any obligation 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, the party will be excused to the extent such performance or obligation is so limited or prevented by such occurrence without liability of any kind.

#### NOTICES

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

City: Sherwood City Manager  
City of Sherwood  
22560 SW Pine Street  
Sherwood OR 97140  
Society: Sherwood Historical Society  
22552 SW Park Street

### Sherwood OR 97140

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 will be deemed given on actual receipt. Any notice mailed to the last designated address will be deemed effective if actual delivery is made or there is a failure or refusal to accept delivery of the notice.

#### COSTS AND ATTORNEY FEES

31. If either party brings a legal action and obtains an order or judgment in its favor, the court may award to the prevailing party its reasonable costs and attorney fees, including fees incurred for any appeal (whether or not taxable as such by law).

#### ENTIRE AGREEMENT

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

#### APPLICABLE LAW

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

#### SUCCESSORS

34. The provisions and agreements in this Lease bind and inure to the benefit of City its successors and assigns, and Society, its successors and assigns.

#### CAPTIONS

35. The captions of this Lease are for convenience and reference only, and do not define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

#### STATUTORY WARNING

36. 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.

CONSENT

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

The City and Society have caused this Lease to be executed by their duly authorized officers.

City:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Recorder

Society :

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date Executed