

RESOLUTION 2013-03

A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA, AUTHORIZING THE CONDITIONAL TRANSFER OF CERTAIN REAL AND PERSONAL PROPERTY FROM THE HISTORIC LAKE WALES SOCIETY, INC. TO THE CITY OF LAKE WALES; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Historic Lake Wales Society, Inc., owns certain real and personal property of a historical nature; and

WHEREAS, the current economic climate has caused a downturn in revenues which preclude the Historic Lake Wales Society's continued funding of the maintenance and repair of the historical facilities; and

WHEREAS, the properties which are the subject of this Resolution have for many years been operated by the Historic Lake Wales Society, Inc; and

WHEREAS, the Historic Lake Wales Society, Inc. has expressed a willingness to return the responsibility of the continuing operation, maintenance and repair of the historical facilities which are the subject of this Resolution; and

WHEREAS, the Lake Wales City Commission has expressed a willingness to accept a transfer of the subject real and personal property to the City of Lake Wales in order that it be preserved for the benefit of the citizens of Lake Wales.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Lake Wales, Florida:

SECTION 1. FINDINGS. It is in the interest of the citizens of the City of Lake Wales that certain historic real and personal property of the Historic Lake Wales Society, Inc. be given and transferred to the City of Lake Wales, in order to provide for its continuing use and preservation for the benefit of the public. A list of the property which is the subject of this Resolution is attached hereto and made a part hereof as Exhibit "A".

SECTION 2. CONSIDERATION. As consideration for the transfer of the subject property from the Historic Lake Wales Society, Inc. to the City of Lake Wales, the said Society as part of a management agreement will be required to operate the property for the benefit of the public in perpetuity.

SECTION 3. ACCEPTANCE CREATES NO OBLIGATION FROM THE CITY. Acceptance of the subject properties by the City of Lake Wales, shall in no way obligate the City to provide funding or otherwise provide for the continued operation, maintenance and repair of the subject properties and acceptance will be subject to an easement or easements to be determined for municipal purposes.

SECTION 4. AUTHORIZATION TO ACCOMPLISH TRANSFER. Upon approval of this Resolution, the City Attorney is authorized to prepare an appropriate instrument or instruments for the purpose of effecting the contemplated transfer and the Mayor is authorized to execute the instruments. The Historic Lake Wales Society, Inc., shall provide an inventory of all personal property to be transferred in addition to that described in Exhibit "A" attached hereto.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

APPROVED AND ADOPTED by the City Commission of the City of Lake Wales, Florida, this 15th day of January, 2013.

By: Mike Carter
Michael S. Carter, Mayor

Attest: Clara VanBlargan
Clara VanBlargan, City Clerk

EXHIBIT "A" TO RESOLUTION 2013-03

REAL PROPERTY:

1. The Stuart-Dunn-Oliver House located on the following described real property:

Lot 14, Block 37, TOWN OF LAKE WALES, as recorded in Plat Book 1, at pages 88A and 88B, of the Public Records of Polk County, Florida.

2. The Depot Museum located on the following described real property:

That certain property conveyed to the City of lake Wales by the Seaboard Coast Line Railroad Company by instrument dated December 26, 1975, and recorded February 26, 1976, in Official Records Book 1680, at Page 456, of the Public Records of Polk County, Florida.

PERSONAL PROPERTY:

3. The Engine, Train Car, Caboose and fencing located at the Depot Museum.
4. The Children's Museum located North of the Depot Museum.
5. The 1916 SAL depot located North of the Children's Museum.

1/15/2013

Depot Museum Complex Management Agreement

This Agreement made and entered into this 9th day of January, 2013, by and between the Historic Lake Wales Society, Inc., a Florida not-for-profit corporation, hereinafter referred to as the Managing Tenant, and the City of Lake Wales, a Florida municipal corporation, hereinafter referred to as the Owner.

1. PURPOSE:

The purpose of this Agreement is to provide a private/public partnership for the management and administration of the Lake Wales Museum and Cultural facility housed at the Depot Museum (Museum), 325 South Scenic Highway, Lake Wales, Florida, the Children's Museum at 323 S. Scenic Hwy; the SAL Freight Depot at the corner of Scenic HWY & Johnson Ave.; and the three train cars: the Caboose, Pullman, and Engine (all of the foregoing described facilities collectively referred to as the "Depot Museum Complex") for the benefit of the public. Nothing in this Agreement shall affect the Articles of Incorporation or Bylaws of the Historic Lake Wales Society, Inc., or the authority of its Board of Directors.

2. TERM:

That for and in consideration of sum of ten dollars (\$10.00), and the covenants and Agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Owner leases to the Managing Tenant and the Managing Tenant leases from the Owner on a yearly basis, the Depot Museum Complex located in Lake Wales, Florida, together with the fixtures situated therein, for a term commencing on October 1, 2012 and ending September 30, 2013, with the option for renewal for up to five(5) additional one-year terms. Either party shall reserve the right to terminate this lease by giving the other party a sixty (60) day written notice prior to the end of any term.

3. USE:

(a) The Managing Tenant agrees to manage and administer the Depot Museum Complex as a museum and cultural facility. The Museum shall be open to the public not less than twenty (20) hours per week. The Managing Tenant shall have the authority to hire and terminate its personnel which operate the Museum or other property within the Depot Museum Complex.

(b) All parties agree to comply with the provisions of Title VI and VII of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. Specifically, in carrying out the intent of

this Lease Agreement, neither party shall discriminate in any way as to race, creed, or color, nor in any other respect in carrying out the terms of this Lease Agreement which would violate the aforesaid acts.

(c) The Managing Tenant acknowledges that its managerial and administrative activities and any other activities it undertakes that result in raised funds, such as gift shop sales, donations, membership drives and other fundraisers, shall be used for the benefit of the Managing Tenant and its preservation efforts as has been previously accomplished. The Owner shall at all times have access to the records of the Managing Tenant concerning use of funds for audit purposes.

(d) The Managing Tenant acknowledges that due to the nature of the services to be provided hereunder, its records are public records and are specifically subject to the provisions of Chapter 119, Florida Statutes.

4. ORDINANCES AND STATUTES:

The Managing Tenant shall comply with all applicable provisions of the Lake Wales Code of Ordinances, as well as applicable statutes and requirements of state and federal authorities now in force, or which may hereafter be in force, pertaining to the Depot Museum Complex, occasioned by or affecting the use thereof by the Managing Tenant.

5. RENT:

No monthly rent shall be paid by the Managing Tenant to the Owner for use of the Depot Museum Complex. However, the Managing Tenant shall be responsible for all costs associated with operations of the Depot Museum Complex.

The usage of the Freight Depot currently managed the Lake Wales Model Railroad Club shall be overseen by the Managing Tenant. No rents shall be collected from the Lake Wales Model Railroad Club by the Owner. All donations collected and sales made at the Freight Depot shall belong to the Lake Wales Model Railroad Club unless otherwise agreed between the Managing Tenant and the Lake Wales Model Railroad Club.

The usage of the Children's Museum shall be governed by the Managing Tenant.

The Stuart House shall be administered by the Owner and the Managing Tenant. The Managing Tenant shall consult with the Owner concerning any contemplated use of the Stuart House.

Any rental or other fee charged to a third party by the Managing Tenant, other than as previously stated herein, for activities held or conducted at the Depot Museum Complex shall be paid to the Managing Tenant and shall be the Managing Tenant's funds to be utilized as previously set forth.

6. SOVEREIGN IMMUNITY:

The Managing Tenant, in accordance with Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or intentional tortious acts which result in claims or suits against the Owner, and agrees to be liable for any damages proximately caused by any of said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the Owner. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract. The Managing Tenant acknowledges and agrees that for all purposes it is an independent contractor and not an agent or employee of the Owner.

7. PROJECT MONITORING AND REPORTS:

(a) Project Monitoring Reports. The Managing Tenant shall provide the Owner with semiannual reports that briefly describe the overall operation of the facilities. Reports shall include, but are not limited to, a brief description of each program offered, a schedule of upcoming exhibits, attendance figures, updated inventory, and physical condition of the Depot Museum Complex.

(b) Upon entering into this Agreement, Managing Tenant shall make and maintain a complete inventory report of all exhibits, artifacts, art work, and display items of any nature which are in the possession or come into the possession of the Managing Tenant (the "Inventory"). This inventory shall be provided to the Owner not later than 180 days from the date of this Agreement.

8. EXTERMINATION:

The Owner is responsible for necessary extermination services for the facility.

9. REPAIRS:

(a) The Owner is responsible for all major repairs including sewer, plumbing, electrical, air conditioning, structural damage, termites

and roof. This provision shall not apply to the three train cars: the Caboose, Pullman, and Engine.

(b) The Managing Tenant agrees to promptly report to the Owner any damages or needed repairs which are the responsibility of the Owner.

(c) The Managing Tenant is responsible for all facility needs which are not the responsibility of the Owner as set forth above, such as painting.

(d) The Owner shall be responsible for solid waste trash removal from the facility. The Managing Tenant shall provide janitorial services for the complex on a regular basis.

(e) Upon termination of this Agreement, the Managing Tenant shall return the premises to the Owner in the same condition as when received, normal wear and tear excepted.

(f) The Managing Tenant is responsible for the costs and repairs associated with any electronic equipment utilized in the Depot Museum Complex. Said equipment shall include phones, computers, copiers, fax machines and printers.

10. MAINTENANCE:

(a) The Managing Tenant accepts all buildings and other property within the Depot Museum Complex in the condition they are in at the beginning of this lease, and agrees to maintain said premises in the same condition, excepting only reasonable wear and tear arising from the use thereof under this Agreement, and to make good to the Owner immediately upon demand, any damage to water apparatus, or electric lights or any other fixtures, appliances, or appurtenances of said premises, or of the building caused by any act or neglect of any person or persons in the employment of, or under the control or supervision of the Managing Tenant.

(b) Other than for the purpose of changing exhibits, the Managing Tenant shall not make internal or external renovations, alterations, additions, or install any fixtures, equipment, fencing, or other appurtenances, without the written consent of the Owner. All permanent fixtures are to remain with the buildings.

(c) The Managing Tenant shall be responsible for reimbursement to the Owner for any and all losses or damages to property and/or equipment resulting from the programs of the Managing Tenant. The Managing Tenant shall be charged for time and material by the

Owner for any and all maintenance and repairs performed by the Owner or by third parties at the request of the Managing Tenant. This payment will be due and payable on the first day of the calendar month following the completion of the subject work.

(d) The Owner will be responsible for lawn and landscape maintenance for the Depot Museum Complex. The Managing Tenant shall be responsible for grounds maintenance such as hedge trimming and weeding.

11. INSURANCE:

(a) The Owner shall maintain property and casualty insurance coverage for the land and buildings managed by the Managing Tenant as is maintained by Owner for its other properties.

(b) Managing Tenant agrees to secure and maintain in full force and effect premises liability insurance which names the Owner as an additional insured. This insurance policy shall provide that the Owner receive a Thirty (30) day notice in the event of cancellation, non renewal, or adverse change to the policy. The policy shall insure The Managing Tenant and the Owner regarding all claims, causes of action, or other damages (including personal injuries or property damage) arising out of the Managing Tenant's use of the Owner's premises. Said insurance policy shall have a minimum coverage of Five Hundred Thousand Dollars (\$500,000.00) per claim.

(c) The Managing Tenant shall provide insurance coverage for contents and any personalty it may own or have responsibility for.

12. UTILITIES:

The Managing Tenant understands and agrees that it will be responsible for all utilities of the Depot Museum Complex, including water, sewer, electricity, telephone, internet access and security systems.

13. DAMAGE BY FIRE OR OTHER CASUALTY:

(a) If any portion of the Depot Museum Complex is damaged by fire or other casualty to such an extent that it is rendered untenable in whole or in part, the Owner shall have the option to cancel the lease as to the affected portion of the Depot Museum Complex, or repair the property to substantially its former condition.

(b) The Owner shall give notice of its election to the Managing Tenant within thirty (30) days after the occurrence of such damage, and if the Owner shall elect to repair the property, the Owner will

include in the notice a good faith estimate of the date upon which such repairs shall be completed.

14. NOTICE:

All notices which are required or permitted under this Agreement shall be given to the parties by certified mail, return receipt requested, hand delivery, or express courier, and shall be effective upon receipt. Notices shall be sent to the parties at the addresses set forth below or such other address as provided to the parties by written notice delivered in accordance with this section.

Notice to Managing Tenant:

Historic Lake Wales Society, Inc.
325 South Scenic Highway
Lake Wales, FL 33853

Attn: Mimi Reed Thompson, its President

Notice to Owner:

City of Lake Wales
City Manager
PO Box 1320
201 Central Ave., W.
Lake Wales, FL 33859-1320

With a copy to:

Albert C. Galloway, Jr., City Attorney
Albert C. Galloway, Jr., P.A.
202 E. Stuart Ave.
PO Box 3339
Lake Wales, FL 33859-3339

15. BANKRUPTCY:

If the Managing Tenant shall become insolvent or if bankruptcy proceedings shall begin by or against the Managing Tenant, before the end of any lease term provided for herein, the Owner is hereby irrevocably authorized at its option, to forthwith cancel this lease, as for default. No receiver, trustees, or other judicial officer shall ever have any right, title or interest in or to the property which is the subject of this Agreement by virtue of this Agreement.

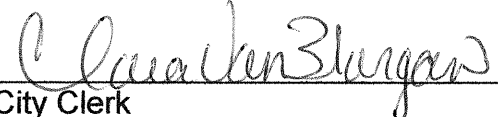
16. DEFAULT:

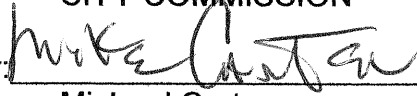
It is expressly understood between the Owner and the Managing Tenant that at any time in the event the Managing Tenant is declared in default of any provision(s) contained herein that the Owner shall be entitled, at its option, to terminate the parties interest hereunder, whether during the initial lease term or during any extension thereof.

17. WAIVER:
 No failure of Owner to enforce any term hereof shall be deemed to be a waiver.
18. ASSIGNMENT:
 The Managing Tenant shall not assign or attempt to assign any part of this Agreement nor any of its responsibility or liability provided for in this Agreement.
19. ENTIRE AGREEMENT:
 This Agreement contains the entire agreement between the parties and may be modified only by an addendum to this Agreement or by a new Agreement in writing signed by the Owner and the Managing Tenant and approved by the City Commission of the City of Lake Wales.
20. AUTHORITY:
 The parties hereto acknowledge and affirm that all steps required to provide authority for entry into this Agreement have been accomplished and the individuals who execute this Agreement are duly authorized to bind the respective parties.

In witness whereof, the parties have hereunto set their hands and seals this 9th day of JANUARY, 2013.

ATTEST:


City Clerk

CITY OF LAKE WALES
CITY COMMISSION
By: 
Michael Carter

Signed Sealed and delivered in

HISTORIC LAKE WALES
SOCIETY, INC.

the presence of:

Walter G. Paulk,

(Witness)

James C. McLendon II

(Witness)

James C. McLendon II

By:

William Fred Harrison

Its President

Depot Museum Complex Lease Agreement

Summary of Operations and Maintenance Responsibility Expense	OWNER (City)	MANAGING TENANT (HLWS)
Electric		X
Water & Sewer		X
Irrigation		X
Security		X
Property & Casualty Insurance	X	
Insurance (Museum Contents)		X
Typical Maintenance Items (light bulbs, air filters, paint, service calls – AC, electric, plumbing, security, porches)		X
Telephone		X
Extermination Services	X(termites only)	X (ERAD/ants)
Major Repairs (Sewer, roof leak, structural, major AC repair/replace)	X	
Janitorial Services		X
Lawn/Landscape Maintenance (Mowing)	X	
Grounds Maintenance (pulling weeds/trimming hedges/use of equipment)		X
Exhibit Assistance (cases, quilt racks, trucks, etc)		X
Refuse Collection and Disposal	X	
Ins. W/C		X
Internet/Tech Support		X
Staffing		X