

## **MEMORANDUM**

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October 27, 2009

**TO:** Honorable Mayor and City Commissioners

**VIA:** Judith H. Delmar, City Manager<sup>jhd</sup>

**FROM:** Clara VanBlargan, City Clerk

**SUBJECT:** Lease Agreement Amendment – “B” Street Community Service Center

**SYNOPSIS:** The Lease Agreement Amendment will allow the Roosevelt Recreation and Social Club, Inc. to operate the B Street Community Service Center through December 31, 2010.

### **STAFF RECOMMENDATION**

It is recommended that the City Commission authorize the Mayor to execute the lease agreement amendment with the Roosevelt Recreation and Social Club, Inc. renewing the lease for two one-year terms commencing on January 1, 2009 and ending December 31, 2010.

### **BACKGROUND**

Initially the City Commission approved the lease agreement on December 17, 2002 for a one-year term beginning January 1, 2003 and expiring December 31, 2003. Terms in the agreement provide for up to ten (10) additional one-year term renewals, provided that neither party has exercised their right to terminate the lease by giving the other party a sixty (60) day written notice prior to the end of any term. January 1, 2010 through December 31, 2010 makes the seventh year of the one-year renewal terms.

Other terms of the lease remain the same.

Highlights of the lease include:

- Use – the property must be used as a community resource center and for other CDBG eligible activities.
- Rent – there shall be no rent paid by the managing tenant.
- Monitoring – the managing tenant shall allow periodic inspections and provide quarterly reports describing offered programs, attendance, and the physical condition of the facility. (This reporting requirement is being provided.)
- Financial reports – the managing tenant shall provide monthly financial reports. (This report is received monthly.)

- Insurance – the managing tenant is required to maintain minimum insurance coverages. These shall include Worker’s Compensation in compliance with State and Federal laws, Comprehensive Auto Liability (\$100,000), and Comprehensive General Liability (\$100,000). (Under State and Federal Law Worker’s Compensation is not required; managing tenant has provided proof of other insurance requirements.)
- Maintenance, repairs, utilities, operating expenses – attached table summarizes operations and maintenance responsibility.
- Default – Upon default of any provision of agreement, the City may, at its option, terminate the managing tenant’s interest in the property.

### **FISCAL IMPACT**

The City’s financial obligation for “B” Street Community Service Center for 2009 was included in the 2008-09 budget and the financial obligation for 2010 is included in the 2009-10 budget.

### **ATTACHMENTS**

- “B” Street Community Service Center Lease Agreement Amendment
- “B” Street Community Service Center Operations and Maintenance Responsibility Table
- “B” Street Community Service Center Lease Dated December 17, 2002

**“B” STREET COMMUNITY SERVICE CENTER  
LEASE AGREEMENT AMENDMENT**

The *City of Lake Wales*, a municipal corporation created and existing pursuant to the laws of the State of Florida, its successors and assigns, does hereby amend the lease agreement granted to Roosevelt Recreation and Social Club, Inc., a Florida for-profit corporation, as described in lease approved by the City Commission of Lake Wales on December 17, 2002.

*Roosevelt Recreation and Social Club, Inc.*, approves and accepts the amended terms renewing the lease for two one-year terms commencing on January 1, 2009 and ending December 31, 2010.

The parties agree that the “B” Street Community Service Center Lease Agreement approved and executed on December 17, 2002, as amended this day, is the entire Agreement of the parties and shall govern the dealings between the parties.

IN WITNESS THEREOF the parties hereunto have set their hands and seals this 3rd day of November 2009.

ATTEST:

CITY OF LAKE WALES  
CITY COMMISSION

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
L. Jack Van Sickle, Mayor

Signed, Sealed, and Delivered in  
the presence of

ROOSEVELT RECREATION & SOCIAL  
CLUB, INC.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Clinton Horne, Executive Vice President

\_\_\_\_\_  
(Print or Type Name)

**"B" Street Community Service Center Lease Agreement  
Summary of Operations and Maintenance Responsibility**

EXPENSE	OWNER (CITY)	MANAGING TENANT (RRSC)
Electric	X (Max \$350 month)	Amount over \$350 month
Water & Sewer	X (Max \$145 month)	Amount over \$145 month
Irrigation	X	
Security	X	
Property & Casualty Ins	X	
Building and building components maintenance	X	
Telephone		X
Appropriate Capital Reserve	X	
Extermination Services	X	
Repairs - necessitated by neglect or abuse by the tenants/users.		X
Office supplies		X
Typical maintenance items, daily janitorial services and removal of garbage, trash, and refuse from the facility		X
Damages cause by act of neglect of tenants/users, MT employees, or persons under MT's control of supervision (furniture, fixtures, appliances, equipment, or appurtenances of said premises		X
Lawn and landscape maintenance	X	
Refuse Collection and Disposal	X	
Ins. - W/C		X
Ins. Comprehensive Automobile Liab \$100K		X
Ins. Gen. Liab. 100K		X
Cable	X	

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**"B" Street Community Service Center  
Lease Agreement**

This Agreement made and entered into this 17<sup>th</sup> day of DECEMBER, 2002 by and between Roosevelt Recreation and Social Club, Inc., a Florida 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 provision of community resource services at the "B" Street Community Service Center (Center), 230 "B" Street, Lake Wales, Florida in collaboration with the Managing Tenant.
2. **TERM:**  
That for and in consideration of the sum of ten dollars (\$10.00), 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 Center located in Lake Wales, Florida together with the fixtures situated therein, for a term commencing on January 1, 2003 and ending December 31, 2003 with the option for renewal for up to ten (10) additional one-year terms. Either party shall reserve the right to terminate the 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 use the property as a community resource center, as well as for other approved Community Development Block Grant eligible programs and services. The Owner, with input from Polk County Housing and Neighborhood Development, will make the final determination of the eligibility of specific programs and services.
  - (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 activities and any other activities it undertakes at the premises shall not generate a profit to the said Managing Tenant. The Owner shall at all times have access to the records of the Managing Tenant for audit purposes to confirm that no profit generating activities are being conducted by the Managing Tenant in conjunction with the performance of its obligations pursuant to the terms of this Lease Agreement.

(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.

(e) Utilization of the premises by the Managing Tenant for any activity to produce profit to the Managing Tenant shall constitute a default pursuant to the terms of this Lease Agreement.

4. **ORDINANCES AND STATUTES:**

The Managing Tenant shall comply with all applicable statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the tenants.

5. **RENT:**

No monthly rent shall be paid by the Managing Tenant to the Owner for use of the Center.

Any rent/fees charged to a third party by the Managing Tenant for activities or services at the Center shall be retained by the Managing Tenant for the benefit of the "B" Street Community Service Center and shall be applied toward the cost of operation and maintenance of the Center. This shall include telephone, typical maintenance items, office supplies, repairs, and a receptionist/clerk position (Owner's paygrade 107 pay range). Surplus rents/fees shall be remitted to the Owner within fifteen (15) days after the end of each term.

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, only to the extent of its immunity to be liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by any tenant to which sovereign immunity applies. 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 agrees that it is an independent contractor of the Owner and not an agent or employee.

7. **MONITORING:**

The Managing Tenant understands that the facility is financed by Community Development Block Grant funds and further understands that there will be periodic monitoring inspections made of the facilities by applicable local, state, and Federal agencies during its occupancy. The inspections will be reasonable and in a manner

not to unduly interfere with the Managing Tenant's programs. However, the Managing Tenant agrees to comply with all governmental orders regarding the operation of the facility and programs.

8. PROJECT MONITORING/REPORTS:

(a) Project Monitoring Reports. The Managing Tenant shall provide the Owner with quarterly reports that briefly describe the overall operation of the facility. Reports shall include, but are not limited to, a brief description of each program offered, a schedule of upcoming classes, seminars, and/or workshops, attendance, and physical condition of the facility.

(b) Financial Reports. In each calendar year the Managing Tenant shall provide the Owner with twelve (12) monthly financial reports and one (1) year-end financial report. Copies of program attendance/use sheets shall be submitted with monthly financial reports. Financial reports may be submitted on the report form attached to this Agreement, Appendix A, or other format containing the same information as found in Appendix A.

(c) Failure to provide any of the foregoing reports as required shall be a default pursuant to the terms of this Agreement.

9. EXTERMINATION:

The Owner will be responsible for necessary extermination services for the facility.

10. REPAIRS:

(a) The Managing Tenant is responsible for repairs especially those which are necessitated by neglect or abuse by the tenants/users.

(b) The Managing Tenant agrees to promptly report to the Owner any damage or needed repairs and to pay for loss or damage resulting from neglect or abuse by tenants/users.

(c) The Managing Tenant shall be responsible for removal from the facility of garbage, trash, and refuse and shall provide janitorial services on a daily basis.

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

11. MAINTENANCE:

(a) The Managing Tenant accepts the premises 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 tenants/users or any person or persons in the employment of, or under the control or supervision of, the Managing Tenant.

(b) The Managing Tenant shall not make internal or external renovations, alterations, additions, or install any fixtures, equipment, fencing, etc., without the written consent of the Owner. All permanent fixtures are to remain with the building.

(c) The Managing Tenant shall be responsible for reimbursement to the Owner for any and all loss or damage to property and/or equipment resulting from the programs of the tenants/users. 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 regularly scheduled lawn and landscape maintenance.

(e) The Owner will be responsible for provision of refuse collection and disposal in accordance with its agreement with Florida Refuse, Inc.

(f) Except as previously noted in this section, the Owner will be responsible for building and building component maintenance such as heating and cooling system, replacement of tiles and carpet from normal wear and tear use, electrical and plumbing.

## 12. INSURANCE:

(a) The Managing Tenant shall maintain, at all times, the following minimum levels of Insurance and; shall, without in any way altering its liability obtain, pay for and maintain insurance for the coverages and amounts of coverage not less than those set forth below:

- 1.) Worker's Compensation – in compliance with State and Federal laws.
- 2.) Comprehensive Automobile Liability—\$100,000.00 combined single limit liability for bodily injury, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.
- 3.) Comprehensive General Liability—\$100,000.00 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages:



- i Premises and Operations; and
- ii Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Managing Tenant); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

(b) The Managing Tenant shall provide to the Owner original Certificates of Insurance satisfactory to the Owner to evidence such coverage before occupancy of the building commences.

(c) The Owner shall be named as an additional insured on all policies related to the project, excluding worker's compensation and professional liability.

(d) All insurance coverage shall be written with a company having an A.M. Best Rating of at least the "A" category and size category of VIII.

(e) The Managing Tenant self-insured retention or deductible per line of coverage shall not exceed \$25,000 without the permission of the Owner. Such certificates of insurance shall provide that there shall be no termination, non-renewal, modification or expiration of such coverage without forty-five (45) calendar days prior written notice to the Owner. In the event of any failure by the Managing Tenant to comply with these provisions, the Owner may, at its option, on notice to the Managing Tenant suspend the project for cause until there is full compliance. Alternatively, the Owner may purchase such insurance at the Managing Tenant's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the managing Tenant shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

13. UTILITIES:

The Managing Tenant understands that it will be responsible for the facilities telephone.

The Owner will be responsible for the facilities electricity (maximum \$350.00 monthly), water and sewer (maximum \$145.00 monthly), and security system. The Managing Tenant will be responsible for the facilities monthly electric bill in excess of \$350.00 and for the monthly water and sewer bill in excess of \$145.00.

14. DAMAGE BY FIRE OR OTHER CASUALTY:

(a) If the property 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, 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 shall include in the notice a good faith estimate of the date upon which such repairs shall be completed.

15. 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:

Roosevelt Recreation and Social Club, Inc.  
230 B Street  
Lake Wales, FL 33853  
Attn: Clinton Horne, President  
Albert Hawkins, Jr., Vice President  
Jerome Mack, Vice President  
Terrye Howell, Vice 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

16. BANKRUPTCY:

If the Managing Tenant shall become insolvent or if bankruptcy proceedings shall begin by or against the Managing Tenant, before the end of the lease term, the Owner is hereby irrevocably authorized at its option, to forthwith cancel this lease, as for default. The Owner may elect to accept rent from such receiver, trustee or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting the Tenant's rights as contained in this agreement, but no receiver trustee,

or other judicial officer shall ever have any right, title or interest in or to the above described property by virtue of this agreement.

17. 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.

18. WAIVER:

No failure of Owner to enforce any term hereof shall be deemed to be a waiver.

19. ASSIGNMENT:

Neither party hereto shall attempt to assign any part of this Lease Agreement nor any responsibility or liability provided in this Agreement to a third party without the mutual written consent of both parties.

20. ENTIRE AGREEMENT:

This lease 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.

In witness whereof, the parties have hereunto set their hands and seals this 17th day of DECEMBER, 2002.

ATTEST:

Roseanne Couglin  
City Clerk

CITY OF LAKE WALES  
CITY COMMISSION

By: Lee A. Wheeler, III  
Lee A. Wheeler, III, Mayor

Signed Sealed and Delivered in  
the presence of:

Patricia M. Phillips  
Witness

ROOSEVELT RECREATION & SOCIAL  
CLUB, INC.

By: Clinton Horne  
Clinton Horne, President

Patricia M. Phillips  
(Print or Type Name)

