



City Attorney's Communication #2020-613

March 2, 2020

TO: Cassandra LeMasurier, Real Property Manager

FROM: James E. Saunders III, Assistant City Attorney

RE: Ordinance Approving an Operating and Management Agreement and Resolution Accepting Deed of Gift / Pompano Beach Historical Society, Inc.

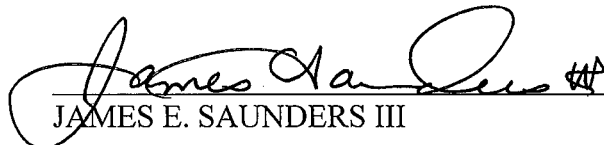
As requested, attached is the revised Deed of Gift from the Pompano Beach Historical Society, Inc., along with the appropriate resolution captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, ACCEPTING A DEED OF GIFT FOR KESTER COTTAGES FROM POMPANO BEACH HISTORICAL SOCIETY, INC.; PROVIDING FOR RECORDATION; PROVIDING AN EFFECTIVE DATE.

Also, I have prepared and attached the Operating and Management Agreement with the Pompano Beach Historical Society, Inc. regarding the Hood Center and Kester Cottages along with the appropriate ordinance captioned as follows:

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN OPERATING AND MANAGEMENT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND POMPANO BEACH HISTORICAL SOCIETY, INC. FOR THE OPERATION AND MANAGEMENT OF THE HOOD CENTER AND KESTER COTTAGES AND RELATED PROGRAMMING AND EXHIBITS FOR THE BENEFIT OF THE PUBLIC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



JAMES E. SAUNDERS III

JES/jrm
l:cor/finance/real-prop/2020-613500

Attachments

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN OPERATING AND MANAGEMENT AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND POMPANO BEACH HISTORICAL SOCIETY, INC. FOR THE OPERATION AND MANAGEMENT OF THE HOOD CENTER AND KESTER COTTAGES AND RELATED PROGRAMMING AND EXHIBITS FOR THE BENEFIT OF THE PUBLIC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Operating and Management Agreement for the operation and management of the Hood Center and Kester Cottages and related programming and exhibits for the benefit of the public, between the City of Pompano Beach and Pompano Beach Historical Society, Inc. is approved. A copy of the Agreement is attached and incorporated by reference as if set forth in full.

SECTION 2. That the proper City officials are authorized to execute the Agreement between the City of Pompano Beach and Pompano Beach Historical Society, Inc.

SECTION 3. If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2020.

PASSED SECOND READING this _____ day of _____, 2020.

REX HARDIN, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

JES:jrm
3/2/2020
L:ord/2020-152

OPERATING AND MANAGEMENT AGREEMENT

THIS OPERATING AND MANAGEMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2020, by and between:

CITY OF POMPANO BEACH, a Florida municipal corporation, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, (“City”),

and

POMPANO BEACH HISTORICAL SOCIETY, INC., a Florida not-for-profit corporation, whose address is 217 NE 4th Avenue, Pompano Beach, Florida 33060, (“Society”);

collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Society’s mission is to collect, preserve and publicize the documentary and pictorial history of the Greater Pompano Beach area through its archived materials, public programs, lecture series, exhibits and displays and publications, and overall advocacy for the preservation of historical sites and buildings within the City of Pompano Beach; and

WHEREAS, the City has partnered over the years with the Society to preserve and enhance historical sites and buildings within the City of Pompano Beach including, but not limited to, the Dick and Miriam Hood Center and Kester Cottages; and

WHEREAS, in 1986, the Parties entered into a ground lease permitting the Society to place the Kester Cottages onto Founder’s Park and later, in 1987, 1994 and 1995, to construct the Dick and Miriam Hood Center, and operate such areas as part of a historical museum for the benefit of the general public as depicted in Composite Exhibit 1; and

WHEREAS, the leases and addenda executed between the Parties for occupancy and operation of the Hood Center and Kester Cottages have long expired, although the Parties continued to conduct themselves according their terms and conditions; and

WHEREAS, the Parties have determined that there is a continued need for historical preservation and that the Society is best equipped to operate and manage the Hood Center and Kester Cottages, its programming and exhibits for the benefit of the general public, and display and preserve the archived and documentary materials capturing the history of the City of Pompano Beach, State of Florida and other national institutions without the leasing and associated obligations related to building and grounds maintenance; and

WHEREAS, the City will assume all building and grounds maintenance and other ownership responsibilities, and the Society will convey its complete ownership interest in the Kester Cottages to the City for their continued preservation and maintenance;

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and payments set forth, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated in this Agreement by this reference.

2. The Parties understand, acknowledge and agree that the Society shall, in proper form, grant, alienate, convey and quit claim to the City all of its interest in the physical structures and improvements known as the Kester Cottages, not including the artifacts and historical paraphernalia and other personal property located within such structures and buildings. The City shall be the sole owner of the Hood Center and Kester Cottages (“Historical Museum”) and responsible for the maintenance and upkeep of such structures and improvements. The personal property, furnishings and artifacts, currently archived and maintained by the Society, shall remain forever the property of the Society.

3. The Society shall operate and manage, for the benefit of the general public, the Historical Museum including, but not limited to, conducting tours and other programming, and shall collect, store and digitize historical materials, artifacts and exhibits pertaining to the history of the City of Pompano Beach, State of Florida and the United States of America and their institutions.

4. The Society shall prepare and submit an Annual Plan to the City, no later than September 1 of each year, outlining its proposed programming and events at the Historical Museum for the benefit of the public; notwithstanding, any programming or event not outlined in the Annual Plan must be approved in writing, in advance by the City, which approval shall not be unreasonably withheld. Any use of the Historical Museum by an entity other than the Society or the City, or for purposes other than the display or presentation of the history of the City of Pompano Beach, the State of Florida or the United States of America and their institutions, must be approved in writing and in advance by the City.

5. The Society shall operate and manage the Historical Museum without unjust discriminations; and refrain from imposing or levying excessive, discriminatory or otherwise unreasonable charges or fees for any programming or event.

6. The Society represents and warrants to the City that it is a Florida not-for-profit corporation authorized to transact business within the State of Florida and has the business skills and ability to diligently, skillfully and successfully perform all obligations when operating and managing the Historical Museum.

7. Term. The term of this Agreement is five (5) years, commencing upon final execution by the last party (“Effective Date”), unless sooner terminated as provided in this Agreement. The Parties shall have the option to extend the Agreement up to one additional five (5) year term (“Option Period”), on the terms and conditions as set forth in this Agreement. Notwithstanding, the Agreement term and any extension to such term must comply with applicable provisions of the City Charter or

City Code. At least ninety (90) calendar days before the expiration of the Term, the Parties shall negotiate in good faith for an extension upon the same terms and conditions of this Agreement.

8. The City shall compensate the Society for its operation and management of the Historical Museum and associated programs in the annual amount of Twenty Thousand Dollars (\$20,000.00). First payment shall be made within fifteen (15) days of execution of this Agreement. Each subsequent annual payment shall be made on October 31 of each year.

9. Additional Obligations.

A. The Society covenants and agrees to observe and obey and to require its officers, employees, guests, invitees and those doing business with it, to observe and obey such reasonable and nondiscriminatory rules and regulations of the City for the conduct and operations of the Historical Museum and others as may be promulgated for safety, health or sanitation and good order.

B. The Society shall conduct its operation at the Historical Museum in an orderly and proper manner, so as not to unreasonably annoy, disturb, endanger, or be offensive to the occupants and patrons of Founder's Park.

C. The Society shall, at all times, keep the Historical Museum in a clean and orderly condition and appearance, along with its fixtures, equipment and personal property.

D. The Society shall commit no unlawful nuisance, waste, or injury on the Historical Museum or the surrounding lands that encompass Founders' Park and shall not do or permit any act or thing to be done which may result in the creation, commission, or maintenance of such nuisance, waste, or injury on such lands. The Society shall not do or permit any act to be done upon the Historical Museum or adjacent lands comprising Founders' Park that will invalidate or conflict with any fire insurance policies covering the Historical Museum or any part of Founder's Park. The Society shall not do or permit any act which may interfere with the effectiveness or accessibility of the drainage, sewage, fire protection, sprinkler, or alarm systems, nor with the fire hydrants and hoses, if

any, which may be installed within the Historical Museum or the surrounding lands comprising Founders' Park.

E. The Society agrees to be billed in its own name and pay for utility charges associated the operation and management of the Historical Museum including, but not limited to, charges for telephone, internet access, website hosting, and any related subscription charges.

F. The Society shall be authorized to charge admission during special events held at the Historical Museum or the land immediately surrounding such buildings and to tour the structures that comprise Historical Museum.

G. The Historical Museum will be open to the public on a regular basis with the exact times and dates to be determined by the Society in consultation with the City of Pompano Beach Parks and Recreation Department.

H. The Society may request the use of a City passenger bus, using appropriate City forms, to conduct historical tours, and shall coordinate such usage with the City at least four (4) weeks in advance of the scheduled tour. The Society shall provide the City proof of current hired and non-owned auto insurance coverage and obtain liability waivers from all passengers. The minimum number of passengers shall be eight (8) for a minimum time period of three (3) hours at a rate of \$15 per hour. The City passenger bus is available on a first come, first serve basis, provided that city-sponsored programs have priority over all requests. If the Society schedules use of the City passenger bus and the City approves the schedule, and later the City passenger bus becomes unavailable due to circumstances beyond the City's control, the City will make arrangements and pay for alternate transportation.

I. The City shall be responsible for the maintenance and repair of all utilities service lines for the supply of water, sanitary sewers and storm sewers which are now or which may be subsequently located on or about the Historical Museum. The City shall pay for water and sewer services, and be responsible for maintenance of grounds, irrigation, fences and garbage removal.

J. The City shall be responsible for maintenance and repairs of the Historical Museum and shall provide trash and recycling containers at the Historical Museum.

K. The Parties shall coordinate and schedule periods for ground and utility maintenance.

L. The City shall be responsible for the maintenance and repair of the bathroom facilities including plumbing, paper towels, toilet paper and regular cleaning services. The Parties shall coordinate and schedule cleaning and maintenance of bathroom facilities.

M. The City agrees that, during City approved special events or rentals of the Historical Museum, alcohol may be permitted in concurrence with applicable state and City applicable rules and regulations. The Society is authorized, from time to time, to use amplified music, tents tables and chairs for City approved special events or rentals.

N. In consideration of public services and outreach provided by the Society, and to ensure continuity of such services and outreach to the extent possible, the City agrees in the event of material damage to, or destruction of, City-owned properties occupied by the Society to make timely repairs to such properties at no cost to the Society, and when applicable, make a best-effort attempt to, temporarily or otherwise, provide an alternative location for the Society to conduct business.

10. INSURANCE

A. The Society covenants and agrees to provide and keep in force and effect comprehensive general public liability and property damage insurance which shall name the City of Pompano Beach as an additional insured. Such comprehensive general liability coverage shall not be less than \$1,000,000.00 for each occurrence, holding harmless and indemnifying the City as its interests may appear against public liability and property damage claims, and to furnish the City at all times with an appropriate certificate from the insurance carrier showing such insurance to be in force.

B. All policies of such insurance and renewal shall insure the Parties as their interests may appear.

C. The insurance policies shall be written by companies authorized to do business in the State of Florida and listed in “Best’s Insurance Guide,” or a comparable publication in the event of the discontinuance of publishing “Best’s,” said insurance company having a minimum rating in “Best’s” of A.

D. The policies or certificates representing the insurance shall be delivered by the Society to the City and each policy or certificate delivered shall bear the endorsement of or be accomplished by evidence of payment of the premium and also an endorsement obligating the insurance company to furnish the City sixty (60) days’ notice in advance of the cancellation of the insurance. Renewal policies or certificates shall be delivered to CITY within sixty (60) days after the renewal.

E. When such policies or certificates have been delivered by the Society to the City, and the City notifies the Society in writing that the insurance does not conform to the provisions of this paragraph either because of the amount or because of the insurance company or for any other reason, the Society shall have thirty (30) days to cure the defect. Failure to cure such defect within thirty (30) days shall constitute a breach of this Agreement by the Society, entitling the City to all remedies occasioned by default.

11. SIGNS

Except with the prior written approval of the City, which approval shall not be unreasonably withheld or delayed, and so long as same complies with all applicable governmental rules, regulations, and ordinances, including the City’s sign code, the Society may erect signage in compliance with the City’s sign code, as amended from time to time. The City agrees that from and after the Effective Date of this Lease, the Society may, for temporary events, erect up to two (2) temporary signs in compliance with the City Sign Code.

12. TAXES AND EXPENSES

The Society shall be responsible to pay all personal property taxes, tangible or intangible taxes, assessments, utilities, insurance premiums, business tax receipt, maintenance and other similar expenses as stated in this Agreement.

13. PUBLIC RECORDS, RECORDKEEPING, INSPECTION AND AUDIT PROCEDURES

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Society shall comply with Florida's Public Records Law, as amended. Specifically, the Society shall:

1) Keep and maintain public records required by the City in order to perform the service.

2) Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Society does not transfer the records to the City.

4) Upon completion of the Agreement, the Society shall transfer, at no cost to the City, all public records in possession of the Society, or keep and maintain public records required by the City to perform the service. If the Society transfers all public records to the City upon completion of the contract, the Society shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Society keeps and maintains public records upon completion of the contract, the Society shall meet all applicable

requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Society to provide the above described public records to the City within a reasonable time may subject the Society to penalties under Section 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

C. *Recordkeeping, Inspection and Audit Procedures.* The Society, its agents and contractors shall be required to record, preserve and make available at all reasonable times for City's local inspection, examination and audit, complete and accurate records for all activities, revenues, and expenditures hereunder, including all financial records, books, statistical records, federal/state tax returns, and any other documents attendant to their provision of goods and services for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Agreement.

However, upon written notice that the City has initiated an audit and audit findings have not been resolved, the Society, its contractors and agents shall be required to retain the required documentation until resolution of the audit findings. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for the City's disallowance and recovery of any such payment. Should the results of such an audit result in discrepancies or unauthorized expenditures and the City requests the return of such funds, in writing, the Society agrees to comply with the request and provide the City the funds within sixty (60) days of such request.

The Society shall make available at reasonable time for the City's examination all membership rosters; attendance, financial and statistical records; federal/state tax returns; and any other documents attendant to the Society's provision of services under this Agreement.

14. INDEMNIFICATION

A. The Society shall at all times indemnify, hold harmless and defend the City, its Mayor, Commissioners, officials, employees and other agents, from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising as a result of the Society's officers, employees, agents, or volunteers' negligence or misconduct under this Agreement. The Society agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses, even if the claim is groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by the Society for any causes of action Society has or may have for breaches or defaults by the City under this Agreement.

B. The Society shall indemnify and hold harmless the City, its Mayor, Commissioners, officials, employees and other agents, from and against all claims and demands of third persons, including, but not limited to, the execution of this Agreement, claims and demands for death or personal injuries or for property damages arising out of the use or operation of the Historical Museum by the Society or with its consent or out of any acts or omissions of others upon the Historical

Museum or its adjacent and surrounding lands comprising Founders Park, or arising or resulting from any breach or default by the Society or any of the obligations or duties assumed by or imposed upon it under this Agreement, or indemnification arising by operation of law.

C. Further, the Society shall pay all costs incurred and attorneys' fees incurred by the City in the event of a necessity to defend any claim, lawsuit or cause of action whatever against the City arising out of the Society's activities at the Historical Museum or the execution of this Agreement, be the same with or without merit. It is further understood that the above indemnification agreement extends to the act of invitees, licensees and trespassers upon the Historical Museum, and the Society's obligations to indemnify the City shall be cumulative with the obligations of any assignee of the Society, absent a specific agreement to the contrary with the City at the time of such assignment.

D. The Society further agrees to hold the City harmless from any claim of lien by any contractor, subcontractor, materialman or other person or firm or corporation whatsoever and the Society further agrees to hold the City harmless and to reimburse the City for all costs including cost of defense, attorneys' fees and other expenses in connection with any claim of whatsoever kind, whenever the same may be presented, arising out of any construction in connection with this Agreement.

E. Any sums due to the City under this paragraph shall constitute a lien against the interest of the Society and all of its property situated on the Historical Museum to the same extent and on the same conditions as any lien upon the Society's revenues.

F. The Society acknowledges and agrees that the City would not enter into this Agreement without this indemnification of the City by the Society. The parties agree that one percent (1%) of the total compensation paid to the Society shall constitute specific consideration to SOCIETY for the indemnification provided under this Paragraph. These provisions shall survive expiration or early termination of this Agreement.

G. For Professional Liability claims, the Society agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of four (4) years, unless sooner terminated by the applicable statute of limitations. For General Liability claims, the Society agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of two (2) years, unless sooner terminated by the applicable statute of limitations.

15. RIGHTS OF ENTRY RESERVED

A. The City, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times, and with reasonable prior notice, to enter upon the Historical Museum for the purpose of inspecting the same, for observing the performance by the Society of its obligations under this Agreement and for doing any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise as long as the inspection or visit does not interfere with the normal business of the Society.

B. Without limiting the generality of the foregoing, the City, by its officers, employees, agents, representatives, contractors, and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others to maintain existing and future utilities, mechanical, electrical and other systems and to enter upon the Historical Museum at all reasonable times to make such repairs, replacements or alterations as may, in the opinion of the City, be deemed necessary or advisable and from time to time to construct or install over, in or under the Historical Museum such systems or parts and in connection with such maintenance to use the Historical Museum for access to other areas otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, maintenance or alteration, the City shall not unreasonably interfere with the actual use and occupancy of the Historical Museum by the Society or its contractors, agents or invitees.

C. In the event that any personal property of the Society shall obstruct the access of the City or its officers, employees, agents or contractors, to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, the Society shall move such property, as directed by the City, in order that access may be had to the system or any part for its inspection, maintenance or repair, and if the Society shall fail to do so, the City may move it and the Society agrees to pay the cost of such moving upon demand.

16. ASSIGNMENT

The Society shall not assign or transfer this Agreement or any part or any rights created without the prior written consent of the City.

17. DEFAULT

The Society will be considered in default of this Lease if any one or more of the following events shall occur:

A. Bankruptcy, Insolvency or Termination of the Pompano Beach Historical Society, Inc. Should the Society, at any time during the term of this Agreement, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it, or should the Society, by order or decree of a court be adjudged bankrupt or an order or decree of a court be adjudged bankrupt or an order be made approving a petition filed by any of its creditors or members, or should the Society or any of its members institute any proceedings seeking a composition, arrangement, reorganization or readjustment of the Society's indebtedness under the Federal Bankruptcy Law or under any other law or statute of the United States or any state, or make any assignments for the benefits of its creditors, or should a receiver or trustee or liquidator be appointed for the Society's property because of the Society's insolvency, and the appointment not vacated within thirty (30) days after the levy has been made, or should the Society fail promptly to make the necessary returns and reports required of it by state and federal law, or should the Society fail to promptly comply with all governmental regulations,

both state and federal, and should such failure in any manner jeopardize the right of the City, then and, in such event, and upon the happening of either or any of these events, the City shall have the right, at its election, to consider the same a default on the part of the Society of the terms and provisions of this Agreement and, in the event of such default not being cured by the Society within a period of thirty (30) days from the date of the giving of written notice by the City to the Society of the existence of such default, the City shall have the option of terminating this Agreement, or the City may exercise any other options conferred upon it. The pendency of bankruptcy proceedings, or arrangement proceedings, to which the Society shall be a party shall not preclude the City from exercising the option conferred upon it. In the event the Society or the trustees or receiver of Society's property shall seek an injunction against the City's exercise of the option conferred, such action on the part of the Society, its trustee or receiver, shall automatically terminate this Agreement as of the date of the making of such application. In the event the court shall enjoin the City from exercising the option conferred, such injunction shall automatically terminate the Agreement.

Should Society, at any time during the term of this Agreement, cease to exist, the City shall assume control of all Society's rights and interests under this Agreement.

B. Other Events Constituting Default.

1) If the Society shall voluntarily abandon, desert or vacate the Historical Museum or discontinue its operation absent an event of force majeure; or

2) If any lien is filed against the Historical Museum because of any act or omission of the Society and is not removed or secured by bond or otherwise, within thirty (30) days after the Society has received notice of the lien; or

3) If the Society shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed or observed within thirty (30) days after receipt of notice of non-compliance from City except where fulfillment of its obligation requires activity over a period of time and the Society shall have

commenced to perform whatever may be required for fulfillment within fifteen (15) days after receipt of notice and continues such performances without interruption; or

4) Upon the occurrence of any such event which is not cured as provided in this Agreement or at any time thereafter during the continuance of the occurrence, the City, by thirty (30) days' written notice, may terminate the rights of the Society under this Agreement.

C. Wasting or Destruction of Property. In the event the activities of the Society, which are in derogation of the terms of this Agreement, are such as to constitute a material wasting or destruction of the Historical Museum or any property of the City, then and in that event it shall not be necessary for the City to suffer the wasting or destruction of the property during the periods of notice, but in such event the City shall give the Society three (3) days' notice during which to terminate such destruction or waste or terminate any act or practice which shall place the property of the City in danger of destruction or waste. If at the expiration of the three (3) day period from the service of notice upon the Society, in accordance with the provisions for service of such notice as contained in this Agreement, the Society has not terminated such waste of the City's property, then and, in that event, the City shall have the right to enter upon the Historical Museum, and the Society shall remove itself from the Historical Museum and this Agreement shall be deemed canceled and terminated as of the expiration of the three (3) day period.

D. The rights of declaration of default described above shall be in addition to any other rights of termination provided in this Agreement and in addition to any rights and remedies that the City would have at law or in equity consequent upon any breach of this Agreement by the Society and the exercise by the City of any right of termination shall be without prejudice to any other such rights and remedies.

18. REMEDIES TO BE NON-EXCLUSIVE

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to either party at law or in equity

and the exercise of any remedy or the existence of other remedies or indemnities shall not prevent the exercise of any other remedy.

19. NOTICES AND DEMANDS

Whenever it is provided that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice:

For CITY:

Gregory P. Harrison, City Manager
City of Pompano Beach
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Greg.Harrison@copbfl.com
954-786-4601 (office)
954-786-4113 (fax)

For SOCIETY:

Historical Society Executive Director
217 NE 4th Avenue
Pompano Beach, FL 33060
954-782-3015 (office)
info.pompanohistory@gmail.com

20. GOVERNING LAW; VENUE

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. The Parties submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

21. INDEPENDENT CONTRACTOR STATUS

The Society is an independent contractor and shall not be considered an employee of the City at any time during the period of this Agreement. Society's employees and agents shall not be considered employees of the City at any time during the period of this Agreement.

22. ATTORNEY'S FEES

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs, whether at trial or on appeal. The provisions of this paragraph shall survive termination of this Agreement.

23. WAIVER AND MODIFICATION

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

The Parties may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

24. BINDING EFFECT

This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective.

25. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the City.

26. PERFORMANCE UNDER LAW AND AUTHORITY TO ENGAGE IN BUSINESS

The Society, in the performance of Work described in this Agreement, shall be responsible to ascertain and comply with all applicable local, state and federal laws and ordinances as exist now or as may subsequently be enacted during the term of this Agreement, including, but not limited to, standards of licensing, permitting, annual filings, copyright law, conduct of business and other matters. Ignorance on the Society's part shall in no way relieve the Society from this important responsibility.

The City reserves the right to request in writing and receive within three (3) business days, copies of all documentation required under this Paragraph.

27. ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained in this Agreement and both parties agree there are no commitments, agreements or understandings concerning the subject matter that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both Parties and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of either party and construed against either party as the drafter.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

28. SEVERABILITY

Should any provision of this Agreement or its application be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization. this _____ day of _____, 2020, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"SOCIETY":

Witnesses:

POMPANO BEACH HISTORICAL SOCIETY, INC., a Florida not-for-profit corporation

James Post
Print Name

By: *Peter Williams*
Peter Williams, President

Carol Ann Mott
Print Name

ATTEST:
Rita [Signature]
Secretary

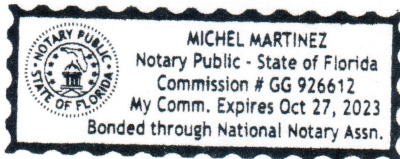
STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 3rd day of March, 2020, by Peter Williams as President of POMPANO BEACH HISTORICAL SOCIETY, INC., a Florida not-for-profit corporation on behalf of the company. (He is personally known to me or who has produced _____ (type of identification) as identification.

[Signature]

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA
Michel Martinez
(Name of Acknowledger Typed, Printed or Stamped)
66 926612
Commission Number



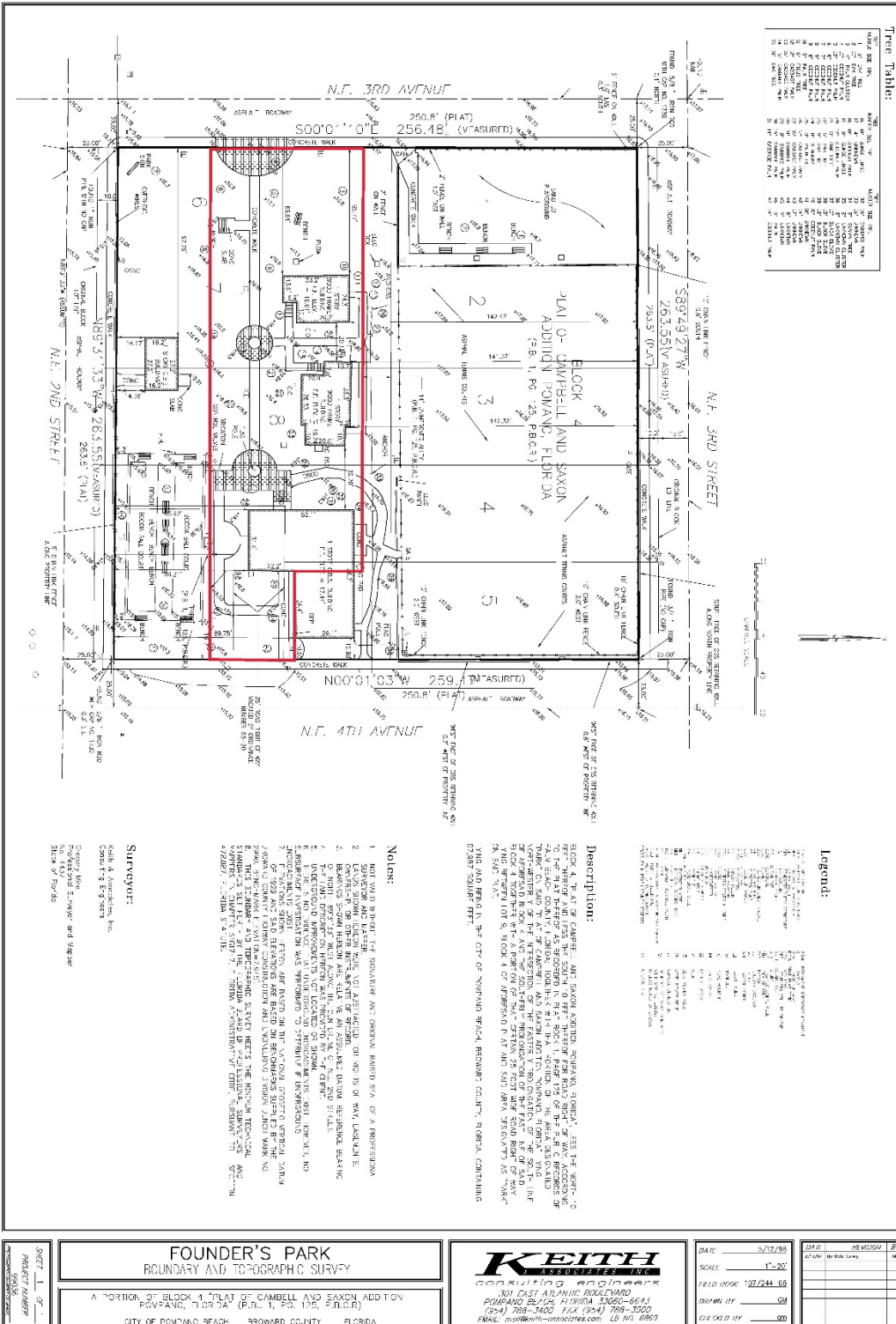
JES:jrm
3/2/2020
L:agr/Manager/2020-503

COMPOSITE EXHIBIT 1

Historical Society Aerial of Area of Operations



Historical Society Survey of Area of Operations



Tree Table:

NO.	SYMBOL	DESCRIPTION
1	(Symbol)	1.0' - 1.5' DBH
2	(Symbol)	1.6' - 2.0' DBH
3	(Symbol)	2.1' - 2.5' DBH
4	(Symbol)	2.6' - 3.0' DBH
5	(Symbol)	3.1' - 3.5' DBH
6	(Symbol)	3.6' - 4.0' DBH
7	(Symbol)	4.1' - 4.5' DBH
8	(Symbol)	4.6' - 5.0' DBH
9	(Symbol)	5.1' - 5.5' DBH
10	(Symbol)	5.6' - 6.0' DBH
11	(Symbol)	6.1' - 6.5' DBH
12	(Symbol)	6.6' - 7.0' DBH
13	(Symbol)	7.1' - 7.5' DBH
14	(Symbol)	7.6' - 8.0' DBH
15	(Symbol)	8.1' - 8.5' DBH
16	(Symbol)	8.6' - 9.0' DBH
17	(Symbol)	9.1' - 9.5' DBH
18	(Symbol)	9.6' - 10.0' DBH
19	(Symbol)	10.1' - 10.5' DBH
20	(Symbol)	10.6' - 11.0' DBH
21	(Symbol)	11.1' - 11.5' DBH
22	(Symbol)	11.6' - 12.0' DBH
23	(Symbol)	12.1' - 12.5' DBH
24	(Symbol)	12.6' - 13.0' DBH
25	(Symbol)	13.1' - 13.5' DBH
26	(Symbol)	13.6' - 14.0' DBH
27	(Symbol)	14.1' - 14.5' DBH
28	(Symbol)	14.6' - 15.0' DBH
29	(Symbol)	15.1' - 15.5' DBH
30	(Symbol)	15.6' - 16.0' DBH
31	(Symbol)	16.1' - 16.5' DBH
32	(Symbol)	16.6' - 17.0' DBH
33	(Symbol)	17.1' - 17.5' DBH
34	(Symbol)	17.6' - 18.0' DBH
35	(Symbol)	18.1' - 18.5' DBH
36	(Symbol)	18.6' - 19.0' DBH
37	(Symbol)	19.1' - 19.5' DBH
38	(Symbol)	19.6' - 20.0' DBH
39	(Symbol)	20.1' - 20.5' DBH
40	(Symbol)	20.6' - 21.0' DBH
41	(Symbol)	21.1' - 21.5' DBH
42	(Symbol)	21.6' - 22.0' DBH
43	(Symbol)	22.1' - 22.5' DBH
44	(Symbol)	22.6' - 23.0' DBH
45	(Symbol)	23.1' - 23.5' DBH
46	(Symbol)	23.6' - 24.0' DBH
47	(Symbol)	24.1' - 24.5' DBH
48	(Symbol)	24.6' - 25.0' DBH
49	(Symbol)	25.1' - 25.5' DBH
50	(Symbol)	25.6' - 26.0' DBH
51	(Symbol)	26.1' - 26.5' DBH
52	(Symbol)	26.6' - 27.0' DBH
53	(Symbol)	27.1' - 27.5' DBH
54	(Symbol)	27.6' - 28.0' DBH
55	(Symbol)	28.1' - 28.5' DBH
56	(Symbol)	28.6' - 29.0' DBH
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59	(Symbol)	30.1' - 30.5' DBH
60	(Symbol)	30.6' - 31.0' DBH
61	(Symbol)	31.1' - 31.5' DBH
62	(Symbol)	31.6' - 32.0' DBH
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70	(Symbol)	35.6' - 36.0' DBH
71	(Symbol)	36.1' - 36.5' DBH
72	(Symbol)	36.6' - 37.0' DBH
73	(Symbol)	37.1' - 37.5' DBH
74	(Symbol)	37.6' - 38.0' DBH
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79	(Symbol)	40.1' - 40.5' DBH
80	(Symbol)	40.6' - 41.0' DBH
81	(Symbol)	41.1' - 41.5' DBH
82	(Symbol)	41.6' - 42.0' DBH
83	(Symbol)	42.1' - 42.5' DBH
84	(Symbol)	42.6' - 43.0' DBH
85	(Symbol)	43.1' - 43.5' DBH
86	(Symbol)	43.6' - 44.0' DBH
87	(Symbol)	44.1' - 44.5' DBH
88	(Symbol)	44.6' - 45.0' DBH
89	(Symbol)	45.1' - 45.5' DBH
90	(Symbol)	45.6' - 46.0' DBH
91	(Symbol)	46.1' - 46.5' DBH
92	(Symbol)	46.6' - 47.0' DBH
93	(Symbol)	47.1' - 47.5' DBH
94	(Symbol)	47.6' - 48.0' DBH
95	(Symbol)	48.1' - 48.5' DBH
96	(Symbol)	48.6' - 49.0' DBH
97	(Symbol)	49.1' - 49.5' DBH
98	(Symbol)	49.6' - 50.0' DBH
99	(Symbol)	50.1' - 50.5' DBH
100	(Symbol)	50.6' - 51.0' DBH

Legend:

(Symbol)	1.0' - 1.5' DBH
(Symbol)	1.6' - 2.0' DBH
(Symbol)	2.1' - 2.5' DBH
(Symbol)	2.6' - 3.0' DBH
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(Symbol)	49.6' - 50.0' DBH
(Symbol)	50.1' - 50.5' DBH
(Symbol)	50.6' - 51.0' DBH

Description:

Block 4, Tract 1 of Campbell and Saxon Addition, Pompano Beach, City of Pompano Beach, Broward County, Florida, is located in the City of Pompano Beach, Florida, and is bounded by N.E. 3rd Avenue to the north, N.E. 4th Avenue to the south, N.E. 2nd Street to the west, and N.E. 5th Street to the east. The area is currently used for residential purposes and is zoned R-1. The survey shows the boundaries of the block and the locations of the buildings and other structures within the block. The survey also shows the locations of the utility lines and other features within the block. The survey was conducted on 5/12/85 and is accurate to within 1/4 inch.

Notes:

1. NOT VALID WITHOUT THE SIGNATURE AND COMMON RATION SEA OF A PROFESSIONAL SURVEYOR.
2. LEASING RIGHTS RESERVED TO THE STATE OF FLORIDA.
3. SURVEYED FROM OTHER MEASUREMENTS.
4. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
5. ALL DIMENSIONS ARE TO THE CENTER OF THE LINE.
6. UNDEVELOPED PORTIONS OF THE SURVEY ARE SHOWN IN LIGHT GRAY.
7. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.
8. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.
9. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.
10. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.
11. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.
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19. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.
20. PORTIONS OF THE SURVEY NOT SHOWN ARE NOT PART OF THIS SURVEY.

Surveyor:

Keith J. Associates, Inc.
 301 East Atlantic Boulevard
 Pompano Beach, Florida 33069
 (305) 788-1400
 Keith J. Associates, Inc.
 301 East Atlantic Boulevard
 Pompano Beach, Florida 33069
 (305) 788-1400

<p>FOUNDER'S PARK BOUNDARY AND TOPOGRAPHIC SURVEY</p> <p>A PORTION OF BLOCK 4, TRACT 1 OF CAMPBELL AND SAXON ADDITION POMPAÑO BEACH, FLORIDA</p> <p>CITY OF POMPAÑO BEACH BROWARD COUNTY FLORIDA</p>	<p>KEITH ASSOCIATES, INC. Consulting Engineers 301 EAST ATLANTIC BOULEVARD POMPAÑO BEACH, FLORIDA 33069-1644 (305) 788-1400 FAX (305) 788-3500 EMAIL: keith@keith-associates.com LD NO. 0980</p>	DATE: 5/12/85	SCALE: 1"=20'	DATE PLOTTED: 02/24/03	PROJECT NUMBER: 001	SHEET: 1 OF 1
		DATE: 5/12/85	SCALE: 1"=20'	DATE PLOTTED: 02/24/03	PROJECT NUMBER: 001	SHEET: 1 OF 1