

ORDINANCE NO. 2017-\_\_\_\_\_

**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 A THIRD AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE SAMPLE-McDOUGALD HOUSE PRESERVATION SOCIETY, INC.; 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 a Third Amendment to the Lease Agreement between the City of Pompano Beach and Sample-McDougald House Preservation Society, Inc., a copy of which Amendment is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Amendment to the Lease Agreement.

**SECTION 3.** If any provision of this Ordinance or the application thereof 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 \_\_\_\_\_, 2017.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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**LAMAR FISHER, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

/ds  
6/6/17  
L:ord/2017-238

**THIRD AMENDMENT TO THE LEASE**  
**BETWEEN**  
**THE CITY OF POMPANO BEACH**  
**AND**  
**SAMPLE-MCDOUGALD HOUSE PRESERVATION SOCIETY**

This is the THIRD AMENDMENT to the Lease between the **CITY OF POMPANO BEACH**, (hereinafter referred to as "CITY"), a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida, 33060, and **SAMPLE-MCDOUGALD HOUSE PRESERVATION SOCIETY, INC.**, (hereinafter referred to as "LESSEE").

WHEREAS, the CITY and LESSEE entered into a Lease Agreement dated November 23, 1999, and a copy of said Lease is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, the CITY and LESSEE entered into a First Amendment to the Original Agreement on May 26, 2011, approved by City Ordinance No. 2011-45, and made a part hereof as Exhibit "B", in order to change a description of the leased property; and

WHEREAS, the CITY and LESSEE entered into a Second Amendment to the Original Agreement on November 27, 2012, approved by City Ordinance No. 2013-22, and made a part hereof as Exhibit "C"; and

WHEREAS, the Original Agreement and Amendments shall hereinafter collectively be referred together as the "LEASE"; and

WHEREAS, the LEASE provided, in part, for the lease of certain area of land of approximately 4 acres of municipal property bounded on the north by NE 10<sup>th</sup> Street and on the east by NE 5<sup>th</sup> Avenue and bounded on the west by NE 3<sup>rd</sup> Avenue and bounded on the south by private residential homes, commonly known as Centennial Park and hereinafter referred to as the "PREMISES"; and

WHEREAS, the LESSEE, on May 31, 2001, moved a structure onto the PREMISES, a historical home now known as the Sample-McDougald House, hereinafter referred to as "SMH"; and

WHEREAS, the LESSEE has requested the CITY amend the LEASE to revise conditions and obligations of the parties, and the parties mutually desire to amend the LEASE;

**WITNESSETH:**

In consideration of the mutual terms, conditions, promises, covenants and payments herein set forth, CITY and LESSEE agree that each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference; that the original Lease Agreement dated November 23, 1999, and subsequently amended on May 26, 2011, by City Ordinance No. 2011-45, and again on November 27, 2012, by City Ordinance No. 2013-22, shall remain in full force and effect except as specifically amended herein below. The LEASE is hereby amended as follows:

1. Section 7. **OBLIGATION OF LESSEE** shall be deleted in its entirety and the following shall be inserted in its place:

**7. OBLIGATION OF LESSEE**

A. LESSEE 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 non-discriminatory rules and regulations of CITY for the conduct and operations of LESSEE and others on the premises as may from time to time during the lease term be promulgated for safety, health, sanitation, and good order.

B. LESSEE shall conduct its operation hereunder in an orderly and proper manner, considering the nature of such operations so as not to unreasonably annoy, disturb, endanger, or be offensive to occupants of the Air Park.

C. LESSEE owns the historic home structure (SMH) on the PREMISES and all property contained inside SMH as well as property located in the storage space located at the rear of the exterior bathroom facilities. LESSEE shall throughout the term of this Lease assume the entire responsibility and shall relieve CITY from all responsibility for all repair and maintenance whatsoever on the historic home structure (SMH) on the PREMISES; and keep at all times in a clean and orderly condition and appearance the historic home structure (SMH), and all LESSEE's fixtures, equipment and personal property which are located in any parts of the PREMISES which is open to or visible by the general public.

D. LESSEE shall commit no unlawful nuisance, waste, or injury on the premises 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 the premises. LESSEE shall not do or permit any act to be done upon the premises that will invalidate or conflict with any fire insurance policies covering the premises or any part of the Air Park. LESSEE 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 on the PREMISES.

E. LESSEE agrees to pay for monthly telephone expenses, installation of

alarm system, monthly alarm costs, and inside pest control.

F. LESSEE shall be authorized to charge admission during special events held on the PREMISES which are operated and produced by LESSEE. LESSEE shall also be authorized to tour the SMH.

G. Centennial Park including the SMH will be open to the public on a regular basis with the exact times and dates to be determined by the LESSEE in consultation with the City of Pompano Beach Parks, Recreation & Cultural Arts Department.

H. All records of LESSEE shall be made available locally, at LESSEE's expense, for inspection and audit by the City of Pompano Beach Internal Auditor or CITY designee at all reasonable times, and upon reasonable notice, during the period of this agreement, and for three (3) years from the termination of this agreement. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

I. All records of LESSEE shall be retained during said time period, or as otherwise required by applicable laws including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. Records include, but are not limited to, all business records, bookkeeping and accounting records, sales and income tax records and returns, bank statements, tax deposits, supporting documents, statistical records, sales reports, and any other record pertinent to this agreement.

J. LESSEE will fully cooperate with the City Auditor or designee. The failure of LESSEE to produce requested records by CITY agents shall be deemed a material breach and CITY may terminate this agreement pursuant to the terms specified in the agreement.

K. Upon review of LESSEE's records, CITY at its sole discretion shall have the right to reopen negotiations with LESSEE with regard to the obligations of the parties as set forth in Sections III and IV of this agreement, in order to adjust responsibilities under the section based upon the information contained in said records. Failure of LESSEE to participate in good faith in said negotiations shall be deemed a material breach and CITY may terminate this agreement pursuant to the terms specified in this agreement.

L. LESSEE shall comply with all laws and ordinances and governmental rules, regulations, and orders now in force or enacted at any time during the lease term, which as a matter of law are applicable to or effect on the operation of LESSEE on the PREMISES. Such provision is not to be construed as a submission by the CITY to application to itself of such requirements or any of them.

M. LESSEE shall, at its own cost, make improvements to the premises and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over said property in order to comply with sanitary, fire

hazard, zoning, or setback requirements, or any other similar requirements designed to protect the public.

2. Section 8. **CARE, MAINTENANCE, AND REPAIR BY LESSEE** shall be deleted in its entirety and the following shall be inserted in its place:

**8. OBLIGATIONS OF THE CITY**

A. CITY shall be responsible for the maintenance and repair of all utilities service lines for the supply of water, gas service lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers which are now or which may be subsequently located upon the PREMISES leased to LESSEE and used by LESSEE exclusively; and

B. At all times during the letting, CITY shall take such appropriate anti-erosion measures with respect to all portions of the PREMISES not paved or built upon.

C. CITY shall pay for water, sewer and electrical services, maintenance of grounds, all ground surfaces, irrigation, and garbage removal.

1. CITY shall provide a dumpster and recycling containers at PREMISES.

2. The CITY shall provide refuse and recycling receptacles throughout the park.

3. CITY shall coordinate with LESSEE staff to develop a continuing horticulture and maintenance plan.

4. CITY and LESSEE shall coordinate schedules and assignment of responsibilities for ground and utility maintenance.

D. CITY shall be responsible for the maintenance and repair of the exterior bathroom facilities including plumbing, paper towels, toilet paper, and regular cleaning services. CITY and LESSEE shall coordinate schedules and assignment of responsibilities for cleaning services and maintenance of exterior bathroom facilities.

E. CITY shall be responsible for the regular maintenance and repair of pavilion(s), perimeter fencing and well house #2 located west of the historic home structure on the PREMISES.

F. The CITY agrees that during approved special events or rentals of the Sample-McDougald House (SMH), alcohol will be permitted in concurrence with applicable state and CITY applicable rules and regulations. LESSEE is authorized, from time to time, to use amplified music, tents tables and chairs for special events or rentals.

G. Should the CITY obtain ownership of the property commonly known as the "Elks Club" on the southeast corner of NE 10th Street and NE 5th Avenue,

CITY acknowledges LESSEE's use of parking lot at the "Elks Club" property for overflow parking. CITY will continue to allow overflow parking at this location if space and facilities are available, and said use is not prohibited by any lease or other legal status of the property. LESSEE must provide CITY with THIRTY (30) days' notice of special events that require use of the Elks Club parking lot to arrange for access.

H. CITY agrees to make a minimum of a FORTY THOUSAND (\$40,000.00) unrestricted annual contribution to LESSEE in support of operations for SMH. First payment shall be made within FIFTEEN (15) days of execution of this lease. Each subsequent annual payment shall be made on July 1<sup>st</sup> of each year.

3. Section 12. **SIGNS** shall be deleted in its entirety and the following shall be inserted in its place:

**12. SIGNS**

LESSEE may, for temporary events, erect up to two (2) temporary signs along the exterior fence of NE 10<sup>th</sup> Street and one (1) sign on the exterior fence along NE 5<sup>th</sup> Avenue.

4. Under Section 22. **NOTICES**, LESSEE's address for purposes of this section is as follows:

Sample-McDougald House Preservation Society

PO Box 1599

Pompano Beach, FL 33061

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, 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 this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by **LAMAR FISHER** 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

**"LESSEE":**

Witnesses:

SAMPLE-MCDOUGALD HOUSE  
PRESERVATION SOCIETY, INC.

[Signature]  
[Signature]

By: [Signature]  
Signature  
Jennifer D'hollander  
Typed, Stamped or Printed Name  
Executive Director  
Title

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of  
JUNE, 2017 by JENNIFER D'HOLLANDER as EXECUTIVE  
DIRECTOR of SAMPLE-MCDOUGALD HOUSE PRESERVATION SOCIETY, INC. on behalf  
of the corporation. He/She is personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(type of identification) as  
identification.

NOTARY'S SEAL:



[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA

MICHELE DEBOE  
(Name of Acknowledger Typed, Printed or  
Stamped)

#FF 929342  
Commission Number