

RESOLUTION NUMBER: 53 -2014

INTRODUCED BY: MAYOR HEADEN

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT FOR RENTING TO GREENWOOD FARM HISTORICAL, CULTURAL & ARTS ASSOCIATION, INC., THE REAL PROPERTY LOCATED AT 264 RICHMOND ROAD, RICHMOND HEIGHTS, OHIO (PPN# 661-08-005), FOR THE ONE DAY PERIOD OF JULY 12, 2014 THROUGH JULY 12, 2014, IN ORDER FOR GREENWOOD FARM HISTORICAL, CULTURAL & ARTS ASSOCIATION, INC., TO CONDUCT A PROGRAM CALLED "JUNK IN A TRUNK."; AND DECLARING AN EMERGENCY

WHEREAS, the City of Richmond Heights agrees that the "Junk in a Trunk" program Sponsored by Greenwood Farm Historical, Cultural & Arts Association, Inc., would be a good and beneficial program for the City of Richmond Heights.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND HEIGHTS THAT:

Section 1. The Mayor is authorized to enter into a Contract for the lease of the property Located at 264 Richmond Road Richmond Heights, Ohio.

Section 2. The Auditor of State recommends the City establish fee schedules for the Rental of its fields and facilities.

Section 3: It is found and determined that all formal actions of this council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal Requirements, including Section 121.22 of the Ohio Revised Code.

PASSED: _____

Miesha Wilson Headen, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben, Clerk of Council

David H. Roche, President of Council.

LEASE OF PREMISES

THIS LEASE is made as of July 2, 2014, between the City of Richmond Heights, a municipal corporation ("the Landlord") and Greenwood Farm Historical, Cultural & Arts Association, Inc., an Ohio not-for-profit corporation ("the Tenant") ("the Lease").

Section 1. LEASED PREMISES. Landlord leases to Tenant and Tenant leases from Landlord, on the terms and conditions set forth in the Lease, the following property (the "leased Premises"): (a) real property located at 264 Richmond Road, Richmond Heights, Cuyahoga County, Ohio, commonly known as Greenwood Farm (PPN # 661-08-005); (b) the building located on the real property and all related fixtures and appurtenances ("the Building"); and (c) access and egress thereto.

Section 2. TERM. The term of this lease shall be one day only, starting on July 12, 2014, and ending on July 12, 2014.

Section 3. RENT: SECURITY DEPOSIT.

3.1. During the Term of this Lease Tenant shall pay Landlord as rent for the leased Premises, the sum of \$1696.62. This sum includes a \$750 charge for portable restroom facilities, \$247.87 for auxiliary police, and cost of labor of \$698.75. In addition, a \$100 license fee as described in subsection 3.3 must be paid, as well, bringing the total to \$1796.62.

3.2. Tenant has deposited with Landlord the sum of \$1696.62 as security for the Performance by Tenant of all the terms of this lease required to be performed by the Tenant. If Tenant defaults in the performance of any obligation under this Lease, the

Landlord may, but shall not be obligated to , apply all or portions of the security deposit on account of Tenant's obligations. Tenant shall promptly reimburse the Landlord for any expenses in excess of \$1696.62 incurred by the Landlord. Any unused amount of the security deposit of \$1696.62 shall be returned to the Tenant by the Landlord within 30 days after the expiration of this Lease if Tenant has fully carried out all of its terms.

3.3. In addition to the \$1696.62 security deposit, the Tenant agrees to be responsible a \$100 license fee as prescribed in City of Richmond Heights Ordinances 703.02, 703.04, and 703.11 (attached as Exhibit A).

SECTION 4. UTILITIES AND TAXES.

4.1 During the term of this Lease, the Landlord shall obtain and pay for all Utilities, except telephone, furnished or consumed on the Leased Premises. The Tenant is responsible for paying a 3% tax on admission fees per Richmond Heights Ordinance 183.02 (Exhibit B).

4.2. At the formation of this lease, both Landlord and Tenant have been and are exempted from payment of real estate taxes on the Leased Premises by virtue of their status as tax exempt entities. However, should the activities or uses by the Tenant result in real estate tax liability for either party, the Tenant agrees to assume responsibility for any such real estate taxes levied against the Leased Premises/Owner/Landlord.

SECTION 5. INSURANCE

5.1 Prior to the lease term, the Tenant shall procure and maintain a general Liability insurance policy for the Leased Premises with policy limits of not less than

\$2,000,000. The Tenant shall name the Landlord as an additional insured under this Policy. A copy of the Tenant's policy shall be delivered to the Landlord within five (5) days of the commencement date of this Lease.

5.2. Landlord shall maintain fire and casualty insurance on the structured portions of the Leased Premises. Tenant shall maintain fire and casualty insurance, including vandalism and malicious mischief endorsements, on its trade fixtures and personal property.

SECTION 6. WAIVER OF LIABILITY AND SUBROGATION

Neither Landlord nor Tenant shall be liable for any damage to property of the other Found or located within the Leased Premises or for any damage to the leased Premises or the building or other improvements caused by fire or other peril usually covered by a policy of insurance of the type described in Sections 5.1 and 5.2 herein, and each party releases the other from all liability for damage from those causes. This provision shall apply regardless of the negligence of either party and shall not be limited by the amount of insurance coverage. This Section shall override any inconsistent provisions of this Lease. However, this provision shall not apply to the extent that it would rendered void The insurance coverage obtained by Landlord or Tenant, but only if that party makes reasonable efforts to obtain insurance coverage that would not be voided by this waiver of liability, and notifies the other party in writing that this waiver will not apply.

SECTION 7. INDEMNIFICATION.

Except to the extent liability is waived under Section 6 herein, Tenant shall indemnify and hold Landlord harmless against any and all claims, liability, damages or losses resulting from injury or death of any persons or damage to property occurring on or about the Leased Premises

or in any manner in conjunction with the use and occupancy of the Leased Premises in whole or in part, unless the death, injury or damage was sustained as a result of any intentional act of the Landlord, Landlord's agents, or employees.

SECTION 8. MAINTENANCE

8.1 During the term of this Lease, Tenant at its expense shall (a) maintain the interior of the Leased Premises in no worse condition than the Building is obtained in, except for reasonable wear and tear from the last repair or replacement required by this Lease, and except for damage by fire or other casualty; (b) maintain the Building at no less than the status quo condition as of the date of this lease. In addition, the Tenant, shall be responsible for any damage to the Leased Premises caused by extraordinary or excessive use or by the negligence or other tortious acts of Tenant, its employees, agents, contractors, licensees, or invitees.

8.2 During the Lease Term, the Tenant shall provide all necessary maintenance, repair and replacements of , and keep in good operating condition, the water, gas, electrical, plumbing heating, ventilating, air conditioning, and all other mechanical and utility systems, and facilities serving the Leased Premises. The landlord shall keep all sidewalks, parking areas, and drives on or about the Leased Premises in a clean, slightly, and sanitary condition, free of ice and snow and shall keep all shrubbery trimmed, lawns mowed, and yards free of excessive weed growth so that the lawns and yards shall at all times be maintained in a neat and presentable condition. To the extent that repairs or replacements of sidewalks, parking areas, or drives are required, the Landlord shall provide the same at its expense. Landlord's obligations under this Section shall not be deemed to relieve Tenant to the extent Tenant is responsible under the last sentence of Section 8.1

SECTION 9. ALTERATIONS AND IMPROVEMENTS

Tenant may, without Landlord's consent, install temporary equipment, trade fixtures, artifacts, and other personal property in the Building. Those items shall remain Tenant's property and may be removed by Tenant prior to the expiration of or promptly after the expiration of the Lease. Tenant shall repair any damages to the Leased Premises caused by that removal.

SECTION 10. DAMAGE AND DESTRUCTION

10.1. If the Leased Premises are damaged in whole or in part by fire or other Casualty and this Lease is not terminated pursuant, then Tenant shall at its own expense Restore the Leased Premises to a kind and quality substantially similar to that which existed immediately prior to the damage or destruction. Restoration shall be commenced within a reasonable time, and subject to matters beyond Tenant's reasonable control, shall be completed without delay.

10.2 If the Tenant fails to restore the Leased Premises within 90 days after the occurrence of the damage or destruction, regardless of the reason for the delay (unless caused by Landlord), Landlord shall have the option to extend the time for restoration. In no event shall Landlord or Tenant have any liability to the other on account of the delay.

SECTION 11. USE OF THE PREMISES.

11.1 The leased Premises shall be used solely for charitable and educational Purposes, as currently set forth in Tenant's Articles of Incorporation, attached hereto as Addendum A, and all such activities directly related thereto, subject to the rules and regulations set for in Exhibit D attached hereto. The leased Premises shall

not be used for any other purpose without Landlord's prior written consent. Tenant shall not conduct any extra hazardous use of the Leased Premises, or create any public or private nuisance, and in connection with its use, Tenant shall comply with applicable insurance agreements.

SECTION 12. COMPLIANCE WITH THE LAWS.

During the Lease Term, Tenant, at its expense shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises and shall make any repairs, modifications, or additions to the Leased Premises as may be required by by any such laws or regulations. Tenant agrees to hold landlord harmless from any cost, expense, or liability, that may be imposed or assessed against Landlord in connection with Tenant's noncompliance with any such law or regulation. Landlord shall not be obligated To make, and Tenant shall be solely responsible for, any structural repairs, modifications, or additions to the leased Premises that (a) are not necessitated by negligent or wrongful actions of Landlord or landlord's agents, employees, contractors, licensees, or invitees of the areas surrounding and including the leased Premises and (b) Tenant would be required to make as if it were the owner of the Building regardless of the specific nature of the uses of the areas surrounding the Leased Premises.

SECTION 13. ASSIGNMENT AND TRANSFER

Tenant may not transfer (for purposes of this Section, transfer means sublease, Assign, franchise, or license, except as provided herein) this Lease in whole or in part unless Landlord has given its prior written consent which may be withheld for any reason. No assignment or subletting shall relieve the tenant from liability for performance of its

Obligations under this Lease.

SECTION 14. EXPIRATION AND EARLIER TERMINATION

Upon the expiration or earlier termination of this Lease, Tenant shall surrender to the Landlord the Leased Premises in good condition and repair, being no less than the Condition in which the property was leased to the Tenant, ordinary wear and tear, fire and other casualty and governmental takings excepted. Any damage caused by removal of Tenant's trade fixtures and personalty shall be repaired by the Tenant at its expense.

SECTION 15. NOTICES

All notices to be given to either party shall be deemed given if made in writing and deposited in the United States mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

Landlord: City of Richmond Heights

26789 Highland Rd.

Richmond Hts., Ohio 44143

Tenant: Greenwood Farm Historical, Cultural & Arts Association, Inc.

c/o Statutory Agent 1932 Service Corp.

1301 East 9th St. Suite 3500

Cleveland, Ohio 44114.

Either Party may change its notice address by giving written notice of the change to the other.

SECTION 16. TENANT'S PROPERTY

All trade fixtures, furnishings, equipment, and other personal property placed or Maintained on the Leased Premises shall be at the Tenant's sole risk, and landlord shall Not be liable for any loss or damage to such property from any cause whatsoever, unless Occasioned at the hands of the Landlord's employees, agents, licensees, or invitees.

SECTION 17. CONDITION OF PREMISES:

17.1 Tenant acknowledges that the Leased Premises are leased "as is", and that Neither Landlord, nor any agent or employee of the Landlord has made any representation or warranty either written or oral, express or implied with respect to the condition, suitability, stat of repair, or zoning of the Leased Premises.

17.2 Notwithstanding the provisions of Section 17.1 herein, Tenant shall have the right to terminate this lease if Tenant shall not have obtained all zoning, building, environmental, and other governmental approvals, consents, permits and certificates that may be necessary in order to improve, operate, and conduct Tenant's proposed activities. Upon such termination, this Lease shall be null and void and the parties shall be released from all further obligations under the Lease. Tenant reserves the right at tis sole option to waive this condition.

SECTION 18: QUIET ENJOYMENT

Landlord covenants that if Tenant pays rent and performs all obligations under this Lease, Tenant shall peaceably and quietly enjoy and possess the Leased Premises through out the term subject only to the conditions set forth in this Lease.

SECTION 19: SIGNS

Any and all exterior signs placed on the Leased Premises by Tenant shall be maintained in compliance with all applicable governmental laws and regulations and subject to approval of the Landlord. Tenant shall be responsible to Landlord for any damage caused by installation, use, or maintenance of its signs. At the expiration or earlier termination of this lease, Tenant shall remove all of its signs, unless otherwise agreed upon by the parties hereto, and shall repair any damage incidental to this removal.

SECTION 20. LIABILITY OF LANDLORD

If Landlord fails to perform any of its obligations under this Lease, and as a consequence of this default, Tenant recovers a money judgment against the Landlord, That judgment may be satisfied only out of the proceeds of the sale received upon the Execution of the judgment against the right, title, and interest of Landlord in the Leased Premises, and neither Landlord, nor any of its officers, employees, or agents shall be Liable for any deficiency. In no event shall Tenant have the right to levy its execution Against any property of the Landlord other than its interest in the Leased Premises. In the event of the sale or other transfer of the Landlord's interest in the Leased Premises, Landlord shall be released from all liability and obligations under this Lease.

SECTION 21: NONWAIVER.

No waiver of any condition or covenant of this Lease by either party shall be Deemed to imply or constitute a further waiver of the same or any other condition

or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of the parties of any right or remedy in law or otherwise.

SECTION 22: RIGHT OF ENTRY.

Landlord shall have the right to enter the Leased Premises at any time to Examine its condition or to show the Leased Premises to persons interested in Purchasing or leasing the same. Each entry by the landlord shall be made in such a manner as will not unreasonably interfere with the Tenant's use of the Leased Premises. In cases of emergency, the Landlord shall have the right to enter the Premises with no prior notice.

SECTION 23. ENVIRONMENTAL MATTERS.

Landlord represents to Tenant that to the best of Landlord's knowledge, no toxic Explosive, or other dangerous materials or hazardous substances have been concealed with, buried beneath, or removed from and stored off site of the Leased Premises.

SECTION 24: PARTIAL INVALIDITY

If any provision of this Lease or the application to any person or circumstances Shall to any extent be invalid or unenforceable, the remainder of this Lease, or the Application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law.

SECTION 27. ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties and cannot be Amended unless the amendment is in writing and is executed by both parties.

SIGNED AS OF THE DAY AND YEAR WRITTEN ABOVE ,

LANDLORD, CITY OF RICHMOND HEIGHTS.

BY: _____

TITLE: _____

APPROVED AS TO FORM:

DIRECTOR OF LAW

TENANT: GREENWOOD FARM HISTORICAL, CULTURAL & ARTS ASSOC., INC.

BY: _____

TITLE: _____

EXHIBIT A

City of Richmond Heights Ordinances 703.02, 703.04, and 703.11

703.04 LICENSE FEE.

The applicant shall pay a fee of one hundred dollars (\$100.00) for the license required in Section 703.02 at the time the application is filed. If the permit is not issued or if the application is withdrawn, the fee shall be refunded. (Ord. 72-88. Passed 9-21-88.)

703.02 LICENSE REQUIRED.

No person shall conduct or operate any exhibition that is open to the public without first having obtained a license therefor in the manner set forth in this chapter. (Ord. 12-77. Passed 7-5-77.)

703.11 PERMIT ISSUANCE.

Applications for the license required in Section 703.02 shall be filed at least two weeks prior to the date of use, and the Mayor or his appointee shall cause the license to be issued immediately upon satisfying himself that all the conditions herein required have been complied with. (Ord. 72-88 Passed 9-21-88.)

EXHIBIT B

Richmond Heights Ordinance 183.02 (Admissions Tax)

183.02 RATE AND ADMISSIONS TAXABLE.

There is hereby levied and imposed upon every person who pays an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates, to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations:

- (a) A tax of three percent on the amounts received for admission to any place, including admission by season ticket or subscription. The tax shall apply to every admission within the City for which a charge is made, notwithstanding that the sale of the ticket or other evidence of right of admission thereto is made outside the City.

1980 Replacement
- (b) A tax of three percent on the excess of the amounts received for tickets or cards of admission to theaters, operas and other places of amusement, sold at newsstands, hotels and places other than the ticket offices of such theaters, operas or other places of amusement, over and above the amounts representing the established price therefor at such ticket offices, such tax to be returned and paid in the manner provided in Section 183.04 hereof by the person selling the ticket.
- (c) A tax of three percent on the amount received for admission to any public performance for profit at any roof garden, cabaret or other similar entertainment in case the charge for admission is in the form of a service charge or cover charge or other similar charge. (Ord. 5-66. Passed 5-10-66.)
- (d) A tax of three percent on the amount received as annual membership dues by every club or organization maintaining a swimming pool, tennis, racketball and handball courts, a tax of three percent on the amount received as annual membership dues by every club or organization maintaining a golf course, a tax of three percent on greens fees collected by golf courses either under club or private ownership, and a tax of three percent on fees charged by any golf driving range or practice fairway.
(Ord. 124-78. Passed 12-26-78.)