

GIBSON LAW FIRM

Harriet,

Thanks for asking me to look over the proposed lease agreement for the Davenport Historical Society's lease of the City's Peter Rust Civic Center Building.

My experience with these kinds of things is that the best arrangement is a mutually beneficial partnership where both parties work together for the benefit of the community -- so that's the way I looked at it when making these suggestions. I've employed the commonly used method whereby strikethrough's are removed from the proposed agreement while underlinings signify additions. As you look over the attached proposed changes, a few points:

- The numbering for sections 7 and 8 were duplicated, so I had to renumber the sections to put them in the right sequence. The text in the sections was not duplicated, just the numbers.
- At the beginning of the agreement I thought it was important to distinguish between the ownership of the realty as against the ownership of the personal property that would be in the building.
- Section 11 seeks to take advantage of the desirability of a museum for public events. The more people that can be exposed to the history of the community, the better for everyone. Our local history museum and arts museum have benefited from these kinds of events, which increase the quality of life in the community.
- Section 16 did not convey the spirit of a mutually beneficial partnership. I substituted some language that would facilitate working together to achieve a common goal.
- The other changes are pretty much self-explanatory.

I note that Tom Cloud is Davenport's city attorney. Tom is an experienced and competent attorney with as much municipal experiences anybody I know. My guess is he would appreciate the value of these proposed changes.

I hope this is helpful.

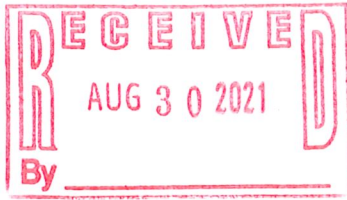
Robin

(Please forgive voice recognition errors)

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Robin Gibson is Board Certified in both Civil Trial Law and Business Litigation Law by the Florida Bar



LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this _____ day of _____, 2021, between City of Davenport, Florida, a municipal corporation created under the laws of the State of Florida ("City"), and Davenport Historical Society, Inc., a not-for-profit Florida corporation, ("Historical Society").

RECITALS

1. The City owns the Peter Rust Civic Center building of approximately 3,225 square feet, aka "Building #3" located at 5 South Allapaha Avenue, City of Davenport, Florida, Parcel # 27-27-03-717500-054010 (hereafter "Premises").

2. The Historical Society owns its archives of original drawings, books, maps, records, personal property and other precious artifacts that donors and other citizens have gifted and entrusted to the Society to preserve, maintain, and exhibit for the purpose of providing a chronological perspective of the quality of life in Davenport, Florida. Many of the artifacts and exhibits are unique and irreplaceable, and carry with them certain economic and historical value. ~~The Historical Society wishes to lease the Premises in order to operate a museum for housing exhibits, artifacts, and educational tools and programs about the history of Davenport to contribute to the aesthetics and quality of life in Davenport, Florida.~~

3. The Historical Society wishes to lease the Premises in order to operate a museum for housing and exhibiting its artifacts as well as conducting programs for the benefit of the community. ~~The Historical Society has artifacts and exhibits which have been given to the Historical Society which have economic and historical value, and has archives of original drawings, books, maps, records and other precious artifacts that donors and other citizens have entrusted to it to preserve and maintain.~~

4. The Historical Society and the City wish to memorialize the terms of their lease of the Premises in this Agreement.

ACCORDINGLY, in consideration of the above stated Recitals, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties to this Agreement, the parties agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. INTENT. It is the intent of the parties hereto to cooperate in the establishment of space where Historical Society can place personnel and exhibits to educate visitors to the historic attributes of the City of Davenport, Florida and conduct historic preservation services for the Davenport area.

SECTION 3. LEASED PREMISES. In consideration of the rents, covenants, conditions and agreements herein contained on the part of the Historical Society to be observed and performed, the City demises and leases to the Historical Society, and the Historical Society rents from the City, the Premises as described above.

SECTION 4. EQUIPMENT AND FURNISHINGS. Historical Society shall provide, at its sole expense, any and all equipment and furnishing, including, but not limited to, communication equipment, desks, chairs and filing cabinets. Historical Society shall remove the same upon vacating the premises and shall be responsible to patch or repair any damage to walls, floors, or ceiling which occurs because of the installation and subsequent removal of the same.

SECTION 5. LENGTH OF TERM. The original term of this lease shall run for a period of ~~three (3)~~ five (5) years from October 1, 2021, to October, ~~2024~~ 2026. If this arrangement proves satisfactory to the parties, this lease agreement can be renewed or extended for a longer period upon mutual agreement between the City and Historical Society. If the Historical Society desires to renew this agreement, the Historical Society shall provide written confirmation of that intent to the City at least thirty (30) days prior to expiration date.

SECTION 6. RENT. Historical Society shall pay to the City an annual rental fee of \$12.00 for the premises described in this agreement. Payments will be made on a monthly basis or annually. The rent shall b1e payable the month following the month of occupancy in accordance with Section 215.422, Florida Statutes. ~~The rentals shall be paid to the City~~

SECTION 7. INSTALLATION BY HISTORICAL SOCIETY; OPERATIONAL COVENANT. All fixtures installed by Historical Society shall be new or completely reconditioned. Historical Society shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any exterior signs, exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first submitting to City plans and specifications and obtaining City's written approval and consent. Historical Society shall present to the City plans and specifications for such work at the time approval is sought. Notwithstanding anything to the contrary contained herein, the Historical Society covenants and agrees that it shall be open twenty (20) hours a week to the public and operate its exhibits within the Premises, ~~on the following schedule:~~ The Premises will be closed on all City observed holidays.

Wednesday, Thursday & Friday	10:00 am until 4:00 pm(open to public)
Saturday	10:00 am until 2:00 pm(open to public)
Monday & Tuesday	Work days (not open to public)

If the Historical Society fails to comply with this covenant, then the City may terminate this Agreement upon sending written notice to the Historical Society, and the Historical

Society shall immediately remove its property and restore the Premises to its original condition.

SECTION 8. RESPONSIBILITY OF HISTORICAL SOCIETY CONCERNING INSTALLATIONS. All alterations, decorations, additions and improvements made by the Historical Society, or made by the City on the Historical Society's behalf by agreement under this Lease, shall remain the property of the Historical Society for the term of this Lease, or any extension or renewal thereof. Such alterations, decorations, additions and improvements shall not be removed from the Premises without prior consent in writing from the City. Upon expiration of this Lease, or any renewal term thereof, the City shall have the option of requiring the Historical Society to remove all such alterations, decorations, additions and improvements, and restore the Leased Premises as provided in herein. If the Historical Society fails to remove such alterations, decorations and improvements and restore the Premises, then the decorations, additions and improvements shall become the property of the City and in such event should City so elect, City may restore the Premises to its original condition for the cost of which, with allowance for ordinary wear and tear, Historical Society shall be responsible for and shall pay promptly upon demand.

SECTION 7 9. MAINTENANCE AND REPAIRS. City shall be responsible for all maintenance to said premises during the term of this lease agreement. Historical Society shall be responsible for the clean-up and removal of trash after its use of the premises for any function such as meetings, historic tours, and events.

SECTION 8 10. INSURANCE. Historical Society is an insured entity and certifies that its policies are adequate to maintain sufficient coverage for general liability, bodily injury and property damage. City shall be responsible for property damage, comprehensive public liability, and fire insurance on the Premises. Historical Society shall not be liable required to carry fire insurance on the Premises or property of the City or any other personal property which may now or thereafter be placed on the Premises. The City shall not be liable for damages or theft to the personal property or fixtures belonging to the Historical Society which are located on the Premises.

SECTION 9 11. INDEMNIFICATION. Historical Society shall indemnify the City and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property rising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Historical Society of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Historical Society, its agents, contractors, employees, servants, Historical Societys Societies, or concessionaires, whether occurring in or about the Premises.

SECTION 10 12. ASSIGNMENT/SUBLETTING. Historical Society shall not assign, mortgage or otherwise encumber this lease or sublet or permit all or part of the

premises to be used by others without the prior written consent of the City in each instance.

SECTION 13. PUBLIC ACCESS. City recognizes the importance of the citizenry's knowledge and appreciation of the Davenport's history and the chronological perspective it brings to the quality of life in the city. Those citizens participating in public events held within an historic museum receive the additional benefit of being exposed to the culture and history of the community in which they live, and are more likely to become constructive citizens as a result. The historical society intends to host public events such as the East Polk Plein Air art classes, Florida Sewing Sew-ciety sewing for charity, Polk County Library Cooperative, Good Neighbor Garden Wildflower Master Gardeners, Florida Citrus Hall of Fame and Citrus Label presentation and displays, Polk County Historical Association presentations and research through Polk County History Center Genealogical Library, Davenport Elementary School 4th grade Florida Exhibit, and Davenport High School Music, Art & Theatre volunteer opportunities. The historical society will take full responsibility for staffing these events so that no city employee will need to work overtime to accommodate the historical society and its programs and events.

~~City acknowledges and permits public use of the premises during normal business hours. City shall make reasonable effort to accommodate after hour events facilitated by Historical Society provided that Historical Society notifies City of its intended schedule for after hours use of the premises no less than two weeks before the scheduled event. Under no circumstance should Historical Society permit or otherwise tolerate unauthorized access to the premises by members of the public.~~

SECTION 12 14. PAYMENT FOR UTILITIES. Historical Society would normally be responsible for and promptly pay all monthly charges for water, sewage, gas, electricity, trash removal, or any other utility used or consumed in the Premises. The City has determined to waive and be responsible for the cost of utilities consumed at the Premises during the initial term of this Agreement.

SECTION 13 15. WASTE OR NUISANCE. Historical Society shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of City.

SECTION 14 16. TERMINATION. The City and the Historical Society shall each have the right to terminate this lease with cause or a valid reason upon giving six (6) months advance written notice to the other by regular U.S. Mail, Hand Delivery, Facsimile or Express Mail.

SECTION 15 17. NOTICES. All notices required to be served upon the City shall be served by regular U.S. Mail, Hand Delivery, Facsimile or Express Mail., at City of Davenport, Florida City Hall, 1 South Allapaha Avenue, Davenport, Florida 33837, and all notices required to be served upon the Historical Society shall be served by regular

U.S. Mail, Hand Delivery, Facsimile or Express Mail., at the address of the Historical Society at 110 East Cypress, Davenport, FL 33837 Attention: Registered Agent.

SECTION 16 18. REMEDIES OF CITY OPPORTUNITY TO CURE BREACH; REMEDIES. If either party determines that the other has breached this Agreement, the non-breaching party will notify the party in breach of that fact in writing, and the party in breach will be afforded six business days to cure the breach. In the event of failure to cure the breach, remedies shall be those prevailing in Chapter 83, Part I, Florida Statutes (2021), which is adopted herein by reference and made a part of this Agreement.

~~(a) — In the event of any such default or breach, City shall have the immediate right to re-enter the Premises, either by summary proceedings, by force or otherwise, and to dispossess Historical Society and all other occupants therefrom and remove and dispose of all property therein in the manner provided in subdivision (c) of this Section, all without service of any notice of intention to re-enter and with or without resort to legal process (which Historical Society hereby expressly waives) and without City being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. City shall also have the right, at the option of City, to terminate this Lease upon ten (10) days written notice to Historical Society, and to thereupon re-enter and take possession of the said Leased Premises with or without legal process. In the event of any such default or breach, City shall have the right, at its option, from time to time, without terminating this Lease, to re-enter and re-let the Leased Premises, or any part thereof, with or without legal process, as the agent and for the account of Historical Society upon such terms and conditions as City may deem advisable or satisfactory, in which event the rents received on such re-letting shall be applied first to the expenses of such re-letting and collection including, but not limited to, necessary renovation and alterations of the Leased Premises, reasonable attorney's fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due City hereunder, and if a sufficient sum shall not be thus realized or secured to pay such sums and other charges, (i) at City's option, Historical Society shall pay City any deficiency monthly, notwithstanding City may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and City may bring an action therefore as such monthly deficiency shall arise, or (ii) at City's option, the entire deficiency, which is subject to ascertainment for the remaining term of this Lease, shall be immediately due and payable by Historical Society. Nothing herein, however, shall be construed to require City to re-enter and re-let in any event. The City shall not, in any event be required to pay Historical Society any surplus of any sums received by City on a re-letting of said premises in excess of the rent provided in this Lease.~~

~~—— (b) — In the event of any such default or breach, the City shall have the right, at its option, to declare the rents for the entire remaining term and other indebtedness, if any, immediately due and payable without regard to whether or not possession shall have been surrendered to or taken by City, and may commence action immediately thereupon and recover judgment herefore.~~

~~_____ (c) The City, in addition to other rights and remedies it may have, shall have the right to remove all or any part of the Historical Society's property from the Premises and any property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Historical Society and the City shall not be responsible for the care or safekeeping thereof, and the Historical Society hereby waives any and all loss, destruction and/or damage or injury which may be occasioned by any of the aforesaid acts.~~

~~_____ (d) No such re entry or taking possession of said Premises by City shall be construed as an election on City's part to terminate this Lease unless a written notice of such intention is given to Historical Society. Notwithstanding any such re-letting without termination, City may at all times thereafter, elect to terminate this Lease for such previous default or breach. Any such re-entry shall be allowed by Historical Society without hindrance, and City shall not be liable in damages for any such re-entry, or guilty of trespass or forcible entry.~~

~~_____ (e) Any and all rights, remedies and options given in this Lease to City shall be cumulative and in addition to and without waiver of or in derogation of any right or remedy given to it under any law now or hereafter in effect.~~

SECTION 17 19. RIGHT OF ENTRY. City and City's agent shall have the right to enter the Premises at all times to examine the same and enjoy the exhibits. In the event City determines it necessary to make repairs for occupant safety or integrity of the building, City shall have the right of entry to make such repairs, or alterations, improvements or additions as City may deem necessary or desirable, and City shall be allowed to take all material into and upon the Premises that may be required therefore without the same constituting an eviction of Historical Society in whole or part and the rent reserved shall in no way abate while said repairs, alterations, improvements or additions are being made unless Historical Society is prevented from operating in the Premises in whole or in part, in which event rent shall be proportionately abated during said period.

In the event city elects to terminate this lease pursuant to Section 16 above, City will be allowed, during the six (6) months prior to the expiration of the term of this Lease or any renewal term, to show the building to prospective purchasers of City may exhibit the Premises to prospective purchasers, and place upon the Leased Premises the usual notice "To Let" or "For Sale", which notices Historical Society shall permit to remain thereon without molestation. If Historical Society shall not be personally present to open and permit an entry into the Leased Premises, at any time, when for any reason on entry therein shall be necessary or permissible, City or City's agents may enter the same without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon City any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

SECTION 18 20. TAXES ON LEASEHOLD OR PERSONALTY. Historical Society shall be responsible for and shall pay before delinquent all municipal, county or state taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind, owned by or placed in, upon or about the Premises by the Historical Society.

SECTION 19 21. NOTICE BY HISTORICAL SOCIETY. Historical Society shall give immediate notice to Lessor in case of fire or accidents in the Premises or in the building of which the Premises are a part or of defects therein or in any fixtures or equipment.

SECTION 20 22. ENTIRE AGREEMENT. This Agreement sets forth all covenants, promises, agreements, conditions and understandings between City and Historical Society concerning the Premises and there are no covenants, promises, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, change or addition to this Agreement shall be binding upon Lessor or Lessee unless reduced to writing and signed by them.

IN WITNESS WHEREOF, the City and Historical Society have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first written above.

ATTEST:

CITY OF DAVENPORT, FL

Rachel Castillo, City Clerk

H.B. Robinson, III, Mayor

APPROVED AS TO FORM & LEGALITY

By: _____
Thomas A. Cloud, City Attorney

ATTEST:

DAVENPORT HISTORICAL SOCIETY, INC.

Witness

~~Harriet R. Rust~~ Kathy B. Linder, President

Witness

(CORPORATE SEAL)

The foregoing was acknowledged before me this _____ day of _____, 2021 by _____, who is personally known to me, on behalf of the Davenport Historical Society, Inc.

Notary Public

Printed Name:

My Commission Expires: