

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Timothy Sexton, Acting Village Manager
DATE: September 18, 2013 (B of T) DATE: October 3, 2013
TITLE: Fourth Amendment to the Historical Museum Use Agreement
SUBMITTED BY: Carl Goldsmith, Director of Public Works *CJ*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration a resolution authorizing signatures of Village President and Village Clerk on a Fourth Amendment to the Use Agreement for the Lombard Historical Museum.

FISCAL IMPACT/FUNDING SOURCE

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: Materials must be submitted to / approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



September 17, 2013

TO: Village President and Board of Trustees

THROUGH: Timothy Sexton, Acting Village Manager

FROM: Carl Goldsmith, Director of Public Works *cy*

SUBJECT: **Fourth Amendment to the Historical Museum Use Agreement
(23 W. Maple Street)**

Attached for the Village Board consideration is a Fourth Amendment to the Historical Museum Use Agreement. The Third Amendment to the Agreement had expired and the Village, Lombard Historical Commission and Lombard Historical Society have been working on an amendment to the agreement. The terms and conditions of the Agreement are substantially the same as the previous Agreements; however several areas have been revised to greater articulate the responsibilities of the parties to the agreement. The term of the Agreement is a period of ten (10) years commencing on April 14, 2013, which represents the date that the previous agreement expired.

The Lombard Historical Society and Lombard Historical Commission have both agreed to the terms and conditions presented in the Agreement. I would like to thank the Lombard Historical Society and Lombard Historical Commission for their input and cooperation on this matter. This Agreement represents a continued effort to preserve the proud history of the Village of Lombard.

I respectfully request that this matter be placed on the Village Board of Trustee's agenda for the October 3, 2013 meeting. Should you have any questions, please feel free to contact me.

ACTION REQUESTED

Staff recommends that the Village Board of Trustees approve the attached resolution authorizing the signature of the President and Village Clerk on the Fourth Amendment to the Historical Museum Use Agreement.

RESOLUTION

R _____ - 13

A RESOLUTION AUTHORIZING THE SIGNATURE OF THE PRESIDENT AND VILLAGE CLERK ON AN AGREEMENT

WHEREAS, the President and Board of Trustees of the Village of Lombard have received an agreement between the Village of Lombard, the Lombard Historical Commission and the Lombard Historical Society in regard to the Historical Society Use Agreement for the Lombard Historical Museum as attached hereto; and

WHEREAS, the Corporate Authorities deem it in their best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, as follows:

SECTION 1: That the President be and hereby is authorized to approve on behalf of the Village of Lombard said Agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to approve said agreement as attached hereto.

Adopted this _____ day of _____, 2013.

Ayes: _____

Nays: _____

Absent: _____

Approved this _____ day of _____, 2013.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Resolution No. _____

Re: Historical Society/Historical Museum Third Amendment

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Published by me in pamphlet from this _____ day of _____, 2013

Brigitte O'Brien, Village Clerk

H:\PW\Director\Historical Commission\2013 Resolution RE Historical Museum Use.doc

Amended and Restated Historical Museum Use Agreement

THIS AMENDED AND RESTATED HISTORICAL MUSEUM USE AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2013, by and between the Village of Lombard, a municipal corporation ("VILLAGE") and the Lombard Historical Society Inc., an Illinois not-for-profit corporation ("SOCIETY"). (The VILLAGE and SOCIETY being sometimes referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, the VILLAGE and the SOCIETY originally entered into a ten (10) year Agreement on the 13TH day of September, 1971, regarding the acquisition, maintenance and operation of the premises located at 23 West Maple Street, Lombard, Illinois, as a Historical Museum (the "Original Agreement"); and

WHEREAS, Original Agreement has been restated and amended from time to time, with the most recent version thereof expiring on April 14, 2013; and

WHEREAS, the VILLAGE and the SOCIETY wish to enter into this Agreement to reestablish an agreement between the Parties relative to the aforementioned property;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereto agree as follows:

A. DEFINITIONS. When used in this Agreement, the following terms shall have the following meanings:

1. "Premises" means the real property located at LOT 1 IN THE RESUBDIVISION OF LOT 6 IN BLOCK 27 OF THE ORIGINAL TOWN OF LOMBARD, A SUBDIVISION OF PART OF THE NORTHEAST 1/ 4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS; PIN 06-07-217-005, commonly known as 23 West Maple Street, Lombard, Illinois.

2. "Structures" means the Victorian Cottage, Carriage House, privy and all other structures which exist, now or during the duration of this Agreement, upon the Premises.

3. "Lombard Historical Commission", means a committee appointed by the VILLAGE which shall be the VILLAGE's liaison with the SOCIETY in the performance of this Agreement.

B. THE VILLAGE SHALL:

1. Pay certain expenses based on an annual budget prepared by the Lombard Historical Commission and submitted for approval to the VILLAGE'S Board of Trustees (the "Village Board"). The following budget items, upon approval by the Village Board, shall be paid for

directly by the VILLAGE or reimbursement for the payment thereof shall be made by the VILLAGE to the SOCIETY: (i) exterior maintenance or interior structural repair to the Structures located on the Premises in keeping with the historical era of the first years of the existence of the VILLAGE; (ii) repair and/or replacement of the hot water heater and the source of heat for the Structures located on the Premises; (iii) electrical services to the Structures located upon the Premises, including the display lights located thereon, and security alarm and monitoring services; (iv) publicity expenses; and (v) the following expenses associated with employment of the museum staff: payroll accounting fees, state, federal and local payroll taxes where applicable, independent insurance benefits, workers compensation and employers liability insurance, individual professional memberships, work related transportation costs, tuition and conference fees and individual operating expenses. Such reimbursements to the SOCIETY shall be made by the VILLAGE semi-annually pursuant to the VILLAGE's fiscal year, every January and July, except that payment for the expenses associated with employment of the museum staff shall be made monthly.

All financial records of the SOCIETY pertaining to the disbursement of VILLAGE funding shall be subject to an annual audit at the VILLAGE's expense. Notwithstanding any other provision in this Agreement, should the Village Board vote to reduce or eliminate the funds allocated for the position of museum director in any VILLAGE fiscal year, the VILLAGE shall provide the SOCIETY with (ninety) 90 days prior written notice of the funding being eliminated. The VILLAGE shall provide funding through the ninety (90) day period from the date such written notice is given to the SOCIETY. Emergency expenditures not contained in the Village Board approved budget shall be reviewed by the VILLAGE on an individual basis and, if approved, paid in a timely manner.

2. Maintain a fire insurance policy in applicable amounts for the Structures. The VILLAGE shall be responsible for all deductibles should a loss occur, and such policy shall name the SOCIETY as an additional insured.

3. Provide water and sanitary sewer service to the Structures without charge.

4. Provide telephone and internet service to the Structures without charge.

5. Maintain the Premises and the Structures in compliance with any and all Federal, State or local laws, including, but not limited to, the Americans with Disabilities Act (ADA) of 1990, as amended, and the Illinois Accessibility Code (IAC), as amended, and provide any governmental license or permit required for the proper and lawful existence of the Premises and the Structures. In complying with any and all Federal, State or local laws, including, but not limited to, the Americans with Disabilities Act of 1990, as amended, and the Illinois Accessibility Code (IAC), as amended, the VILLAGE shall make every effort to protect the historical integrity of the Structures.

C. THE SOCIETY SHALL:

1. Contingent upon receipt of full funding of its budgeted expenses for employment of a museum director, employ a museum director who shall report to the SOCIETY and shall be

responsible for the daily operation of the museum and its community service programs, including management of the museum volunteers. The museum director shall comply with the stated purposes of the SOCIETY, the written policies and procedures of the SOCIETY, and the provisions of this Agreement. A current copy of the SOCIETY'S written policies and procedures, as in effect on the date hereof, are attached hereto as Exhibit A and part hereof. Notwithstanding any other provision to the contrary in this Agreement, the SOCIETY shall employ a museum director if the VILLAGE fully funds the budgeted expenses for such employment, and shall have the option of employing or not employing a museum director if the VILLAGE does not fully fund the budgeted expenses for such employment.

2. Maintain the interior of the Structures on the Premises in keeping with the period suggested by the age of the Structures, and the historical era of the first years of the existence of the VILLAGE.

3. Not make any structural changes to the Structures on the Premises, nor shall the SOCIETY enter into any contract(s) or take any action(s) which may result in a mechanic's lien being placed against the Premises, without first obtaining the approval of the Village Board and the necessary VILLAGE permits, the fees for which shall be waived by the VILLAGE.

4. Indemnify, defend and save harmless the VILLAGE and its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorney's fees), claims or liabilities of any character, including, as allowed by law, liabilities incurred due to joint negligence of the VILLAGE and SOCIETY, brought because of any injuries or damages received or sustained by any person, persons, or property on account of any act or omission, neglect or misconduct of the SOCIETY, its officers, agents, contractors and/or employees arising out of, or in performance of, any of the provisions of this Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright, or from any claims or amounts arising or recovered under the Illinois Worker's Compensation Act or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the VILLAGE and its officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. The SOCIETY shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities where the SOCIETY is found to be negligent or at fault.

5. Except where the VILLAGE provides insurance coverage for its buildings and the use thereof, and liability for the acts or omissions of the SOCIETY and, its agents, officers, employees and representatives is covered by such insurance, the SOCIETY shall provide the following types of insurance, in not less than the following specific amounts, evidenced by certificates of insurance naming the VILLAGE and its officers, agents and employees, as additional insureds and stating that thirty (30) days written notice shall be given to the VILLAGE by the insurance carrier before a change to or cancellation of the policy:

- (a) Comprehensive general liability - \$2,000,000 per occurrence; and
- (b) Workers' Compensation - Statutory; Employers' Liability- \$500,000.

6. Procure at the SOCIETY's sole cost and expense, contents fire insurance and the appropriate type of Inland-Marine Museum Fine Arts coverage on "art objects", and other items of personal property within the Structures.

7. Maintain in effect the "Dissolution Clause" now in force, a copy of which is attached hereto and made a part hereof as Exhibit B;

8. Maintain at all times a list of all artifacts on the Premises or in the Structures, identifying those objects owned by the VILLAGE or the SOCIETY and those objects which are loaned artifacts (the "Non-Owned Property"). Such Non-Owned Property shall not be placed on the Premises or within the Structures without execution of a Release and Liability Waiver as to the VILLAGE by the owner of such Non-Owned Property, in the form attached hereto as Exhibit C and made part hereof.

9. Arrange for the maintenance of the Premises, including the Structures, grounds and landscaping.

10. Devote its best efforts to fundraising for continued restoration, interior maintenance, displays, programming and operations. Any income or receipts from the use and operation of the Premises or the Structures shall be the property of the SOCIETY, but shall be expended by the SOCIETY for the use and operation of the Premises and the Structures and no other purpose. The VILLAGE shall have the right to audit the records of the SOCIETY at reasonable intervals.

11. Conduct business on the Premises in compliance with any and all Federal, State or local laws, including but not limited to, the Americans with Disabilities Act (ADA) of 1990, as amended, and the Illinois Accessibility Code (IAC), as amended, and obtain any governmental license or permit required for the proper and lawful operation of the SOCIETY's business.

D. MUTUAL AGREEMENTS AND UNDERSTANDINGS OF THE PARTIES:

1. The VILLAGE is the sole owner of the Premises and all Structures upon the Premises.

2. The SOCIETY is the sole owner of all the "art objects" and other items of personal property that are not designated as belonging to the VILLAGE, within and around the Structures, and which are not Non-Owned Property, including but not limited to, any and all rights pertaining to the media of and about such Premises, except that any media produced by the VILLAGE, or produced with VILLAGE funds, shall be the exclusive property of the VILLAGE, and the VILLAGE shall retain all rights thereto. The use of any media produced by the VILLAGE, or produced with VILLAGE funds, shall be mutually agreed upon by the VILLAGE and the SOCIETY.

3. The SOCIETY shall utilize the Premises in the following manner:

(a) Victorian Cottage

i. Provide spaces dedicated to the public display and presentation of period objects and historical documents; and

ii. An office for the conduct of SOCIETY business.

(b) Carriage House

i. A municipal display dedicated to the municipal history of LOMBARD; and

ii. A changing display to correlate special historic dates, early crafts, photographs, special collections, and other such historic displays.

4. The SOCIETY shall provide staffing for its programs, tours, special events, and other historically significant activities.

5. A member of the Lombard Historical Commission shall serve on each of the following committees of the SOCIETY: Personnel, Finance, Facilities and Collections. The Chairperson of the Lombard Historical Commission shall serve as an ex officio member of the SOCIETY's Board of Management.

6. The term of this Agreement shall be from April 14, 2013 through the date which is ten (10) years from the date of the execution of this Agreement, as entered on the first page hereof.

7. In the event of a breach of this Agreement or the dissolution of the SOCIETY, whether voluntary or involuntary, the VILLAGE shall give thirty (30) days prior written notice to the SOCIETY to remove all personal property not owned by the VILLAGE from the Structure and the Premises, to the extent that such removal does not conflict with the Dissolution Clause set forth in Exhibit B. If such personal property is not removed from the Premises within sixty (60) days of the aforementioned notice, such personal property shall be deemed abandoned by the SOCIETY and/or its owners, and shall become the personal property of the VILLAGE to be disposed of as the Village Board shall deem fit.

8. The Lombard Historical Commission may make recommendations, from time to time, in regard to the modification of this Agreement, upon consultation with the SOCIETY and the VILLAGE, but this Agreement may not be modified or amended without the written approval of the SOCIETY and the VILLAGE.

9. This Agreement constitutes a license granted by the VILLAGE to the SOCIETY to use the Premises and its Structures; and such license shall be in effect for the term as set forth in Section D.6. above.

10. In the event an issue or matter arises, not specifically provided for or addressed herein, the rights of the Parties shall be determined according to the laws of the State of Illinois.

11. If any clause, phrase, provision, or portion of this Agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Agreement, nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision, or portion hereof to other persons or circumstances.

12. The SOCIETY shall not assign its rights under this Agreement without the express prior written consent of the VILLAGE.

13. Any notice required or given under this Agreement shall be deemed given upon its mailing by certified mail, return receipt requested, or upon its personal service, addressed as follows:

If to the VILLAGE:

Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148

If to the SOCIETY:

Director
Lombard Historical Society
23 West Maple Street
Lombard, IL 60148

14. This Agreement shall be executed in three (3) counterparts each of which shall constitute an original, so that each Party retains an original signature copy.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above at Lombard, Illinois.

VILLAGE OF LOMBARD,
AN ILLINOIS MUNICIPAL CORPORATION

BY: _____
VILLAGE PRESIDENT

ATTEST:

VILLAGE CLERK

LOMBARD HISTORICAL SOCIETY,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION

BY: _____
PRESIDENT

ATTEST:

SECRETARY

REVIEWED, ACCEPTED AND APPROVED
by the Lombard Historical Commission
this ____ day of _____, 2013.

BY _____
Chairperson

ATTEST:

Secretary

EXHIBIT A

WRITTEN POLICIES AND PROCEDURES OF THE SOCIETY

EXHIBIT B

DISSOLUTION CLAUSE

In the event of the dissolution of the Lombard Historical Society, Inc. (the "Society"), the assets of the Society shall be applied and distributed as follows:

1. All liabilities and obligations of the Society shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;
2. Assets held by the Society on condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements; and
3. Any remaining assets shall be transferred or conveyed to one or more not-for-profit corporations, societies, or organizations engaged in activities substantially similar to those of the Society, pursuant to a plan of distribution adopted by a majority vote of the Board of Management of the Society. Preference shall be given to not-for-profit entities in the Village of Lombard and its vicinity.

EXHIBIT C

RELEASE AND LIABILITY WAIVER

I/We _____, hereby represent that I/We am/are the owner(s) of the following item(s) of personal property which I/We have tendered to the Lombard Historical Society for display at the Society's Historical Museum located at 23 West Maple Street, Lombard, Illinois:

In consideration of being allowed to display the aforementioned items of personal property at the Lombard Historical Society's Museum, I/We hereby release and discharge the Village of Lombard, and its officers, agents, and employees from any and all claims or liability of any kind whatsoever in regard to the damage, destruction or loss of said item(s) of personal property while in the possession or under the control of the Lombard Historical Society.

I/WE HAVE READ AND FULLY UNDERSTAND THE FOREGOING RELEASE AND LIABILITY WAIVER.

_____ DATED: _____

_____ DATED: _____