

RESOLUTION NO. 805

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING A LEASE FOR WINDMILL VILLAGE SPACE D-3 BETWEEN THE CITY OF UNIVERSITY PLACE AND THE U.P. HISTORICAL SOCIETY, INC, FOR USE AS AN INTERIM MUSEUM

WHEREAS, under the Growth Management Act, the City is affirming its interest in preserving local and regional history; and

WHEREAS, preservation is important to foster appreciation of the City's assets, culture, diversity and values to its visitors and residents; and

WHEREAS, on April 14, 2014, the City Council by Resolution 754, approved a Lease with the University Place Historical Society (UPHS), a Washington non-profit corporation, for the Curran House at Curran Apple Orchard; and

WHEREAS, the Lease allows UPHS to work to redevelop Curran House as a University Place History Museum and activity center; and

WHEREAS, at approximately the same time, the City's administration allowed UPHS to utilize space D-3 in Windmill Village as temporary storage, cataloging and curatorial space for materials and artifacts, but not for general public access; and

WHEREAS, because of the length of time involved in redeveloping Curran House as the long-term museum, UPHS now wishes to secure a temporary lease of space D-3 in Windmill Village to open it to the public as the interim University Place History Museum; and

WHEREAS, UPHS understands that Windmill Village is under contract for redevelopment and would operate the interim museum only until Windmill Village is redeveloped, or Curran House is ready to function as the long-term home of the museum, whichever is earlier;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals are hereby incorporated herein as if set forth in full.

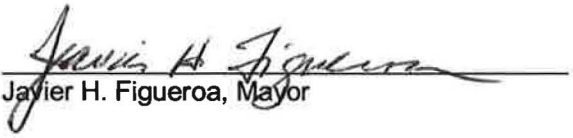
Section 2. Legislative Determination of Consideration. The Council of the City of University Place has considered the proposed transaction, including the consideration to the City to be provided by the U.P. Historical Society, Inc., and hereby makes a legislative determination that the consideration for this Lease Agreement is sufficient, appropriate and in the best interests of the public.

Section 3. Approval of Form of Documents. The City Council hereby approves execution of the Lease in substantially the form of the document accompanying this Resolution.

Section 4. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of document attached, and the terms of this Resolution.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

ADOPTED BY THE CITY COUNCIL ON MARCH 21, 2016.


Javier H. Figueroa, Mayor

ATTEST:


Emelita Genetia, City Clerk

APPROVED AS TO FORM:


Steve Victor, City Attorney

LEASE AGREEMENT

Suite D-3 of Windmill Village

THIS LEASE AGREEMENT (the "Lease") is entered into and effective as of this ____ day of _____, 2016 between City of University Place ("Landlord"), and the University Place Historical Society, Inc. ("Tenant"). Landlord and Tenant agree as follows:

1. LEASE SUMMARY

a. **Leased Premises.** The leased real estate consists of that portion of real property described as Suite D-3 of Windmill Village at 3715 Bridgeport Way in University Place Washington, referred to as the "Leased Premises," and are outlined on the site plan attached as Exhibit A.

b. **Temporary Terminable Lease.** Lessee is fully aware that Leased Premises, as well as all of the Windmill Village Complex is under contract to a developer for redevelopment and agrees that this Lease may be terminated by fourteen (14) calendar days written notice from Landlord to Tenant.

c. **Lease Commencement Date.** The term of this Lease shall be for a period of one (1) year and shall commence on _____, 2016 (the "Lease Commencement Date"). By mutual written agreement, the parties may extend the Lease for one additional one (1) year period on the same terms and conditions.

d. **Lease Termination Date.** The term of this Lease shall terminate at midnight on the day that is one (1) year following the Lease Commencement Date, or two (2) years following the Lease Commencement Date if the parties have agreed to extend the Lease for an additional (1) year period. Tenant shall have the right to terminate this Lease any time by providing fourteen (14) calendar days' written notice to Landlord.

e. **Base Rent.** The base annual rent shall be \$1.00 per year ("Base Rent"), plus any leasehold excise tax determined to be due by the State of Washington. Rent shall be payable at Landlord's address shown in Section 1(h) below, or to such other place designated in writing by Landlord. In consideration of this nominal rental amount, Tenant understands and agrees to the temporary terminable nature of this Lease, as well as taking full responsibility for all expenses and liabilities arising from its use of the Leased Premises, and shared restrooms, whether or not specifically addressed in this Lease.

f. **Rent Commencement Date.** The Rent Commencement Date shall be the Lease Commencement Date.

g. **Permitted Uses.** The Leased Premises shall be used solely and exclusively for the storage and conservation and display to the public of historic materials and artifacts relating to the history of University Place, and for no other purpose without the prior written consent of Landlord (the "Permitted Uses"). Tenant shall have non-exclusive access to the restrooms on the premises, and shall be responsible for cleaning the restrooms and providing all necessary restroom supplies. Tenant is solely responsible for meeting all codes and regulations applicable to Tenant's use.

h. **Notice and Payment Addresses**

Landlord Representative:

City of University Place
ATTN: Public Works/Parks Director
4951 Grandview Drive W.
University Place, WA 98467

Fax No.: 253.460.6497

Email: GCooper@CityofUP.com

Tenant Representative: University Place Historical Society, Inc.
ATTN: Cindy Bonaro
PO Box 65887
University Place, WA 98464

Fax No.: N/A

Email: manager@uphistoricalsociety.org

2. LEASED PREMISES

- a. **Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord, the Leased Premises upon the terms specified in this Lease.
- b. **Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Leased Premises, including the structural condition of the Leased Premises or the condition of all mechanical, electrical, and other systems on the Leased Premises. Tenant shall be responsible for performing any work necessary to bring the Leased Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Leased Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Leased Premises; and acknowledges that the time needed to complete any such items shall not delay the Lease Commencement Date.

3. RENT

a. **Payment of Rent.** Starting on the Rent Commencement Date, Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease term, and shall also pay any other additional payments, taxes or fees due to Landlord ("Additional Charges").

Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall also constitute Additional Charges, and upon failure of Tenant to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as are otherwise provided in this Lease for the failure of Tenant to pay Rent.

b. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to five percent (5%) of the delinquent amount in addition to the amount due as Additional Charges. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord's option, bear interest at the rate of fifteen percent (15%) per annum, or the highest rate of interest allowable by law, whichever is less (the "Default Rate"). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.

c. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that

remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section 3.

4. USES

The Leased Premises shall be used only for the Permitted Uses specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord Representative. No act shall be done on or around the Leased Premises that is unlawful or that will increase the existing rate of insurance on the Leased Premises, or cause the cancellation of any insurance on the Leased Premises. Tenant shall not commit or allow to be committed any waste upon the Leased Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Leased Premises which will obstruct or interfere with the rights of other tenants or occupants of the Leased Premises, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees or to injure or annoy such persons.

5. COMPLIANCE WITH LAWS

Tenant shall not cause or permit the Leased Premises to be used in any way which violates any law, ordinance, or governmental regulation or order.

6. UTILITIES AND SERVICES.

Tenant shall furnish all utilities (including, but not limited to, telephone, Internet, and cable service if available) and other services which Tenant requires with respect to the Leased Premises, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Leased Premises, and of all other utilities and other services which Tenant requires with respect to the Leased Premises.

7. TAXES

Tenant shall pay any taxes, assessments, liens and license fees levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Leased Premises as well as any taxes on Tenant's personal property located on the Leased Premises.

8. ALTERATIONS

Tenant may make alterations, additions or improvements to the Leased Premises only with the prior written consent of Landlord Representative. The term "alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Leased Premises, and Landlord Representative's consent shall not be required for Tenant's installation or removal of those items. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all alterations in accordance with plans and specifications approved by Landlord Representative, using contractors approved by Landlord Representative, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Leased Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Leased Premises or any interest therein. Tenant shall remove all alterations at the end of the Lease term unless Landlord Representative conditioned its consent upon Tenant leaving a specified alteration at the Leased Premises, in which case Tenant shall not remove such alteration, and it shall become Landlord's property. Tenant shall immediately repair any damage to the Leased Premises caused by removal of alterations.

9. REPAIRS AND MAINTENANCE; SURRENDER

Tenant shall, at its sole expense, maintain the entire Leased Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Leased Premises safe and in good condition.

Tenant shall not damage any demising wall or disturb the structural integrity of the Leased Premises, and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Leased Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein.

10. SIGNAGE AND VISIBILITY

Tenant shall obtain Landlord Representative's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Leased Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws, and the City sign code. Tenant shall not damage or deface the Leased Premises in installing or removing signage and shall repair any injury or damage to the Leased Premises caused by such installation or removal.

11. INSURANCE

a. Tenant's Liability Insurance. During the Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord as an additional insured, and shall insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants, or other licensees or invitees with respect to the Leased Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000, and a deductible of not more than \$10,000. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord, and will cover the sub-lease of all or a portion of the Leased Premises to sub-tenants.

b. Waiver of Subrogation. Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by property insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the property insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective property insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such property policies or to the extent of liabilities exceeding the limits of such policies.

12. INDEMNIFICATION

a. Indemnification by Tenant. Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants, or other licensees or invitees on or around the Leased Premises, or arising from any breach of this Lease by Tenant.

b. Indemnification by Landlord. Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or

wrongful act or omission of Landlord or Landlord's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Leased Premises, or arising from any breach of this Lease by Landlord.

c. **Waiver of Immunity.** Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Neither party's indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.

d. **Exemption of Landlord from Liability.** Except to the extent of claims arising out of Landlord's gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant's business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, sub-tenants or other licensees or invitees, or any other person in or about the Leased Premises.

e. **Survival.** The provisions of this Section shall survive expiration or termination of this Lease.

13. LIENS

Tenant shall not subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Leased Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any alterations. If a lien is filed against the Leased Premises by any person claiming by, through or under Tenant, Tenant shall, within ten (10) days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Leased Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

14. DEFAULT

The following occurrences shall each constitute a default (an "Event of Default"):

a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord Representative of the failure to pay.

b. **Vacation/Abandonment.** Vacation by Tenant of the Leased Premises (defined as an absence for at least fifteen (15) consecutive days without prior notice to Landlord Representative), or abandonment by Tenant of the Leased Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Leased Premises shall not be subject to any notice or right to cure.

c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within sixty (60) days after its institution or commencement.

d. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Leased Premises, or any part thereof, by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.

e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of thirty (30) days after notice by Landlord Representative to Tenant of the breach.

f. **Failure to Take Possession.** Failure by Tenant to take possession of the Leased Premises on the Lease Commencement Date.

g. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after notice by Tenant to Landlord. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform of any of its obligations to the standard prescribed in this Lease. Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

15. REMEDIES

Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

a. **Termination of Lease.** The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to the Rent and other sums that would have been owed by Tenant under this Lease for the balance of the Lease term and any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default.

b. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Leased Premises or to have a continuance of this Lease for the Lease term, or any extension thereof.

c. **Nonpayment of Additional Charges.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.

d. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Leased Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due to Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent.

16. NON-WAIVER

Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

17. NOTICES

All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1; or (iii) upon confirmed transmission by facsimile to the other party at the facsimile numbers set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.

18. LANDLORD'S LIABILITY

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Leased Premises, as the same may from time to time be encumbered. In no event shall Landlord or its employees and appointed and elected officials, as the case may be, ever be personally liable hereunder.

19. GENERAL

a. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Leased Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing, signed by Landlord and Tenant.

b. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.

c. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife.

d. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Washington, with venue in Pierce County.

e. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Leased Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Leased Premises shall in no way effect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.

f. **Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against the party upon signing.

g. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Leased Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

h. **No Waiver of Governmental Rights.** Nothing contained in this Lease shall require the Landlord to take any discretionary governmental action relating to development of the improvements to be constructed on the Leased Premises as part of the Lease, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

LANDLORD:

TENANT:

CITY OF UNIVERSITY PLACE

**UNIVERSITY PLACE HISTORICAL
SOCIETY, INC.**

By: _____
Stephen P. Sugg, City Manager

By: _____, President

Approved as to form:

Steve Victor, City Attorney