

**STATE OF GEORGIA
COUNTY OF CHATHAM**

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATION AGREEMENT (“Agreement”) dated December ____, 2018, (“Effective Date”) is by and between THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH, (“CITY”) a Georgia municipal corporation, and COASTAL HERITAGE SOCIETY (“CHS”), a Georgia non-profit corporation.

WITNESSETH

WHEREAS, CHS is a non-profit corporation whose mission is to preserve the cultural heritage of coastal Georgia and adjacent regions; to provide relevant educational and recreational experiences within a historical context for the public; which strives to meet the ethics and standards of the American Alliance of Museums and adheres to the Secretary of Interior’s Standards for Historic Preservation; and which operates and manages historic sites for multiple owners; and

WHEREAS, CHS operates Old Fort Jackson National Historic Landmark in Chatham County on behalf of the State of Georgia, and Pin Point Heritage Museum a privately owned facility in Chatham County; and

WHEREAS, CHS has previously occupied and managed CITY-owned property located at: 301-303 Martin Luther King, Jr. Boulevard (2-0031-47-001); 655 Louisville Road (2-0031-46-002, 2-0031-46-002B and 2-0031-46-004); 650 West Jones Street (2-0031-46-001A); and 604 West Jones Street (2-0031-46-002A) referred to as TRICENTENNIAL PARK (hereinafter referenced as “The Premises”) for the benefit of the CITY; said Premises comprising approximately 726,530 square feet of building space situated on approximately 23 acres of land; and

WHEREAS, The Premises as described above includes the operational areas known as the Savannah Visitor Information Center, the Georgia State Railroad Museum, Battlefield Memorial Park, Savannah History Museum, Savannah Children’s Museum (solely operated by CHS), snackbars/restaurants, gift shops, on-site parking, administrative offices, and related educational and recreation venues/exhibits; and

WHEREAS, the CITY has pursued a joint master plan for a public development of TRICENTENNIAL PARK since 1967, and has partnered with CHS since 1989 to define and create this plan and manage public resources to develop formerly derelict CITY property and provide economic, recreational and educational benefits through the use of this developed CITY property; and

WHEREAS, during that period of time, CHS has managed the master-planning of TRICENTENNIAL PARK, to include the future First Century Campus and railroad rights-of-way to the west including the viaduct west of the canal and the old Stevens Oil Company plot; and

WHEREAS, the CITY desires a high-quality recreational and educational facility be operated at The Premises which serves as a premier visitor destination with a growing audience and has selected CHS due its experience and specialized knowledge to operate and maintain The Premises in a manner that is compliant with all applicable codes, permitting, zoning, and licensing requirements while also generating excellent customer satisfaction ratings from customers/visitors and growing annual attendance levels; and

WHEREAS, CHS operates revenue-generating educational and recreational activities such as tours, train rides, reenactments, student field trips, and special events whose expenses are completely sustained by admissions, retail, food and beverage service, and outside clients and which do not threaten the site or its mission, and thereby adds a kinetic and exciting dimension to the area's Tourism industry and Educational assets largely funded by the users of these services; and

WHEREAS, CHS has furnished Tricentennial Park with its own significant financial assets, historic assets, and intellectual properties and

WHEREAS, CHS leverages its clientele base, contractual agreements, and partnerships on behalf of Tricentennial Park and

WHEREAS, in 2019, the CITY will provide CHS with funds totaling \$716,528 to support facilities and operations at The Premises for the following purposes:

- \$540,000 for facility operations and maintenance services to include janitorial, grounds keeping, pest control, facility maintenance and upkeep, security, fire and safety inspection compliance, utility services, and related facility operations and maintenance expenses.
- \$176,528 to support Tricentennial Park administration to include: leadership; facility and site development; public relations, marketing and fundraising; accounting; administrative and human resource functions; grant and legal compliance; evaluation and oversight; and master planning and strategic planning.
- One percent (1%) of the total economic activity of The Premises shall be payable directly to CHS from revenues generated at The Premises as a Management Fee no later than January 31, 2018 provided that demonstrable satisfactory financial accounting has been maintained throughout the fiscal year.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the adequacy, sufficiency and receipt of which are hereby acknowledged, the CITY and CHS agree as follows:

ARTICLE 1 - GRANT OF USE

- 1.1 Grant. The CITY hereby grants to CHS and to its agents, employees, guests and invitees a lease and operating agreement to enter, use, occupy, manage, and operate The Premises for the Intended Use as set forth in Article 3, below;

1.2 Care of Premises. CHS shall operate and maintain The Premises in a clean, safe, and sanitary condition in accordance with industry best practices and CITY standards; and.

1.3 Condition of Premises. CHS accepts the Premises "AS-IS."

1.4 Assignment and Sublicensing by CHS. This License may not be assigned nor shall The Premises be sub-licensed by CHS to other occupants/users without the prior written consent of the CITY; whose consent can be withheld at the CITY's sole discretion.

1.5 Additional Licensing by CITY. The CITY reserves the right to license portions of The Premises to other occupants/users subject to the prior written consent of CHS.

ARTICLE 2 – TERM

2.1 Term of Use. The term of this Agreement shall be for a period of five years commencing at 12:00 a.m. on January 1, 2019 and terminating at midnight on December 31, 2024 ("Term"), unless otherwise terminated by the parties to this Agreement.

2.2 Right of Termination. In accordance with state law, the CITY reserves the right to unilaterally terminate this Agreement after giving three months notice of its intention to terminate.

ARTICLE 3 - USE OF PREMISES

3.1 The CHS Uses. CHS shall use The Premises for the sole purpose of operating the Georgia State Railroad Museum, Battlefield Memorial Park, Savannah History Museum, Savannah Children's Museum, snackbars/restaurants, gift shops, on-site parking, administrative offices, and educational and recreation venues/exhibits to create a high-quality recreational and educational facility which serves as a premier visitor destination with a growing annual audience.

3.2 CHS Maintenance and Management. CHS shall solely be responsible for securing and managing the operations, maintenance and repairs (excepting items in paragraph 3.3 below), and conditions of The Premises during the Term.

3.3 CITY Maintenance: CITY will be solely responsible for replacements (but not maintenance and repairs) of long-lived items involving the roof, heating ventilation and air conditioning (HVAC) systems, and structural components (foundation and support walls); if and when such long-lived items have expired their useful life and can no longer be maintained or repaired by CHS in a cost-effective manner. In the event CITY has insufficient funds available/appropriated for requisite capital improvements/replacements of these long-lived items at The Premises, or if such improvements/replacements are not financially feasible, then CITY reserves the right to delay or not perform the capital improvements until such funding is appropriated and available.

3.4 Renovations and New Construction. Any proposed renovations or new construction by CHS at The Premises will be subject to the review and approval of the CITY at the CITY's sole discretion.

ARTICLE 4: RESPONSIBILITIES OF CHS

4.1. RECORDKEEPING

1. CHS shall maintain financial records according to standard accounting principles, to be audited annually.
2. CHS shall maintain sufficient records and documentation to substantiate satisfactory completion of their occupancy, use, and management duties as described herein.
3. Notwithstanding the above, all records pertaining to this Agreement shall be made available for inspection by the CITY at any time, upon reasonable notice.
4. Notwithstanding the above, the CITY reserves the right to audit any of CHS's books and records at any time, upon reasonable notice.

4.2. REPORTS AND MEETINGS

1. CHS will provide an annual calendar of all regularly scheduled meetings of its Board of Directors. An agenda for each meeting shall be submitted to the CITY at least one week prior to the meeting. A representative of the CITY shall be permitted to attend such meetings.
2. CHS is required to furnish current versions of certain statements, records, reports, and information to the CITY including, but not limited to, the following:
 - a. notification of any material changes to the budget set out in the application for CITY financial support;
 - b. notification of all applications which require a match from CITY funds and/or awards of grants or other funds that will support the services described in this agreement;
 - c. quarterly reports and an annual report, approved by CHS Board of Directors, on the progress made toward achieving a growing annual attendance at the Premises and high customer/visitor experience satisfaction ratings;
 - d. an audited financial statement for the period covered by this Agreement. Such audit shall be performed by a qualified Certified Public Accountant, and shall be furnished to the CITY within one week of receipt from the auditor. The audit shall include a Profit/Loss Statement for operations at The Premises (Tricentennial Park);
 - e. minutes for all Board of Directors meetings; and

- f. copies of all reports, brochures, advertisements, newsletters and other material published by CHS and pertaining to services provided under this Agreement upon request.
3. The quarterly reports must be submitted to the CITY no later than five (5) business days following the first CHS Board of Directors meeting after the end of the prior quarter, subject to availability of data from the CITY.

4.3. OPERATING POLICIES AND PROCEDURES

1. All organizational policies must be adopted by CHS's Board of Directors, and thereafter provided to the CITY upon request.
2. CHS is to maintain a standard Policy and Procedures Manual to guide operations, which Manual shall be made available to the CITY's representative upon request.
3. CHS must follow the CITY of Savannah Purchasing policy with respect to the services contracted for herein. Records of competitive quotes shall be maintained by CHS and shall be made reasonably available to the CITY upon request. Any single purchase or contract that uses any funding provided by the CITY under this agreement that is in excess of \$25,000 shall be approved by CITY Council.

4.4. FINANCIAL POLICIES AND PROCEDURES

1. A detailed, final line item budget will be attached to this Agreement as ATTACHMENT A and the funds provided by the CITY may only be expended as budgeted, consistent with the purpose and scope described in Article I.
2. CHS's Board of Directors shall approve budget category changes as recommended by CHS or the CITY in excess of 10% of final budget amount or \$3,000, whichever is greater.
3. CHS shall not provide compensation in the form of bonuses using any CITY funds.
4. All checks issued by CHS are to be signed by any two of four designated signatories.
5. Any single purchase or contract that uses any funding provided by the CITY under this agreement that is in excess of \$10,000 shall be approved by CITY Manager. Any expenditure that exceeds \$10,000 and is not approved by the CITY Manager cannot be paid with funds provided by the CITY.
6. As provided in the policies and procedures, CHS's Board of Directors will adopt the CHS budget and the President's compensation.

7. In no case shall any CITY funds referred to herein be used to pay any portion of any cost, expense or obligation of CHS that is not incurred as a result of its obligations under this Agreement.
8. It is expressly understood and acknowledged by CHS that any failure to comply with any portion of this agreement, CHS's Bylaws, or CHS's Charter (Act/Enabling Legislation) will be considered a violation of this agreement and may serve as grounds for suspension or cancellation of payment, and/or termination of this agreement, and that any decision on the part of the CITY not to enforce the provisions of this paragraph in any specific instance or instances shall not operate in any way as a waiver or partial waiver of the CITY'S rights under this paragraph, including the right to rescind an earlier decision not to enforce the provisions of this paragraph.

4.5. DISBURSEMENT PROCESS AND DOCUMENTATION

1. On or before the 15th of each month, CHS will submit the following supporting documentation with the request for reimbursement disbursement based on this Agreement for the prior month:
 - a. Monthly financial statements showing the annual budget, expenses for the month, and year-to-date expenses by budget category outlined in this Agreement;
 - b. An accounting register listing each transaction funded by this Agreement affecting revenue or expense accounts to include, if applicable, the following detail: payee, check number, and date of transaction; and
 - c. Profit and Loss Statement by revenue and cost centers associated with The Premises.
2. January 1, CHS will submit to the CITY a request for the first quarter's disbursement of \$179,132. Each month thereafter beginning in April 2019, CHS will submit to the CITY a request for disbursement in the amount 1/12 of the amount of the Agreement (\$59,710.67 per month). The request will be processed within ten business days of receipt. The CITY will not pay more than the Agreement amount.
3. On a quarterly basis, CHS will provide a copy of their completed form 941, documenting the payment of Federal withholding.
4. After each month is closed out, CHS will provide a profit and loss statement by location for each of the historic sites managed by CHS.

ARTICLE 5: REVERSION OF ASSETS

- 5.1. Assets. In the event that this Agreement is terminated and not renewed by either Party, or expires without replacement or extension by a similar Agreement, CHS shall:

1. Return to the CITY all unexpended and/or unearned CITY funds disbursed as per this agreement;
2. Return, or transfer any ownership interest in, to the CITY all equipment and fixed assets purchased with CITY funds;
3. Assign to the CITY the proceeds and reimbursement payments from all loans and receivables generated with CITY funds.

5.2. Records. In the event that this agreement is terminated, or expires without extension or renewal and without executing a new, similar agreement, CHS shall provide to the CITY all financial, payroll, and performance records related to the expenditure of CITY funds and its obligations under this Agreement. CHS's Board of Directors will retain copies of these records.

ARTICLE 6: RESPONSIBILITIES OF THE CITY

6.1. Coordination. The Director of Real Estate will coordinate the CITY's participation in the Agreement pertaining to real estate and facility matters, and the CITY's Chief Operating Officer or designee will coordinate the CITY's participation in the agreement pertaining to program administration.

6.2. Monitoring and Reporting. The CITY may at any time inspect the progress of work, provided that it is, as far as possible, not unreasonably inconvenient to CHS. Such inspection may include, but not be limited to, the following:

1. The CITY may review all written reports required by the Agreement. If a report is incomplete, incorrect or otherwise deficient, the CITY shall promptly notify CHS of the deficiency in writing.
2. The CITY may monitor the progress of work and inspect records at CHS's premises as often as it shall deem necessary.
3. Any other monitoring or review as is deemed reasonably necessary by the CITY to insure CHS's satisfactory performance of and compliance with the terms, conditions and obligations of this Agreement.

6.3.1 The CITY reserves the right to attend any meetings of CHS's Board of Directors, Executive Committee or other governing body, and its relevant committees.

ARTICLE 7 - IDEMNIFICATION

CHS shall indemnify, defend and hold harmless the CITY, its officers, agents, partners and employees, from and against any Claim or Claims arising out of or in any way connected with this Agreement, including a Claim or Claims from the CITY, without limit Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of the CHS, its officers, agents, or employees.

ARTICLE 8 - INSURANCE

8.1 Insurance. The coverages referred to under Section 6 shall include the CITY as a certificate holder. Such provisions shall apply only in proportion to and to the extent of the negligent acts or omissions of the CHS, its officers, employees, and agents.

8.2 CHS, at its own expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

A. Comprehensive General Liability minimum limits as follows:

1.	Each Occurrence	\$ <u>1,000,000</u>
2.	Damage to Rented Premises	\$ <u>50,000</u>
3.	Medical Expense	\$ <u>5,000</u>
4.	Personal & Adv Injury	\$ <u>1,000,000</u>
5.	General Aggregate	\$ <u>2,000,000</u>
6.	Products-Completed Ops. Aggregate	\$ <u>2,000,000</u>

8.3 Commercial Automobile Liability. The CHS must carry an automobile policy that includes coverage for owned, non-owned and hired automobiles for a minimum of:

\$1,000,000 per occurrence

8.4 Workers Compensation. The CHS shall carry a workers' compensation policy that includes all statutory coverage required by Georgia state law for the minimum employer's liability limits as follows:

1. \$500,000 each accident
2. \$500,000 each employee (disease)
3. \$500,000 policy limit (disease)

8.5 Umbrella/Excess Liability. The CHS shall carry an umbrella/excess liability policy which must follow form over underlying policies: general liability, auto liability and employer's liability for minimum limits as follows:

1. \$1,000,000 per occurrence
2. \$5,000,000 aggregate

8.6 Certificate of Insurance and Notice of Cancellation. The CHS, upon the execution of this Agreement, shall furnish the CITY with certificates of insurance evidencing compliance with all requirements. The CHS shall provide for a thirty (30) day notice of cancellation in favor of the CITY which must be endorsed to the policy and attached to the certificate. The Certificate Holder Should Read:

City of Savannah

The Mayor and Alderman of the CITY of Savannah
P.O. Box 1027
Savannah, GA 31402

With Copy to:

City of Savannah
Director of Real Estate
P.O. Box 1027
Savannah, GA 31402

8.7 Waiver of Subrogation. The CHS agrees to waive rights of subrogation which any insurer of the CHS may acquire from CHS by virtue of any loss. The CHS agrees to obtain the waiver of subrogation endorsement to the policy in favor of the CITY which shall also be provided and attached to the Certificate of Insurance.

ARTICLE 9 – NOTICES

All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective: (i) immediately, when personally delivered to the intended recipient; (ii) three (3) business days after having been sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) immediately, when delivered in person to the address set forth below for the party to whom the notice was given; (iv) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service, addressed to such party at the address specified below; (v) immediately, if sent during regular business hours or at 8:30 a.m. local time on the next business day next following an after-hours, weekend or holiday notice sent by e-mail, provided that receipt for such e-mail is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above; or (vi) immediately, upon actual receipt. Any notice sent as required by this section and refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section, the addresses and e-mail addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

As to the CITY:

City of Savannah
City Managers Office
P.O. Box 1027
Savannah, Georgia 31402

Copy to:

City of Savannah
City Attorneys Office
PO Box 1027
Savannah, Georgia 31402

And: City of Savannah
Director of Real Estate Services
PO Box 1027
Savannah, Georgia 31402
e-mail: dkeating@savannahga.gov

And: William W. Shearouse, Jr.
Weiner, Shearouse, Weitz, Greenberg & Shawe, LLP
14 East State Street
Savannah Georgia 31401
e-mail: wshearouse@wswgs.com

As to CHS: Coastal Heritage Society
Attn: Executive Director
303 Martin Luther King Jr. Boulevard
Savannah, Georgia 31401
e-mail: sandrabaxter08@gmail.com

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ATTEST:

THE MAYOR AND ALDERMEN OF
THE CITY OF SAVANNAH, GEORGIA

CLERK OF COUNCIL

BY: _____

ITS: _____

Signed, sealed and delivered in the

Presence of:

COASTAL HERITAGE SOCIETY

Witness

BY: _____

Notary Public

ITS: _____

Commission expires:

ATTACHMENT A