

RESOLUTION NO. 2018-72

RESOLUTION AUTHORIZING CITY MANAGER TO EXECUTE
MODIFICATIONS TO THE OPERATION AGREEMENT BETWEEN
CITY OF FOREST GROVE AND FOREST GROVE SENIOR
AND COMMUNITY CENTER

WHEREAS, the City of Forest Grove (City) and the Forest Grove Senior and Community Center (FGSCC) have an existing Operation Agreement for occupancy of city-owned property, located at 2037 Douglas Street, Washington County Tax Lot No. 1S-3-06AB-02600, which was last modified on April 11, 2010; and

WHEREAS, changes to the existing operation agreement are desired by both parties; and

WHEREAS, representatives of the City and FGSCC Board of Directors have met in recent months and have reached consensus on certain modifications to the Operation Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1: The City Council of the City of Forest Grove hereby approves the modifications to the Operation Agreement (attached as Exhibit A) between the City of Forest Grove and the FGSCC.

Section 2: The City Manager is hereby authorized to execute the Agreement (attached as Exhibit A) on behalf of the City of Forest Grove.

Section 3: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 17th day of July, 2018.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 17th day of July, 2018.



Peter B. Truax, Mayor

AGREEMENT FOR OPERATION OF FOREST GROVE SENIOR CENTER

DATE: March 29, 2010.
Updated August 13, 2018.

PARTIES: CITY OF FOREST GROVE, Oregon, a municipal corporation, ("Owner")
and
FOREST GROVE SENIOR AND COMMUNITY CENTER, INC., an
Oregon nonprofit corporation, ("Operator")

THE PARTIES AGREE:

Section 1. Exclusive License. Owner grants to Operator an exclusive license to operate the Forest Grove Senior and Community Center, located at 2037 Douglas Street, Washington County Tax Lot No. 1S-3-06AB-02600, for the term stated in this Agreement and subject to the conditions of this Agreement.

Section 2. Term of Occupancy. The term of this Agreement shall commence on the above date and shall continue for twelve (12) months.

Section 3. Renewal of Occupancy. Agreement shall be automatically renewed for successive twelve-month (12) terms unless written notice is given by either party to the other at least sixty (60) days prior to the annual anniversary date. Such written notice must be approved by the governing body of the party. This Agreement may also be reopened by written notice of the Signatories to this Agreement; however, any change to the Agreement is subject to the approval of the governing body of the parties. The Agreement may be opened for good cause as determined by an affirmative vote of at least five (5) members of the Forest Grove City Council.

Section 4. Reports. Operator shall make written reports to City Manager regarding the operation of the Senior Center on a monthly basis.

Section 5. Obligations of Operator. Operator shall be obligated to pay or provide the following during the terms of this Agreement:

- A. All taxes upon Operator's personal property on the premises, including fixtures;
- B. All charges for natural gas used by Operator in the premises;
- C. All exterior grounds and landscaping maintenance and care, building interior cleaning and maintenance, and all supplies necessary for day to day maintenance.
- D. All amounts which Operator is required to reimburse Owner for expenses incurred by Owner in discharging Operator's obligations, if any;
- E. All other amounts which Operator is required to pay by any other provisions of this Agreement;
- F. Any interior redecorating;

- G. Any repairs necessitated by the negligence of Operator, Operator's agents, employees and invitees, except where the loss or damage could have been covered by a standard fire insurance policy with an extended coverage endorsement;
- H. Any repairs or alterations required under Operator's obligation to comply with laws and regulations as set forth in subsection A of the section of this Agreement entitled USE OF PREMISES;
- I. All other repairs to the premises which Owner is not specifically obligated to make. Owner shall have the right to inspect the premises at any reasonable time to determine the necessity of repair.
- J. Compliance with all Federal, State, and local laws regarding operations of a non-profit organization;
- K. Updated bylaws for review and acceptance by Owner.

Section 6. Obligation of Owner. The following shall be the obligation of Owner:

- A. Structural repairs and maintenance and repairs necessitated by structural disrepair or defect;
- B. Repair and maintenance, including painting, of the exterior walls and roof and exterior water, sewage, gas and electrical services up to the point of entry to the premises. This shall not include maintenance of the operating condition of doors and windows or replacement of glass unless maintenance or replacement of these items is necessitated by vandalism;
- C. All charges for heat, power, water, sewage, excepting natural gas, used by Operator in the premises;
- E. Repair of interior walls, ceilings, doors, windows floors and floor coverings when such repairs are made necessary because of faulty construction or failure of Owner to keep the structure in proper repair;
- E. Repair of the heating and air conditioning system other than ordinary maintenance;
- F. All repairs or restoration made necessary by fire or other peril which could be covered by a standard fire insurance policy with an extended coverage endorsement or by reason of war, or by earthquake or other natural casualty, vandalism, malicious mischief and all other risks covered by Owner's property insurance in force at the time of loss.
- G. Appointment of a City Council Liaison to work with Operator, attend Board meetings, and report back to City Council.
- H. Appointment of the City's Facilities Maintenance Supervisor to act as a staff liaison and single point of contact for maintenance and repair issues. Requests for repairs must be made by the FGSCC Executive Director or President and should be done verbally and/or in writing. Requests will be answered verbally or in writing within 24 hours.
- I. Ordinary maintenance of the heating and air conditioning system;

Section 7. Use of Premises. The parties understand that the primary purpose for the construction of the Forest Grove Senior and Community Center was to provide a

physical facility for the providing of services to senior citizens of the community. In addition, all citizens of Forest Grove may use or lease facility with approval of Operator's Board of Directors. In connection with the use of the premises, Operator shall:

- A. Conform to all applicable laws and regulations of any public authority affecting the use of premises and correct, at Operator's expense, any failure of compliance created through Operator's fault or by reason of Operator's use. Operator shall not otherwise be required to make expenditures to comply with any laws or regulations, and in no event shall Operator be required to make any structural changes to effect such compliance;
- B. Refrain from any activity which would make it impossible to insure the premises against casualty, would increase the insurance rate or would prevent Owner from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Owner to obtain reduced premium rates for long-life fire insurance policies, unless the Operator pays the additional cost of insurance;
- C. Refrain from any use which would be reasonably offensive to Owner, other tenants or owners or users of adjoining premises or which would tend to create a nuisance or damage the reputation of the premises.

Section 8. Alterations. Operator shall make no improvements or alterations on the premises of any kind without the prior consent in writing of Owner, which consent shall not be unreasonable withheld.

All improvements and alterations performed on the premises by either Owner or Operator shall be the property of Owner when installed unless the applicable Owner's consent or worksheets specifically provide otherwise.

Section 9. Damage and Destruction. If the premises are partially damaged or destroyed, the property shall be repaired as follows:

- A. If the damage is caused by a risk which would be covered by a standard fire insurance policy with an endorsement for extended coverage, repair shall be at the expense of Owner whether or not the damage occurred as the result of fault on the part of Operator;
- B. If the damage occurred from a risk which would not be covered by insurance of the kind described in A above repairs shall be at the expense of Owner unless the damage was the result of the fault of Operator, in which case Operator shall have the obligation to repair;
- C. In any event, repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of the party responsible.

Section 10. Liability to Third Persons. Except with respect to activities for which Owner is responsible, Operator shall pay as due all claims for work done on and for

services rendered or materials furnished to the premises and shall keep the premises free from any liens.

Operator shall indemnify and defend Owner from any claim loss or liability arising out of or related to any activity of operator on the premises. Operator's duty to indemnify shall not apply to or prevent any claim by Operator against Owner for injury or damage to Operator or Operator's property for which Owner may be liable.

During the term of this Agreement, Operator shall procure and thereafter during the term of this Agreement shall continue to carry the following insurance at Operator's cost with Owner named as an additional insured:

Public liability and property damage insurance in a responsible company with a combined single limit of not less than \$500,000.00. Certificates evidencing such insurance and bearing endorsements require ten (10) days' written notice to Owner prior to any change or cancellation shall be maintained.

Section 11. Insurance. Owner shall keep the premises insured at its full insurable value at Owner's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Such insurance shall not insure Operator's separate property on the premises against such risks.

The parties shall obtain, from their respective insurance carriers, waivers of subrogation against the other party, its agents, employees and, as to Operator, its invitees. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement if such insurance was obtainable at the time of such loss or damage. The party benefiting from a waiver of subrogation clause in an insurance policy shall pay any additional premium required to obtain such a clause within ten (10) days after being notified by the other party of such additional cost unless the benefiting party can obtain such insurance without - the additional cost from another insurance carrier satisfactory to the first party.

Section 12. Assignment and Sublease. No part of the premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means by Operator without the prior written consent of Owner.

Operator shall have the right to make the premises available to third persons or organizations and shall have the right to retain *all* fees and charges resulting from the use of the premises by third persons or organizations.

Section 13. Termination. This Agreement shall terminate at the end of the initial term or such additional terms as may be agreed upon between the parties or upon termination by one of the parties under the Section 3 of this Agreement entitled Renewal of Occupancy.

This Agreement shall terminate earlier if at any time Operator 'breaches any of the terms of this Agreement. Such breach shall be specified by Owner to Operator in writing and Operator shall have sixty (60) days within which to cure such breach or such period of time as may be agreed upon by Owner in writing. If the breach has not been remedied within the time specified in this Section, notice of termination may be given by Owner to Operator in writing at any time after the date upon which such breach should have been remedied. The notice of termination shall specify a date by which Operator shall surrender the premises which date shall not be sooner than ten (10) days from the date of notice of termination.

Operator shall have the same right to terminate this Agreement upon a breach of this Agreement by Owner in the same manner and subject to the same conditions as are set forth in the immediately preceding paragraph.

Section 14. Surrender at Expiration.

14.1 Condition of Premises. Upon expiration of the term or earlier termination on account of default, Operator shall deliver all keys to Owner and surrender the leased premises in first-class condition and broom clean. Alterations constructed with permission from Owner shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the premises were let need not be restored but all repairs for which Operator is responsible shall be completed to the latest practical date prior to such surrender. Operator's obligations under this Section shall be subordinate to Section 9 of this Agreement entitled Damage and Destruction.

14.2 Fixtures.

14.2.1 All fixtures placed upon the premises during the term of this Agreement, other than Operator's trade fixtures shall, at Owner's option, become the property of Owner. Movable furniture, decorations, floor coverings other than hard surface bonded or adhesively fixed flooring, curtains, blinds, furnishings and trade fixtures shall remain the property of Operator if placed on the premises by Operator.

14.2.2 If Owner so elects, operator shall remove any or all fixtures which would otherwise remain the property of Owner, and shall repair any physical damage resulting from the removal. If Operator fails to remove such fixtures, Owner may do so and charge the cost to Operator with interest at nine percent (9%) per annum from the date of expenditure. Operator shall remove all furnishings, furniture and trade fixtures which remain the property of Operator. If Operator fails to do so, this shall be an abandonment of the property, and Owner may retain the property and all rights of Operator with respect to it shall cease or, by notice *in* writing given to Operator within twenty (20) days after removal was required, Owner may elect to hold Operator to its obligation of removal. If Owner elects to require Operator to remove, Owner may effect a removal and place the property in public storage for Operator's account. Operator shall be liable to Owner for

the cost of removal, transportation to storage, and storage, with interest at nine percent (9%) per annum on all such expenses from the date of expenditure by Owner.

14.2.3 The time for removal of any property or fixtures which operator is required to remove from the premises upon termination shall be as follows:

- A. On or before the date the Agreement terminates because of expiration of the original or a renewal term or because of default;
- B. Within thirty (30) days after notice from Owner requiring such removal where the property to be removed is a fixture which Operator is not required to remove except after such notice by Owner, and such date would fall after the date on which Operator would be required to remove other property.

Section 15. Miscellaneous.

15.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

15.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees both on trial and appeal, if any.

15.3 Succession. Subject to the above-stated limitations on transfer of Operator's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successor and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate on the day and year first above written.

OWNER:

CITY OF FOREST GROVE, Oregon,
a municipal corporation

By:  _____ 2/13/17
Jesse VanderZanden, City Manager

OPERATOR:

FOREST GROVE SENIOR AND
COMMUNITY CENTER, INC.
an Oregon nonprofit corporation

By: _____
Jeff Duyck, President



A place where families and businesses thrive.

<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	<u>8.</u>
MEETING DATE:	<u>7/17/18</u>
FINAL ACTION:	<u>Repeal 2018-72</u>

CITY COUNCIL STAFF REPORT

TO: City Council

FROM: Jesse VanderZanden, City Manager

MEETING DATE: July 17, 2018

PROJECT TEAM: Paul Downey, Administrative Services Director

SUBJECT TITLE: Resolution: City of Forest Grove and FGSCC Operation Agreement

ACTION REQUESTED:

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Ordinance	Order	X	Resolution	Motion	Informational

X all that apply

ISSUE STATEMENT: On May 14, the City Council approved a motion to reopen the Operating Agreement between the Forest Grove Senior and Community Center (FGSCC), a 501c3 Oregon non-profit, and the City of Forest Grove, for the purposes of clarifying maintenance obligations, utility funding, and the process for mutually changing the Agreement in the future.

City Staff met with the President and Executive Director of the FGSCC on two occasions to discuss revisions to the Agreement. The revisions to the Agreement are outlined in the attachments and include the following:

- In an effort to streamline potential future revisions, the Agreement may be reopened for negotiation by the Signatories to the Agreement instead of requiring a vote by each body. However, any changes to the Agreement as negotiated by the Signatories must be approved by a vote of both governing bodies.
- In accordance with the FY 18-19 Budget, payment for utility expenses, with the exception of natural gas, will become the obligation of the Owner, not the Operator.
- To help improve response time and communications, the City proposed appointing the City's Facilities Maintenance Supervisor as a staff liaison and single point of contact for all maintenance issues. The Agreement also requires requests for repairs to be made by the FGSCC Executive Director or President and notes all requests will be responded to within 24 hours.
- Last, to better reflect current practice, the ordinary maintenance of the heating and air conditioning system is proposed to be the responsibility of the Owner, not the Operator.

RECOMMENDATION: The FGSCC Board of Directors has reviewed and supports the changes. Staff recommends the Council approve the attached Resolution and instruct the City Manager to finalize and sign the Operation Agreement.

ATTACHMENTS:

- A. Resolution authorizing staff to execute and sign the revised Operation Agreement
- B. Draft MARK UP version of the Operation Agreement (shows proposed changes)
- C. Final Operation Agreement (accepts all changes)

AGREEMENT FOR OPERATION OF FOREST GROVE SENIOR CENTER

DATE: March 29, 2010.
Updated August 13, 2018.

PARTIES: CITY OF FOREST GROVE, Oregon, a municipal corporation, ("Owner")

and

FOREST GROVE SENIOR AND COMMUNITY CENTER, INC., an
Oregon nonprofit corporation, ("Operator")

THE PARTIES AGREE:

Section 1. Exclusive License. Owner grants to Operator an exclusive license to operate the Forest Grove Senior and Community Center, located at 2037 Douglas Street, Washington County Tax Lot No. 1S-3-06AB-02600, for the term stated in this Agreement and subject to the conditions of this Agreement.

Section 2. Term of Occupancy. The term of this Agreement shall commence on the above date and shall continue for twelve (12) months.

Section 3. Renewal of Occupancy. Agreement shall be automatically renewed for successive twelve-month (12) terms unless written notice is given by either party to the other at least sixty (60) days prior to the annual anniversary date. **Such written notice must be approved by the governing body of the party.** This Agreement may also be reopened **by written notice of the Signatories to this Agreement, however, any change to the Agreement is subject to the approval of the governing body of the parties. The Agreement may be opened** ~~provided~~ for good cause as determined by an affirmative vote of at least five (5) members of the Forest Grove City Council.

Section 4. Reports. Operator shall make written reports to City Manager regarding the operation of the Senior Center on a monthly basis.

Section 5. Obligations of Operator. Operator shall be obligated to pay or provide the following during the terms of this Agreement:

- A. All taxes upon Operator's personal property on the premises, including fixtures;
- B. All charges for **natural gas** ~~heat, power, water, sewage and other services or utilities~~ used by Operator in the premises;
- C. All exterior grounds and landscaping maintenance and care, building interior cleaning and maintenance, and all supplies necessary for **those operations day to day maintenance.**
- D. All amounts which Operator is required to reimburse Owner for expenses incurred by Owner in discharging Operator's obligations, if any;

- E. All other amounts which Operator is required to pay by any other provisions of this Agreement;
- F. Any interior redecorating;
- G. Any repairs necessitated by the negligence of Operator, Operator's agents, employees and invitees, except where the loss or damage could have been covered by a standard fire insurance policy with an extended coverage endorsement;
- ~~H. Ordinary maintenance of the heating and air conditioning system;~~
- H.** Any repairs or alterations required under Operator's obligation to comply with laws and regulations as set forth in subsection A of the section of this Agreement entitled USE OF PREMISES;
- J.** All other repairs to the premises which Owner is not specifically obligated to make. Owner shall have the right to inspect the premises at any reasonable time to determine the necessity of repair.
- ~~K.~~ Compliance with all Federal, State, and local laws regarding operations of a non-profit organization;
- ~~L.~~ Updated bylaws for review and acceptance by Owner.

Section 6. Obligation of Owner. The following shall be the obligation of Owner:

- A. Structural repairs and maintenance and repairs necessitated by structural disrepair or defect;
- B. Repair and maintenance, including painting, of the exterior walls and roof and exterior water, sewage, gas and electrical services up to the point of entry to the premises. This shall not include maintenance of the operating condition of doors and windows or replacement of glass unless maintenance or replacement of these items is necessitated by vandalism;
- C All charges for heat, power, water, sewage and other services or utilities, excepting natural gas, used by Operator in the premises;**
- E. Repair of interior walls, ceilings, doors, windows floors and floor coverings when such repairs are made necessary because of faulty construction or failure of Owner to keep the structure in proper repair;
- E. Repair of the heating and air conditioning system other than ordinary maintenance;
- F. All repairs or restoration made necessary by fire or other peril which could be covered by a standard fire insurance policy with an extended coverage endorsement or by reason of war, or by earthquake or other natural casualty, vandalism, malicious mischief and all other risks covered by Owner's property insurance in force at the time of loss.
- G. Appointment of a City Council Liaison to work with Operator, **attend Board meetings, and report back to City Council.** ~~in carrying out the terms of this Agreement.~~
- H. Appointment of the City's Facilities Maintenance Supervisor to act as a staff liaison and single point of contact for maintenance and repair issues. Requests for repairs must be made by the FGSCC Executive Director or President and**

should be done verbally and/or in writing. Requests will be answered verbally or in writing within 24 hours.

I. Ordinary maintenance of the heating and air conditioning system;

Section 7. Use of Premises. The parties understand that the primary purpose for the construction of the Forest Grove Senior and Community Center was to provide a physical facility for the providing of services to ~~older~~-senior citizens of the community. In addition, all citizens of Forest Grove may use or lease facility with approval of Operator's Board of Directors. In connection with the use of the premises, Operator shall:

- A. Conform to all applicable laws and regulations of any public authority affecting the use of premises and correct, at Operator's expense, any failure of compliance created through Operator's fault or by reason of Operator's use. Operator shall not otherwise be required to make expenditures to comply with any laws or regulations, and in no event shall Operator be required to make any structural changes to effect such compliance;
- B. Refrain from any activity which would make it impossible to insure the premises against casualty, would increase the insurance rate or would prevent Owner from taking advantage of any ruling of the Oregon Insurance Rating Bureau or its successor allowing Owner to obtain reduced premium rates for long-life fire insurance policies, unless the Operator pays the additional cost of insurance;
- C. Refrain from any use which would be reasonably offensive to Owner, other tenants or owners or users of adjoining premises or which would tend to create a nuisance or damage the reputation of the premises.

Section 8. Alterations. Operator shall make no improvements or alterations on the premises of any kind without the prior consent in writing of Owner, which consent shall not be unreasonable withheld.

All improvements and alterations performed on the premises by either Owner or Operator shall be the property of Owner when installed unless the applicable Owner's consent or worksheets specifically provide otherwise.

Section 9. Damage and Destruction. If the premises are partially damaged or destroyed, the property shall be repaired as follows:

- A. If the damage is caused by a risk which would be covered by a standard fire insurance policy with an endorsement for extended coverage, repair shall be at the expense of Owner whether or not the damage occurred as the result of fault on the part of Operator;
- B. If the damage occurred from a risk which would not be covered by insurance of the kind described in A above repairs shall be at the expense of Owner unless the damage was the result of the fault of Operator, in which case Operator shall have the obligation to repair;

- C. In any event, repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of the party responsible.

Section 10. Liability to Third Persons. Except with respect to activities for which Owner is responsible, Operator shall pay as due all claims for work done on and for services rendered or materials furnished to the premises and shall keep the premises free from any liens.

Operator shall indemnify and defend Owner from any claim loss or liability arising out of or related to any activity of operator on the premises. Operator's duty to indemnify shall not apply to or prevent any claim by Operator against Owner for injury or damage to Operator or Operator's property for which Owner may be liable.

During the term of this Agreement, Operator shall procure and thereafter during the term of this Agreement shall continue to carry the following insurance at Operator's cost with Owner named as an additional insured:

Public liability and property damage insurance in a responsible company with a combined single limit of not less than \$500,000.00. Certificates evidencing such insurance and bearing endorsements require ten (10) days' written notice to Owner prior to any change or cancellation shall be maintained.

Section 11. Insurance. Owner shall keep the premises insured at its full insurable value at Owner's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Such insurance shall not insure Operator's separate property on the premises against such risks.

The parties shall obtain, from their respective insurance carriers, waivers of subrogation against the other party, its agents, employees and, as to Operator, its invitees. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement if such insurance was obtainable at the time of such loss or damage. The party benefiting from a waiver of subrogation clause in an insurance policy shall pay any additional premium required to obtain such a clause within ten (10) days after being notified by the other party of such additional cost unless the benefiting party can obtain such insurance without - the additional cost from another insurance carrier satisfactory to the first party.

Section 12. Assignment and Sublease. No part of the premises may be assigned or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means by Operator without the prior written consent of Owner.

Operator shall have the right to make the premises available to third persons or organizations and shall have the right to retain *all* fees and charges resulting from the use of the premises by third persons or organizations.

Section 13. Termination. This Agreement shall terminate at the end of the initial term or such additional terms as may be agreed upon between the parties or upon termination by one of the parties under the Section 3 of this Agreement entitled Renewal of Occupancy.

This Agreement shall terminate earlier if at any time Operator 'breaches any of the terms of this Agreement. Such breach shall be specified by Owner to Operator in writing and Operator shall have sixty (60) days within which to cure such breach or such period of time as may be agreed upon by Owner in writing. If the breach has not been remedied within the time specified in this Section, notice of termination may be given by Owner to Operator in writing at any time after the date upon which such breach should have been remedied. The notice of termination shall specify a date by which Operator shall surrender the premises which date shall not be sooner than ten (10) days from the date of notice of termination.

Operator shall have the same right to terminate this Agreement upon a breach of this Agreement by Owner in the same manner and subject to the same conditions as are set forth in the immediately preceding paragraph.

Section 14. Surrender at Expiration.

14.1 Condition of Premises. Upon expiration of the term or earlier termination on account of default, Operator shall deliver all keys to Owner and surrender the leased premises in first-class condition and broom clean. Alterations constructed with permission from Owner shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the premises were let need not be restored but all repairs for which Operator is responsible shall be completed to the latest practical date prior to such surrender. Operator's obligations under this Section shall be subordinate to Section 9 of this Agreement entitled Damage and Destruction.

14.2 Fixtures.

14.2.1 All fixtures placed upon the premises during the term of this Agreement, other than Operator's trade fixtures shall, at Owner's option, become the property of Owner. Movable furniture, decorations, floor coverings other than hard surface bonded or adhesively fixed flooring, curtains, blinds, furnishings and trade fixtures shall remain the property of Operator if placed on the premises by Operator.

14.2.2 If Owner so elects, operator shall remove any or all fixtures which would otherwise remain the property of Owner, and shall repair any physical damage resulting from the removal. If Operator fails to remove such fixtures, Owner may do so and charge the cost to Operator with interest at nine percent (9%) per annum from the date of expenditure. Operator shall remove all furnishings, furniture and trade fixtures which remain the property of Operator. If Operator fails to do so, this shall be an abandonment

of the property, and Owner may retain the property and all rights of Operator with respect to it shall cease or, by notice *in* writing given to Operator within twenty (20) days after removal was required, Owner may elect to hold Operator to its obligation of removal. If Owner elects to require Operator to remove, Owner may effect a removal and place the property in public storage for Operator's account. Operator shall be liable to Owner for the cost of removal, transportation to storage, and storage, with interest at nine percent (9%) per annum on all such expenses from the date of expenditure by Owner.

14.2.3 The time for removal of any property or fixtures which operator is required to remove from the premises upon termination shall be as follows:

- A. On or before the date the Agreement terminates because of expiration of the original or a renewal term or because of default;
- B. Within thirty (30) days after notice from Owner requiring such removal where the property to be removed is a fixture which Operator is not required to remove except after such notice by Owner, and such date would fall after the date on which Operator would be required to remove other property.

Section 15. Miscellaneous.

15.1 Nonwaiver. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

15.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees both on trial and appeal, if any.

15.3 Succession. Subject to the above-stated limitations on transfer of Operator's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successor and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate on the day and year first above written.

OWNER:

CITY OF FOREST GROVE, Oregon,
a municipal corporation

By: _____

Michael J. Sykes, Jesse
VanderZanden City Manager

OPERATOR:

FOREST GROVE SENIOR AND
COMMUNITY CENTER, INC.
an Oregon nonprofit corporation

By: _____
Jeff Duyck, President

Xxxxx = Existing language but moved to different section

Xxxxx = New language

~~Xxxxx~~ = Existing language proposed for removal