

MANAGEMENT AGREEMENT OLD SCHOOL SQUARE

THIS AGREEMENT, made and entered into at Delray Beach, Florida, on the 7 day of August, 1990, by and between the City of Delray Beach, Florida, a Florida municipal corporation, hereinafter referred to as the "City" and Old School Square, Inc., a Florida corporation, not for profit, hereinafter referred to as "Old School Square, Inc.".

WHEREAS, the City has fee simple ownership of the old Delray Beach Elementary School site, which is to be restored and converted into a cultural center to provide educational, cultural, scientific and certain governmental activities; and,

WHEREAS, Old School Square, Inc., was organized under the laws of the State of Florida, as a not-for-profit corporation for the purpose of leasing, restoring, developing and operating the cultural center; and,

WHEREAS, the City has adopted a resolution dated September 13, 1988 which among other things states that Old School Square, Inc. shall serve as project administrator for the purposes of facility management and programming; and,

WHEREAS, the City and Old School Square, Inc. entered into a lease dated July 31, 1989; and,

WHEREAS, the City and Old School Square, Inc. desire to confirm and clarify the organizational, operational and oversight procedures as to Old School Square Inc.'s

responsibility for operation of the facility, including, but not limited to the establishment of budgets, the submission of state and federal grants, the solicitation of private grants and donations, the determination and establishment of programs by Old School Square, Inc. and the maintenance of the interior improvements by Old School Square, Inc.; and to clarify the procedures regarding maintenance of the exterior site by the City, pursuant to the lease.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, STIPULATIONS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. The above WHEREAS clauses are true and correct and are incorporated herein by reference.

2. Board of Directors - Old School Square, Inc. shall be governed by the voting members of the Board of Directors. The Board of Directors shall be selected and perform all duties and responsibilities pursuant to the Articles of Incorporation and By-laws of Old School Square, Inc., as they now exist or as they may be amended from time to time.

(a) Old School Square, Inc., shall submit to the City Commission on an annual basis the names of those elected to membership on the Board of Directors, for the purpose of ratification of the electees by the City Commission.

(b) All meetings of the Board of Directors shall be duly advertised and open to the public in accordance with the

State of Florida Open Meetings Law. A record of all meetings shall be kept and forwarded to the City of Delray Beach on a regular basis. The City representative shall be notified in writing one week prior to all meetings.

3. Subcommittees. The Board of Directors of Old School Square, Inc. shall be empowered to establish such committees as deemed necessary per the Articles of Incorporation and By-laws of Old School Square, Inc., as they now exist or as they may be amended from time to time.

4. Director. Old School Square, Inc. shall have an Executive Director (hereinafter called "Director"). The Director shall manage and administer the operation of the facilities. All activities of the Director shall be subject to the review, policies, procedures and approval of the Board of Directors of Old School Square, Inc., (hereinafter referred to as "Board of Directors").

5. Personnel and Services. Old School Square, Inc. through its Board of Directors shall have sole discretion over the employment of full and part-time staff, including the employment of the Executive Director and all ancillary staff. Old School Square, Inc. shall be responsible for providing all personnel required to carry out its activities, except as may be voluntarily provided by the City. Old School Square, Inc. will provide the City with adequate notice of need for City assistance to carry out their responsibilities. The City shall have the right, upon reasonable prior written notice, to

schedule meetings or events as space is available at no rental charge to the City. The City will assume set up and clean up responsibilities for said events or meetings.

6. City Representative. The City shall designate a representative of the City who shall be given notice of all meetings of the Board of Directors and who shall be encouraged to attend all meetings as a non-voting member. Old School Square, Inc. shall be given written notice of the name of the City Representative.

7. Contact Person. Old School Square, Inc. shall designate the Director and a board member to serve as a liaison between Old School Square, Inc. and the City. The City shall designate an Assistant City Manager, or other such designee of the City Manager as the City's contact person. The City Manager shall notify Old School Square, Inc., in writing, of such appointment.

8. Management. The Board of Directors, either itself or through various committees, shall be responsible for:

(a) Financial affairs which shall include, but not be limited to, proposed budgets, expenses, membership income, donations, grants, and subsidies and City financial support.

(b) Property Management which shall include, but not be limited to, matters relating to upkeep, repairs, capital improvements, security, interior maintenance, alterations, restoration and renovation or any other such changes to

the buildings. Property Management matters constituting major repairs, capital improvements, restorations and renovations must have prior approval of the City.

(c) Programming matters, including exhibits as well as coordinating and scheduling the use of the facilities by other artistic and cultural organizations, community or civic groups and governmental bodies, etc. Old School Square, Inc. shall present to the City a list of projected program uses of the facilities each year along with a copy of Old School Square, Inc.'s budget for each fiscal year.

(d) Fund raising from both public and private sources.

(e) Submission of applications of grants.

(f) Management, maintenance, and operation of the property to the extent required under the lease with the City.

(g) Employment of all personnel.

9. Program Execution. The projected program uses approved by the Board of Directors and ratified by the City shall be executed by the Director or by the Staff of the Old School Square, Inc. under the supervision of the Director.

10. Project Administration.

(a) By resolution of the City Commission of the City of Delray Beach, Florida, dated September 13, 1989, Old School Square, Inc. is named as project administrator for the historic restoration of the Old Delray Beach Elementary School

site into the Old School Square Cultural Arts Center. As such, Old School Square, Inc. shall have the following authority:

(1) Act as owner between all consultants, architects, engineers, and contractors for the project;

(2) Develop and manage all fund-raising campaigns for the capital campaign and annual sustaining funds;

(3) Develop and manage all grant proposals (City, County, State, Corporate and Foundations) with annual reporting to the City for the capital campaign and annual sustaining funds;

(4) Develop all design documents in conjunction with the architects of record;

(5) Develop site landscaping design with the landscape architect of record;

(6) Have contractual authority to use outside independent consultants for design development (i.e. theatre consultants);

(b) Old School Square, Inc. shall abide by all applicable Florida, State and Municipal laws, ordinances, rules and regulations.

11. Grounds and Building Operations. Old School Square, Inc. shall perform its portion of grounds and building operations to the extent set forth in the lease. Pursuant to the lease, Old School Square, Inc. shall be responsible for heating and air-conditioning equipment (climate control), installation and maintenance of exterior lighting, and all

other aspects of property management and maintenance except that the City shall be responsible for the exterior walls, parking lot, exterior landscaping and irrigation. It is explicitly agreed that among other things, that the duty of Old School Square, Inc. shall include furnishing all necessary janitorial and cleaning services, pest control service, care and maintenance of the structures located on the property, any interior renovation or redecoration not involving major structural changes, and that Old School Square, Inc. shall pay all charges for telephone, water, sewer, gas, electricity and any and all other such utilities as may be used in connection with the property, including utilities necessary for the operation of exterior lighting. In addition, the Old School Square, Inc., pursuant to the Lease, shall pay any ad valorem taxes imposed upon the property and improvements located thereon during the term of the lease. Old School Square, Inc. shall pay any taxes for personal property improvements owned by Old School Square, Inc. The City's sole maintenance responsibility shall be for the maintenance and upkeep of the exterior of the buildings, including the roof, the grounds of the cultural center, and irrigation system. Old School Square, Inc. shall be responsible for all interior maintenance, including janitorial service and annual termite protection of the buildings.

12. Budget. The Director, in consultation with the Board of Directors and in any established financial committee,

shall be responsible for recommending a proposed budget to the Board of Directors which will set forth, in a detailed form, all anticipated income and expenses.

(a) Prior to final approval and adoption of the budget by the Board of Directors, the proposed budget shall be submitted to the City for their review and recommendations. The Director shall be responsible for the administration of the budget subject to oversight by the appropriate committees.

(b) A copy of the approved annual budget (both capital and operating) shall be submitted to the City by May 1st of each year. The budget shall delineate sources of revenues and expense items and shall show prior year actual expenses and revenues as of April 1st of each year.

(c) Old School Square, Inc. shall provide to the City, an Annual Financial Report audited by a certified public accountant with an opinion based upon the audit. This audited report shall be furnished each year within one hundred and twenty (120) days of the close of Old School Square fiscal year. Old School Square, Inc. may request that the City Commission waive the requirement to provide a certified audit. The City Commission may approve or deny the requested waiver.

(d) Old School Square, Inc. shall make all requests for funding of money from the City, or for a contribution of services or materials from the City within the City's budget deadlines, except for unforeseen and unanticipated matters.

(e) There shall be no commitment as to City funds or assistance until the annual budget of the City has been approved by the City Commission of the City of Delray Beach.

(f) Old School Square, Inc. shall have prime responsibility for obtaining funds for the budget from members, fund raising events, private grants, private donations and local and state and federal government sources. The City agrees to cooperate and reasonably assist Old School Square, Inc. in obtaining funds in the form of grants and subsidies by reasonably prompt execution of documents required to obtain grants and subsidies.

(g) Old School Square, Inc. shall provide the City quarterly accounting of the revenues and disbursements of any and all funds including grant funds, received or disbursed by Old School Square, Inc.

(h) In addition to the certified audit requirements above, Old School Square, Inc., shall provide to the City of Delray Beach, an annual compliance audit of any and all grant funds received expressly for the cultural center.

(i) Old School Square shall make available to the City copies of all Grant related documentation, to include, but not be limited to: applications, approvals, agreements, audits and related correspondence.

13. Financial Provisions.

(a) Fiscal year. Old School Square, Inc., shall establish a fiscal year which coincides with its by-laws and articles of incorporation.

(b) Old School Square, Inc. shall not have power to spend any funds derived from the sale of bonds by the City unless specifically authorized by the City Commission of the City Delray Beach. Old School Square, Inc. shall be permitted to ask the City to effectuate the issuance of bonds or to borrow money, by submitting to the City Commission, a resolution of the Board of Directors. The City Commission shall be under no obligation to approve such requests. However, if the City approves expenditure of bond funds or any other funds, then Old School Square, Inc. shall submit copies of invoices and bills to the City for reimbursement. Old School Square shall make other documentation to include cancelled checks and bank reconciliations available upon request.

(c) General Financial Provision.

(1) Old School Square, Inc. shall have the authority to establish necessary banking accounts in its own name and to make cash disbursements.

(2) That Old School Square, Inc. shall make an annual report and an audited accounting to the City Commissioners of the City of Delray Beach, for all receipts and disbursements of City funds, all bond proceeds, grants,

subsidies and private donations of any kind or sort whatsoever. Such reports and accounting shall be furnished no later than one hundred twenty days (120) days subsequent to the close of Old School Square, Inc.'s fiscal year.

(d) The City shall, at all times, have the right to audit all records of Old School Square, Inc. Old School Square will comply with the same records retention regulations as prescribed by the State of Florida.

14. Admissions and Charges. Subject to the approval of the City Manager and ratification of the City Commission as to admissions policies, the Board of Directors shall be empowered to establish and collect admission prices and charges.

15. Term of Agreement. The term of this Agreement shall be until such time as the lease shall terminate. However, this Management Agreement shall be reviewed annually by the parties hereto.

16. Modification. No amendment or modification to this Agreement shall be effective unless in writing and signed by each of the parties hereto.

17. Conflicts. Pursuant to Paragraph 18 of the Lease, this Management Agreement is hereby incorporated within the Lease Agreement and to the extent that there may be any express conflicts with the terms and conditions of the Lease Agreement, the terms and conditions of the Management Agreement shall prevail.

18. Liability. No contract executed by Old School Square, Inc. for any obligation incurred by Old School Square, Inc., shall be binding upon the City, unless specifically approved by the City Commission of the City of Delray Beach. Whenever City funds appropriated to Old School Square, Inc. for the cultural center are to be expended, the Board of Directors shall comply with the formal bid requirements of the City.

19. Encumbrances. Old School Square, Inc. shall not be authorized to mortgage, or otherwise impair or encumber the title to the Old School Square property as such is described in the Lease Agreement.

20. Assignment. This agreement may not be assigned without the written consent of the parties hereto.

CITY OF DELRAY BEACH, FLORIDA

By: _____

Thomas Lynch
Mayor

Attest:

Alvin McGeoghegan Hart
City Clerk

Approved as to Form:

Susan A. Riley
City Attorney

OLD SCHOOL SQUARE, INC.

By: _____

Francis J. Bourque

Witness

Witness

State of Florida
County of Palm Beach

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared Frances F Bouquet known to me to be the persons described in and who executed the foregoing instrument as President and Chairman, respectively, of Old School Square Inc. a corporation organized under the laws of the state of Florida. They acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of the corporation, and that they also affixed thereto the official seal of the corporation.

SWORN TO AND SUBSCRIBED before me this 18th day of July, 1990.

William Kay
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP JULY 19, 1993
BONDED THRU GENERAL INS. UND.