

AGREEMENT NO. 47669

THIS AGREEMENT, made and entered into this 10 day of NOV., 1987 by and between the Parks and Recreation Board of the City of Phoenix, Arizona, hereinafter called "BOARD" and the Rosson House - Heritage Square Foundation, Inc., hereinafter called "FOUNDATION."

W I T N E S S E T H

WHEREAS, the City of Phoenix is the owner of Heritage Square, a City park, located between Monroe and Adams streets and 6th and 7th Streets and the north one-third of Block 15, and is under the jurisdiction, control, and management of the BOARD, and;

WHEREAS, the FOUNDATION has contributed in excess of \$500,000 in gifts and has secured over \$700,000 of in-kind services to develop portions of Heritage Square, and;

WHEREAS, these FOUNDATION contributions have enabled restoration of the Rosson House, the Silva House, the Bouvier-Teeter House, the Stevens-Haustgen House, and the Burgess Carriage House, and;

WHEREAS, the FOUNDATION has made significant contributions toward the Rosson House operational upkeep and Heritage Square Management through private fund-raising efforts, and;

WHEREAS, the FOUNDATION has agreed to hold any and all portions of Heritage Square open to the public during the hours specified by the BOARD, and;

WHEREAS, the BOARD desires to continue accepting FOUNDATION cash and service contributions, and;

WHEREAS, the FOUNDATION will continue to share sub-permit fees to be used for operation and maintenance of Heritage Square.

NOW, THEREFORE, in consideration of the mutual covenants and mutual promises herein set forth, it is agreed as follows:

1. It is understood that this Agreement is in the nature of a permit and does not create a lease, easement, other estate, or right in the real property.

2. BOARD hereby grants to FOUNDATION a Master Use Permit to use the premises individually called:
 - (a) Teeter Carriage House,
 - (b) Stevens House,
 - (c) Stevens-Haustgen House,
 - (d) Bouvier-Teeter House, and,
 - (e) Burgess Carriage House.

This Agreement shall extend to the Baird Machine Shop (Ponder Sign Shop), the Thomas House, and other structures moved or constructed on the north one-third of Block 15. Any portion of Heritage Square,

including common areas and gardens, not specifically mentioned in this paragraph shall not be subject to this Agreement and shall remain under the BOARD.

3. BOARD hereby designates the City of Phoenix Parks, Recreation and Library Department Director ("DIRECTOR") or his designate as its agent with whom the FOUNDATION shall deal in the matter of carrying out the provisions of this Agreement.

The FOUNDATION shall:

1. Enter into sub-permit Agreements with third parties for commercial, retail, or exhibition purposes, in keeping with Heritage Square's historic and cultural theme. Such Agreements shall be subject to review and approval of the BOARD.
2. Collect and remit to the BOARD by the 30th of each month, **two-thirds (2/3)** of all previous month's sub-permit fees received for deposit into the City of Phoenix Heritage Square Fund in accordance with acceptable accounting practices. The balance of these sub-permit fee's shall be deposited into FOUNDATION accounts.
3. Agree that the foundations one-third (1/3) of the funds derived from the sub-permittees shall be used for FOUNDATION operational expenses such as staffing, office expenses, supplies, projects, improvements, exhibits, education, marketing, public relations, events, and other daily expenses.

Within the first quarter of the fiscal year (July 1 to June 30), the FOUNDATION shall appear before the BOARD to review the previous year's expenditures and propose a budget for the next year. The BOARD may audit the FOUNDATION'S financial records.

4. Recommend sub-permit rental fees plus other sub-permit agreement terms subject to review and approval by the BOARD. After approval, the sub-permit agreement will become binding on all parties.
5. Be responsible, through its sub-permittees, for gas, electricity, telephone service, appropriate security and alarm systems, interior janitorial maintenance, as well as maintenance and repairs necessitated by normal structural use.
6. Not erect or alter any Heritage Square buildings or structures except upon written consent of BOARD.

The BOARD shall:

1. Maintain exterior landscaping, heating and air systems, and provide water and garbage service for structures. In addition, structural repairs beyond damage due to public utilization will be handled. These items will be paid from annually budgeted Parks, Recreation and Library Department General Operating Funds.
2. Maintain a Heritage Square Fund for deposits of all funds generated to the BOARD from this Agreement.

3. Agree that all expenditures from the Heritage Square Fund shall be for restoration and maintenance of Heritage Square. Expenditures from the Heritage Square Fund are contingent upon City of Phoenix budgeted funds availability. Expenditures must follow standard City of Phoenix buying procedures.

Both PARTIES shall:

1. Agree that the term of this Agreement shall be for fifteen (15) years. At the conclusion of the fifteen years, the FOUNDATION may request of the BOARD an option to extend the Agreement for an additional five (5) years. An additional five year extension may be granted by mutual consent. The final decision to extend the agreement lies solely with the Board.
2. Agree that either party may cancel this Agreement upon ninety (90) days written notice. Upon approval by the BOARD, a Sub-permit Agreement may survive cancellation of this Agreement.
3. As required by Section 18-22 of the City of Phoenix Code, the following paragraph shall be considered a binding covenant of this Agreement:

"Any supplier in performing under this contract, shall not discriminate against any worker, employee, or applicant, or any member of the public, because of race, creed, color, religion, sex, or national origin, nor otherwise commit an unfair employment practice. The supplier will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The supplier further agrees that this clause will be incorporated in all contracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this contract.

'The attention of all suppliers is called to Ordinance No. G-881, passed October 8, 1968; Ordinance No. G-1080, passed April 6, 1971; and Ordinance No. G-1121, passed October 5, 1971.'

4. As required by the City of Phoenix, the following paragraph shall be considered a binding covenant of this Agreement:

Compliance with the Immigration Reform and Control Act of 1968 (IRCA) required. FOUNDATION understands and acknowledges the applicability of the IRCA. FOUNDATION agrees to comply with the IRCA in performing under this Agreement and to permit City of Phoenix inspection of its personnel records to verify such compliance.

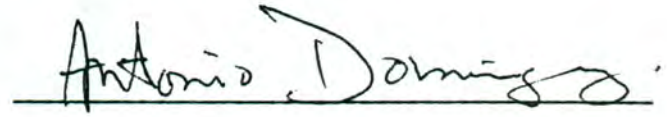
5. Each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including such reasonable attorney's fees as may be assessed by law) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims are proximately caused by the negligence, misconduct or other fault of the indemnitor, its agents, employees or contractors.
6. Except as provided in Section 1 on page 3 of the FOUNDATION agreements, the rights granted under this Agreement are not assignable or otherwise transferable without the prior written consent of the BOARD.

IN WITNESS WHEREOF, the parties hereto have caused this permit Agreement to be executed the day and year first above written.

PARKS AND RECREATION BOARD OF
THE CITY OF PHOENIX

ATTEST

CITY CLERK


ITS CHAIRMAN


ATTEST:



APPROVED:

ROSSON HOUSE-HERITAGE SQUARE
FOUNDATION, INC.


ACTING CITY ATTORNEY RTR


ITS PRESIDENT

ATTEST:



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