

RESOLUTION NO. 08-242

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING A FIVE-YEAR LEASE RENEWAL BY WESLEY HOUSE COMMUNITY CENTER, INC.; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Wesley House occupies a portion of City property at Bayview Park pursuant to a lease agreement with the City of Key West; and

WHEREAS, the City Commission finds that continued occupancy of the property by Wesley House pursuant to the terms and conditions of the attached lease agreement provides a valuable public benefit and is otherwise consistent with City Code of Ordinances section 2-941(c);

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:


Section 1: That the attached five-year lease agreement is hereby approved, to commence on October 1, 2008.

Section 2: That this Resolution shall go into effect immediately upon its passage, adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.


Passed and adopted by the City Commission at a meeting held this 3rd day of September, 2008.

Authenticated by the presiding officer and Clerk of the Commission on September 4, 2008.

Filed with the Clerk September 4, 2008.


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



EXECUTIVE SUMMARY

TO: City Commission

CC: Jim Scholl, Mark Finigan

FR: Marilyn Wilbarger, RPA, CCIM

DT: August 14, 2008

RE: Wesley House Family Services Lease Renewal

ACTION STATEMENT:

This is a request to renew the lease for the Wesley House Family Services for the vacant city owned lot that is a portion of Bayview Park.

BACKGROUND:

The Wesley House has occupied this property for many years. The last lease was signed in 1998 and renewed in 2003. The terms of the proposed lease are as follows:

PREMISES: Vacant lot approximately 43 X 145 feet as shown on Exhibit A of the lease

TERM: Five years effective October 1, 2008

RATE : One Dollar (\$1.00) per year

USE: Operation of a children's playground, outdoor area and parking area, and for no other purpose.

RECOMMENDATION:

Staff recommends the continued support of Wesley House Family Services, a tax exempt, non-profit agency designated as a 501 (c) (3).

Lease Agreement

between

City of Key West

as Landlord

and

The Wesley House Family Services, Inc.

as Tenant

Dated September 3, 2008

THIS LEASE, made and entered into at Key West, Monroe County, Florida, this 3rd day of Sept., 2008 by and between THE CITY OF KEY WEST, whose address is P.O. Box 1409, Key West, Florida, 33041, (hereinafter "LANDLORD"), and WESLEY HOUSE FAMILY SERVICES, INC. whose address is 1304 Truman Avenue, Key West, Florida, 33040, (hereinafter "TENANT").

WITNESSETH:

That the LANDLORD and the TENANT, for and in consideration of their respective obligations contained herein, agree as follows:

1. DEMISE. The LANDLORD does hereby lease to the TENANT, and the TENANT does hereby lease from the LANDLORD, the following described premises, situated in Monroe County, Florida (hereinafter referred to as "Premises") pursuant to the Phillips & Trice Survey attached hereto and incorporated as **Exhibit A**.

2. TERM. The term of this Lease shall be for five (5) years, which term shall commence on October 1, 2008, and shall end at midnight on September 30, 2013.

3. RENT. The TENANT agrees to pay to the LANDLORD an annual rent for the Premises of One Dollar (\$1.00) per year, which rental amount shall be paid on an annual basis on October 1, or earlier, of each year of the term of this Lease. The TENANT additionally agrees to pay to LANDLORD any sales, use, excise, ad valorem,

or other tax imposed or levied against rent or any other charge or payment which tax has been imposed or levied by any governmental agency having jurisdiction thereof, including any new taxes imposed during the term of this Lease which are in addition to or in substitution for any such tax which is presently imposed, and the TENANT agrees to make payment at the time said tax becomes due.

4. USE OF THE PREMISES. The TENANT shall be entitled to use the Premises for the operation of a children's playground, outdoor space and additional parking, and for no other purpose. In addition, TENANT further agrees:

A. Not to display any banners, pennants, search lights, signs, balloons, or similar temporary media on the Premises;

B. Not to commit waste in the Premises and to keep the Premises in a safe, neat, clean and orderly condition and to maintain the Premises in good condition;

C. Not to use the Premises or permit the same to be used in any manner that violates any law or ordinance, rules and regulations of the LANDLORD, or other governmental agencies, as existing or promulgated during the term hereof, or in a manner that would constitute a hazardous use of the Premises or violate any insurance policy of the TENANT or the LANDLORD;

D. To take no action that would: (i) violate the LANDLORD's contracts or (ii) cause any work stoppage or cause any manner of interference with LANDLORD.

E. To abide by and observe all rules and regulations established from time to time by the LANDLORD and the LANDLORD's insurance carrier.

F. To obtain and maintain all licenses, permits, and other approvals necessary to conduct the TENANT's business during the Lease term.

5. COVENANT OF QUIET POSSESSION. So long as the TENANT pays all of the rent and charges due herein, TENANT shall peaceably and quietly have, hold, and enjoy the Premises throughout the term of this Lease without interference or hindrance by the LANDLORD or LANDLORD's agents.

6. INSURANCE; INDEMNIFICATION.

A. The TENANT covenants and agrees to keep in force during the lease term a comprehensive general liability policy of insurance insuring LANDLORD and TENANT against any liability whatsoever occasioned by accident on or about the Premises and agrees that LANDLORD shall be listed thereon as additional insured. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. The comprehensive general liability policy shall be in the amount of One Million Dollars (\$1,000,000.00) in respect to any one incident and in the aggregate, and shall include Three Hundred Thousand Dollars (\$300,000.00) for property damage. The

original policy or certificate, together with evidence of premium payment, shall be delivered to LANDLORD. TENANT shall renew the policy not less than thirty (30) days prior to the expiration date each year, and shall furnish evidence of the renewals and payment to LANDLORD. To the extent that such a provision is obtainable, the policy shall provide that it cannot be cancelled or terminated until at least thirty (30) days prior notice has been given to LANDLORD. If TENANT falls under the State of Florida Workers Compensation Law, worker's compensation coverage shall be provided for all employees where TENANT is obligated to do so by operation of law. This coverage shall be for statutory limits in compliance with applicable state and federal laws. Failure of TENANT to maintain the insurance in full force and effect at any time shall be deemed a material breach of this Lease, and shall entitle LANDLORD to terminate the Lease. Upon such breach, TENANT shall immediately suspend all use of the Premises and shall provide to LANDLORD written notice of its failure to maintain insurance coverage.

B. TENANT agrees to indemnify, hold harmless and defend the LANDLORD, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney's fees, court costs, and expenses, caused by the conduct, misconduct, negligent error, omission or act of TENANT, its employees agents, servants or officers, or accruing, resulting from, or related to the subject matter of this Lease, including, without limitation, any and all claims, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property, whether or not suit be brought. The provisions of this indemnification provision shall survive the expiration or earlier termination of this Lease.

7. ASSIGNMENT AND HYPOTHECATION. This Lease is not transferable or assignable, except as provided by Resolution of the Key West City Commission. The TENANT may not sublet the Premises or any part thereof. Any assignment or sub-letting, even with the LANDLORD's consent, shall not relieve the TENANT from the obligation to keep and be bound by the agreements of this Lease. The acceptance of Rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease or to be consent to the assignment for benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior consent of the LANDLORD.

8. DEFAULT CLAUSE.

A. It is covenanted and agreed by LANDLORD and TENANT that in case at any time default shall be made in the payment of rent, or if the TENANT shall fail to pay any of the taxes or assessments herein provided for, or in case of the sale of or forfeiture of the Premises or any part thereof during the demised term for non-payment of any tax or assessment, or in case the TENANT shall fail to keep the required insurance, or shall fail to spend insurance money, as herein provided for, or if the TENANT shall fail to perform any of the covenants of this Lease, then, in any of such events, TENANT shall be subject to eviction pursuant to Chapter 83, Florida Statutes.

B. Or, the LANDLORD may have such other remedies as the law and this instrument afford, and the TENANT covenants and agrees that upon the termination of the demised term, at such election of the LANDLORD, or in any other way, the

TENANT will surrender and deliver up the Premises and property (real and personal) peaceably to the LANDLORD, its agent, or attorneys, immediately upon the termination of the demised term. If the TENANT, its agents, attorneys, or tenants shall hold the Premises or any part thereof, one (1) day after the same should be surrendered according to the terms of this Lease, it shall be deemed guilty of forcible detainer of the Premises under the applicable statute and shall be subject to eviction or removal, forcibly or otherwise.

C. Where the alleged default consists of some alleged violation of any term of this Lease, other than the payments of money, including rent and insurance premiums, the LANDLORD may not declare this Lease in default until such violation shall have continued for ten (10) days after the LANDLORD shall have given the TENANT written notice of such violation, and TENANT shall not have undertaken, during this ten (10) days notice period, to cure said violation by vigorous and affirmative action, provided, however, that nothing herein contained shall be construed as precluding the LANDLORD from having such remedy as may be and become necessary in order to preserve the LANDLORD'S right and interest of the LANDLORD in the Premises and in this Lease, even before the expiration of the grace or notice periods provided for in this paragraph, if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the LANDLORD in this Lease and in the Premises. With respect to the payment of the insurance premiums, the same must be paid at least thirty (30) days prior to the time when the policies would lapse for the failure to pay premiums thereon, and evidence of

such payment given to the LANDLORD without any written notice being required to be served upon the TENANT in connection therewith.

E. All default and grace periods shall be deemed to run concurrently and not consecutively.

F. It is mutually covenanted and agreed that the various rights, powers, options, elections, privileges, and remedies of the LANDLORD contained in this Lease shall be construed as cumulative and no one of them shall be construed as being exclusive of the other or exclusive of any rights or priorities allowed by law.

G. It is further covenanted and agreed by and between the parties hereto that the right given to the LANDLORD in this Lease to collect the rent that may be due under the terms of this Lease by any proceeding under same, or the right to collect any additional rent, money, or payments due under the terms of this Lease by any proceedings under same, or the right given the LANDLORD to enforce any of the terms and provisions of this Lease shall not in any way affect the right of such LANDLORD to declare this Lease void and the terms ended hereby, as herein provided, when default is made in the payment of rent or when default is made by the TENANT in any of the terms and provisions of this Lease.

H. If at any time, by reason of the failure of the TENANT to keep and perform any covenant or agreement which, under the terms of this Lease, the TENANT is bound and obligated to keep and perform, it becomes necessary for the LANDLORD to employ an attorney to protect the rights and interests of the LANDLORD in the property demised or to enforce the Lease or proceed under it in any particular, then in any of such events, the TENANT will owe and will pay unto the LANDLORD all costs of Court and

reasonable attorney's fees incurred or expended by the LANDLORD in taking such actions, including actions taken in all trial and appellate courts.

9. TENANT'S DUTY TO KEEP PREMISES IN GOOD REPAIR. The TENANT covenants and agrees with the LANDLORD that during the term of this Lease, the TENANT will keep in good state of repair and in current condition, the Premises and all furnishings brought or placed upon the Premises by the TENANT; nor will the TENANT suffer or permit any strip, waste, or neglect of any such personal property to be committed; and the TENANT will repair, replace, and renovate the personal property as often as it maybe necessary in order to keep the personal property which is subject to the LANDLORD's lien, in good repair and condition.

10. ADDITIONAL COVENANTS OF THE TENANT.

A. The TENANT shall pay for all utilities associated with the use of the Premises including, but not limited to, water, electricity, sewer gas and solid waste. In the event that a separate bill for the Premises is not available for one or more of the utility services required by the Premises, then the TENANT shall pay a pro-rated share of that particular utility based on the square footage of the Premises and/or the parties' estimated usage of that particular utility.

B. The TENANT covenants and agrees with the LANDLORD that no damage or destruction to any building or improvement by fire, windstorm, or any other casualty shall be deemed to entitle the TENANT to surrender possession of the Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or

rebate in the rent then due or thereafter becoming due under the terms hereof, unless otherwise specifically provided for herein. If the Lease is canceled for the TENANT's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the Lease, be deemed immediately to become absolute and unconditional property of the LANDLORD. In the event of destruction of the Premises by casualty or hazard, the LANDLORD will have the option of canceling the Lease.

C. The TENANT covenants and agrees with the LANDLORD that nothing in this Lease shall ever be construed as empowering the TENANT to encumber or cause the TENANT to encumber the title or interest of the LANDLORD.

D. The TENANT covenants and agrees with the LANDLORD that, at the termination of this Lease, the TENANT will peaceably and quietly deliver unto the LANDLORD, possession of the Premises and all improvements located thereon, as well as the LANDLORD's interest in all fixtures and equipment appertaining thereto.

E. The TENANT agrees not to make any changes or alterations without written approval of the LANDLORD.

11. LANDLORD'S RIGHT OF ENTRY. The LANDLORD or its agents shall have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the TENANT in the conduct of the TENANT's business on the Premises.

12. EQUIPMENT, FIXTURES AND SIGNS. All fixtures, equipment, and signs used on the Premises by the TENANT but provided by the LANDLORD will at all times be and remain the property of the LANDLORD. Provided that this Lease is in good standing, the TENANT will have the right to remove any equipment or fixtures provided by the TENANT, or any part thereof, from the Premises during the term of this Lease, at the expiration thereof, or within a reasonable time thereafter; provided, however, that the TENANT, in so doing, does not cause any irreparable damage to the Premises; and provided further, that the TENANT shall pay or reimburse the LANDLORD for the reasonable expense of repairing damage caused by such removal.

13. ACCEPTANCE IN AS-IS CONDITION. The TENANT accepts the Premises in an as-is condition and all improvements and additions shall be at the sole expense of the TENANT.

14. NO MECHANIC'S LIENS. It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the demised term, be no mechanic's liens upon any buildings or improvements that may at any time be put upon the demised property, and that in case of any mechanic's liens the TENANT must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, LANDLORD shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall at the option of the LANDLORD, be so much additional rent due from the TENANT at the next rent due after such payment, with interest thereon at the maximum rate allowed by law.

Nothing herein shall be construed to admit that a mechanic's lien may be enforced against municipal property.

15. MISCELLANEOUS PROVISIONS. It is mutually covenanted and agreed by and between the parties as follows:

A. That no waiver or a breach of any of the covenants in this Lease contained shall be construed to be a waiver of all succeeding breach of the same covenant.

B. That time is of the essence in every particular and particularly where the obligation to pay money is involved.

C. That all arrearages in the payment of rent or in the repayment to the LANDLORD of any sums which the LANDLORD may have paid in order to cure a default of the TENANT (as elsewhere herein provided for), shall bear interest from the date when due and payable at the highest rate permitted by law until paid.

D. That no modification, release, discharge, or waiver of any provision hereof shall be of any force, effect, or value unless in writing and signed by the persons who are then LANDLORD and TENANT.

E. That all covenants, promises, conditions, and obligations contained herein or implied by law, or covenants running with the land, shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives, and assigns of each of the parties to this Lease.

F. That this instrument contains the entire agreement between the parties as of this date, and that the execution hereof has not been induced by either of the

parties by representations, promises or understandings not expressed herein, and that there are not collateral agreements, stipulations, promises, or understandings whatsoever between the representative parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

G. That when either of the parties desire to give notice to the other or others in connection with and according to the terms of this Lease, such notice shall be deemed given when it shall have been deposited in the U.S. Registered or Certified mail with sufficient postage pre-paid thereon to carry it to its addressed destination. The notice shall be addressed as follows:

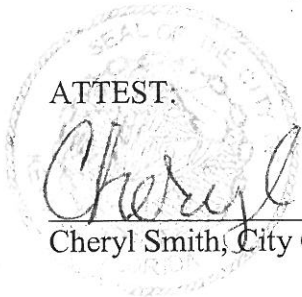
As to LANDLORD: City Manager
City of Key West
P.O. Box 1409
Key West, FL 33041

As to TENANT: President
Wesley House Family Services, Inc.
1304 Truman Avenue
Key West, FL 33040

When the parties on either side (LANDLORD or TENANT) consist of more than one person, notice or default by one of the persons on that side shall constitute notice or default by all of the persons on that side.

H. This Lease and the provisions thereof shall be governed by and construed and enforced in accordance with the laws of the State of Florida; venue for any action regarding this Lease shall be in Monroe County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused the foregoing Lease to be executed on the day and year first above written.



ATTEST:

Cheryl Smith
Cheryl Smith, City Clerk

CITY OF KEY WEST

By: Jim Scholl
Jim Scholl
City Manager

ATTEST:

Sheri Detweiler
Name: Sheri Detweiler

WESLEY HOUSE FAMILY SERVICES, INC.

By: Douglas Thomas
Name: Douglas Thomas
Its: CEO



PHILLIPS & TRICE SURVEYING, INC.

Professional Land Surveyors
1201 Sheddock Street
Key West, Florida 33445
(305) 294-1747

STATE OF FLORIDA
SCHOOL OF SURVEYING
NO. 1225, 1226
AND 1227, 1228, 1229

EXHIBIT A WESLEY HOUSE FAMILY SERVICES

SKETCH TO ILLUSTRATE THE FOLLOWING LAND DESCRIPTION RECENTLY AUTHORED BY THE UNDERSIGNED SURVEYOR

On the island of Key West, and known on the map or plan of the Island and City of Key West, delineated by William A. Whitehead in February 1829, as a part of Tract-Fourteen:

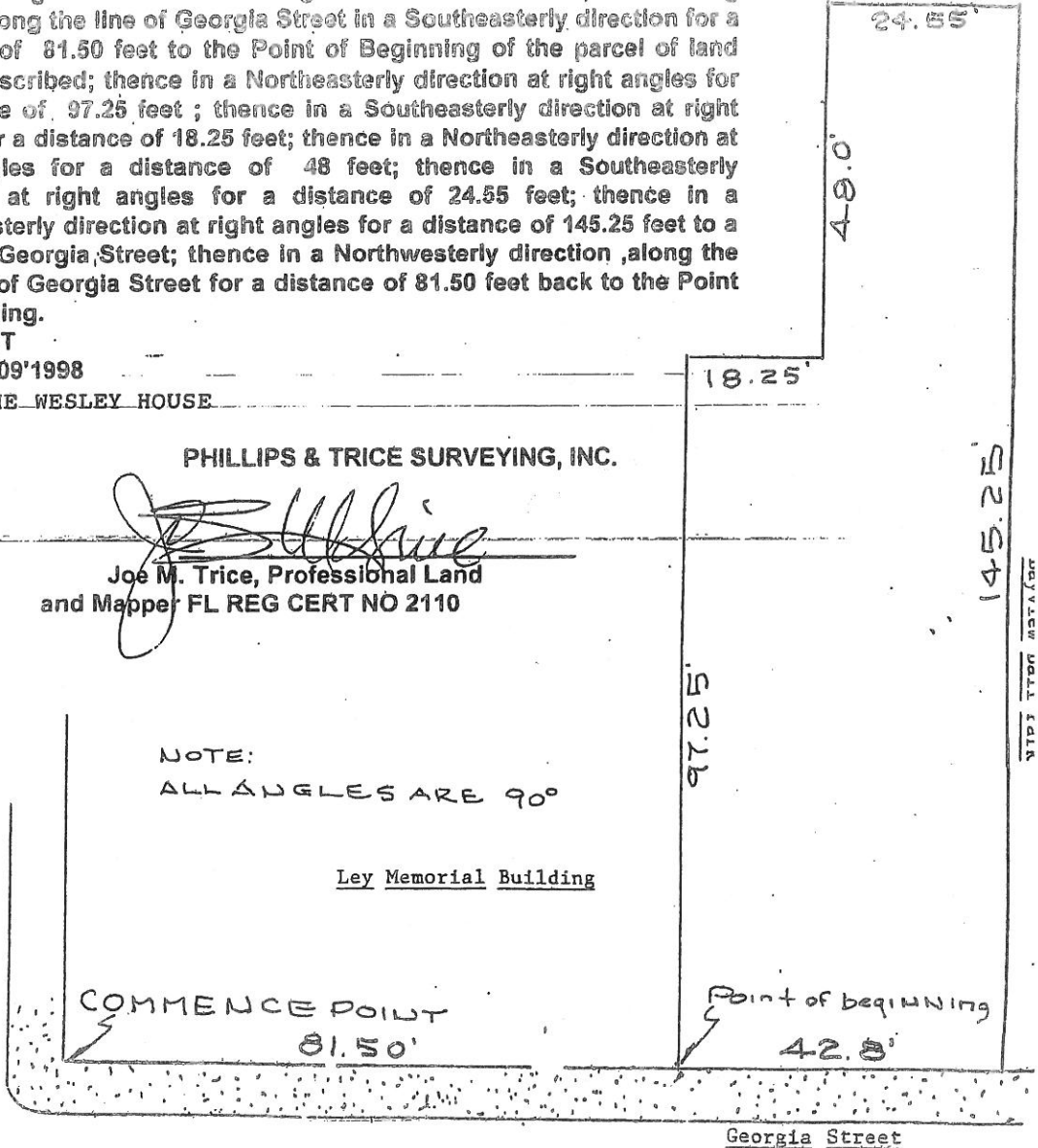
Commencing at the corner of Georgia and Division Streets, and running thence along the line of Georgia Street in a Southeasterly direction for a distance of 81.50 feet to the Point of Beginning of the parcel of land herein described; thence in a Northeasterly direction at right angles for a distance of 97.25 feet; thence in a Southeasterly direction at right angles for a distance of 18.25 feet; thence in a Northeasterly direction at right angles for a distance of 48 feet; thence in a Southeasterly direction at right angles for a distance of 24.55 feet; thence in a Southwesterly direction at right angles for a distance of 145.25 feet to a point on Georgia Street; thence in a Northwesterly direction, along the said line of Georgia Street for a distance of 81.50 feet back to the Point of Beginning.

KEY WEST
AUGUST 09'1998

FOR : THE WESLEY HOUSE

1/4 AC. ASSUMED

Tennis Courts



PHILLIPS & TRICE SURVEYING, INC.

Joe M. Trice
Joe M. Trice, Professional Land
and Mapper FL REG CERT NO 2110

NOTE:
ALL ANGLES ARE 90°

Ley Memorial Building

COMENCEMENT POINT
81.50'

Point of Beginning
42.8'

TRUMAN AVE.
50'

GEORGIA ST.
50' R-W

See the other side of this sheet for abbreviations that may have been used above