

# MEMORANDUM

Council Agenda Item 4A

**To:** Honorable Harley Strickland, Mayor and City Council Members  
**From:** William E. Reischmann, Jr., Esquire, City Attorney  
**Subject:** **City of Orange City – Village Improvement Association (“VIA”) Memorandum of Understanding.**  
**Date:** February 6, 2008

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## **PURPOSE**

To have the City Council approve the Memorandum of Understanding with the VIA.

## **BACKGROUND**

This Memorandum of Understanding is to allow the VIA to use the Albertus Cottage on a month to month basis, said use to be dictated by the City. The Memorandum of Understanding limits the VIA's use of the premises to Association meetings, historical displays, education and storage. The Memorandum of Understanding requires the VIA to provide insurance naming the City as an additional insured. The City may terminate the VIA's use of the premises upon 10 days written notice (Paragraph #14).

## **RECOMMENDATION**

Staff recommends, following Council's review and consideration of the Memorandum of Understanding, the City Council direct the City Manager to execute the Memorandum of Understanding on behalf of the City of Orange City.

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING**, made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **CITY OF ORANGE CITY**, a Florida municipal corporation, hereinafter called "CITY," whose address is 205 E. Graves Avenue, Orange City, Florida 32763 and **VILLAGE IMPROVEMENT ASSOCIATION ORANGE CITY WOMAN'S CLUB, INC.**, hereinafter called "VIA," whose address is 200 East Rose Avenue, Orange City, Florida 32763.

### WITNESSETH:

(1) **PREMISES.** In consideration of the rents, covenants and agreements hereinafter made, reserved and contained on the part of VIA to be observed and performed, the CITY leases to the VIA and VIA rents from CITY the premises located at 200 East Rose Avenue, Orange City, Florida 32763, and more particularly described in Exhibit "1" attached hereto, sometimes herein referred to as the "**Premises.**"

(a) Tenant has inspected and takes the Premises in "As Is" condition and subject to the existing zoning, use and occupancy regulations currently in existence. CITY shall not be responsible for any latent defect or change of condition of the Premises.

(2) **TERM.** The term of this Memorandum of Understanding, and VIA's obligation to pay rent, shall commence on \_\_\_\_\_, 2008 and shall be on a month-to-month basis.

(3) **RENT.** The VIA covenants and agrees to pay to CITY at such place as CITY may, in writing, from time to time designate, rent in lawful money of the United States for the Premises, a guaranteed and fixed monthly rental of **\$1.00** per month, and continuing on the same day of each month thereafter.

(4) **USE.** VIA shall use the premises for Village Improvement Association meetings, historical displays, education, and storage. The location and manner of such use shall be scheduled by the City. The premises shall be used for no other purpose without written prior authorization of the City Manager. VIA shall not permit said premises to be used for any unlawful purpose and shall at all times comply with the laws and rules and regulations of the applicable governmental bodies and fire inspection and rating bureaus relating to the use of said premises, including sidewalks, alleys, and streets adjoining.

(5) **MAINTENANCE.** VIA shall accept said premises in the condition that the same shall be in at the commencement of the term of this Memorandum of Understanding, and shall not permit or allow the Premises to be damaged or depreciated in value by any act of negligence of VIA, its agents, or sublessees, and VIA shall at all times during the term of this Memorandum of Understanding keep the buildings and improvements on the Premises, both exterior and interior, structural and otherwise, in good repair, ordinary wear and tear excepted. VIA shall also keep the Premises and buildings and improvements thereon in a clean condition, and shall not permit or allow any refuse or debris of VIA to accumulate thereon, or upon the sidewalks, alleys, or streets adjoining the same.

(6) MECHANIC'S LIENS. VIA shall not have nor shall anyone claiming by, through, or under VIA have the right to file or place any mechanic's liens or other lien of any kind or character whatsoever upon said Premises or upon any building or improvement thereon, or upon the leasehold interest of VIA therein, nor shall anyone furnishing any material, service, or labor for any building improvements, alterations, repairs, or any part thereof, at any time be or become entitled to any lien thereon.

(7) UTILITIES. All application for utility service shall be made in the name of Orange City. VIA acknowledges that the leased premises are designed to provide standard office use electrical facilities and standard office lighting. VIA shall not use any equipment or devices that utilize excessive electrical energy or that may, in CITY's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

(8) INSPECTION OF AND ACCESS TO PREMISES. CITY, its agents and employees, shall have the right, at all reasonable times, to enter the Premises or any part thereof to inspect and examine same and for the purpose of making any repairs to or within the Premises which the CITY has agreed to make under the terms of this Memorandum of Understanding, and/or which the CITY deems advisable to make in order to preserve and/or maintain the Premises.

(9) PARKING. During the term of this Memorandum of Understanding, VIA shall have the nonexclusive use in common with CITY, other tenants of the building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and foot ways, subject to rules and regulations for the use thereof as prescribed from time to time by CITY. CITY reserves the right to designate parking areas with the building or in a reasonable proximity thereto, for VIA and VIA's agents and employees.

(10) PUBLIC LIABILITY INSURANCE. VIA shall at all times during the term of this Memorandum of Understanding, carry general liability, accident, and property damage insurance and such other insurance as should be carried for the protection of CITY as provided for in this paragraph. Such liability, accident, and property damage insurance shall be to protect CITY against any claims for injuries to person or persons or property arising or growing out of the use of said Premises by VIA, and the amount of liability insurance shall be an amount acceptable to CITY. VIA shall provide CITY with a Certificate of Insurance showing CITY as additional insured. The Certificate shall provide for a ten-day written notice to CITY in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by CITY or VIA, VIA and CITY, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

(11) FIRE INSURANCE. VIA shall, at its sole expense, at all times during the term of this Memorandum of Understanding, carry fire, extended coverage, vandalism, and malicious mischief insurance in an amount acceptable to CITY. All insurance policies secured by VIA pursuant to this Memorandum of Understanding shall name CITY as an additional insured and VIA shall provide CITY with a copy of all policies.

(12) ASSIGNMENT AND SUBLETTING. VIA shall not, without the prior written consent of CITY first obtained, assign this Memorandum of Understanding, or sublet the Premises or

any part thereof, or permit the use of the Premises by any party other than VIA. Consent given by CITY to any assignment or sublease of this Memorandum of Understanding shall not nullify this provision, and all subsequent assignments or subleases shall be made only subject to the obtaining of prior written consent of CITY, which shall not be unreasonably withheld. The assignee or sublessee of VIA, at option of CITY, shall become directly liable to CITY for all obligations of VIA hereunder, but no sublease or assignment by VIA shall relieve VIA of any primary liability hereunder nor of its obligations to comply promptly and faithfully with all of the terms and conditions of this Memorandum of Understanding, unless the other party hereto shall specifically agree in writing that such proposed assignment shall so release the assigning party.

(13) SUCCESSORS. All rights, obligations, and liabilities given to, or imposed upon the parties hereto shall extend to and bind the respective heirs, executors, administrators, successors, sublessees, licensees, concessionaires, and assigns of such parties. No rights, however, shall inure to the benefit of any assignee of VIA unless the assignment of such assignee has been approved by CITY in writing as hereinabove set forth.

The term "CITY" as used in this Memorandum of Understanding, so far as covenants and conditions on the part of CITY is concerned, shall be limited to mean THE CITY OF ORANGE CITY, and in the event of any transfer of title to the premises, CITY, and in case of any subsequent transfers or conveyances, the then grantor, shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects to the performance of any covenants and conditions on the part of CITY thereafter to be performed, provided that any amount then due and payable to VIA by CITY, or the then grantor, under any provisions of this Memorandum of Understanding, shall be paid to VIA, it being intended hereby that the covenants and conditions contained in this Memorandum of Understanding on the part of CITY shall be binding on CITY, its successors and assigns, only during and in respect of their respective successive period of ownership.

(14) DEFAULT. In the event VIA shall fail for five (5) days following receipt of notice from CITY to remedy any default in the payment when due of any sum required to be paid by VIA under this Memorandum of Understanding, or in the event VIA shall fail to take all reasonable steps to perform any other term, covenant or condition herein after ten (10) days notice from CITY to do so, then in either such event CITY may, at its option, to be exercised in writing, cause the forfeiture of this Memorandum of Understanding. Possession of the within Premises and all additions and permanent improvements thereof shall be delivered to CITY upon ten (10) days written notice that CITY has exercised said option, and thereupon CITY shall be entitled to and may take immediate possession of the Premises, and other notice or demand being hereby waived.

(15) VENUE. Venue for enforcement hereof shall be in Volusia County, Florida. In the event CITY retains an attorney to enforce its rights in this Memorandum of Understanding, VIA shall be responsible to pay any reasonable attorney's fees incurred with or without a lawsuit, including fees incurred for appeals. Each party hereby waives trial by jury as to any and all such litigation.

(16) RIGHTS CUMULATIVE. All rights, powers and privileges available hereunder to the parties hereto are cumulative and are in addition to the rights granted by law.

(17) WAIVER OF RIGHTS. No failure of CITY to exercise from time to time any right or privilege granted CITY hereunder, or to obligations hereunder required of the VIA, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of CITY's right to demand strict compliance with the terms hereof. No waiver by CITY of any breach of any covenant of the VIA herein contained shall be construed as a waiver of any subsequent breach of the same or any other covenant herein contained.

(18) ENTIRE AGREEMENT. This Memorandum of Understanding contains and embodies the entire agreement of the parties hereto and no representations, inducements or agreements, oral or otherwise, between the parties not contained and embodied herein shall be of any force or effect, and the same way not be modified, changed or terminated in whole or in part orally or in any manner other than by an agreement in writing duly signed by all of the parties hereto.

A. VIA will promptly comply with all applicable laws, guidelines, rules, regulations and requirements, whether of federal, state, or local origin, applicable to the Premises and the Building, including those for the correction, prevention and abatement of nuisance, unsafe conditions, or other grievances arising from or for the correction, prevention and abatement of nuisance, unsafe conditions, or other grievances arising from or pertaining to the use or occupancy of the Premises. VIA acknowledges that the Premises and/or the parking facilities may contain potentially hazardous substances, including but not limited to, asbestos containing materials, radon gas, mineral fibers, and other like materials (all of such materials are referred to herein as "Environmental Concerns"). Accordingly, VIA agrees that VIA and VIA's Agents shall comply with all operation and maintenance programs and guidelines implemented or promulgated from time to time by CITY or its consultants, including, but not limited to, those matters set forth in Subsection B and C below, in order to reduce the risk to VIA, VIA's Agents or any other tenants of the building of injury from environmental concerns.

B. VIA shall provide thirty (30) days notice to CITY prior to the performance by VIA, VIA's Agents or contractors of any structural repairs, renovation and/or maintenance, to the Premises. Such notice shall include a detailed description of the work contemplated. VIA shall not perform, or cause to be performed, any such repair, renovation and or maintenance without the written consent of CITY, and if such consent is granted, the repair, renovation and or maintenance must be performed in accordance with the terms of CITY's consent. VIA agrees to bear the expense for whatever preventive or abatement measures are required by CITY with respect to friable asbestos or any other material.

C. VIA shall indemnify, defend, and hold harmless CITY from and against any and all claims or liability arising from the performance of the repair, renovation, and/or maintenance described above. This indemnity shall include, but not be limited to, claims or liabilities asserted against CITY based upon negligence, strict liability or other liability by operation of law to any third party or government entity, and all costs, attorney's fees, expenses, and liabilities incurred by CITY in the defense of any such claim. CITY shall defend any such claim at VIA's expense by counsel selected by CITY. Furthermore, as a material part of the consideration to CITY for the entering into this Memorandum of Understanding, VIA assumes all risk of damages to property or injury to persons in, upon, or about the Premises arising from any act or omission of VIA, VIA's Agents, employees, contractors, and invitees, resulting in the release or threatened release of friable asbestos.

VIA shall be liable for the entire cost of abating and remediating any such release or threatened release, and VIA shall indemnify, defend, and hold harmless CITY from and against any and all claims or liability arising therefrom.

(21) PROPERTY REMAINING. All property (including, but not limited to, papers, books, office supplies, fixtures, furniture, and equipment) remaining in the Building, whatsoever the value, at the conclusion of the Memorandum of Understanding shall become the property of the CITY.

(22) NOTICES. Notices to VIA and CITY shall be deemed delivered (i) when hand delivered, or (ii) one (1) business day following delivery to an express delivery courier, such as Federal Express, or (iii) three (3) days following deposit in U.S. mail, certified, return receipt requested. Notice shall be given to the following addresses:

VIA: Village Improvement Association  
Attn: \_\_\_\_\_  
200 East Rose Avenue  
Orange City, Florida 32763

CITY: City of Orange City  
Attn: John J. McCue, City Manager  
205 East Graves Avenue  
Orange City, Florida 32763

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year indicated below.

WITNESSES:

VILLAGE IMPROVEMENT ASSOCIATION

\_\_\_\_\_  
(signature)

By: \_\_\_\_\_

\_\_\_\_\_  
(print name)

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
(signature)

Title: \_\_\_\_\_

\_\_\_\_\_  
(print name)

CITY OF ORANGE CITY, FLORIDA

ATTEST:

By: \_\_\_\_\_  
JOHN J. McCUE, CITY MANAGER

By: \_\_\_\_\_  
DEBORAH RENNER  
CITY CLERK

Date: \_\_\_\_\_

Approved by the City Council at its public meeting held on \_\_\_\_\_.

**EXHIBIT "1"**

[LEGAL DESCRIPTION]