

MANAGEMENT AGREEMENT

This Agreement made on _____, 2019, by and between the Board of County Commissioners of Martin County, Florida (the "County") and, The Historical Society of Martin County, a non-profit corporation organized under the laws of the State of Florida (the "Society").

WITNESSETH

WHEREAS, the County holds title to the following described property including the structures thereon located in Martin County, Florida, commonly known as "Gilbert's Bar House of Refuge" ("property"); and

WHEREAS, the Society is experienced in the programming and operation of this historic site; and

WHEREAS, the County has agreed to provide maintenance and preservation of the physical structures and property, and to provide financial support to the Society for the management of the tours and programs at the property.

NOW THEREFORE, in consideration of the mutual covenants set forth below, the County and the Society agree as follows:

SECTION 1. MUTUAL RESPONSIBILITIES

- 1.1 The Society shall continue to act as the exclusive agent of the County for the operation of the property as a public museum. The Society agrees to operate the museum seven days each week, but is not required to operate on legal holidays (Christmas Day, New Year's Day, Thanksgiving Day, Fourth of July). The Society agrees that the hours of operation for the property shall be 10:00 a.m. to 4:00 p.m. Monday through Saturday and 1:00 p.m. to 4:00 p.m. on Sunday.
- 1.2 The Society agrees that it will not discriminate against any person because of race, religion, color, sex or national origin. The Society agrees to manage the property programs on the site in full compliance with all Martin County ordinances, resolutions or other regulations as well as all applicable State and Federal laws and regulations.

- 1.3 The County shall employ and supervise all on-site employees or contractors required for the overall maintenance, restoration and upkeep of the property. All on-site program personnel, except independent contractors and employees of independent contractors, shall be the employees of the Society.
- 1.4 The County shall use its best efforts to ensure that the property and structure are maintained in an attractive condition and in a good state of repair. The County shall establish a maintenance and improvement schedule for the repair and general periodic maintenance of the property, including assignment to the Society of limited duties for the daily museum operations and maintenance support of the property. The Society agrees to make or contract for emergency repairs and provide protective measures necessary to protect the property from damage and to prevent injury to persons or loss of life. The County will reimburse The Society for any emergency expenditures, provided, however, that such repairs must receive the prior written approval by the County Administrator. In the event of an emergency and inability to contact the County Administrator or the General Services Manager, the Society may undertake emergency action provided documentation of such emergency action will be filed with the County Administrator within 24 hours of the emergency.
- 1.5 In addition to the foregoing, the Society shall perform all services that are necessary and proper for the museum operation and management, excluding maintenance, of the property, and shall report to the County's General Services Director promptly any conditions concerning the property that require the attention of the County.
- 1.6 Representatives of the Society and the County shall meet bi-annually to discuss and develop plans for the future maintenance, preservation and operation of the property.

SECTION 2. SCHEDULE OF FEES

- 2.1 As additional compensation for the Society's programming services, the County agrees to allow the Society to retain all admission fees, event rental and gift shop sales collected from visitors to the property as established herein. The Society agrees to establish a schedule of reasonable admission fees for entrance to the property, as well as event rental fees, and agrees to maintain adequate records and internal controls to ensure that fees collected are used by the Society for the operation of the property as a museum, including but not limited

to employee salaries and programming expenses. The Society agrees to submit its schedule of fees to the County for its approval on September 1 of each year. The Society and the County agree that, in the event that the County does not approve the Society's fee schedule, the County's determination of reasonable admission fees shall be the final determination. If the County fails to act, by September 30, upon the Society's request for approval of admission fees schedule, such schedule shall be deemed approved for the fiscal year. The Society will provide to the County a list of all scheduled rental events on the first Monday of each month.

SECTION 3. RECORDS AND REPORTS

- 3.1 The Society agrees to keep books, accounts and records that reflect all revenues and all expenditures received in connection with the management and operation of the property. The books, accounts and records shall be maintained in accordance with generally accepted accounting principles at the Society's principal place of business. The Society shall maintain the original copies of all invoices, statements, purchase orders and billings as well as such other information relating to the operation or management of the property that requires the County's attention. The Society shall make the books, accounts and records required to be maintained hereunder available to the County for examination or audit during normal business hours, upon five (5) days written notice. The Society agrees to provide inspection and review by a designated county employee or agent of the above materials twice a year.
- 3.2 The Society shall furnish the County a detailed statement of all activities, attendance, rentals and revenues and expenditures on a quarterly basis on or before the following: January 31, April 30, July 31, and October 31.
- 3.3 Failure to comply with the following provisions shall be deemed a material default subject to termination as provided herein. To the extent that disclosure of information is required by law or regulation or applicable legal or regulatory process, the County shall give notice as is practicable to the Society that such disclosure is required.

Society shall comply with public records laws, specifically, Society shall:

- a. keep and maintain public records required by the County to perform the service;
- b. upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be

inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

- c. ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if Society does not transfer the records to the County; and
- d. upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of Society or keep and maintain public records required by the County to perform the service. If Society transfers all public records to the County upon completion of this Agreement, Society shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Society keeps and maintains public records upon completion of this Agreement, Society shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

IF SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (772) 288-5400, PUBLIC_RECORDS@MARTIN.FL.US, 2401 SE MONTEREY ROAD, STUART, FLORIDA 34996.

SECTION 4. MANAGEMENT FEE AND UTILITIES

- 4.1 The County shall pay a management fee to the Society of \$76,606.00 for the 2019/2020 Fiscal Year and for each fiscal year thereafter. Such fee will be disbursed on a monthly basis in the amount of \$6,383.83 for eleven (11) months with a twelfth month disbursement in the amount of \$6,383.87.
- 4.2 The County agrees to pay the monthly utility bills for electricity for the Property.

- 4.3 The Society agrees that any funds paid by the County that remain unexpended by Society at the close of each fiscal year shall be returned to the County within sixty (60) days of September 30 of that year.

SECTION 5. TERM OF AGREEMENT

- 5.1 This Agreement shall be for a three (3) year term commencing on October 1, 2019 and ending on September 30, 2022. The County and Society agree to meet on or before February 1, 2022, concerning FY22/23 Management Agreement. This Agreement may be renewed for subsequent three year periods upon written agreement of the parties.

SECTION 6. TERMINATION OF AGREEMENT

- 6.1 If the Society breaches any of the terms of this Agreement, the County shall give the Society written notice of such breach. If the Society fails to remedy the breach within ninety (90) days after receiving the above-described notice, the County may terminate this Agreement. Notwithstanding the above, either party shall have the right to terminate this Agreement for any reason upon sixty (60) days written notice. The Agreement is contingent upon the continued appropriation of adequate funding by the County.

SECTION 7. PROPERTY INTERESTS

- 7.1 Nothing contained in this Agreement shall be deemed to create or be construed as creating in the Society any property interest in and to the property. The Society agrees that any and all fixtures shall become property of the County upon expiration or termination of this Agreement.
- 7.2 The County acknowledges that the artifacts and furnishings currently contained in the property are the personal property of the Society on loan during the term of this Agreement to the County to enhance operation of the property as a museum.

SECTION 8. INSURANCE AND INDEMNIFICATION

- 8.1 Policies: The County agrees to maintain general premises insurance for the subject property. The Society agrees to maintain insurance for such personal property and historical artifacts it places on the property. The Society shall provide proof of worker's compensation insurance as required by law, if applicable.

- 8.2 Liability: The County shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by the Society or by any person whosoever may at any time be using or occupying or visiting the premises, or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of the Society, its employees or of any occupant, subtenant, visitor or user of any portion of the premises. The Society specifically agrees that the County shall not be liable for any loss or damage to the Society's personal property, historical artifacts or other property placed on the property.
- 8.3 Indemnification: The Society shall indemnify the County against all claims, liabilities, loss or damage whatsoever on account of any such loss, injury, death or damage. The Society hereby waives all claims against the County for damages to the buildings and improvements that are now or hereafter placed or built on the premises and to the property of the Society in, on or about the premises, and for injuries to persons or property in or about the premises from any cause arising at any time as a result of Society's acts, omission or negligence. The Society agrees to hold harmless the County from and against any and all claims, lawsuits, judgments, or similar causes of action, for any injuries to persons or property arising out of the activities conducted by the Society on the property described herein. Further, the Society agrees to defend the County against any and all such claims and suits as described above at the Society's sole cost and expense with no cost and expense to be incurred by the County.

SECTION 9. NOTICES

- 9.1 All notices, requests, demands, or other communications shall be in writing, and shall be deemed to have been duly given if delivered in person, or within two (2) business days after deposited in the United States mail, postage prepaid, certified, with return receipt requested, or otherwise actually delivered to **the County at 2401 SE Monterey Road, Stuart, Florida 34996**, or to **the Society at Elliot Museum, 825 NE Ocean Blvd., Stuart, Florida 34996-1696**. Either party to this Agreement may change the address at which it received written notices by so notifying the other party in writing.

SECTION 10. ASSIGNMENT

- 10.1 This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties to it, and their respective successors and assigns;

provided, however, that this Agreement may not be assigned by the Society without the prior written consent of owner, or by owner without prior written consent of agent. Anything in the foregoing to the contrary notwithstanding, the Society may, without the consent of the owner, delegate the performance of, but not the responsibility for, any duties and obligations of agent to any independent contractor or entity.

SECTION 11. SEVERABILITY

- 11.1 Should any section or any part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section in this Agreement. This Agreement has been made and entered into in the State of Florida, and the laws of Florida shall govern the validity and interpretation of this Agreement and the performance due under it.

SECTION 12. INTEGRATION

- 12.1 The drafting, execution, and delivery of this Agreement by the parties have been induced by no representations, statements, warranties or agreements other than those expressed in it. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter unless expressly referred to in it.

SECTION 13. ATTORNEY'S FEES, WAIVER OF TRIAL BY JURY, VENUE

- 13.1 If any legal action or other proceeding is brought for the enforcement of this Agreement or due to an alleged dispute, breach or default or misrepresentation in connection with any provisions of this Agreement, the parties expressly agree that each party will bear its own attorney's fees.
- 13.2 The parties specifically and expressly waive the right to a jury trial as to any issues in any way connected to this Agreement.
- 13.3 This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.

SECTION 14. MODIFICATIONS

14.1 This Agreement may not be modified unless such modification is in writing and signed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

ATTEST

COUNTY:
BOARD OF COUNTY COMMISSIONERS
OF MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER

EDWARD V. CIAMPI, CHAIRMAN
DATE: _____

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

SARAH W. WOODS, COUNTY ATTORNEY

SOCIETY:

**HISTORICAL SOCIETY OF MARTIN
COUNTY**

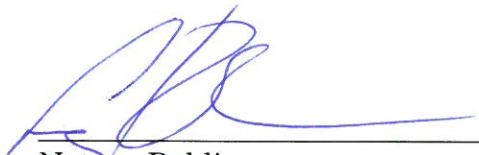
BY: 
PRESIDENT/CEO


DATE: 7-16-19

**STATE OF FLORIDA
COUNTY OF MARTIN**

This Agreement was acknowledged before me this 16th day of July, 2019, by Robert E. Steele, as President/CEO, of Historical Society of Martin County, a Florida not for profit corporation, on behalf of the corporation. He/She is personally known to me or has produced a driver's license issued within the past 5 years as identification.

NOTARY SEAL


Notary Public

 Craig Felke
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG036212
Expires 10/15/2020