

AGENDA

WESTMINSTER HOUSING AUTHORITY SPECIAL MEETING

MONDAY, FEBRUARY 24, 2014

AT 7:00 P.M.

- 1. Roll Call**
- 2. Minutes of Previous Meeting** (February 10, 2014)
- 3. Public Hearings and New Business**
 - A. Resolution No. 57 re South Westminster Arts Group Lease of 73rd Avenue Community Theater
- 4. Adjournment**

CITY OF WESTMINSTER, COLORADO
MINUTES OF THE WESTMINSTER HOUSING AUTHORITY
MONDAY, FEBRUARY 10, 2014, AT 7:20 P.M.

ROLL CALL

Present at roll call were Chairperson Herb Atchison, Vice Chairperson Faith Winter, and Board Members Bruce Baker, Bob Briggs, Alberto Garcia, Emma Pinter, and Anita Seitz. Also present were J. Brent McFall, Executive Director, Martin McCullough, Attorney, and Linda Yeager, Administrative Secretary.

MINUTES OF PRECEDING MEETING

Board Member Briggs moved, seconded by Seitz, to approve the minutes of the meeting of January 13, 2014, as written and distributed. The motion carried unanimously.

RESOLUTION NO. 56 LEASING RODEO MARKET TO SWAG

Vice Chairperson Winter moved, seconded by Briggs, to adopt Resolution No. 56 authorizing the Executive Director to execute a Cooperative Agreement and lease, in substantially the same form as attached, with the South Westminster Arts Group for use of Westminster Housing Authority-owned property at 3915 West 73rd Avenue, commonly known as the Rodeo Market building approving the 2014 Westminster Housing Authority Budget. On roll call vote, the motion passed unanimously.

ADJOURNMENT

There being no further business to conduct, the meeting adjourned at 7:24 p.m.

Chairperson

ATTEST:

Administrative Secretary

WHA Agenda Item 3 A

Agenda Memorandum

Westminster Housing Authority Meeting
February 24, 2014



SUBJECT: Resolution No. 57 re South Westminster Arts Group Lease of 73rd Avenue Community Theater

Prepared By: Tony Chacon, Senior Projects Coordinator

Recommended Board Action

Adopt Resolution No. 57 authorizing the Chair to execute a Lease Agreement, in substantially the same form as attached, with the South Westminster Arts Group for use of Westminster Housing Authority-owned property at 7287 Lowell Boulevard, referred to as the 73rd Avenue Community Theater.

Summary Statement

- The Westminster Housing Authority (WHA) Board owns property at 7287 Lowell Boulevard, referred to as the 73rd Avenue Community Theater that has been leased to the South Westminster Arts Group (SWAG) as a community theater.
- SWAG is proposing to enter into a Lease Agreement with the WHA to lease the premises through October 31, 2014.
- SWAG will sub-lease the premises to Germinal Stage, a Denver-based community theater group that intends on showing two theatrical productions in 2014.
- Per the proposed lease, SWAG would pay \$10 for the lease term and be responsible for paying water, sewer, electric and gas utility costs in full for the period of the lease. SWAG would also be responsible for routine upkeep and maintenance of the building and grounds.
- The WHA would be responsible for making repairs to and replacement of structural elements and equipment including the roof, heating, ventilation and air conditioning systems, electrical and plumbing not exceeding a cost of \$500 for any single component. Any cost in excess of \$500 would require approval of the WHA Executive Director.

Expenditure Required: \$500 (estimated maintenance)

Source of Funds: 2014 WHA Budget

Policy Issue

Should the Westminster Housing Authority lease the property at 7287 Lowell Boulevard to the non-profit South Westminster Arts Group (SWAG) for \$10.00 so as to activate use of the space by a theatrical company?

Alternatives

1. Do not lease the premises to SWAG. This alternative is not recommended as SWAG is in the process of securing an agreement with Germinal Stage, a theatrical company, to showcase two theatrical productions on the premises.
2. Lease the premises directly to Germinal Stage. This alternative is not recommended as the WHA is under agreement with SWAG to facilitate and support arts endeavors. SWAG has the better capability to meet the liability insurance requirements of the WHA.
3. Do not lease the premises at this time. This option is not recommended as a vacant space could be viewed as contributing to blight and be more prone to vandalism. Further, the WHA may need to continue to incur utility costs to preserve the structural integrity of the premises for future use.

Background Information

The City of Westminster initiated the South Westminster revitalization efforts in 1997 with the redevelopment of the Westminster Plaza Shopping Center. The South Westminster Strategic Revitalization Plan was thereafter prepared and approved by City Council on January 22, 2001. Significant revitalization success has been made with implementation of the plan that led to the construction of 72 new townhouses and a 12,000 square foot commercial building, several street enhancement projects, and park and library improvements.

As another implementation effort, the City saw an opportunity in pursuing and developing arts and cultural programming as a means of attracting new residents and businesses, while also providing activities and events for the existing neighborhood population. In pursuit of this goal, the South Westminster Arts Group (SWAG) was created to pursue and provide arts-related programming. Concurrent with the creation of SWAG the WHA and City of Westminster cooperated in converting the premises at 7287 Lowell Boulevard from a vehicle repair facility into a 50^{+/-} seat community-theater. The property was then leased to SWAG that, in turn, made it available for use by several theatrical companies. The most recent theatrical company stopped utilization of the premises in early 2013.

More recently SWAG has been able to attract a new theatrical company prospect to utilize the space. Germinal Stage, a well-known Denver theater company has expressed the desire to move onto the premises immediately and showcase two productions beginning in May and continuing through until the end of October. Germinal Stage intends to invest several thousand dollars to make improvements on the interior of the space to make it a more inviting environment for its patrons who generally are older. Germinal Stage is proposing to sub-lease the space from SWAG given SWAG's ability to comply with the WHA's liability insurance provisions. Germinal Stage has also indicated interest in extending their use of the premises further into 2015 should the property remain available.

As in past years, SWAG is proposing to enter into a lease agreement with the WHA to operate the community theater out of 7287 Lowell Boulevard. Staff proposes that the WHA again enter into a lease agreement (Attachment A) with SWAG for the year 2014 that includes the following terms and conditions:

- The lease would terminate October 31, 2014;
- SWAG would pay a lease rate of \$10.00 for the lease period;

SUBJECT:Resolution re SWAG Lease of 73rd Avenue Community Theater

Page 3

- The WHA would be responsible for repairs or equipment replacement relative to the roof, plumbing, electrical and heating, ventilation and air conditioning up to a cost of \$500 for each element. Any cost over \$500 would have to be approved by the Executive Director of the WHA;
- SWAG would be responsible for paying bills related to water, sanitary, electric, gas, phone and cable;
- SWAG would be responsible for general daily maintenance and upkeep of the grounds and building; and,
- SWAG would be required to carry its own liability insurance in addition to the coverage obtained by the WHA through the Colorado Insurance Colorado Intergovernmental Risk Sharing Agency (CIRSA).

The approval of the proposed lease to SWAG meets the City's Strategic Plan Goal of creating "Vibrant Neighborhoods and Commercial Areas," with the Objective to "develop Westminster as a cultural art community" by bringing theatrical productions and performances to the community.

Respectfully submitted,

J. Brent McFall
Executive Director

Attachments

- Resolution
- Lease Agreement

WESTMINSTER HOUSING AUTHORITY

RESOLUTION NO. **57**

INTRODUCED BY BOARD MEMBERS

SERIES OF 2014

**A RESOLUTION
APPROVING A LEASE AGREEMENT
BETWEEN THE WESTMINSTER HOUSING AUTHORITY
AND THE SOUTH WESTMINSTER ARTS GROUP FOR
7287 LOWELL BOULEVARD**

WHEREAS, the Westminster Housing Authority (WHA) owns property located at 7287 Lowell Boulevard; and

WHEREAS, the South Westminster Arts Group is a non-profit organization dedicated to promoting community arts activities and providing an incubator for artists' businesses; and

WHEREAS, the South Westminster Arts Group proposes to lease the property at 7287 Lowell Boulevard from the WHA in order to create a venue for local theatrical performances; and

WHEREAS, the South Westminster Arts Group (SWAG) has recruited a theatrical company that will utilize the community theater space at 7287 W. 73rd Avenue to provide performances through 2014; and,

WHEREAS, the attached Lease Agreement would allow the SWAG to provide theatrical performances to the community by subletting the building on the property to a theater company.

NOW, THEREFORE, be it resolved by the Board of Commissioners of the Westminster Housing Authority that the Chair is hereby authorized to execute and the Authority Clerk to attest the Lease Agreement, attached hereto as Attachment "A", or a substantially similar form as approved by the Authority's Attorney.

PASSED AND ADOPTED this 24th day of February, 2014.

Chairperson

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

Authority Attorney

ATTACHMENT "A"

LEASE AGREEMENT

This **Lease** is made between the **WESTMINSTER HOUSING AUTHORITY**, a Colorado public housing authority (hereinafter called "Lessor" or "Authority"), and **SOUTH WESTMINSTER ARTS GROUP**, a Colorado nonprofit corporation (hereinafter called "Lessee" or "SWAG").

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the Premises described in Paragraph 1 below, subject to the terms, conditions, and agreements set forth herein below:

1. Premises. The Premises consist of the building and property located at 7287 Lowell Boulevard, Westminster, CO, and as depicted in Exhibit 1 attached hereto and incorporated herein by reference.

2. Term and Rent. Lessor demises the above Premises for an eight (8) month term for the period commencing at 12:00 a.m. on February 25, 2014 and terminating at 12:00 a.m. on November 1, 2014, or sooner as provided herein (hereinafter, the "Term"), for a nominal rent payment for the Term in the sum of Ten Dollars (\$10.00).

3. Use. Lessee shall use and occupy the Premises for activities and functions specifically related to theatrical performances and complimentary or supporting activities and functions. The Premises shall not be used for other purposes unless approved in writing by the Lessor. SWAG will maintain records of all third-party rentals of the property and the Authority, through its staff, shall retain the right to inspect such records at any time.

4. Utilities, Care and Maintenance of Premises.

a. Lessee's responsibilities: Lessee acknowledges and accepts the Premises in their "as-is" condition. Lessee shall, at its own expense and at all times during the Term of this Lease, maintain the Premises in good and safe condition, and shall surrender the same, at termination hereof, in the same condition as received, normal wear and tear excepted. In addition, Lessee shall be responsible for:

- paying the cost of utilities as defined in paragraph 8, below.
- the routine care and maintenance of the interior of the building on the Premises of a housekeeping nature, including custodial and janitorial services, normal and reasonable cleaning, and the replacement of all consumable or expendable items such as light bulbs, cleaning, bathroom and office supplies and all items brought into the building by the Lessee
- keeping the exterior of that portion of the Premises constituting the lot at 3915 West 73rd Avenue clean and free of weeds, including the plaza area to the west of the building.

b. Lessor's responsibilities: The Lessor shall be responsible for all general repairs relative to the building on the Premises, including roofing, plumbing, mechanical and electrical equipment, that individually do not exceed \$500.00 in cost. The Lessor shall not be obligated to make substantive repair to any of said components should the cost for repair or replacement of any one component exceed \$500.00. Should the cost exceed \$500.00, repairs shall only be made upon approval of the Executive Director of the Westminster Housing Authority. The Lessor reserves the right to terminate the Lease immediately should the repair and replacement allowances as provided for above be exceeded, or upon a determination by the

City of Westminster that the premises constitute a clear and present danger to the public health, safety and welfare..

5. Alterations. Lessee shall not make any interior or exterior alterations, additions, or improvements to the building on the Premises without first obtaining the prior written consent of Authority staff. Any such alterations, additions, or improvements approved by the Authority, regardless of the party installing the same, become fixtures appurtenant to the Premises.

6. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Lessee.

7. Assignment, Subletting, and unauthorized Use. Lessee shall not assign this Lease, nor sublet or allow utilization of any portion of the Premises without the prior written consent of the Lessor, which shall be granted or refused in Lessor's sole discretion. Any such assignment, subletting or impermissible utilization without Lessor's consent shall be void and, at the option of the Lessor, grounds for Lessor's immediate termination of this Lease. Notwithstanding the foregoing, Lessor acknowledges that the parties anticipate that Lessee will sublet the Premises or portions thereof to a theatrical production and performance group.

8. Utilities. The Lessee shall provide and pay for utility charges as they become due, including those for heat, electricity, water and sewer for the duration of the lease. All applications and connections for other services desired by Lessee for the Premises shall be made in the name of Lessee only, and Lessee shall be solely liable for such charges as they become due, including those for cable, Internet, alarm and telephone services.

9. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents or staff to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this Lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

10. Possession. If Lessor is unable to deliver possession of the Premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby.

11. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to any person or property occurring on the Premises during the Term of this Lease. Lessee agrees to indemnify and save and hold Lessor harmless from any claims for such damage or injury, no matter how caused, except to the extent such damage or injury was the direct and proximate result of Lessor's negligent act or omission, provided, however, that nothing herein shall be deemed or construed as a waiver by Lessor of any of the protections or limitations against liability to which Lessor may be entitled under the Colorado Governmental Immunity Act. Lessee may satisfy its obligations pursuant to this paragraph by assuming the defense of and liability, if any, for any such claim brought against the Lessor, and retaining for such defense qualified legal counsel reasonably acceptable to the Authority.

12. Insurance.

a. Lessee, at its expense, shall maintain comprehensive commercial liability insurance, including coverage for bodily injury and property damage, insuring Lessee and naming Lessor as an additional insured with minimum coverage as follows: \$1,000,000 per occurrence. The insurance shall include coverage for contractual liability. Additional insurance shall be obtained in the event any aggregate limitations result in per occurrence coverage of less than \$1,000,000.

b. Prior to taking possession of the Premises pursuant to this Lease, Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional named insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies that may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation that might otherwise exist.

13. Eminent Domain. If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests in the condemnor pursuant to such taking.

14. Destruction of Premises. In the event that the Premises or any part of the building thereon is damaged or destroyed by any cause to an extent that renders the Premises unsafe or unusable for Lessee's purposes, either Lessee or Lessor may terminate this Lease forthwith. In no event shall the Lessor have any obligation to repair or replace the Premises in the event of any such damage or destruction and Lessee's sole and exclusive remedy in the event of such damage to or destruction of the Premises or the building in which it is located is the termination of this Lease.

15. Lessor's Remedies on Default. If Lessee defaults in the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within ten (10) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such ten (10) days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than twenty (20) days' notice to Lessee. On the date specified in such notice, the Term of this Lease shall terminate, and Lessee shall then quit and surrender the Premises to Lessor, without extinguishing Lessee's liability. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term or condition of default herein shall be deemed a waiver as to any future enforcement.

16. Taxes. Lessee shall be solely responsible for the payment of any property or other taxes that may arise as a result of Lessee's use of the Premises. The Lessee covenants and warrants to Lessor that Lessee is exempt from all federal, state and local taxes and further, that Lessee shall take no action to cause the loss of its exemption from said taxes. Lessee further covenants and agrees with the Lessor that in the event Lessee shall lose its exemption from taxes for any reason, Lessee shall timely pay all and any taxes accruing as a result thereof. Lessee further covenants and agrees to indemnify and hold Lessor harmless against any claims or judgments for unpaid taxes resulting from Lessee's use of the Premises.

17. Attorneys' Fees. In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. For any controversy or claim arising out of or relating to this Lease, or the breach thereof, the parties agree to attempt to mediate any such disputes in good faith prior to filing any action against the other.

18. Waiver. No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

19. Heirs, Assigns, Successors. This Lease is binding upon and shall inure to the benefit of the heirs, assigns and successors in interest to the parties.

20. Subordination. This Lease is and shall be subordinated to all existing and future liens and encumbrances against the Premises.

22. Entire Agreement. This Lease constitutes the entire agreement between the parties concerning the Premises and may be modified only by a written amendment signed by both parties.

23. Survival. Paragraphs 8, 11, and 16 through 20 inclusive shall survive any termination of this Lease by either Lessee or Lessor.

Signed as of this ____ day of _____, 2014.

WESTMINSTER HOUSING AUTHORITY

By: _____
Chair

Attest: _____
Administrative Secretary

SOUTH WESTMINSTER ARTS GROUP

By: _____
Debbie Teter, Chair

Attest: _____

APPROVED AS TO LEGAL FORM:

Authority Attorney

EXHIBIT 1

Leasable Premises – 7287 Lowell Boulevard

