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| Date: | July 19, 2022 |
| Prepared By: | Matt Denton, Parks and Recreation Director |
| Subject: | Senior Center Facility Discussion |

In 2020, the Board provided short-term guidance on the direction of the Senior Center to staff. Board direction was to have the Parks and Recreation Department manage the rentals of the facility, add more rental availability when the seniors were not using the facility and increase the fee to be more in line with other facility rentals in the area.

Since then, staff has worked to utilize the Senior Center more through rentals. In 2020, the Senior Center brought in around \$1,300 in facility rental revenue. In 2021, the Senior Center brought in \$4,000 facility rental revenue. It should be noted that the senior center was closed four months in 2021 due to COVID19. Staff predicts another significant increase in rental revenue in 2022. Through 8-months rental revenue totals \$3,43, with 4,500 in revenue projected by the end of the budget year.

Staff is bringing this discussion back to the Board as the Senior Center lease is up for renewal in 2023. Staff is seeking Board direction on the long-term direction of the senior center facility and lease.

LEASE SUMMARY

The City's lease agreement with the Smithville Senior Citizen Center was signed on August 6, 2013 and runs through August 5, 2023. The agreement is included for your reference.

The agreement allocated an original funding amount of \$250,000 from Clay County Senior Services on behalf of the Smithville Senior Citizen Center to be used towards "renovations/rent" of the building. The Clay County Senior Services funding was provided in two \$125,000 payments received in October 2013 and April 2014. The total renovation cost was \$285,775 and work was completed around June 2014. The \$35,775 construction costs over and above the Clay County Senior Services funding was taken on by the City, and, therefore, none of the \$250,000 was attributable to rent.

TENANT USE

The agreement allows for use of the building by the Smithville Senior Citizen Center from 9:00 AM to 4:00 PM Monday through Friday of each and every week for a rental fee of \$1 per year. Currently, the group uses the building Monday, Wednesdays, and Fridays for meals and activities. The building is used on Tuesday and Thursdays are for office hours. In the Senior Center there is an office, a room for a pool table and a

storage room for senior's use only. Just last summer, staff was able to access these three rooms after a meeting with the Seniors to obtain the keys. The pool table room has two cabinets that store decorations and a pool table. The storage room holds leftover tables, shelves with holiday decorations, games, and candy. The office has a desk with a computer, WIFI, printer, and a filing cabinet.

The agreement requires the City to:

- maintain an insurance and a flood policy on the building
The FY23 budget includes \$3,409 for insurance premiums.
- provide utilities services for the building, including gas and electricity
The FY23 budget includes \$3,300 for these utilities.
- repair and maintain the building
The FY23 budget includes \$480 for pest control and \$500 for miscellaneous repairs and maintenance.
- provide *weekly* janitorial services
The FY23 budget includes \$2,200 for janitorial services to be performed *three times per week* - Monday, Wednesday, and Friday evenings after meals are served in the building.

The agreement states that the Smithville Senior Citizen Center is responsible for telephone and internet. However, the City currently takes on those costs.
The FY23 budget includes \$1,970 for those services.

The total FY23 expenditure budget for the Senior Center operations is \$11,842

CITY USE

The agreement allows the City to use the building for City use outside of 9:00 AM to 4:00 PM Monday through Friday, including for third-party rentals.

The current third-party rental rate is \$100 + \$200 deposit for a weekly rental and \$250 + \$200 deposit for a weekend rental. Rentals are now done online using the Parks and Recreation facility rental software.

In FY20, the City returned to making weekday evening rentals available, and weekend rentals are offered once per day (one renter can rent the building Saturday and another on Sunday).

In FY23 we are predicting five rentals on weekend and 10 rentals during the weeks. 10 months' worth of recurring rentals.

Therefore, the City recoups \$4,000 of the \$11,842 operating expenses from rental revenue. The remaining \$7,842 operating loss is funded through General Fund revenues (sales and property taxes).

SHORT-TERM DISCUSSION

As it pertains to the upcoming FY23 budget year, staff seeks Board clarification regarding the goal for the Senior Center. Is the Board satisfied with the changes made? To this end, staff is asking Board feedback on the following in relation to the FY23 budget:

- Should the time allocated to the seniors be just M-W-F from 9:00 AM – 2:00 PM and eliminate the office hours on Tuesday and Thursday?
- Do the Seniors need specific rooms for Billiards, Office Space and Storage? Should their personal items like piano, bookshelves, etc. be removed?
- Are there any changes to expenses the Board wishes to change by canceling additional services?
- Does the Board desire to create additional youth, teen, adult, and/or senior programming to take place at the facility?

Staff as allocated funds to paint and purchase equipment to better the rental space.

LONG-TERM DISCUSSION

Since the current contract runs through August 2023, it has been recommended to us by Clay County Senior Services that we renew the contract in January rather than August as the contract states.

The building was renovated in conjunction with Clay County Senior Services to provide the Smithville Senior Citizens Center a place to improve the health, nutrition, and quality of life of Clay County residents sixty years or older.

**LEASE AGREEMENT FOR OCCUPANCY
OF THE SENIOR CENTER
109 WEST MAIN STREET SMITHVILLE, MO 64089**

This Lease Agreement (the "**Lease**") is entered into as of August 6, 2013 (the "**Effective Date**"), between the City of Smithville (the "**City** "), a fourth class city in the State of Missouri, and Smithville Senior Citizen Center, a Missouri Non-Profit Corporation (the "**Tenant**").

RECITALS

- A. The City owns the property located at 109 W. Main Street Smithville Mo ("**Leased Property**") and desires to lease the property to foster ties to the community and to promote learning and growth opportunities for its citizens, and in particular its Senior Citizens.
- B. The Tenant has applied for, and has been granted, acceptance as a tenant in the Leased Property on the basis of the suitability of the Tenant to take advantage of the resources and services of the Leased Property in contributing to the fulfillment of the City's purpose.
- C. In furtherance of these purposes, the Tenant wishes to lease from the City and the City wishes to lease to the Tenant, space located in the Leased Property facility, on the terms and conditions set forth in this Lease.
- D. The parties acknowledge that the Clay County Senior Services on behalf of Tenant is providing \$250,000.00 in funds ("**Grant Funds**") toward the renovations/rent of the below described Leased Premises for use as a senior citizen center, which funds/renovations will upon acceptance thereupon immediately become the property of the City of Smithville.
- E. The City of Smithville has determined that the Operation of a center for its Senior citizens provides a public purpose.

NOW, THEREFORE, in consideration of the premises and the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1.1 Leased Premises.

- 1.1 The City, in consideration of the rents to be paid and the agreements to be performed by the Tenant, hereby leases to the Tenant and the Tenant hereby leases from the City the space located in the Leased Property, which space is described on **Exhibit 1.1** attached hereto. The space leased to the Tenant is referred to as the "**Leased Premises.**" Any special provisions concerning improvements and payment for such improvements to be made to the Leased Premises are specified in **Exhibit 1.1**. Tenant

shall pay for the improvements referenced in **Exhibit 1.1** from the Grant Funds prior to moving into the Leased Premises. Further, all improvements, including fixtures and/or trade fixtures, to the property referenced in **Exhibit 1.1** shall immediately become the property of the City of Smithville, unless otherwise agreed to in writing by the City.

1.2 The Tenant shall also have a nonexclusive right to access common areas of the Leased Property for the use of its invitees.

1.3 This Lease is subject to all easements, mortgages, zoning and governmental restrictions, rules and regulations and encumbrances and restrictions of record, applicable to the Leased Property.

1.4 The Tenant acknowledges that neither The City nor anyone on its behalf has made any representations, warranties or promises with respect to the Leased Premises or this Lease, except as expressly set forth in this Lease and the exhibits attached hereto.

1.5 The Leased Premises shall be leased to the Tenant for use by the Tenant Monday through Friday of each and every week, between the hours of 9:00 a.m. and 4:00 p.m. The City may also grant Tenant additional use of the Leased Premises at no additional cost at other times in the reasonable discretion of the City.

1.6 The Leased Premises, at times other than as set forth in Section 1.5 above, shall be available for use by the City for any purposes, including for third party rentals by the City, with any and all proceeds being the property of the City.

2. Lease Term.

2.1 Unless terminated earlier as provided in the Lease, the **"Lease Term"** shall consist of the Initial Term and any Renewal Terms.

2.2 The **"Initial Term"** of this Lease shall begin on the Effective Date specified above, and shall expire at midnight preceding the tenth anniversary of the Effective Date.

2.3 Upon the expiration of the Initial Term, this Lease may be renewed for successive Renewal Terms of five years each, on the following conditions:

(a) The Tenant shall have given the City written notice of the Tenant's desire to renew this Lease at least 365 days prior to the scheduled expiration of the Initial Term or the then current Renewal Term. If the Tenant fails to give such notice the City may require in writing that such notice be given within 30 days of the City's notice. Failure of the Tenant to give such notice within the 30 day period shall cause the lease to terminate at the end of the then current term (not to exceed 11 months) or thirty days which ever is longer; and

(b) The Tenant is current in the payments due to Smithville under this Lease; and

- (c) No event shall have occurred and be continuing which is a default of the Tenant under this Lease which would be such a default upon the giving of notice or the passage of time, or both if such default is such that it could not be cured within the cure period, unless Tenant has commenced to remedy such default and been proceeding diligently to remedy such default; and
- (d) The City shall have determined in its reasonable discretion that continued tenancy of the Tenant would be consistent with the purposes of the Leased Property and the City;

2.4 The Tenant may terminate this Lease at any time after completion of the renovations in **Exhibit 1.1** without incurring any additional liability by giving the City written notice at least 90 days prior to the effective date of such termination. Such termination shall not affect the obligations of the Tenant under this Lease arising through the date of such termination. In the event of such termination, Tenant shall not be entitled to any refund, repayment or otherwise of the monies paid by Tenant or on behalf of Tenant or otherwise to the City for the renovation of the Leased Property.

3. Use of the Leased Premises.

3.1. The Leased Premises shall be used and occupied by Tenant only as a senior citizens center and will comply with all applicable federal state and local laws and regulations with regard to the operation and maintenance of the Senior Center. Without the express written consent of the City, neither the Tenant and/or anyone on Tenant's behalf will allow the consumption, storage or possession of alcohol or tobacco on or in the Leased Premises.

3.2 The City reserves the right from time to time in its reasonable discretion to make, modify and revoke rules and regulations applicable to the Leased Property in which the Leased Premises are located. The Tenant agrees to comply with such rules and regulations within a reasonable amount of time after the Tenant has received written notice of them from the City. The making, modification or revocation of such rules and regulations will not be deemed an amendment of the Lease, but the Tenant's failure to materially comply with such rules and regulations will be a default under this Lease. The initial rules and regulations are, and any changes to the rules and regulations will be, provided by the City to Tenant in writing, and Tenant shall take reasonable efforts to post the rules and regulations in the Leased Premises.

4. Possession and Quiet Enjoyment.

4.1. Possession of the Leased Premises shall be given to the Tenant on the Effective Date specified above.

4.2 So long as the Tenant fully and promptly pays rent provided for in this

Lease and performs all of the other terms of this Lease, the Tenant shall at all times during the Lease Term peacefully and quietly enjoy the Leased Premises without any disturbance from the City.

4.3 The Tenant agrees to prevent, correct or abate, within a reasonable time after receiving notice from the City, any excessive noise, fumes, vibrations, or other nuisances from occurring on the Leased Premises.

4.4 The City shall have at all reasonable times, access to the Leased Premises for the purposes of examining or showing the Leased Premises or for any other purposes of the City not inconsistent with Tenant's purposes. Without the consent of the City, the Tenant shall not install security systems or devices that impede The City's right of access to the Leased Premises.

5. Rent.

5.1. Rent shall be paid by the Tenant to the City at the the City's address, unless it designates another place. The rent for the Leased Premises shall be as provided in this Section 5 and shall be paid without abatement, deduction or set off for any reason except as specifically provided in this Lease.

5.2 For the Initial Term of this Lease, the payment of the Grant Funds to the City by or on behalf of Tenant plus One Dollar (\$1.00) annually shall constitute full payment of rent for the entire Initial Term. The rent for each year of any renewal period shall be One Dollar (\$1.00) per year.

6. Maintenance.

6.1 The City shall perform or cause to be performed all necessary or reasonably requested repairs, replacements, and required or reasonably requested maintenance with respect to the Leased Property and Leased Premises, including all plumbing, wiring, roofing, supporting structural members, locks, heating, ventilation and air conditioning, and shall provide or cause to be provided routine cleaning and janitorial services and exterior maintenance, including lawn care, snow removal and outside lighting. The City shall have at all reasonable times, and on reasonable notice, access to the Leased Premises for the purposes of performing any such repairs, replacements or maintenance. The City shall have no other repair, replacement or maintenance obligations. Notwithstanding the above, any repairs or replacements caused by Tenant and/or its patrons, shall be paid for by Tenant.

6.2 The Tenant agrees to maintain the Leased Premises, as well as all of the Tenant's fixtures and the Tenant's improvements, in good condition and repair, ordinary wear and tear excepted, during any Lease Term, to the reasonable satisfaction of the City. Tenant shall make sure the Leased Premises is clean at the end of each day. The City shall provide weekly janitorial services.

6.3 The City shall be responsible to clean the Leased Premises at the end of any use by the City or its tenants/licensees, other than Tenant.

7. Utilities and Services.

7.1 The City agrees that all utilities and municipal services (including gas, electricity, water, sewer, and nonhazardous waste disposal but excluding telephone, internet access, cable and/or satellite television) shall be available to the Leased Premises and in operating condition at the beginning of the Lease. Except for telephone services, internet access and cable or satellite television services, such utilities and municipal services shall be included in the Tenant's rent. Tenant shall be responsible for telephone, internet access and cable or satellite television and the Tenant shall pay for any special fixtures, connection charges and equipment required for such telephone, internet access and cable and/or satellite television in the Leased Premises.

7.2 The City shall have the right to grant easements in areas of the Leased Premises for the installation of utilities provided the use of such easement areas for such purposes does not interfere substantially with the Tenant's use of the Leased Premises in the reasonable judgment of the City. The Tenant shall not be entitled to any compensation or abatement of rent for the use of such easement areas.

7.3 Reasonable parking will be available to Tenant, its agents, employees and patrons.

7.4 Lost keys or fobs will be replaced at a fee according to then applicable rates of The City.

8. Tenant's Assistance.

The Tenant shall permit the City and any party designated by the City to erect, use, maintain, and repair pipes, cables, conduits, plumbing, vents and wires in, to and through the Leased Premises, to whatever extent the City may deem reasonably necessary or appropriate for the proper operation, maintenance or repair of the Leased Property or in connection with easements granted under this Lease so long as this does not result in the substantial interference with the use of the Leased Premises. All such work will be done in such practicable manner as to avoid interference with the Tenant's use of the Lease Premises. The Tenant agrees to report immediately to the City any defective condition in or about the Leased Premises.

9. Alteration by the Tenant.

9.1. Tenant shall make no alterations in or additions to the Leased Premises without the prior written consent of the City, which the City may withhold in its sole discretion. The City may consent to alterations to the Leased Premises on the condition that the City perform the work or arrange for such work to be performed, in either case at the Tenant's expense.

9.2 At the termination of any Lease Term, and with the prior written consent of the City, the Tenant may remove any alterations or additions which it has made pursuant to this section, so long as such removal is done without damaging the Leased Premises or the Leased Property. Any alterations or additions left after termination of the Lease Term shall become the property of the City without cost to the City.

10. Renovation by the City.

Other than the renovations required pursuant to the terms of this lease, if the City determines that it is necessary to effect renovations of the Leased Property in which the Leased Premises are located, or of the improvements of which the Leased Property is a part, such action shall be made at the City's expense under this Lease. Renovation shall be done as far as is practicable in such a manner as to avoid substantial interference with the Tenant's use of the Leased Premises.

11. Property of the Tenant.

11.1 So long as the Tenant is not in default under this Lease, (other than fixtures and equipment procured with the Grant Funds) the Tenant may, prior to the expiration of this Lease, remove all fixtures and equipment that it has placed in the Leased Premises, but the Tenant shall repair all damage to the Leased Premises caused by such removal.

11.2 If the Tenant fails to remove all of its effects from the Leased Premises upon the termination of this Lease for any cause whatsoever, the City may, at its option, remove the same in any manner that the City shall choose and may store such effects without liability to the Tenant for the loss thereof. The Tenant agrees to pay the City all reasonable expenses incurred in such removal and storage, including court costs, attorney's fees and storage charges for any length of time such effects are in the City's possession. The City may, at its option, without notice, sell all or any part of such effects at a private sale and without legal process for such price as the City may obtain, and may apply the proceeds of such sale at its discretion to the amounts due under this Lease from the Tenant and to the expenses incident to the removal, storage and sale of such effects.

12. Damage or Theft of Property.

The Tenant agrees that all fixtures, equipment and personal property brought into the Leased Premises shall be at the risk of the Tenant only, and that the City shall not be liable for the theft thereof or for any damage thereto occasioned from any act of other occupants of the Leased Property or any other person. The Tenant understands and agrees that the City has no obligations to provide security services for the Leased Premises or the Leased Property. The Tenant agrees that provision by the City of any security services for the Leased Premises or the Leased Property shall not be deemed to imply a duty to provide security or continue to provide security and that the City shall not be responsible for the Tenant's failure to properly use securing systems or devices provided by the City, if any.

13. Holding Over.

In the event of holding over by the Tenant subsequent to the expiration or other termination of this Lease, and without regard to the City's acquiescence or consent, the Tenant shall pay for such holding over, as liquidated damages and not as a penalty, the sum of five thousand dollars per month, or if after a Renewal Term, monthly rent double the reasonable monthly rent payable immediately prior to such period.

14. Governmental Requirements and Environmental Law Compliance.

14.1 The Tenant agrees to promptly comply, at its own expense, with all requirements of any legally constituted public authority applicable to the Tenant made necessary by reason of the Tenant's occupancy of the Leased Premises, including, but not limited to, all health, safety and fire codes and regulations of the State of Missouri, Clay County, and the City of Smithville.

14.2 The Tenant shall obtain, at its own expense, all required licenses or permits (if any are required) for the conduct of its business within the terms of this Lease. The Tenant shall, on the City's request, provide proof that all required licenses and permits have been obtained.

14.3 The City and the Tenant acknowledge that there are certain federal, state and local laws, regulations and guidelines now in effect, and that additional laws, regulations and guidelines may hereafter be enacted, relating to or affecting the Leased Premises and the Leased Property, concerning the impact of the environment of construction, land use, maintenance and operation of structures, and the conduct of activities.

14.4 The Tenant will not cause or permit any act or practice, by negligence, omission or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of such laws, regulations or guidelines. The Tenant shall establish such safety and monitoring procedures as are necessary to ensure compliance with all applicable federal, state and local laws, regulations and guidelines.

14.5 The City reserves the right to reasonably enter and inspect the Leased Premises from time to time to ensure the Tenant's compliance with these covenants. Any violation of these covenants shall be an event of default under this Lease. The Tenant shall have no claim against the City by reason of any changes that the City may make in the Leased Premises or the Leased Property, pursuant to any federal, state or local laws, regulations or guidelines.

15. Destruction of or Damage to Leased Premises.

15.1. If the Leased Premises are totally destroyed (or so substantially damaged as to be untenantable or not usable for the occupancy and uses permitted under this Lease) by storm, fire, tornado, earthquake, or other casualty, this Lease shall at the option of the City be terminated as of the date of such destruction or damage.

15.2. If the Leased Premises are damaged but are not subject to Section 15.1, rent shall abate in such proportion as the Leased Premises have been destroyed until the City has restored the Leased Premises to substantially the same condition as before such damage, whereupon full rent shall resume. Nothing in the Lease shall require the City to make such restoration if, in its sole discretion, the City deems such restoration not to be advisable. The City shall make known to the Tenant in writing within 90 days of such occurrence whether or not the City intends to restore the Leased Premises to substantially the same conditions as before such damage. If the City decides against such restoration or fails to provide such notice within the 90-day period, then the Tenant may, at its option, terminate this Lease as of the date of the event causing such damage.

16. Indemnification and Insurance.

16.1 The Tenant agrees to be liable to the City for any damage to the Leased Premises or to other areas of the Leased Property or furnishings or equipment included therein to the extent caused by the actions or omissions of Tenant's Officers, Directors, Agents, employees and/or invitees. The Tenant also agrees to defend, indemnify and hold harmless the City its elected officials, officers, employees, agents, representatives and contractors, from all costs, expenses (including reasonable attorney's fees), liabilities, obligations, damages and claims to the extent caused by the actions or omissions of Tenant's Officers, Directors, Agents, employees or breach of any provision of this Agreement by Tenant or any other person participating in or using Tenant's programs or services by the express or implied invitation of the Tenant.

16.2 The City shall at all times during the Lease Term maintain or cause to be maintained, for its benefit, a policy or policies of insurance (which may include self-insurance by the City) insuring the Leased Property against loss or damage by fire, explosion or other hazards and contingencies, but the City shall not be obligated to insure any furniture, equipment, machinery, goods or supplies and/or trade fixtures, unless provided pursuant to this Lease, that the Tenant may bring upon the Leased Premises, or any additional improvements that the Tenant may construct on the Leased Premises. If the premiums payable for such casualty insurance exceed the standard rates due to actions or additional hazards created as a result of the Tenant's occupancy of the Leased Premises, then the City shall notify Tenant in writing of such increase in premium and Tenant shall, upon receipt of appropriate premium invoices, reimburse the City for such increase in premiums.

16.3. The Tenant shall, at its own expense, at all times during the term of this Lease, maintain in force a policy or policies of insurance, written by one or more responsible insurance carriers subject to the reasonable approval of the City, that will insure the City its elected officials, officers, employees, agents, representatives and contractors, against liability for injury to or death of persons or loss or damage to property occurring as the result of the Tenant's use of the Leased Premises or the Leased Property. The liability under such insurance shall not be less than \$1,000,000 combined single limit. Tenant shall use commercially reasonable efforts to cause all liability insurance obtained by the Tenant under this Lease to contain a provision by which the insurance company waives

any right of subrogation it may have against the City , its elected officials, officers, employees, agents, representatives and contractors. Tenant shall also obtain insurance covering its furniture, equipment, machinery, goods or supplies and/or fixtures located at the Leased Premises

16.4. The Tenant shall maintain and keep in force all workers' compensation insurance required under the laws of the State of Missouri, and such other insurance as may be reasonably necessary to protect the City against any other liability of person or property arising hereunder by operation of law, whether such law is now in force or is adopted subsequent to the execution hereof, as the result of the Tenant's use of the Leased Premises or the Leased Property.

16.5 Tenant shall use commercially reasonable efforts to cause the policies of insurance carried pursuant to this Lease to provide that at least 30 days' (or to the extent 30 days is not reasonably available, at least 15 days') prior written notice shall be given to the City by the underwriters of any proposed termination, cancellation, lapse or modification of such insurance. If the Tenant receives any notice referred to in the preceding sentence, the Tenant shall promptly deliver a copy of such notice to the City.

16.6 Should the Tenant fail to keep in effect and pay for such insurance as it is required to maintain under this Lease, the City may do so, in which event the Tenant shall be required to reimburse the City for the insurance premiums paid by the City. If the City receives notice of termination, cancellation, or lapse of such insurance, it may elect to notify the Tenant to cease operations in the Leased Premises immediately and not to resume operations in the Leased Premises until the City receives copies of policies evidencing that the insurance required under this Lease is in full force and effect.

16.7 All policies of insurance to be kept and maintained in force by the respective parties hereto shall be obtained from good and solvent insurance companies, rated no less than A VIII by A.M. Best, licensed under the laws of the State of Missouri.

16.8 The Tenant shall provide to the City a copy of the insurance policies required under this Lease.

17. Signs.

The City will provide all signs and signage and no others will be used.

18. No Assignment or Sublease.

Without the prior written consent of the City, which the City may withhold in its sole discretion, the Tenant may not assign this Lease or any interest in this Lease, or sublet the Leased Premises or any part thereof, or permit the use of the Leased Premises by any party other than the tenant. Consent by the City to one assignment or sublease will not waive this provision with respect to any other assignments or subleases, and all other assignments and subleases shall be made only with the prior written consent of the City, which it may withhold in its sole discretion. Assignees or subtenants shall become liable

to the City for all of the obligations of the Tenant under this Lease, without relieving the Tenant of any of its liabilities or obligations under this Lease.

The City shall retain the right at all times, other than during the times the Leased Premises are leased to Tenant, to lease/license or use the Leased Premises.

19. Default of the Tenant.

19.1. A default shall occur in the event that:

(A) The rent specified herein is not paid at the time and place when and where due;

(B) The Leased Premises shall be deserted or vacated by the Tenant prior to the expiration or termination of the Lease Term in accordance with the terms of this Lease;

(C) The Tenant shall fail to comply with any provision of this Lease other than the payment of rent, or any of the rules and regulations now or hereafter established by the City for the use of the Leased Property;

(D) Any event occurs that would become such a default with the giving of notice or the passage of time, or both;

(E) Any petition is filed by or against the Tenant under any federal or state bankruptcy or insolvency law, or the Tenant shall become insolvent, or the Tenant shall make a general assignment of its assets for the benefit of creditors, or a receiver is appointed for a substantial part of the Tenant's assets;

(F) Tenant shall cease to be a Missouri Not-For-Profit Corporation in Good standing for a period of 30 days or more and receipt of notice from either the State of Missouri or the City of the fact that it is no longer in good standing.

19.2. If the Tenant shall not cure any such default event, other than payment of rent, within 30 days after the sending of written notice thereof from or if the default is such that it could not be cured within said 30 days and Tenant has not commenced to remedy such default and has not proceeded diligently to remedy such default, then the City shall have the option to proceed according to any one or more of the following courses of action in addition to any other remedies at law or in equity:

(A) The City may terminate this Lease, in which event the Tenant shall immediately surrender the Leased Premises to the City, but if the Tenant shall fail to do so, the City may, without further notice and without prejudice to any other remedy that the City may have for possession or arrearages in rent, enter upon the Leased Premises and remove the Tenant and its effects, without being liable for any claim for damages, other than claims and damages resulting from recklessness or willful misconduct, and the Tenant agrees to indemnify the City for all loss and damages that the City may suffer by reason of such termination, whether through inability to re-let the Leased Premises, decrease in rent, or otherwise after the City has used commercially reasonable efforts to mitigate any such loss and damage.

(B) As agent of the Tenant, the City may do whatever the Tenant is obligated to do by the provisions of the Lease and may enter the Leased Premises, without being liable for any claim for damages, in order to accomplish this purpose. The Tenant agrees to reimburse the City for any expense that it may incur in obtaining compliance with this Lease on behalf of the Tenant. The City **Shall Not Be Liable** for any Damages Resulting to the Tenant From such action, whether caused **By The Negligence** of The City Of Smithville or Otherwise.

(C) Pursuit of any of the above remedies shall not preclude the City from pursuing any of the other remedies provided in this Lease or any other remedies provided by law.

19.3. Nothing done by the City or its agents during the Lease Term shall be deemed an acceptance or surrender of the Leased Premises, and no agreement to accept a surrender of the Leased Premises shall be valid unless it is made in writing and signed by the Mayor of the City of Smithville. Neither the mention in this Lease of any particular remedy that the City might have, either at law or in equity, nor the waiver of, or redress for, any violation of any provision of this Lease or of any of the rules and regulations set forth in this Lease or subsequently adopted by the City, shall prevent a subsequent act that would have originally constituted a violation from having all of the force and effect of an original violation. In case it should be necessary for the City to bring any action for the enforcement of the City's rights under this Lease and it is judicially determined the City was legally entitled to such right, then the Tenant shall be liable for the reasonable attorneys' fees and court costs and litigation expenses incurred by the City of Smithville in connection with such action. The receipt by the City of rent with the knowledge of the breach of any provision of this Lease will not be deemed a waiver of such breach.

19.4 The Tenant hereby appoints as its agent to receive the service of all legal papers concerning possession of the Leased Premises, legal notices and notices required under the Lease, the person in charge of the Leased Premises at the time, or occupying the Leased Premises and/or its Missouri registered agent. If there is no person in charge of, or occupying, the Leased Premises, then such service or notice may be made by attaching the same on the main entrance of the Leased Premises.

20. General Provisions.

20.1. If any provision of the Lease is illegal, invalid or unenforceable under present or future laws effective during the Lease Term, then it is the intention of the parties that the remainder of this Lease shall not be affected, and it is also the intention of the parties that, in place of each provision of this Lease that is illegal, invalid or unenforceable, there be added a part of this Lease a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. If such illegal, invalid, or unenforceable provision is, in the sole determination of the City, essential to the rights of both parties, then the City has the right to terminate the Lease on written notice to the Tenant.

20.2 All rights, powers and privileges conferred under this Lease on the parties shall be cumulative and not restricted to those given by law.

20.3 This Lease contains the entire agreement of the parties with respect to the subject matter of such agreements. No representations, inducements, promises or agreements, oral or otherwise, between the parties shall be of any force or effect if not set forth in such agreements.

20.4. No failure of either party to exercise any right of such party under the Lease, or to insist upon strict compliance by the other party of any obligation under this Lease, and no custom or practice or the parties at variance with the terms of this Lease, shall constitute a waiver of such party's right to demand exact compliance with the provision of this Lease.

20.5. Time is of the essence of this Lease.

20.6. The relationship of the parties under this Lease is solely that of landlord and tenant, and no partnership or joint venture between the City and the Tenant shall arise as the result of this Lease.

20.7. The headings of each section are added as a matter of convenience only and shall not be considered in the construction of any provision of this Lease.

20.8. Any notice, demand, request or other communication provided for in this Lease shall be in writing and shall be effective when delivered personally or one business day after being deposited in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the address listed in this Lease or to such other address as may from time to time be designated by notice given to the other party in accordance with this section. Notices to either party shall be given as set forth below or as set forth in section 19.5:

20.9.

Notices to the City of Smithville:

City Administrator
107 West Main Street
Smithville, MO 64089

Notices to Tenant:

Smithville Senior Citizen Center, a Missouri Non-Profit Corporation
109 West Main Street
Smithville, MO 64089

or

Such address designated by the Tenant in writing.

20.10. Any amount due to the City from the Tenant under the provisions of this Lease that is not paid when due, shall at the City's option, bear interest at the rate set by the

City not to exceed the highest rate allowed by law) per annum from the date due until paid in full.

20.11. The Lease shall be governed by, and construed in accordance with, the laws of the State of Missouri, with regard to the principles thereof concerning the choice of law. Any action in regard to the consent or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. Tenant is validly registered to do business in Missouri. In accordance, the parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

20.12. The language of this Lease reflects negotiations between Tenant and the City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Contract, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City Clerk shall pursuant to §432.080 R.S.Mo shall be deemed to be the controlling original.

20.13 All exhibits to this Lease Agreement are hereby incorporated by reference into this Lease Agreement as though more fully set forth herein.

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

CITY OF SMITHVILLE

By: B. Fullmer
Name: Brian Fullmer
Title: Mayor

SMITHVILLE SENIOR CITIZEN CENTER

TENANT

By: Larry Thomas
Name: Larry Thomas
Title: President Smithville Senior Citizens

Exhibit 1.1 to Lease Agreement
Description of Leased Premises and Build Out Plans

Leased Premises:

The Leased Premises is the space outlined on Exhibit 1.1 (A) attached hereto and contained within the Leased Property generally located at 109 W. Main Street, Smithville Missouri.

Plans and Specifications:

Attached hereto as Exhibit 1.1 (B) is a copy of the plans and specifications for the improvements to the Leased Premises to be undertaken by the City. All improvements will be undertaken by the city at its cost and expense, but The City shall be paid for all such improvements prior to Tenant taking possession of the Leased Premises with the Grant Funds.

Improvement Payment Terms:

Attached hereto as Exhibit 1.1 (C) is a copy of the terms of the payments to be made with the Grant Funds by or on behalf of Tenant for the improvements referenced in Exhibit 1.1.

Exhibit 5.2 to Lease Agreement
LEASE RATES

Tenant shall pay the sum of one dollar per year during the Initial Term as, and for rent, in addition to the full and complete payment for all of the improvements to be completed by the City to the Leased Premises pursuant to Exhibit 1.1.

During any Renewal Term hereof, Tenant shall pay one dollar per year.