

HISTORICAL STRUCTURES OPERATING AND CARETAKING 1-YEAR AGREEMENT

The undersigned, **FOREST PRESERVE DISTRICT OF KANE COUNTY** (hereinafter "**FPDKC**"), hereby engages the services of **Preservation Partners of the Fox Valley**, an Illinois not-for-profit corporation, St. Charles, Illinois, (hereinafter called "**Preservation Partners**") to provide *the* exclusive program management of the Fabyan Villa and Japanese Garden (at Fabyan Forest Preserve) and the Durant-Peterson House and Pioneer Sholes School (at LeRoy Oakes Forest Preserve), which shall include all staffing, exhibits, tours, and programs related to the venues and to take reasonable measures to advise FPDKC of any maintenance needs arising from time to time during the term hereof. For these purposes, the Fabyan Villa, Fabyan Japanese Garden, Durant-Peterson House and Pioneer Sholes School are herein referred to as the "Venues". FPDKC further hereby grants Preservation Partners all necessary rights of access and possession during its activities for itself, its workers, agents and contractors and for all other purposes convenient or incidental to the exercise by Preservation Partners of the rights herein granted to it and the obligations herein undertaken by it for the term of this Agreement, all as more particularly set forth hereinafter.

1. FPDKC covenants with Preservation Partners that it is the lawful fee simple owner of the lands upon which the Venues are located and that it has the right and authority to make this license and permit grant. The FPDKC is the lawful owner of the exhibit contents, except those expressly donated to Preservation Partners which are displayed in the Villa Museum at Fabyan Forest Preserve and Preservation Partners is the lawful owner of the exhibit contents which are displayed at the Durant- Peterson House and Pioneer Sholes School at LeRoy Oakes Forest Preserve. FPDKC further covenants that it shall remain responsible for all maintenance costs and payment of utilities at the Venues.
2. In exchange for the payment by the FPDKC to Preservation Partners of the sum of One Hundred and Fifteen Thousand (\$115,000.00) Dollars per year (\$78,000 Fabyan Villa; \$10,000 Fabyan Japanese Garden and \$27,000 Durant-Peterson House and Pioneer Sholes School), Preservation Partners agrees to the following obligations to be undertaken on its part:
 - a. To provide the exclusive program management at the Venues, consisting of staffing for tours, placement and arrangement of exhibits, tour scheduling and content, and related programs and events, all of which shall be regularly held according to an agreed-upon schedule of events which shall be established in conjunction with staff of FPDKC.
 - b. To advise FPDKC of any maintenance needs which arise from time to time with respect to the Venues, as observed by Preservation Partners staff.

- c. To provide FPDKC schedules and information on programs at the Villa, Japanese Garden or Durant-Peterson House.

3. The FPDKC manages the Japanese Garden. This includes maintenance and the coordination of all reservations. Preservation Partners may reserve the use of the Japanese Garden for programming through the FPDKC in writing at any time in advance. FPDKC programs and activities shall have priority booking. Preservation Partners shall operate regular tours through the Japanese Garden and provide staffing for special tours during the Garden's open days.
4. This Agreement and the rights granted hereunder and obligations assumed hereby are effective from the date hereof, and shall end on August 31, 2025. This Agreement is subject to the following terms and conditions precedent for the term of this Agreement, which are hereby mutually covenanted and agreed to, by and between FPDKC and Preservation Partners.
5. Preservation Partners agrees to pay for all costs and taxes associated with the payment by FPDKC hereunder, as well as all staffing of its programs at the Venues and shall be solely responsible for compensation and supervision of its volunteers, agents, representatives, employees and contractors and Preservation Partners affirmatively agrees to hold FPDKC harmless from any and all losses of or damages to property, including environmental and economic losses, or injuries to or death of any person resulting from any activities or use of the Venues held, hosted or sponsored by Preservation Partners, its employees, contractors, affiliates, subsidiaries or successors, or any property affected by such activity or use. Preservation Partners shall pay for the defense of FPDKC, its officers and employees in any such litigation, with FPDKC having the right to designate its own local counsel.
6. Preservation Partners understands, acknowledges and agrees that the relationship of Preservation Partners to the FPDKC arising out of this Agreement shall be that of independent Preservation Partners. It is understood that neither Preservation Partners nor any of Preservation Partners' officers, directors, owners, employees or agents, is an employee of the FPDKC and is therefore not entitled to any benefits provided by the FPDKC to its employees. It is further understood by Preservation Partners that Preservation Partners will not be covered under provisions of the worker's compensation insurance of the FPDKC and that any injury or property damage on the job will not be the FPDKC's responsibility, except in cases where such injury or damage is the fault of the FPDKC. Also, it is understood that Preservation Partners is not protected as an employee or as a person acting as an employee under the provisions of the public liability insurance of the FPDKC and, therefore, will be solely responsible for its own actions. FPDKC will in no way defend Preservation Partners in matters of

Preservation Partners' liability. The hiring of qualified personnel to provide the services shall be the sole responsibility of Preservation Partners, as shall the discipline and discharge of such personnel. Preservation Partners shall be solely responsible for compensating its personnel. Preservation Partners shall be responsible for paying any expenses it incurs in the provision of the services, except as otherwise provided herein. Preservation Partners will not be covered under Social Security, federal or state income tax withholding, or any other payroll withholding program of the FPDKC. FPDKC will report payments made to Preservation Partners pursuant to this Agreement as required by applicable federal and state law. (Payments in excess of \$600 will be reported to the Internal Revenue Service on Form 1099-Misc). Neither Preservation Partners nor its employees shall hold themselves out to members of the public as employees of the FPDKC. Preservation Partners shall be solely responsible for purchasing the supplies necessary to satisfactorily perform the Services required under this Agreement, provided, however, that to the extent reasonably practicable, Preservation Partners shall order such supplies through the FPDKC in order to benefit from such volume discounts as may be available to the FPDKC, it being understood and agreed that Preservation Partners shall be entitled to all such benefits, discounts and reimbursements.

7. Preservation Partners represents and warrants that it has, and all persons providing the Services on its behalf have, the requisite education, training and experience to properly provide the Services in accordance with the standards set forth and results to be achieved under this Agreement; have procured all licenses, permits, certifications or like permission required by law, rule or regulation to properly provide the Services; will procure all additional licenses, permits, or like permission hereafter required by law, rule or regulation during the Term of this Agreement; and will keep same in full force and effect during the term of this Agreement.
8. Nothing herein shall be construed to be a grant by FPDKC to Preservation Partners to undertake any maintenance, renovation, expansion or construction at any of the Venues.
9. Preservation Partners is expressly permitted to charge reasonable fees and to undertake solicitation of patrons of events hosted by Preservation Partners on the premises of the Venues, as well as general fundraising efforts held off-site of the Venues. General fundraising events held on the premises of the Venues undertaken by Preservation Partners outside of a specific program event hosted by Preservation Partners must be approved in writing by FPDKC.
10. The privileges herein granted are subject to the paramount rights of the FPDKC, and the FPDKC shall not be liable to Preservation Partners for damage to the property of Preservation Partners

due to maintenance or lack thereof or the installation or removal of any present or future facilities of FPDKC at the Venues.

11. This Agreement shall not in any manner or to any extent limit or restrict the right of FPDKC to grant additional licenses or rights over, along, under and across the Venues described herein for other purposes, provided, however, that FPDKC shall use its best reasonable efforts to avoid conflicts regarding uses and shall coordinate scheduling of events with Preservation Partners in advance of the date of same.
12. Preservation Partners agrees to utilize the property in a manner that will not interfere with the use by the general public of the Venues independent of the programs staffed or hosted by Preservation Partners. Upon completion of an event at the Venues, Preservation Partners shall take reasonable steps to assure that the Venues will be left in a neat, clean and orderly condition and to advise FPDKC staff as soon as reasonably practicable of any extraordinary cleanup or routine maintenance requirements at a Venue.
13. Preservation Partners covenants and agrees that it will not permit or suffer any lien to be put upon or arise or accrue against said Venues in favor of any person or persons, individual or corporate, furnishing either labor or material in any work herein proposed, and Preservation Partners further covenants and agrees to hold FPDKC and said Venues free from any and all liens or rights or claims of lien through it which may or might arise or accrue under or be based upon any mechanic's lien law, so called, of the State of Illinois, now in force or hereafter to be enacted.
14. Preservation Partners agrees to purchase and maintain during the term of this license or any extension thereof, at its cost, a policy or policies of insurance issued by good and responsible insurance companies and in a form satisfactory to FPDKC, as well as abiding by the following covenants:

a. Commercial General and Umbrella Liability Insurance

Preservation Partners shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this

location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 0110 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent Preservation Partners, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

FDPKC shall be Included as an insured under the CGL, using ISO additional insured endorsement CG 20 11 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self insurance afforded to FDPKC. Any insurance or self-insurance maintained by the FDPKC shall be excess of the Preservation Partners' insurance and shall not contribute with it.

b. Business Auto and Umbrella Liability Insurance

If applicable, Preservation Partners shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non- owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

c. Workers Compensation Insurance

If applicable, Preservation Partners shall maintain worker's compensation and employer's liability insurance. The commercial umbrella and/or employer's liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. If FDPKC has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 11 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Preservation Partners waives all rights against FDPKC and its

officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Preservation Partners' use of the premises. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the FPDKC for all activities of the Preservation Partners, its employees, agents and sub-Preservation Partners.

d. General Insurance Provisions

i. Evidence of Insurance: Prior to taking occupancy, Preservation Partners shall furnish FPDKC with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

1. There shall be furnished to FPDKC each year a Certificate of Insurance issued pursuant to the requirements contained in sub-paragraphs (1) and (2) of this paragraph FOURTEEN. Insurance coverage as required herein in subparagraphs (A), (B) and (C) shall be kept in force during the term of this license. FPDKC shall be named as an additional named insured.
2. All certificates shall provide for 30 days' written notice to FPDKC prior to the cancellation or material change of any insurance referred to therein. Written notice to FPDKC shall be by certified mail, return receipt requested.
3. Failure of FPDKC to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of FPDKC to identify a deficiency from evidence that is provided shall not be construed as a waiver of Preservation Partners' obligation to maintain such insurance.
4. FPDKC shall have the right, but not the obligation, of prohibiting Preservation Partners from occupying the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by FPDKC.
5. Failure to maintain the required insurance may result in termination

of this lease at FPDKC's option.

6. Preservation Partners shall provide certified copies of all insurance policies required above within 10 days of FPDKC's written request for said copies.

ii. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A.VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A.VII or a Best's rating is not obtained, the FPDKC has the right to reject insurance written by an insurer It deems unacceptable.

iii. Cross-Liability Coverage

If Preservation Partners' liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross- liability coverage.

iv. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the FPDKC. At the option of the FPDKC, the Preservation Partners may be asked to eliminate such deductibles or self-insured retentions as respects the FPDKC, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

e. Indemnification

Preservation Partners shall indemnify and hold harmless the FPDKC and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising from or in any way connected with (i) the conduct or management of the premises or of any business or activity therein, or any work or thing whatsoever done, or condition created in or about the premises

during the term of this lease; (ii) any act, omission wrongful act or negligence of Preservation Partners or any of Preservation Partners' subtenants or licensees (if applicable), or the partners, directors, officers, agents, employees, invitees or Preservation Partners of Preservation Partners or Preservation Partners' subtenants or licensees; (iii) any accident, injury or damage whatsoever occurring in or at the premises, except to the extent it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Preservation Partners shall similarly protect, indemnify and hold and save harmless the FPDKC, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, Incurred by reason of Preservation Partners' breach of any of its obligations under, or Preservation Partners' default of, any provision of the Contract.

15. Any notice required or permitted herein shall be in writing and delivered personally, by USPS or electronically via email to the address or addresses or person set forth below:

FPDKC

Executive Director: Benjamin Haberthur
Forest Preserve District of Kane County 1996 S. Kirk Road, Suite 320
Geneva, IL 60134

Preservation Partners of the Fox Valley

Executive Director: Kelsey Shipton
P.O. Box 903
St. Charles, IL 60174

16. This Agreement is not assignable or transferable.
17. This Agreement is subject to the terms and conditions of the original deed of conveyance of the property to FPDKC, if any, and all other conditions, covenants and restrictions of record which may otherwise limit the rights of use contemplated hereby.

IN WITNESS WHEREOF, the FPDKC has executed this document this ____ day of _____ **2024.**

FPDKC:

FOREST PRESERVE DISTRICT OF KANE COUNTY
an organized corporation, Forest Preserve

By: _____

Christopher Kious, President

By: _____

Myrna Molina, Secretary

Preservation Partners:

PRESERVATION PARTNERS OF THE FOX VALLEY,
an Illinois not-for-profit

By: _____

Jim Kautz, Board President

By: _____

Kelsey Shipton, Executive Director