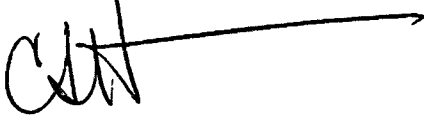


TOWN OF OCEAN VIEW
DELAWARE

October 2, 2023

TO: Mayor and Council

FROM: Town Manager, Carol Houck 

SUBJECT: Recommendation to Authorize a 15-Year Lease Extension to the Ocean View Historic Society for 39 Central Avenue the Location of the Tunnel-West House

BACKGROUND

The Town of Ocean View entered a lease agreement with the Ocean View Historical Society (now doing business as the Historic Village in Ocean View) in 2010 for the use of 39 Central Avenue, known as the 1860's Tunnel-West House for the purposes of making it into a museum that shows how people lived at the time in Ocean View. A copy of the agreement is attached for reference, as well as other pertinent information. The term of the original 15-year lease agreement ends on May 31, 2025, unless extended or terminated.

The Historic Village in Ocean View (HVOV) is an active and engaged preservation and education organization here in the Town. Since 2019, a strong partnership between the society/village has been built and our community enjoys the benefit of having the historic structures adjacent our park. Many programs are offered by the HVOV and the board voluntarily staffs the historic structures during most of our Town events for the benefit of the community.

MAINTENANCE REQUIRED

At this time maintenance is required and the Ocean View Historic Society/Historic Village in Ocean View applied for and received State Bond Bill funds to assist in funding improvements. The lease agreement reads *"...the Tenant shall, at its own expense, make all necessary repairs or replacements to the leased property, to its exterior, and..."*. In addition, *"...The Tenant shall not alter or otherwise make improvement or additions to the demised premises without the prior written consent of the Landlord..."*

The members of the HVOV Board have suggested that the short term left on the existing lease (7 months at writing) and the pending maintenance planned would best be served by extending the lease term by another 15 years, at this time. The primary work planned will see the exterior of the Tunnel-West structure improved. The exterior is currently in decline and the siding is in disrepair. The HVOV Board intends to enter into a contract with Miken Builders for the repairs.

RECOMMENDATION

It is therefore recommended that Mayor and Council authorize the Town Manager to modify the existing lease agreement term for an additional 15 years, or until May 31, 2040, and by obtaining all necessary signatures. All other aspects of the current lease agreement will remain in effect.

SINCE 1889



TOWN OF OCEAN VIEW

201 Central Avenue – 2nd Floor

Ocean View, DE 19970

302 539-9797 (office) • 302 537-5306 (fax)

www.oceanviewde.com

Note:

*As Required for
Work to be Done.
CSH*

August 15, 2023

Ocean View Historical Society
DBA Historic Village in Ocean View
C/O Barbara Slavin, President
& Phil Shockley, Treasurer
39 Central Avenue
Ocean View, Delaware 19970

RE: Contract with Miken Builders/39 Central Avenue Building Exterior Improvements

Dear Historic Village in Ocean View, Board of Directors:

The Town of Ocean View, being the owner (Landlord) of the home at 39 Central Avenue, known as the Tunnel-West House, and leased to the Ocean View Historic Society, that presents the home as part of the offerings of the Historic Village in Ocean View (HVOV) has considered the interest of the HVOV to improve the exterior of the structure given its current deteriorated condition. It is our understanding that funds to make the improvements were sought and granted by the State of Delaware in its FY24 Bond Bill.

Further, in accordance with the Lease Agreement between the parties dated 15 May 2010, such improvements require "prior written consent" of the Town (Landlord). This letter therefore shall serve as consent for the improvements to be made with the following conditions:

No construction or construction debris and or disruption shall take place during the period of August 15, 2023, through February 4, 2024, in association with planned events and activities at John West Park. The Towns upcoming events are as follows:

- Sept 2, **Labor Day Weekend Concert and Patriotic Celebration** 250 +/- attendance
- Sept 8, 15 and 22 – **Classic Movie Nights** 200 attendance
- Oct 28th – **Cops and Goblins** 3000 plus attendance
- Nov 25 – **Old Town Holiday** and continued trail of lights through Jan 1st, 2024. 1000 plus attendance
- Jan 26 to 28th – **Fire and Ice** or its postponement weekend of Feb 2 through the 4th. 2000 plus attendance over weekend

Upon further awareness of staging of the project, the Town is willing to reconsider the above blackout period, if assurances can be given that the resultant disturbance will not negatively impact the park or cause a hazardous situation. Any change to the blackout period noted above shall be completed in writing in advance between the parties.

Further, the contractor hired (understood to be Miken Builders) shall apply for a permit with the Town of Ocean View, however the permit fees will be waived in association with the Towns ownership of the home.

Thank you for your consideration of the details herein. We wish you much success with the project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Carol S. Houck". The signature is fluid and cursive, with the first name "Carol" being the most prominent.

Carol S. Houck
Town Manager

Email Regarding Lease Review

Carol Houck

From: Carol Houck
Sent: Tuesday, August 15, 2023 9:51 AM
To: Phil Shockley, Treasurer - Historic Village in Ocean View; Kathy Green; Joanne Guilfoil, Secretary - Historic Village in Ocean View; Barbara Slavin, President - Historic Village in Ocean View; David Green
Subject: RE: Miken Contract for Tunnell-West House Exterior Project
Attachments: HVOV Miken Contract Suggested Owners Representation Aug 2023.pdf; HVOV Addendum Miken Contract Suggestions & Questions Aug 2023.pdf; HVOV Lease Agreement - pertinent sections highlighted RE Miken Contract.pdf

Good morning, everyone – First – thank you for all of this leg work in regards to the improvement of 39 Central! After reviewing the original lease agreement, your email, the sample Miken contract, and draft Addendum, it seems all you need from the Town is ...“prior written consent” ... “to alter or otherwise make improvement or additions” ... To that end, I will begin preparing a letter and you will note in the first attachment my suggested representation of owners on the contract.

I also don't know when this work is being considered to start, however – the following **black out period** (when work to disturb/improve the structure or where work trucks, equipment or supplies at the site will not be permitted) is as follows:

- Today's date (August 15, 2023, through February 4, 2024) This allows for all of the upcoming events to take place in the park without disturbance. In addition, to limit potentially hazardous conditions in regard to materials or equipment adjacent the park, during crowded periods. I am however open to discussing with Miken how work during some of this proposed black out period might be handled such that it does not negatively impact our events or pose a hazard to park visitors. If an agreeable solution can be determined/planned, we will certainly consider it.
- Our Upcoming events are as follows:
 - Sept 2, **Labor Day Weekend Concert and Patriotic Celebration** 250 +/- attendance
 - Sept 8, 15 and 22 – **Classic Movie Nights** 200 attendance
 - Oct 28th – **Cops and Goblins** 3000 plus attendance
 - Nov 25 – **Old Town Holiday** and continued trail of lights through Jan 1st, 2024. 1000 plus attendance
 - Jan 26 to 28th – **Fire and Ice** or its postponement weekend of Feb 2 through the 4th. 2000 plus attendance over weekend

I do have a few suggestions/questions as notated on the addendum – 2nd attachment.
And lastly, a copy of the Lease agreement for ease of reference.

Any questions, please let me know. I will forward a draft letter of consent shortly.

Thank you - Carol

Carol S. Houck
Town Manager
Town of Ocean View, Delaware
201 Central Avenue
Ocean View, DE 19970
Office – 302-539-9797, ext. 104
Mobile – 302-354-4564

@Hack Recommendations:



Page 1

only shared here

32782 Cedar Drive
Millville, DE 19967
302-537-4444 (o)
302-537-4525 (f)

Construction Management Contract for Residential Construction

Recommended way to handle ownership

Date:

Project:

Owners:

Mailing Address:

Town of Ocean View, DE (for purpose of written consent only to Tenant - per attached lease Agreement. and letter, of Ocean View Historical Soc. DBA Historic Village in Ocean View (Tenant))

This is an agreement between MIKEN Builders, Inc. as the Construction Manager and _____ as the Owner for the Construction Management Services as identified below.

1. General

- a. **Contract Documents** – The Contract Documents consist of this Agreement, Drawings, Scope of Work/Specifications issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

Contract Documents:

- i. This Agreement
- ii. Construction Drawings by Transforming Architecture dated , _____

CONTRACTORS
for a cause

Serving
Delmarva Since
1986

2021
Best of Houzz
Service

Suggested add's + questions

CST

Miken Contract

Items to add in the contract or in an addendum

- The project is to remove the wood siding and replace with hardie plank, but there is likely some rotted wood underneath that needs replacing as well
 - We need to be notified where this rot is found and what remediation is needed to address before it is done.

and cost

Suggest Adding

- Absolute maximum we can spend is \$65,000

- Work needs to be done in phases as best determined by the contractor (Mike already agreed to this piece during our walkthrough)

- Front of building is priority
- Sides – next priority
- Back (not viewable from Central Avenue) – last priority

One phase will be substantially completed or determined to not have rot (extra costs) before moving to next phase.

- Columns need repair or replacement – we were previously advised they are in danger of failing

↑ Is this part of Phase 1??

- Any other work that needs to be done and is found during this process, we need immediate notification to consider whether we need to/can address at this time.

- We'd prefer to get everything done that needs to be done to ensure the longevity of the building now versus needing to come back within a short time period to do it again.
 - If this means we cannot put siding on the entire building now due to cost, we will request more to complete the job.

- Agree to contact Jeff at Sussex Lumber (previously talked to Janet Sabo, one of our Board members) regarding obtaining the building material from them.

- They offered us the hardie plank at cost + 1.75%.

→ Does this mean Miken agreed to contact Sussex Lumber?

1 **LEASE AGREEMENT**

2
3 **THIS LEASE AGREEMENT**, made this 15th day of May, A.D., 2010

4
5 **BY AND BETWEEN:**

6 **TOWN OF OCEAN VIEW**, a municipal corporation of the State of Delaware, of 201
7 Central Avenue, Ocean View DE 19970, hereinafter referred to as "Landlord",

8 **AND**

9 **OCEAN VIEW HISTORICAL SOCIETY, INC**, a Delaware non-profit corporation, of
10 32 West Avenue, Ocean View DE 19970, hereinafter referred to as "Tenant".

11
12 **FOR AND IN CONSIDERATION** of the mutual promises and covenants contained
13 herein, the parties hereto, each intending to be legally bound hereby, do mutually covenant and
14 agree as follows:

15
16 1. The Landlord hereby leases to the Tenant, subject to the conditions hereinafter expressed,
17 all that certain real property together with all structures and improvements thereon situated, lying
18 and being in Baltimore Hundred, Sussex County, State of Delaware, and being designated as 39
19 Central Avenue, Ocean View Delaware, and also shown on the tax maps of the Sussex County
20 Department of Finance as TM # 1-34-12-609.

21 2. The Tenant, its servants, employees, agents and invitees shall at all times during which
22 the Tenant is open have the free and uninterrupted right of access to the leased property.

23 3. At the commencement of the term, the Tenant shall accept the building, improvements,
24 and any equipment on or in the leased premises, in their existing condition. No representation,

1 statement or warning, expressed or implied, has been made on behalf of the Landlord as to such
2 condition, or as to the use that may be made of such property. In no event shall the Landlord be
3 liable for any limitation on its use. Prior to the commencement of this lease, the Tenant has been
4 given access to the property to perform inspections of the building and accept the subject premises
5 and surrounding land in their present condition.

6 4. The term of this lease shall be Fifteen (15) Years, commencing on June 1, 2010, and
7 ending on May 31, 2025, inclusive, unless sooner terminated as herein provided.

8 5. The Tenant shall have the option to extend this lease for an additional period of Five (5)
9 years, such option to be exercised in writing not less than 90 days prior to the expiration of the
10 original term.

11 6. So long as the Tenant shall maintain its status as a nonprofit corporation for the purposes
12 hereinafter set forth, the Tenant shall pay to the Landlord annual rent in the amount of \$1.00 and
13 other good and valuable considerations.

14 The Tenant shall provide to the Landlord the following:

15 (a) An operational report of its activities; and

16 (b) An IRS Form 990 Financial Report.

17 7. The Tenant may use and occupy the leased property for the purposes of the Tenant,
18 including the maintenance of its corporate office and a museum dedicated to the history of the
19 Town of Ocean View and the surrounding communities. The Tenant shall not use or knowingly
20 permit any part of the leased property to be used for any unlawful purpose.

21 8. The Tenant shall not, without the Landlord's written consent, place or erect any signs of
22 any nature on any part of the leased property or the sidewalk adjoining the leased property. The

1 Landlord will not unreasonably withhold its consent to the placement of a sign of reasonable size,
2 but the location, colors, materials and style of such sign shall be subject to the Landlord's absolute
3 right of approval. Any and all signs erected on the leased property shall conform to the
4 requirements of the Ocean View Zoning Code.

5 9. The Tenant, upon the payment of the rent herein reserved, and upon performance of all
6 the terms of this lease, shall at all times during the leased term peaceably and quietly enjoy the
7 leased property without any disturbance from the Landlord or from any other person claiming
8 through the Landlord. Provided, however, that the Landlord reserves unto itself, its agents or
9 employees and its successors or assigns, the right to enter upon the property upon reasonable
10 notice to Tenant for the purposes of maintaining, repairing, or inspecting the premises thereof.

11 10. The Tenant agrees to replace or restore any personal property which may be broken,
12 lost, destroyed or damaged, excepting for usual normal wear and tear. The Tenant shall repair all
13 damages and injuries to the building hereby leased resulting from a lack of reasonable care and
14 attention with respect thereto by the Tenant or by the negligence of Tenant.

15 11. At the expiration of the leased term, the Tenant shall surrender the leased property in as
16 good condition as it was in the beginning of the term, reasonable use and wear and damages by the
17 elements excepted.

18 12. The Landlord shall not be required to furnish to the Tenant any facilities or services of
19 any kind. All utility service charges shall be the sole responsibility of the Tenant.

20 13. At all times, the Tenant shall be obligated to maintain the demised premises and the
21 surrounding lot in such a manner that it shall be free and clear of all litter, garbage, etc. Tenant
22 agrees to dispose of trash in approved containers with lids to prevent intrusion by animals. All

1 trash is to be removed once a week. It is the responsibility of the Tenant to keep the Demised
2 Premises clean and to remove litter and other debris. No outside storage or any items shall be
3 permitted upon the premises or the structure. If due to negligent care on part of the Tenant, the
4 Tenant shall, at its own expense, make all necessary repairs or replacements to the leased property,
5 to its exterior, and to the pipes, heating system, plumbing system, window glass, fixtures, and all
6 other appliances and appurtenances belonging thereto, all equipment used in connection with the
7 leased property, and the sidewalks and curbs adjoining or appurtenant to the leased property. The
8 Tenant shall maintain all exterior utilities from the demised premises to the connection with the
9 utility, e.g., sewer, water.

10 14. All fixtures or improvements belonging to the Landlord shall remain the property of the
11 Landlord at the termination of the lease. Any trade fixtures or improvements which shall have been
12 placed on the demised premises by the Tenant may be removed by the Tenant at the end of said
13 term, provided that the removal of the same shall not materially damage the demised premises. The
14 Tenant shall not alter or otherwise make improvement or additions to the demised premises without
15 the prior written consent of the Landlord.

16 15. The landlord agrees to cooperate with the Tenant to determine the placement of a
17 building to be located behind the house located at 39 Central Avenue. The proposed structure will
18 be used as a museum/office facility for the Tenant.

19 In the event of termination of this lease, said structure shall remain the property of the
20 Tenant, subject to the following terms and conditions: (1) the building may be removed at the
21 expense of the Tenant or its assignee and the site restored to a condition satisfactory to Landlord; or
22 (2) the Town shall have the option of purchasing the building at its fair market value as determined

1 by a mutually agreed upon licensed appraiser; or (3) the structure may be transferred to a third
2 party and remain at the site upon the condition that the third party transferee enter into a
3 commercially reasonable lease for a lawful permitted use that is acceptable to Landlord.

4 16. The Tenant will pay for all costs associated with demolition and debris removal of the
5 existing garage presently located behind the house located at 39 Central Avenue. If the garage is
6 relocated to other Town property for Town purposes, the removal will be paid for by the Town. The
7 Town will retain use of the existing garage in the lease of the property until such time that the
8 Tenant needs the land area where the garage is located. The Historical Society shall give the Town
9 ninety (90) days notice that the garage will either be razed or is to be moved.

10 17. Parking will be made available to the Tenant's staff, volunteers, and visitors in the John
11 West Park Community center parking area. Parking will be on a first come first serve basis and
12 Tenant acknowledges that events occurring in the John West Park and/or Community center and
13 Town Staff may prohibit a guarantee of parking in the area.

14 18. This lease shall terminate at the end of the full term or any extension term hereof. ~~00~~

15 19. The lease shall be subject to immediate cancellation by the Landlord in the event the
16 Tenant shall:

17 (a) Be in arrears in the payment of the whole or any part of the amounts agreed upon
18 hereunder for a period of thirty (30) days after the date the same is due and payable;

19 (b) File a voluntary petition of bankruptcy;

20 (c) Make any general assignment for the benefit of creditors without the approval of the
21 Landlord;

1 (d) Failure to replace or repair any items which the Tenant is obligated to replace or
2 repair for a period in excess of thirty (30) days.

3 (e) Be the subject of any reasonable execution process;

4 (f) Default in the performance of any of the material covenants and conditions required
5 herein to be kept and performed by the Tenant, and such default continues for a period of thirty (30)
6 days after receipt of notice from the Landlord of said default; or

7 (g) Abandon its proposed use of the demised premises.

8 In any of the above events, the Landlord may take immediate possession of the demised
9 premises and remove the Tenant's effects, forcibly, if necessary, without being deemed guilty of
10 trespassing. Upon said entry, the lease shall terminate. Any rental due hereunder shall be payable
11 to said date of termination and thereafter in the amount of any loss. Failure of the Landlord to
12 declare this lease terminated upon default of Tenant for any of the reasons set out shall not operate,
13 debar or destroy the right of the Landlord to cancel this lease by reason of any subsequent violations
14 of the terms of this lease. Tenant may terminate this lease at any time after the first twelve months
15 by giving Landlord ninety days notice

16 20. At the termination of this lease; whether by the expiration of the said lease, or by and
17 under the terms of lease, the Tenant shall surrender quiet and peaceful possession of the leased
18 premises to the Landlord in good order and condition, reasonable wear and tear excepted. All
19 improvements remain with property.

20 21. The Tenant shall promptly, after execution of this lease, obtain public liability insurance
21 in such an amount as is acceptable to Landlord for personal injuries and/or death arising out of any
22 one accident or other cause, and in addition thereto, shall provide property damage liability

1 insurance for property damage arising out of any one accident or cause. Tenant shall maintain said
2 insurance with insurance underwriters authorized to do business in the State of Delaware
3 satisfactory to the Landlord. All policies shall name the Landlord, its successors and assigns, as
4 additional insured. The Tenant shall furnish the Landlord with a certificate from the insurance
5 carrier showing such insurance to be in full force and effect during the entire term of this lease, or
6 shall deposit with the Landlord copies of said policy.

7 22. The tenant shall indemnify, save harmless, and defend the Landlord against all
8 liabilities, expenses, losses, and reasonable attorneys' fees incurred by the Landlord as a result of:

9 (a) Failure by Tenant to perform any covenant required to be performed by the Tenant
10 hereunder:

11 (b) Failure to comply with any requirement of any governmental authorities; and

12 (c) Any mechanics lien or security agreement filed against the leased property, any
13 equipment therein, or any materials used in the construction or alteration of any improvements
14 thereon.

15 23. The Tenant may not sublet, assign, transfer, or lien any or all of the leased property
16 except after receiving the prior written approval of the Landlord.

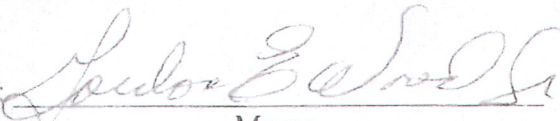
17 24. All of the terms, covenants and agreements herein contained shall be binding upon and
18 shall inure to its heirs, administrators, successors, executors, or assigns of the respective parties
19 hereto and shall be governed by the laws of the State of Delaware.

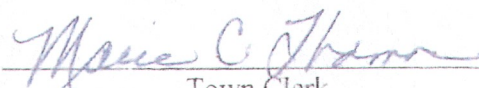
20 [The remainder of this page was left blank intentionally.
21 The signature page appears next.]
22

1 **IN WITNESS WHEREOF**, the parties hereto have hereunder set their hands and seals on the day
2 and year aforesaid.
3
4

5 **LANDLORD:**
6 **Town of Ocean View**


7
8
9 {Seal}

10 By: 
11 Mayor

12
13 Attest: 
14 Town Clerk

15
16
17 **TENANT:**
18 **Ocean View Historical Society, Inc.**

19
20
21 {Seal}

22 By: 
23 President

24
25 Attest: 
26 Town Clerk

27
28
29
30
31 [DLSRevDraft 04-23-10]

32 [DLSRevDraft 05-05-10]

33 [DRDRev.Draft05-14-10]