

State of Wisconsin

County of Racine

Village of Sturtevant

RESOLUTION 2010-21

2-25-10

**RESOLUTION BY THE COMMUNITY EVENTS, BEAUTIFICATION, AND
CULTURAL COMMITTEE AUTHORIZING A LEASE AMENDMENT WITH
WESTERN UNION JUNCTION RAILROAD CLUB**

WHEREAS, the Village leases a parcel of land from the Soo Line Railroad d/b/a Canadian Pacific Railway; and

WHEREAS, the Village is willing to continue to allow the Western Union Railroad Club to operate a train museum on the site but the Village needs a formal lease agreement to set forth the rights and responsibilities of the parties.

NOW THEREFORE, the Village Board of the Village of Sturtevant, Racine County, Wisconsin does hereby resolve:

1. That the execution of a lease with the Western Union Railroad Club for the lease of land that the Village leases from Soo Line Railroad d/b/a Canadian Pacific Railway pursuant to Resolution 2009-85 near the intersection of Michigan Ave. and Wisconsin Street, as set forth in Exhibit A which is attached hereto and incorporated herein, is authorized and approved.
2. That the Village President and the Village Clerk are authorized to execute any contracts, agreements or other documents necessary to carry out the intent of this resolution.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 2nd day of March, 2010.

Village of Sturtevant

By _____
Steven Jansen, President

Attest _____
Mary A. Cole, Village Clerk

Exhibit A

LEASE AGREEMENT

This Lease Agreement, (hereinafter referred to as Lease) made and entered into the _____ day of _____, 2010 by and between the Village of Sturtevant, a municipal corporation (hereinafter referred to as Landlord) and the Western Union Rail Road Club, (hereinafter referred to as Tenant). For good and valuable consideration, Landlord leases to Tenant and Tenant leases from Landlord the property,(hereinafter referred to as the premises), which is located at _____ and is more fully described in Exhibit A, which is attached hereto and incorporated herein pursuant to the following terms and conditions:

1. The term of this lease shall be for ten years commencing _____ and terminating on _____. After the initial term, the lease shall automatically renew on a year to year basis unless either party gives at least 60 days notice prior to the end of the initial 10 year term. After the initial 10 year term, either party can terminate the lease upon 60 days written notice for any reason. Either party can terminate this lease at any time, after providing the other party with 30 days written notice, if there is a material breach of the terms and conditions of this lease and said material breach is not corrected within said 60 days. The parties understand that the Landlord does not own the premises but has permission to use the premises from the Canadian Pacific Railroad. Landlord shall have the right to terminate this lease if the Canadian Pacific Railroad terminates Landlord's right to possess the property or otherwise requires Landlord to remove the tenant's possessions from the premises.
2. At the termination of the lease, Tenant shall remove all of its possessions from the premises including any possessions on the premises which tenant does not own but are on the premises pursuant to tenants' permission and authorization and shall peaceably and quietly surrender and deliver the Premises to Landlord. The removal of possessions shall include all railroad cars, locomotives, and any other similar structures. If these items are not removed at the termination of the lease, Landlord shall have the right to remove said items and to dispose of said items in any manner that Landlord deems appropriate. Any costs connected with the removal and disposal of any of said items shall be charged to and paid by Tenant.
3. Tenant agrees to lease the Premises in an "as is" condition, without any representations or warranties of any kind from Landlord as to the condition of the property.
4. Any property insurance for the museum or its contents shall be the responsibility of the Tenant. Landlord shall have no responsibility to provide any insurance for the museum or its contents.

5. The exact location and physical limits of the museum shall be limited to the premises as set forth in exhibit A and shall not be expanded without an amendment to this lease. Tenant shall insure that there is no obstruction or interference with Canadian Pacific Railroad operations. Tenant shall not interfere or allow interference with the operations of neighboring property owners.
6. Tenant shall be allowed to use the premises for the operation of a train museum which shall consist of various rail road cars and locomotives on tracks.(The cars shall be secured by the Tenant so that they do not move on the tracks.) The museum shall be open to the general public. No structures (other than railroad cars and locomotives and similar items) shall be erected on the premises without the written permission of the Landlord. Tenant shall not permit the premises to be used by other parties for parking, storage or similar uses except as specifically set forth in this lease.
7. The maximum hours of operation shall be Monday through Sunday 6:00 a.m. to 9:00 p.m. Any hours of operation beyond the maximum hours of operation must be approved by the Landlord and shall not be changed without Landlord's written approval.
8. Any signage which the Tenant desires to erect on the premises must be approved, in advance, by the Landlord in regard to content, appearance and location.
9. Rent shall be \$1.00 per year payable on January 2nd of each year.
10. The items that are currently on the premises are set forth in Exhibit B which is attached hereto and incorporated herein. The items set forth in Exhibit B are hereby approved by the Village. A description of any additional items that are to be brought onto the premises must be sent the Sturtevant Village Clerk for review by the Community Events, Beautification & Cultural Committee of the Village Board. If the Community Events, Beautification & Cultural Committee of the Village Board does not reject an item within 90 days of the submittal to the Village Clerk, the item shall be deemed approved. Any items, including approved items, that the Village deems unsafe or unsightly shall be repaired to the Village's satisfaction or shall be removed at the Village's direction. If an item has not be approved by the Village or if the Village requires that an unsafe or unsightly item be removed, the Tenant shall remove said item from the premises at Tenant's cost within 30 days of written notice from Landlord. Failure to remove said item within 30 days shall be a material breach of the lease. At Landlord's option, Landlord can terminate the lease upon 10 days notice or can have said item removed and disposed of and shall have a charge against the Tenant for the cost of removal and disposition.

11. Tenant shall:
 - A. Maintain all of the items on the site and insure that items do not appear to be unsightly;
 - B. Pick up all litter on a weekly basis;
 - C. Dispose of garbage in proper garbage receptacles;
 - D. Perform any snow removal, if necessary;
 - E. Provide lawn maintenance and cutting around the items in the museum;
 - F. Eliminate and/or prevent any unsafe or dangerous conditions;
12. Tenant shall not change the grading or create any additional storm water run off from the premises without the written permission of Landlord.
13. Tenant shall not use, store, or release any hazardous substances on the premises. Hazardous substances means any pollutant, contaminant, hazardous waste, solid waste, petroleum product, distillate, radioactive material, chemicals in amounts known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.
14. Tenant shall not assign or sublet to third parties any right to use the whole or any part of the premises. The parties understand that, from time to time, tenant will grant permission to third parties to bring railroad cars and/or locomotives that are not owned by the tenant onto the premises for display and this is permitted under this lease subject to the provisions of paragraph # 10 above.
15. Tenant shall not allow any overnight sleeping or camping on the premises and shall not allow and shall prohibit loitering on the premises. The parties understand that from time to time, on an occasional basis, a night watchman may sleep on the premises to provide security for the train museum.
16. Tenant agrees to conform to and not violate any applicable laws, ordinances, rules, regulations of the federal, state, county or municipal governments.
17. Tenant may not install any outdoor lighting on the premises without obtaining the prior written approval of the Landlord. Tenant shall pay for any electrical power provided to the premises. Small decorative holiday lights are permitted and hereby granted approval.
18. Tenant shall not install any fencing on the premises without obtaining the prior written approval of the Landlord.

19. The following shall be considered a material breach of the lease: If Tenant either: (i) fails to pay any installment of Rent or other charges due hereunder when due; (ii) fails to perform any other non-monetary covenant, term, agreement or condition of this Lease within ten [10] days after notice from Landlord [provided, however, that if the nature of such non-monetary default is such that the same cannot reasonably be cured within such 10-day period, Tenant shall not be deemed in default if Tenant shall commence such cure within said 10 day period and thereafter diligently prosecutes the same to completion]; or (iii) vacates or abandons the Premises for a period in excess of ten [10] consecutive days; or ceases to operate a Railroad museum open to the public for more than _____ days during the months of _____ to _____; then, in any of such cases, Landlord, in addition to all other rights and remedies available to Landlord by law or by other provisions hereof, may, without process, immediately re-enter the Premises and remove all persons and property, and, at Landlord's option, terminate this Lease as to all future rights of Tenant, and Tenant hereby expressly waives the service of any notice in writing of intention to re-enter. Neither acceptance of Rent or other charges by Landlord, with or without knowledge of breach or default, nor failure of Landlord to take action on account of any breach or default hereof or to enforce its rights hereunder shall be deemed a waiver of any breach or default, and absent specific written notice or consent to the contrary, said breach or default shall be a continuing one. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.
20. This Lease, and the term and estate hereby granted, and all of the rights of Tenant hereunder, are subject and subordinate to any underlying leases and the liens of any mortgage or mortgages now or hereafter in force against the Premises and/or the land on which it sits, as well as to any and all zoning laws, ordinances and regulations, conditions and agreements affecting said real estate at any time, and Tenant shall execute such further instruments subordinating this Lease to the lien or liens of any such lease or mortgage as shall be requested by Landlord; provided, however, that this subordination and any such further instruments shall not, so long as Tenant is not in default in the performance of any of the terms, covenants and conditions of this Lease, terminate or modify this Lease or any of the rights of Tenant hereunder.
21. For the purpose of this Lease, when approval by the Landlord is required pursuant to paragraphs 7, 8, 10, 12, 17 and 18, the Community Events, Beautification & Cultural Committee of the Village Board shall have the authority to grant said approval.

22. Miscellaneous provisions:

- (a) Non-waiver. Waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of this Lease, regardless of Landlord's or Tenant's knowledge of such preceding breach at the time of acceptance or payment of Base Rent or Additional Rent.
- (b) Entire Agreement. This Lease represents the full, final and complete expression of the parties and contains all covenants and agreements between Landlord and Tenant relating in any manner to the Base Rent, Additional Rent, Tenant's use and occupancy of the Premises, and other matters set forth in this Lease. No prior agreements or understandings pertaining thereto shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended except in writing signed by Landlord and Tenant.
- (e) Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect. If the intent of any sections of this Lease so indicate, the obligations of Landlord and Tenant pursuant to such sections of this Lease shall survive the termination of this Lease.
- (f) Notices. All notices which Landlord or Tenant may be required, or may desire, to serve on the other may be served by personal service or by mailing by registered or certified mail, postage prepaid, at such address as the parties may from time to time designate to the other in writing or in the case of the Landlord, by service on the Village Clerk. The time of rendition of such notice shall be deemed to be the time when the notice is either personally delivered or deposited in the mail as herein provided.
- (g) Force Majeure. Time periods or deadlines for Landlord's or Tenant's performance under any provisions of this Lease (except for the payment of money) shall be extended for periods of time during which the non-performing party's performance is prevented due to circumstances beyond the party's control, including, without limitation, labor disputes, embargoes, governmental restrictions or regulations, inclement weather and other acts of God, war or strike.
- (h) Applicable Law. This Lease shall be governed by, and construed in accordance with, the Laws of the State of Wisconsin
- (i) Authority. Each party warrants and represents to the other party that each party is duly authorized to execute this Lease and bind Landlord and Tenant to the terms, conditions and provisions herein.

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

Dated this ___ day of _____
2010.

Dated this ___ day of _____
2010.

Village of Sturtevant

Western Union Rail Road Club

By: _____
Steve Jansen, Village President

By: _____

Attest: _____

By: _____

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Mary Cole, Village Clerk