

RESOLUTION 21-70

**A RESOLUTION TO AUTHORIZE THE MAYOR OF SPRING HILL, TENNESSEE,
TO EXECUTE A MANAGEMENT AND OPERATION AGREEMENT
FOR HISTORIC RIPPAVILLA
WITH THE BATTLE OF FRANKLIN TRUST**

WHEREAS, the City of Spring Hill, Board of Mayor and Aldermen is committed to the best interests of the citizens of Spring Hill and the preservation of historic property; and

WHEREAS, the City of Spring Hill advertised and accepted proposals for the Management and Operation of Rippavilla on March 11, 2021; and

WHEREAS, Battle of Franklin Trust submitted a proposal which emphasized their experience, tools, resources and vital relationships valued in the field of historical preservation; and

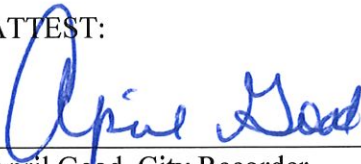
WHEREAS, the City Attorney has developed and prepared a proposed Management and Operation Agreement attached as Exhibit A hereto, between the City of Spring Hill and Battle Trust of Franklin.

NOW, THEREFORE, BE IT RESOLVED, that the City of Spring Hill authorizes the Mayor of Spring Hill, Tennessee, to execute the attached Management and Operation Agreement with Battle of Franklin Trust, as it is found to be in the best interest of the citizens of Spring Hill.

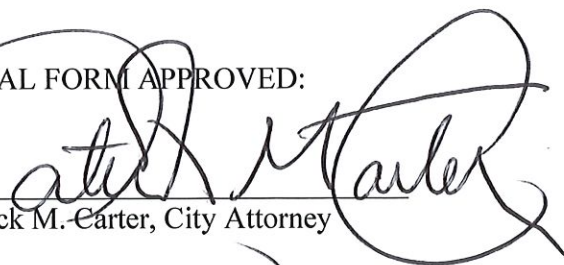
Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee, on the 17th day of May, 2021.


Jim Hagaman, Mayor

ATTEST:


April Goad, City Recorder

LEGAL FORM APPROVED:


Patrick M. Carter, City Attorney

MANAGEMENT AND OPERATION AGREEMENT

THIS MANAGEMENT AND OPERATION AGREEMENT ("Agreement") is made by and between THE CITY OF SPRING HILL, TENNESSEE (the "City") and THE BATTLE OF FRANKLIN TRUST, a Tennessee nonprofit corporation, ("BOFT") and is entered into on May 24, 2021, and is effective as of the Effective Date set forth herein.

RECITALS:

WHEREAS, the City owns improved property popularly known as "Rippavilla", referred to herein alternatively as "Rippavilla" or "the Property" located at 5700 Main Street, Spring Hill, Tennessee 37174, as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property consists of approximately 98.44 acres and includes not only the Rippavilla Mansion, but also Brown's Stand, an historically accurate recreated log structure built in 2001 to aid in the site's interpretation of early Tennessee history, the historic Cheairs Cemetery, the resting place for the members of the Cheairs family, the adjacent Cemetery for Unknown Souls into which remains have been reinterred from the Haynes Haven property, the Freedmen's Bureau School House - a historic school house relocated to the Property, the Slave House, the last remaining of houses occupied by slaves on the Property, the Sunken Road, an historic abandoned road thought to have been used by bison, Native Americans and early settlers of this area, and the Carriage House, located adjacent to the Rippavilla Mansion and built in 1914; and

WHEREAS, the City desires to contract with BOFT to manage and operate the Property in a manner consistent with historical integrity as defined by the U.S. Department of Interior's Historic Building Standards; and

WHEREAS, the City and BOFT desire to set forth certain terms relating to the management and operation of the Property by BOFT.

NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties do hereby agree to the following:

1. **APPOINTMENT AND TERM.** This Agreement hereby confirms the appointment of BOFT to manage and operate Rippavilla for an initial term of thirty-six (36) months (three years), beginning on the Effective Date hereof, subject to the terms and conditions of this Agreement.

2. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be May 24, 2021 (the "Effective Date").

3. **OPTION TO EXTEND.** The City and BOFT shall have the mutual option to extend this Agreement for twelve (12) thirty-six (36)-month renewal periods. In order to exercise the mutual option to extend, either party may notify the other party at least six (6) months (180 days) prior to the expiration of the then existing Agreement term. The party receiving notice shall indicate, in writing, its decision whether the desire to extend the Agreement is mutual at least ninety (90) days prior to the expiration of the then existing Agreement term. Upon said expression of mutuality by the parties, the City, by Resolution, shall state its formal desire to extend the Agreement as provided herein. The Agreement shall not be deemed extended until the City formally acts by Resolution.

4. **OVERSIGHT BY CITY.**

A. Beginning in 2022, and prior to March 1st of each year that this Agreement is in place, BOFT shall submit to the City or its designee the following information for the then upcoming fiscal year (July 1 through June 30):

i. A Budget and Management Plan, an Interpretive Plan, a Marketing Plan and any other financial documents reasonably requested by the City or its designee relating to the Property. For all years following 2022, and with regards to the Interpretive Plan and Marketing Plan, an update thereof shall be deemed sufficient.

ii. A budget request, if any, for funds to supplement BOFT's management and operation of the Property (and not any other property owned or managed by BOFT) for the then upcoming fiscal year understood to be in addition to the City's base financial support detailed below.

B. On or before each June 30th, the City may appropriate funds in conjunction and in consideration of BOFT's budget request from revenues generated by the City's Hotel/Motel Excise Tax. The amount of the appropriation and its uses shall be incorporated into the Annual Budget adopted by the City and shall be in addition to the City's base financial support detailed below.

C. In addition to revenue generated from the Property paid to BOFT or otherwise may be appropriated to BOFT in connection with the Property, the City's base financial support to supplement the salaries and other costs of BOFT associated with the Property shall be \$100,000.00 in year one (1) of this Agreement, \$80,000.00 in year two (2) of this Agreement and \$60,000.00 in year three (3) of this Agreement. All payments shall be made quarterly in advance (July 1, October 1, January 1 and April 1). Any payment shall be prorated if BOFT is not expected to manage and operate the Property for the full quarter.

5. **RIGHT TO INSPECT.** A representative of the City may, at all reasonable times, enter the Property to inspect the Property, make necessary or agreed upon repairs, alterations or improvements, supply necessary or agreed services or otherwise.

6. **TERMINATION.** Either party may terminate this Agreement upon ninety (90) days' (three months) written notice to the other party or as the parties may otherwise agree.

7. **REPRESENTATIONS; ACCEPTANCE.**

A. The City hereby represents and warrants that as of the Effective Date:

i. there are no other agreements to manage, use or operate the Property except for an Agreement for Use of Property by and between the City and Rippavilla, Inc. dated June 8, 2017; and

ii. there are no leases or subleases covering any portion of the Property except for the Lease Agreement by and between the City and Rippavilla, Inc. dated June 8, 2017.

B. For so long as BOFT is operating and managing the Property, the City will not enter into any other agreement to manage, use, operate or lease the Property or any portion thereof, without the prior written consent of BOFT. The City will not extend the Rippavilla, Inc. Use Agreement or Lease without the prior written consent of BOFT.

C. BOFT has examined the Property and agrees to take it in its present condition without alteration or repairs except to the extent listed in Exhibit B attached hereto.

8. **MANAGEMENT STRUCTURE.** BOFT will fulfill its responsibilities in accordance with this Agreement in conjunction with the oversight of the City or its designee. The City's oversight is limited to the oversight rights explicitly set forth in this Agreement.

9. **BOFT'S RESPONSIBILITIES.** BOFT shall be responsible for operation and management of the Property, including, but not limited to:

A. Sufficiently staffing the Property for it to be open to the public seven (7) days per week, three hundred sixty (360) days a year (the property may be closed on Christmas Eve, Christmas Day, Thanksgiving Day, Easter, and New Year's Day), except in instances of *Force Majeure* as set forth in Section 15, or as the Parties otherwise agree, with appropriate personnel and all human resource management related thereto (including, but not limited to, employee education, performance, evaluation, insurance and compensation). Unless specifically hired by the City, all staff shall be considered employees of BOFT and not the City.

B. With regards to year one (1) of this Agreement, BOFT shall provide the BOMA a monthly report regarding activities at the Property, including, but not limited to updates on operations, and year-to-date financials. For year two (2) and thereafter, the required reports shall be made quarterly rather than monthly. The reports shall be included in the BOMA meeting packets.

C. Interpretation of the property consistent with the Master Plan and taking into account Rippavilla's four (4) distinct epochs as set forth in "Rippavilla: Telling the Whole Story of the Civil War Era Experience" prepared by the Tennessee Civil War National Heritage Area, specifically:

- i. Building of the Plantation
- ii. War and Reconstruction
- iii. Agricultural Innovation and Return to Prosperity
- iv. Modern Age

Additionally, interpretation and programming for Rippavilla shall seek to place an emphasis on:

- i. Rippavilla's unique architecture
- ii. Rippavilla's place in Civil War history
- iii. The lives and contributions of those enslaved at Rippavilla
- iv. Rippavilla's place in the agricultural history of the United States

D. Manage collections within the Property, including furnishings and artifacts, whether held, donated or owned (an inventory of which has been signed off on by both parties and attached hereto as Exhibit C detailing items, their description and ownership of said items), which shall be updated by the Parties on a yearly basis on or before June 1 of each year of this Agreement or any extension thereof. When a donation or gift of tangible personal property is made, BOFT shall keep a contemporaneous written record of whether the gift or donation was made to BOFT or the City and the name and contact information of the donor. BOFT shall notify the City of any gifts made to the City within fourteen (14) days of the gift being made.

E. Manage special events at the Property, including, but not limited to, weddings, private parties, community events and the like.

F. Maintain separate financial records for the Property in the same manner that BOFT does for its Carter House and Carnton properties.

G. Support Spring Hill businesses and service providers whenever possible.

H. Manage donors and volunteers.

I. Operate and manage the Property's gift shop.

J. Engage in general Property maintenance, defined as those repairs not exceeding \$500.00 for any single repair.

K. Provide of all necessary operational supplies.

L. Develop and implement educational programming.

M. Within boundaries to be reasonably determined by and between the Parties, provide for lawn care, landscaping and farming operations of the Property.

N. Pay for all utilities serving the Property, including, but not limited to, gas, electric, water, cable and internet.

O. Provide guidance and oversight of adherence to the Land Trust of Tennessee's conservation easement.

P. Manage public relations, marketing and tourism initiatives.

Q. Secure all appropriate and necessary insurance coverages (e.g., workers compensation, contents/renter's insurance and general liability) related to the operation of BOFT. The City shall be named as an additional insured with regards to said policies and BOFT shall provide proof of same to the City on or before every June 1 this Agreement is in effect.

R. Endeavor to establish an endowment fund for the Property to provide capital improvements therefor.

S. Participate in audit preparation, as necessary.

T. Carry out all duties and obligations pursuant to this Agreement in a reasonably professional manner and in material compliance with all regulations and laws, whether local, state or federal.

U. Carry out other reasonable responsibilities as agreed upon by the City and BOFT.

10. **CITY'S RESPONSIBILITIES.** Notwithstanding any other provision of this Agreement, the City shall be responsible for the following:

A. Engage in major Property maintenance defined as those repairs exceeding \$500.00 for any single repair.

B. Maintain and develop roads, trails and fences on the Property.

C. Provide security and fire protection.

D. Secure and maintain general liability and property insurance on the Property with minimum limits of \$1,000,000/\$3,000,000.

E. Pay any cost associated with its own events.

F. Carry out all other duties and obligations of the City pursuant to this Agreement.

11. **PARTIES' RELATIONSHIP.** BOFT is a third-party independent contractor with regards to the City and shall not otherwise be considered as an agent, agency, subdivision and/or board thereof.

12. **MODIFICATION.** This Agreement supersedes all prior discussions and agreements between BOFT and the City, including, but not limited to, the Letter of Intent by and between the Parties dated April 19, 2021. This Agreement contains the sole and entire understanding between BOFT and the City with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of BOFT and the City.

13. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior written consent of the other party.

14. **SUBLEASE.** BOFT shall not have the right to sublease space at the Property without the prior written consent of the City.

15. **FORCE MAJEURE.** The parties shall not be liable to each other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond their respective reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or governmental authorities approval delays which are not caused by any act or omission by the parties, and unusually severe weather. The parties agree to notify each other of the existence and nature of any delay.

16. **EXHIBITS.** Each and every Exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

17. **TIME.** Time is and shall be of the essence with regards to this Agreement.

18. **NOTICES.** Any notices required to be sent hereunder shall be hand delivered or sent by certified mail to the following addresses:

CITY:	Mayor Jim Hagaman
	P.O. Box 789
	Spring Hill, Tennessee 37174

COPY TO: Patrick M. Carter, City Attorney
Middle Tennessee Law Group, PLLC
d/b/a Wolaver, Carter & Heffington
809 South Main Street, Suite 100
Columbia, TN 38401

BOFT: The Battle of Franklin Trust
c/o Eric Jacobson
1345 Eastern Flank Circle
Franklin, TN 37064

19. INDEMNITY.

A. Except to the extent BOFT is obligated to indemnify the City pursuant to Section 19(B) below, and to the extent permitted by law, the City shall indemnify, defend and hold harmless BOFT and its affiliates, from and against any and all liabilities, obligations, claims, losses, awards, judgments, settlements, demands, damages, costs, penalties and fees (including reasonable attorneys' fees) to or for third parties (as used in this Section 19, "Claims") to the extent attributable to or in connection with the Property, or the performance or exercise by BOFT of the duties, obligations, powers, or authorities herein.

B. Except to the extent insured under the City's property or liability insurance policies, BOFT agrees to indemnify and hold harmless the City and its affiliates, from and against any and all Claims to the extent attributable to (i) any acts or omissions of BOFT which have been held to be grossly negligent, or (ii) any acts of BOFT that are beyond the scope of BOFT's authority hereunder.

20. SEVERABILITY. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. APPLICABLE LAW. This Agreement shall be governed by, construed under, interpreted and enforced in accordance with the laws of the State of Tennessee.

22. VENUE AND JURISDICTION. The venue and jurisdiction for any disputes arising pursuant to this Agreement shall be in the Circuit Court for Maury County, Tennessee.

23. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. An executed counterpart delivered by electronic means shall constitute an effective execution of this Agreement.

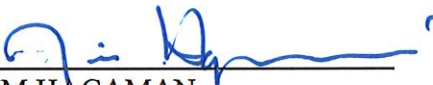
24. **CAPTIONS.** The captions and headings used in this Agreement are for the convenience of the parties only and do not in any way restrict, modify or amplify the terms of this Agreement.

25. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties and shall not be affected by any agreements or representations whether written or oral, not contained herein. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, and assigns, if any.

26. **WAIVER OF JURY TRIAL: EACH PARTY HERETO, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.**

IN WITNESS WHEREOF, BOFT and the City have caused their duly authorized representatives to execute and deliver this Agreement, all as of the day and year first written above.

CITY OF SPRING HILL, a Tennessee
municipality

By: 
JIM HAGAMAN
Mayor of Spring Hill
Date of Execution: 5-17-2021

THE BATTLE OF FRANKLIN TRUST,
a Tennessee nonprofit corporation

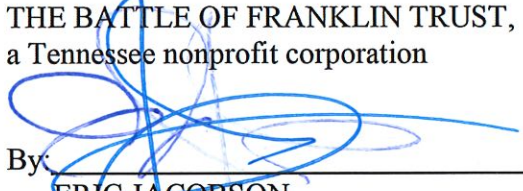
By: 
ERIC JACOBSON
CEO
Date of Execution: 05/24/2021

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

EXCEPTED ALTERATIONS OR REPAIRS TO PROPERTY

EXHIBIT C
INVENTORY

CITY OF SPRING HILL, TENNESSEE

By: _____
Name: _____
Title: _____

THE BATTLE OF FRANKLIN TRUST

By: _____
Name: _____
Title: _____