

## **AGREEMENT OF LEASE**

**THIS LEASE AGREEMENT** (the "Lease"), made this \_\_\_\_ day of April, 2019 by and between the TOWN OF BEDFORD, a municipal corporation of the County of Westchester, State of New York, with its offices at the Town House, 321 Bedford Road, Bedford Hills, Town of Bedford, County of Westchester, State of New York, (the "Town"), and THE BEDFORD HILLS HISTORICAL MUSEUM INC., a New York not-for-profit corporation, with its offices at POB 331, Bedford Hills, New York 10507, Town of Bedford, County of Westchester, State of New York, (the "BHHM") herein;

### **WITNESSETH:**

**WHEREAS**, the Town is the owner of certain premises commonly known as 321 Bedford Road, Bedford Hills, New York 10507 (the "Town Hall"); and

**WHEREAS**, the BHHM represents that is organized under Section 509(a)(1) and 501(c)(3) under the Internal Revenue Code and is authorized by New York State to operate as a museum.

**WHEREAS**, the mission of the BHHM is to enable present and future generations to learn about and study Bedford Hills, its history and its people; and

**WHEREAS**, among other things in fulfilling its mission, the BHHM ensures the preservation of historical artifacts, objects, journals, newspapers, memorabilia and other such items (the "Bedford Hills Historical Objects") in or involving the hamlet of Bedford Hills, for the edification and enjoyment of the general public, residents, inhabitants, citizens and taxpayers of the Town; and

**WHEREAS**, the parties hereto are also intent upon ensuring the preservation of the Bedford Hills Historical Objects; and

**WHEREAS**, the BHHM under a lease with the Town previously occupied certain space in a portion of the basement of the Town Hall for the safe storage of the Bedford Hills Historical Objects, display of certain of the Bedford Hills Historical Objects, to display exhibits and hold events relating to the history of Bedford Hills and for related purposes; and

**WHEREAS**, the BHHM is seeking to re-occupy a portion of the basement of the Town Hall, with some modifications, for the aforementioned purposes; which portion consists of approximately 840 square feet, as more particularly described on Exhibit "A" attached hereto as Rooms A and B (the "Premises"); and

**WHEREAS**, the Town acknowledges that the BHBM provides substantial services to the Town and the public with respect to its operation of a museum and the preservation of the Bedford Hills Historical Objects; and

**WHEREAS**, the Town and the BHBM wish to have the services of the BHBM continue for the benefit of the Town and its residents; and

**WHEREAS**, the Town Board of the Town is desirous of leasing said Premises to the BHBM and the BHBM is desirous of leasing said Premises from the Town for the purpose of conducting, or permitting, qualified persons to conduct functions, exhibitions, displays, and activities for the promotion of the general welfare, interest and enjoyment of the public, including but not limited to operating the Bedford Hills Historical Museum (the "Museum") which Museum shall be operated for the benefit of the public and for furthering the preservation of the Bedford Hills Historical Objects for the edification and enjoyment of the general public, residents, inhabitants, citizens and taxpayers of the Town; and

**WHEREAS**, among other things, each of the parties hereto is to carry the insurance specified herein, in an amount not less than the amounts specified herein; such BHBM insurance to bear endorsements in the name of the Town Board of the Town of Bedford and/or of the Town of Bedford, as additional insureds, for the protection of the specified interests of the said Town Board and/or of the Town of Bedford, in and to said premises and such Town insurance to bear endorsements in the name of the BHBM and its Board of Directors; and

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) in hand paid by one party to the other, and the mutual covenants, restrictions, and reservations herein contained, the parties hereto do hereby agree as follows:

1. Town hereby leases and demises to the BHBM the Premises designated as Rooms A and B on Exhibit "A" attached hereto commencing on June 1, 2019 for a term of five years ending on April 30, 2024. This lease shall be renewable at the Town's sole discretion, for three (3) additional five year terms upon receipt of written notification from the BHBM not less than six (6) months prior to the expiration of this Lease.

2. The BHBM agrees and acknowledges that in the event an unanticipated public need arises, the Town reserves the right to use the Premises, to the exclusion of the BHBM, during the period of time the unanticipated public need exists. The Town agrees that the Town will not exercise such right during the first year of this Lease. The Town shall be required to give the BHBM six (6) month notice of need to use the Premises. The Town will restore the Premises to the BHBM as soon as the public need is abated. The Town will be responsible for moving costs to relocate the BHBM and to assist the BHBM to be

restored to the Premises, if necessary. In addition, the Town agrees to restore the Premises to the condition existing before BHBM was required to relocate from the Premises due to an unanticipated public need arises that requires the Town to occupy or use the Premises.

3. The Town shall, at any and all reasonable times, have access to the Premises, and shall at any and all times, have the use of the same for any and all municipal purposes that do not interfere with the BHBM's reasonable use of the Premises. The Town shall provide BHBM reasonable notice before accessing the Premises. Notwithstanding the foregoing, the Town reserves the right to access Room A in the Premises at any time, without notice, to perform work on and maintain the data/communication infrastructure in the ceiling in Room A of the Premises being leased to the BHBM, to perform emergency repairs, and to access the entire Premises in the event of other emergencies. BHBM shall not place any equipment or displays that cannot be easily moved or that will interfere with the Town's ability to access the data/communication infrastructure in the ceiling in Room A.

4. The BHBM shall have the use and occupancy of the Premises for the general purposes of the organization, shall be required to maintain a museum on the Premises, may provide a reading room, and may conduct or permit to be conducted, programs, exhibitions, displays, meetings, activities, etc., on the Premises, which activities shall be primarily for the public use, and the interest, enjoyment, and pleasure of the public. At all times, such programs, exhibitions, displays, meetings, etc. shall be under the supervision of the BHBM staff, volunteers, officers, directors, and the responsibility of the BHBM Board of Directors. The BHBM may serve prepared food and drinks in conjunction with said events and activities. Notwithstanding the foregoing, BHBM's meetings, events and activities shall not interfere in any way with the Town's use of any other parts of the Town Hall and the BHBM shall provide the Town with appropriate notice of any meetings, events, displays, exhibitions or activities and shall confer with the Town Clerk before scheduling any such meetings, events or activities.

5. Neither party shall, at any time, perform any act or acts or make any commitment or commitments in regard to the Premises which shall place any liability or obligation upon the other party, without the express prior written consent of such other party.

6. The BHBM shall have the right to the non-exclusive use of the kitchen and bathroom facilities shown as Room C on Exhibit "A" attached hereto and designated as the "common area". The BHBM shall be responsible for maintaining any such the kitchen and bathroom facilities in a clean and orderly manner to the extent they are used by the BHBM and shall be responsible for any repairs of such facilities or apparatus located therein if any such damage is caused by the BHBM. The use of such kitchen facilities shall not interfere

with the use of such facilities by the Town or any Town employees or personnel and the Town's use of the kitchen facilities shall take priority over BHHM's use of the kitchen facilities.

7. The Town has performed the work set forth in Exhibit "B-1" attached hereto, at its sole cost and expense. The Town agrees to perform the work set forth in Exhibit "B-2" attached hereto.

8. Any renovations or improvements to the Premises undertaken by the BHHM shall be subject to the prior written approval of the Town Building Department. In undertaking such renovations and improvements or any other work in the Premises, the BHHM shall only be permitted to use contractors approved in writing by the Town Building Department and the BHHM shall be responsible for obtaining from any such contractors (i) proof of insurance acceptable to the Town Clerk, naming the Town as an additional insured and, (ii) an indemnification and hold harmless agreement in a standard form as provided by the Town Clerk. The BHHM shall be solely responsible for all costs and expenses for renovations or improvements or other work to the Premises required to allow the BHHM's occupancy and use of the Premises. The Town shall not be responsible for reimbursing the BHHM for any such improvements.

9. To the extent that Town personnel are made available to carry out any work on behalf of BHHM relating to the Premises, including work relating to moving in or re-occupancy not outlined herein, the BHHM shall reimburse the Town for any costs, including but not limited to reimbursement for the cost of such Town personnel. The BHHM further agrees to hold harmless and indemnify the Town, and any Town personnel, for any damages resulting from the BHHM's use of such Town personnel.

10. Except as set forth herein, the BHHM agrees to assume the maintenance and repair of the Premises and shall maintain the Premises in a clean and good working order at all times. BHHM shall, at BHHM's expense, clean the Premises and arrange for the removal of the BHHM's refuse and rubbish from the Town Hall to an appropriate disposal area. Notwithstanding the foregoing, the Town shall be responsible for maintaining and repairing all utilities that service the Premises, at the Town's own cost.

11. If deemed necessary by either party, the BHHM will pay for installation of a door lock or locks that provides security for the Bedford Hills Historical Objects and other artifacts stored in the museum exhibit room shown as Room B on Exhibit "A". BHHM will provide two (2) sets of keys to any such locks to the Town Clerk.

12. The BHHM will have the right, at its sole cost and expense, to reinstall picture moulding and/or a track system for display hanging purposes in Room A on Exhibit "A".

The BHBM shall also have the right to re-install track lighting in the shown as Room A on Exhibit "A".

13. The BHBM, at its own cost and expense, shall provide for the installation of its own phone, internet, cable television or computer networks connections.

14. The BHBM shall have the right to install the stone bench honoring Jaap Ketting in the area outside the vestibule entrance to the Premises, at its own cost. The Building Department shall approve the exact location of the bench and the method of installation.

15. The BHBM is solely responsible for the following operational expenses: phone, internet, cable television, computer and insurance.

16. The BHBM is also solely responsible for any costs associated with preparing and mounting exhibits and for moving any Bedford Hills Historical Objects or other articles from their current storage unit to the Premises.

17. The BHBM shall be required to pay in advance to the Town the sum of Fifty and 00/100 (\$50.00) Dollars per month as payment for its share of the utilities relating the use and occupation of the Premises, which shall be made payable to the "Town of Bedford" and remitted on a semi-annual basis to the Town of Bedford Comptroller commencing May 1, 2019.

18. Throughout the term of this Lease, and any renewals, the BHBM shall be required to obtain and maintain in full force and effect liability insurance in the minimum amount of \$2,000,000.00, which policy shall name the Town of Bedford as an additional insured. Proof of insurance shall be provided to the Town prior to the BHBM taking occupancy of the Premises. Additionally, the BHBM shall, if required by law, carry workers compensation insurance and any other statutorily required insurance. The Town of Bedford shall maintain appropriate insurance covering the Town Hall, as well as its own liability policy, which policy shall name the BHBM as an additional insured.

19. The Town shall have a right to cancel the Lease for cause based upon a breach of any terms of the Lease, upon giving ten (10) business days' notice to the BHBM, and allowing the BHBM ten (10) business days to cure such breach.

20. The BHBM shall use and occupy the Premises only for its enumerated purposes and related incidental uses. If any governmental license, permit or corporate registration shall be required for the proper and lawful conduct of the BHBM's use of the Premises, or any part thereof, the BHBM, at its sole expense, shall duly procure and

thereafter maintain such license, permit or corporate registration and at Town's request submit the same for inspection by Town. The BHBM shall at all times comply with the terms and conditions of each such license, permit or corporate registration.

21. The BHBM shall not at any time use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises which would in any way: (i) violate any laws or requirements of public authorities; (ii) make void or voidable any fire or liability insurance policy then in force with respect to the Premises; (iii) make unobtainable, or more expensive, from reputable insurance companies authorized to do business in New York State at standard rates any fire insurance with extended coverage, or liability, elevator or boiler or other insurance with respect to the Premises; (iv) cause physical damage to the Premises or any part thereof; (v) constitute a public or private nuisance; (vi) result in the discharge of objectionable fumes, vapors or odors into the air conditioning system or into flues or vents not designed to receive them; or (vii) impair or interfere with or tend to impair or interfere with the use of any of the other areas of the Town Hall.

22. Except as set forth in this Lease, the BHBM accepts the Premises "as is." The Town has not made any representations or warranties whatsoever with respect to the Premises. The BHBM acknowledges that the BHBM is fully familiar with the Premises and the condition and state of repair thereof on the date hereof.

23. The Town shall furnish to the BHBM electric current to be used by the BHBM in, or in connection with, the lighting fixtures and the BHBM's ordinary office equipment in the Premises, along with the operation of the Town Hall's heating, cooling and other Town Hall systems. The BHBM's use of electric energy in the Premises shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise servicing the Premises. The BHBM agrees that Town shall not in any way be liable or responsible to the BHBM for any loss, damage, or expense that BHBM may sustain or incur if either the quantity or character of electrical service is changed, is no longer available, or is unsuitable for the BHBM's requirements.

24. Except as set forth herein, the BHBM shall make no changes in or to the Premises of any nature whatsoever without Town's prior written consent. The BHBM shall, throughout the Term of this Lease, take good care of the Premises, ordinary wear and tear excepted. The BHBM, at its expense, shall be responsible for repairing all damage or injury to the Premises and the systems and equipment thereof, whether requiring structural or nonstructural repairs, caused by or resulting from carelessness, omission, neglect or improper conduct of the BHBM, its agents, employees, invitees or licensees, or which arise out of any work, labor or service done for or supplied to the BHBM arising out of the

installation, use or operation of the property or equipment of the BHBM. The BHBM, at its expense, shall repair all damage to the Town Hall and the Premises caused by the moving of the BHBM's fixtures, furniture and equipment. Except if required by the neglect or other fault of Town or its employees, agents or contractors, the BHBM, at its expense, shall replace all broken glass in or about the Premises and shall be responsible for the repair and maintenance of all lighting fixtures therein. The BHBM shall promptly make, at the BHBM's expense, all repairs in and to the Premises for which the BHBM is responsible, using only contractors approved by the Town, which approval shall not be unreasonably withheld or delayed. The Town, at its option, may perform such repairs at the BHBM's expense, provided such repairs are promptly made at reasonable cost.

25. The Town, at its expense, shall keep and maintain the Town Hall and its fixtures, appurtenances, systems and facilities serving the Premises (including the plumbing, electrical, heating, air conditioning and other Town Hall systems, but excluding the alarm system) in good working order, condition and repair and shall make all repairs, structural and otherwise, interior and exterior, as and when needed in or about the Premises, except for those repairs for which the BHBM is responsible pursuant to any other provisions of this Lease. The Town reserves the right, without any liability to the BHBM, except as otherwise expressly provided in this Lease, and without being in breach of any covenant of this Lease, to stop, interrupt, or suspend service of any of the heating, ventilating, air conditioning, water, electric, sanitary or other Town Hall systems serving the Premises, or the rendition of any other services required of the Town under this Lease, whenever and for so long as may be necessary, by reason of accidents, emergencies, mechanical breakdowns, the making of repairs or changes which Town is required by this Lease or by law to make, or by reason of difficulty in securing proper supplies of fuel, steam, water, electricity, labor or supplies, or by reason of Events of Force Majeure. In each instance, Town shall use best efforts to eliminate the cause of stoppage and to effect restoration of service and shall give BHBM reasonable notice, when practicable, of the commencement and anticipated duration of such stoppage, and if any work is required to be performed in or about the Premises for such purpose, such work shall be performed in a manner as, to the extent practicable, will not unreasonably interfere with the BHBM's use and occupancy of the Premises. The Town shall have no responsibility or liability to the BHBM by reason of any interruption, stoppage, or suspense of any of the Town Hall systems or services arising out of the causes set forth in this section. The term "Events of Force Majeure" as used throughout this Lease shall mean any delays due to acts of God, governmental restrictions or guidelines, strikes, labor disturbances, shortages of materials and supplies and for any other causes or events whatsoever beyond Town's reasonable control.

26. The BHBM shall not place, erect or maintain any sign, sticker, poster, notice, advertising material, display or any item of any kind or nature on the inside or outside of the

windows or exterior of the Premises, without the prior written approval of Town. Upon the expiration of the term of this Lease, the BHBM at its own expense shall remove any signage which Town consented to under this paragraph. The Town agrees that the BHBM may reinstall the Museum sign that had previously been bolted to the exterior of the Town Hall, at its own cost, in a location and using a method of installation approved by the Building Department.

27. At the end of the term or upon any earlier termination of this Lease, the BHBM shall quit and surrender the Premises to Town broom clean, in good order, condition and repair except for ordinary wear and tear and shall remove all of the BHBM's property without causing damage to the Premises.

28. The Town shall have the right at any time, without the same constituting an eviction or nuisance and without incurring liability to the BHBM, to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the Town Hall and to change the parking area and access thereto from the Town Hall and from the nearest public road.

29. The BHBM shall have access to the Premises during regular Town Hall business hours, during the times that the museum is scheduled to be open and at such other times as the BHBM reasonably may require provided the Town Clerk is provided prior written notice (which may be effectuated by e-mail) and authority to access the premises is granted. The BHBM agrees that such access to the Premises shall be subject to such reasonable security measures and restrictions as the Town from time to time may adopt and impose.

30. The BHBM covenants and agrees to indemnify and save harmless Town, its elected officials, agents, employees, contractors, licensees and invitees (collectively the "Town Indemnified Parties") from and against any and all liability (statutory or otherwise) claims, suits, demands, damages, judgments, costs, interests, and expenses, including, without limitation, counsel fees and disbursements incurred in the defense of any action or proceeding whether incurred in a third-party action or in an action brought by the BHBM, to which the Town Indemnified Parties may be subject or which they may suffer by reason of, or by reason of any claim for, any injury to, or death of, any person or persons, or damage to property (including any loss of use thereof) (i) arising from or in connection with the occupancy or use of, or from any work, installation, or thing whatsoever done in or about the Premises, the Town Hall or the Town's real property where the Town Hall is located during the Term of this Lease caused by BHBM, (ii) resulting from any default by BHBM in the performance of BHBM's obligations under this Lease or (iii) resulting from any act, omission, or negligence of BHBM or of any of BHBM's officers, directors, agents,

contractors, employees, licensees, or invitees. BHHM shall not be responsible for liabilities resulting from the negligence or willful misconduct of the Town Indemnified Parties. In no event shall Town or BHHM be liable under this Lease for any consequential, incidental, punitive, indirect, or special damages or any other liabilities not expressly set forth herein, regardless of legal theory or negligence provided, that consequential, incidental, punitive, indirect, or special damages shall be deemed to be direct damages in an indemnification payment otherwise due under this provision reimbursing payments for consequential, incidental, punitive, indirect, or special damages made by an indemnified party to a third party in a third party action.

31. The person(s) executing this Lease on behalf of BHHM hereby represent and warrant that they have been duly authorized to execute this Lease for and on behalf of BHHM. The person(s) executing this Lease on behalf of Town hereby represent and warrant that they have been duly authorized to execute this Lease for and on behalf of Town.

32. This Lease shall be governed in all respects by and construed under the laws of the State of New York without reference to the choice of law provisions thereof.

33. The parties acknowledge any Town Board resolution approving the lease of the Premises to BHHM is subject to a permissive referendum pursuant to Town Law § 64(2), and that in the event such permissive referendum is held and it is determined that the lease of the Premises is not approved by such referendum, this Agreement shall become null and void and neither party shall be entitled to assert any cause, claim or action relating to or arising out of this Agreement or BHHM's occupation of the Premises.

34. BHHM, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this Lease, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of the Town in each instance. Transfer of the majority of the stock of BHHM, or other majority ownership interest in BHHM, as the case may be, shall be deemed an assignment.

35. This Lease contains the entire understanding and agreement of the parties with respect to its subject matter and all prior negotiations, discussions, agreements and understandings heretofore. No amendment, change or modification of this Lease shall be valid unless it is in writing and signed by the parties hereto. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between the Town and BHHM, and any executory agreement hereafter made shall be ineffective to change, modify, discharge or

effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

36. This Lease may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which when taken together shall form one and the same instrument.

**IN WITNESS, WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year first above written.

TOWN OF BEDFORD (TOWN)

By: \_\_\_\_\_  
Chris Burdick, Town Supervisor

THE BEDFORD HILLS HISTORICAL  
MUSEUM INC. (BHHM)

By: \_\_\_\_\_  
\_\_\_\_\_, President