

# Town of Blowing Rock

## Request for Council Action

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FROM: Town Manager  
SUBJECT: BRAHM Lease Addendum  
TO: Town Council  
DATE: September 12, 2017  
REQUESTED BY: BRAHM Executive Director Lee Carol Giduz

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Public Hearing  Yes  No  Will be required  NA  
Properly Advertised  Yes  No  Will be required  NA

### BACKGROUND:

The Lease agreement between BRAHM and the Town of Blowing Rock was recorded in 2003, before the building was built. The BRAHM director and former manager, David Harwood, asked for a mutual review of the Lease to determine any changes that may be warranted. The review was completed and the following Lease Addendum has been prepared and reviewed by staff, myself, BRAHM, and our Town Attorney, Allen Moseley. Both the current Lease and the proposed Addendum are attached for your review.

### STATEMENT OF PLAN CONSISTENCY:

It is the opinion of staff that the proposed action  IS  IS NOT consistent with the Comprehensive Plan for Blowing

### ATTACHMENTS:

1. Original, recorded lease between BRAHM and the Town of Blowing Rock
2. Proposed Lease Addendum.

### STAFF RECOMMENDATIONS:

Town Council ***approve the proposed Lease Addendum.***

### COUNCIL ACTION:

To Be Determined

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

**ADDENDUM TO LEASE AGREEMENT**

THIS LEASE ADDENDUM modifies and supplements the attached lease agreement between the TOWN OF BLOWING ROCK, a North Carolina municipal corporation, of Post Office Box 47, Blowing Rock, NC 28605, herein referred to as "Lessor", and THE BLOWING ROCK ART & HISTORY MUSEUM, INC., of Post Office Box 828, Blowing Rock, NC 28605, herein referred to as "Lessee", which was executed on August 12, 2003 and recorded at Book of Records 880 at Page 434 of the Watauga County Register of Deeds Office, herein referred to as "Original Lease Agreement". The Parties to the Original Lease Agreement are also the sole Parties to this Lease Addendum.

This Lease Addendum shall become effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

The Parties agree that whenever there is any conflict between this Lease Addendum and the Original Lease Agreement, the provisions of this Addendum will control and the Original Lease Agreement will be construed accordingly. This Lease Addendum supersedes all prior agreements and understandings (whether written or oral) between the Lessor and Lessee, or any of them, with respect to the subject matter hereof.

For and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**1. Delete Section One of the Original Lease Agreement and replace with the following:**

**SECTION ONE  
DESCRIPTION OF PREMISES AND APPURTENANCES  
USE OF PREMISES**

A. Description of Premises. Lessor leases to Lessee and Lessee hires from Lessor, a tract of land located at 159 Chestnut Street, Blowing Rock, North Carolina of approximately 7,000 square feet on the Lessor's property described as a 1.22 acre tract pursuant to deeds to the Lessor as recorded at Book of Records 787 at Page 462 and Book of Records 792 at Page 636 of the Watauga County Register of Deeds Office. As used in this Lease Agreement, the term "Premises" refers to the real property as described and to the existing building known as The Blowing Rock Art & History Museum ("LESSEE"), the flagstone walkways on the north and west side of LESSEE and to any improvements located on the property from time to time during the term of this Lease Agreement.

B. Appurtenances to the Premises Serving Lessee. Certain structures and equipment that solely support and serve Lessee are located adjacent to the Premises but reside on Lessor's property. These appurtenances are:

- i. Handicap ramp structure and railings located to the west of the Premises on the upper level of the parking structure.
- ii. HVAC units and screen walls located to the south of the Premises and to the south of the parking structure.
- iii. Landscape lighting located on the north and east side of the Premises.
- iv. Concrete sculpture pad and associated lighting located on the east side of the Premises.
- v. Flagpole and associated lighting located on the north side of the Premises
- vi. Stone column for signage located on the east side of the Premises adjacent to Main Street
- vii. Backflow preventer, valves and vault for Lessee's fire protection system located to the

west of the parking structure adjacent to Wallingford Street.

viii. Loading zone located to the west of the Premises adjacent to Lessee's loading dock on the lower level of the parking structure delineated by painted striping.

ix. Ramp structure and railing located to the west of the Premises adjacent to exterior entrance door to Lessee on the lower level of the parking structure.

Both parties agree to, and accept, the location of these appurtenances. Lessor shall provide unrestricted access to these appurtenances to Lessee and Lessee's agents, employees, guests and vendors. Furthermore, it is understood and agreed that Lessee has the responsibility for the operation and maintenance of these appurtenances.

C. Shared appurtenances to the Premises Serving both Lessee and Lessor

i. Wastewater lift station, associated equipment and alarm located to the west of the Premises and below the lower level of the parking structure.

ii. Staircase to the west of the Premises that serves both Lessee and the parking structure. The wall heaters, fire alarm pull stations, railings, lighting, exit lights, emergency lights and batteries, paint, floor finishes and other components of this staircase are considered a part of the shared staircase.

Both parties agree to, and accept, the location of these shared appurtenances. Lessor shall provide unrestricted access to these appurtenances to Lessee and Lessee's agents, employees, guests and vendors. Furthermore, it is understood and agreed that Lessee and Lessor shall equally share the responsibility for the operation and maintenance of these appurtenances to include costs of maintenance, replacement and repairs.

D. Other appurtenances. The operation, maintenance and repair of any other existing appurtenances adjacent to the Premises and located on Lessor's property are the responsibility of Lessor. Other such appurtenances include, but are not limited to, buildings, staircases, emergency lighting, fire alarm pull stations, landscaping, trees, street lighting, coach lighting, sidewalks, bike racks, retaining walls, signage, parking spaces, parking structures, storm water drainage and structures.

E. Use of Premises. The Premises shall be used for no other purpose than the operation of a museum for the cultural enhancement of the Village of Blowing Rock.

**2. Delete Section Six of the Original Lease Agreement and replace with the following:**

**SECTION SIX  
MUSEUM BUILDING**

A. Museum Building. The Lessee will have the sole responsibility for operating, managing and maintaining the museum facility.

B. Disposition of Improvements. The museum building, constructed by Lessee on the Premises, and all alterations, improvements, changes or additions made in or to the Premises shall be the property of the Lessor upon the termination of this Lease.

C. Alterations, Improvements and Changes Permitted. Lessee shall have the right to make such alterations, improvements and changes to the building that may, from time to time, be on the Premises as Lessee may deem necessary, or to replace the building with a new one of at least equal value, provided that prior to making any structural alterations, improvements or changes, or to replacing any building, Lessee shall obtain Lessor's written approval of plans and specifications therefor, provided that the value of the building shall not be diminished and the structural integrity of the building shall not be adversely affected by any such alterations, improvements, or changes, or that any proposed new building is at least equal in value to the one that it is to replace, as the case may be.

3. In Section Seven, Paragraph A. of the Original Lease Agreement, delete “including sidewalks adjacent to the premises” and replace with “as described herein”.

4. Delete Section Nine of the Original Lease Agreement and replace with the following:

**SECTION NINE  
MUTUAL INDEMNITY**

The Lessor and Lessee shall hold harmless, and indemnify the other Party and its directors, officers, agents and employees against any and all loss, liability, damage, or expense, including any direct, indirect or consequential loss, liability, damage, or expense, but not including attorneys’ fees unless awarded by a court of competent jurisdiction, for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with intentional, willful, wanton, reckless or negligent conduct regarding (a) the engineering, design, construction, maintenance, repair, operation, supervision, inspection, testing, protection or ownership of the Party’s facilities, or (b) the making of replacements, additions, or improvements to, or reconstruction of, the Party’s facilities. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct. Notwithstanding the indemnity provisions contained herein, except for a Party’s willful misconduct or sole negligence, each Party shall be responsible for damage to its own facilities resulting from electrical disturbances or faults.

5. In Section Ten, Paragraph A. of the Original Lease Agreement, delete “and the extended coverage hazards”.

6. In Section Ten, Paragraph B. of the Original Lease Agreement, delete “and its appurtenances and the sidewalks fronting on them”.

7. Delete Section Eleven of the Original Lease Agreement and replace with the following:

**SECTION ELEVEN  
ASSIGNMENT, SUBLETTING AND FACILITY RENTAL**

A. Assignment and Subletting. Lessee shall not, without the prior written consent of Lessor, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Lessor. The Assignee of Lessee, at option of Lessor, shall become directly liable to Lessor for all obligations of Lessee hereunder, but no sublease or assignment by Lessee shall relieve Lessee of any liability hereunder.

B. Facility Rentals. Lessee is permitted to rent a portion of, or the entire Premises, to other individuals or entities for short-term events to include, but not limited to, receptions, weddings, conferences, meetings, exhibitions, fundraising and parties (“facility rentals”). Such facility rentals shall not extend for more than twenty-four (24) hours per occurrence.

8. Delete Section Eighteen of the Original Lease Agreement.

9. Delete Section Nineteen of the Original Lease Agreement.

10. Delete Section Twenty of the Original Lease Agreement.

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

TOWN OF BLOWING ROCK

By: \_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
Town Manager

THE BLOWING ROCK ART & HISTORY  
MUSEUM, INC.

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

STATE OF NORTH CAROLINA, COUNTY OF WATAUGA

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Ed Evans personally came before me this day and acknowledged that he is the Town Manager of the Town of Blowing Rock, and that by authority duly given and as the act of The Town of Blowing Rock, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Ed Evans as its Town Manager.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2017.

(SEAL)

\_\_\_\_\_

Notary Public

My Commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA, COUNTY OF WATAUGA

I, \_\_\_\_\_, a Notary Public, certify that Bo Henderson personally came before me this day and acknowledged that he is the President of The Blowing Rock Art & History Museum, Inc., a corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2017.

(SEAL)

\_\_\_\_\_

Notary Public

My Commission expires: \_\_\_\_\_

NORTH CAROLINA, WATAUGA COUNTY

The foregoing certificate(s) of

\_\_\_\_\_, Notary Public, \_\_\_\_\_ County, NC

\_\_\_\_\_, Notary Public, \_\_\_\_\_ County, NC

Is (are) certified to be correct

This the \_\_\_\_\_ day of \_\_\_\_\_, 2017

Amy J. Shook, Register of Deeds

BY \_\_\_\_\_  
Deputy



20030825000273390 AGMT  
Bk:BR880 Pg:434  
08/25/2003 01:56:03PM 1/11

FILED Wanda C. Scott  
Register of Deeds WATAUGA COUNTY, NC  
BY:

Deputy

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

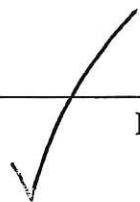
**LEASE AGREEMENT**

THIS LEASE AGREEMENT is made and executed as of the 12<sup>th</sup> day of August, 2003, by and between the TOWN OF BLOWING ROCK, a North Carolina municipal corporation, of Post Office Box 47, Blowing Rock, NC 28605, herein referred to as "Lessor", and THE BLOWING ROCK ART AND HISTORY MUSEUM, INC., of Post Office Box 1776, Blowing Rock, NC 28605, herein referred to either as "Brahm" or "Lessee".

For and in consideration of the mutual covenants contained herein, the parties agree as follows:

**SECTION ONE  
DESCRIPTION AND USE OF PREMISES**

Lessor leases to Lessee and Lessee hires from Lessor, for the purpose of constructing and conducting in and on such premises a museum on a tract of land of approximately 7,000 square feet on the Lessor's property described as a 1.22 acre tract pursuant to deeds to the Lessor as recorded at Book of Records 787 at Page 462 and Book of Records 792 at Page 636 of the Watauga County Register of Deeds Office, and as shown as Scheme One site plan for The Blowing Rock Art and History Museum, Visions for the Edgewood Cottage Property in the Village of Blowing Rock, North Carolina dated February 17, 2003, which site plan is incorporated herein by reference. The premises shall be used for no other purpose than the creation, construction and operation of a museum for the cultural enhancement of the Village of Blowing Rock. As used in this Lease Agreement, the term "premises" refers to the real property as described and to any improvements located on the property from time to time during the term of this Lease Agreement.



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Prepared by: di Santi Watson Capua & Wilson  
P O Box 193, 642 West King Street  
Boone, North Carolina 28607

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**SECTION TWO  
TERM**

The initial term of this lease shall be for fifty (50) years, commencing on August 22, 2003 and ending August 21, 2053.

**SECTION THREE  
RENT/OPTION TO RENEW**

During the term of this lease, the Lessee shall pay no rent to the Lessor, the provision of the museum for the cultural enhancement of the Village of Blowing Rock being recognized by the Lessor as significant consideration to the citizens of Blowing Rock, which shall apply to renewal of the lease term. At the conclusion of the lease term, the Lessee shall have the option to renew the lease on the same terms and conditions for an additional thirty (30) year period, with the provision that the Lessee give written notice of its intent to renew the lease one (1) year prior to the end of the initial term.

**SECTION FOUR  
USES PROHIBITED**

Lessee shall not use, or permit the demised premises, or any part of the demised premises, to be used, for any purpose or purposes other than the purposes stated in this lease.

**SECTION FIVE  
ENCUMBRANCE OF LESSEE'S LEASEHOLD INTEREST**

A. Lessee may encumber by mortgage or deed of trust, or other proper instrument, its leasehold interest and estate in the demised premises, together with all buildings and improvements placed by Lessee on the premises, as security for any indebtedness of Lessee. The execution of any mortgage, or deed of trust, or other instrument, or the foreclosure of any mortgage, or deed of trust, or other instrument, or any sale, either by judicial proceedings or by virtue of any power reserved in a mortgage or deed of trust, or conveyance by Lessee to the holder of the indebtedness, or the exercising of any right, power, or privilege reserved in any mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions of this Lease Agreement, or as an assumption by the holder of the indebtedness personally of the obligations of this Lease Agreement. No encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability under this Lease Agreement. It is the understanding and agreement of the parties that any mortgage or deed of trust placed upon the demised premises shall be subordinate to the terms and provisions of this Lease agreement.

B. If Lessee shall encumber its leasehold interest and estate in the demised premises and if Lessee or the holder of the indebtedness secured by the encumbrance shall give notice to Lessor of the existence of the encumbrance and the address of the holder, then Lessor will mail or deliver to the holder, at such address, a duplicate copy of all notices in writing which Lessor may, from time

to time, give to or serve on Lessee under and pursuant to the terms and provisions of this Lease Agreement. The copies shall be mailed or delivered to the holder at, or as near as possible to, the same time the notices are given to or served on Lessee. The holder may, at its option, at any time before the rights of Lessee shall be terminated as provided in this Lease Agreement, pay any of the rents due under this Lease Agreement, or pay any taxes and assessments, or do any other act or thing required of Lessee by the terms of this Lease Agreement, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions of this Lease Agreement or to prevent the termination of this Lease Agreement. All payments so made and all things so done and performed by the holder shall be as effective to prevent a foreclosure of the rights of Lessee thereunder as the same would have been if done and performed by Lessee.

## SECTION SIX CONSTRUCTION OF NEW BUILDING

A. Plans and Specifications. Lessee shall, at Lessee's sole expense, prepare plans and specifications for the construction of a new building to be erected on the premises pursuant to the Isometric View of Scheme One on the document entitled Blowing Rock Art and History Museum, Visions for the Edgewood Cottage Property, Village of Blowing Rock, North Carolina dated February 17, 2003. The plans and specification shall be submitted to the Lessor for the Lessor's written approval. Brahm will have the sole responsibility for operating, managing and maintaining the museum once established.

B. Restoration and Replacement of Currently Existing Structure. Lessee shall have no obligation to restore or replace at the expiration or other termination of this Lease Agreement, the building located east of the demised premises and referred to as the Edgewood Cottage, the original residence and studio for Elliott Dangerfield. The Lessor will determine if any portion of the Edgewood Cottage can be preserved, and if so, it will be preserved at the expense of the Lessor, or other third party, not the Lessee. In the event the Lessor determine that the Edgewood Cottage cannot be preserved and maintained, the Lessor will be responsible for removing that, and any other structures on the property.

C. Disposition of New Improvements. Any new building constructed by Lessee on the premises, and all alterations, improvements, changes or additions made in or to the premises shall be the property of the Lessor upon the termination of this Lease.

D. Alterations, Improvements and Changes Permitted. Lessee shall have the right to make such alterations, improvements and changes to the building that may, from time to time, be on the premises as Lessee may deem necessary, or to replace the building with a new one of at least equal value, provided that prior to making any structural alterations, improvements or changes, or to replacing any building, Lessee shall obtain Lessor's written approval of plans and specifications therefor, provided that the value of the building shall not be diminished and the structural integrity of the building shall not be adversely affected by any such alterations, improvements, or changes, or that any proposed new building is at least equal in value to the one that it is to replace, as the case may be.

**SECTION SEVEN  
REPAIRS AND CONSTRUCTION OF IMPROVEMENTS**

A. Maintenance of Improvements. Lessee shall, throughout the term of this Lease Agreement, at its own cost, and without any expense to Lessor, keep and maintain the premises, including the building improvements of every kind that may be a part of the premises, and all appurtenances to the premises, including sidewalks adjacent to the premises, in good, sanitary and neat order, condition and repair, and, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty, or other causes whatsoever.

B. No Obligation by Lessor to Make Improvements. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature or description, whatsoever to the demised premises, or any buildings or improvements on the demised premises.

C. Lessee's Compliance with Laws. Lessee shall also comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, and regulations affecting the demised premises, the improvements on or any activity or condition on or in the premises.

D. Damage to or Destruction of Improvements. In case of damage to or destruction of any such building or improvement, Lessee shall, at its own expense, promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering damage or destruction shall be made available to Lessee for repair or replacement.

**SECTION EIGHT  
UTILITIES**

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind, furnished to the premises throughout the term of this Lease Agreement, and all other costs and expenses of every kind whatsoever, of or in connection with the use, operation, and maintenance of the premises and all activities conducted on the premises, and Lessor shall have no responsibility of any kind for any such utilities.

**SECTION NINE  
INDEMNIFICATION OF LESSOR**

Lessor shall not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by Lessee or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on, or about the demised premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, sub-lessee, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth. Lessee shall indemnify

Lessor against any and all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. Lessee waives all claims against Lessor for damages to the building and improvements that are now on or hereafter placed or built on the premises and to the property of Lessee in, on, or about the premises, and for injuries to persons or property in or about the premises, from any cause arising at any time. The two preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of Lessor, its agents, or employees.

## SECTION TEN INSURANCE

A. Insurance Coverage of Premises. Lessee shall, at all times during the term of this lease agreement and at Lessee's sole expense, keep all improvements that are now or hereafter a part of the premises insured against loss or damage by fire and the extended coverage hazards for one hundred percent (100%) of the full replacement value of the improvements, with loss payable to Lessor and Lessee as their interests may appear. Any loss adjustment shall require the written consent of both Lessor and Lessee.

B. Personal Injury Liability Insurance. Lessee shall maintain in effect throughout the term of this lease personal injury liability insurance covering the premises and its appurtenances and the sidewalks fronting on them in the amount of One Million Dollars (\$1,000,000.00) for injury to or death of any one person, and Two Millions Dollars (\$2,000,000.00) for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00). Such insurance shall specifically insure Lessee against all liability assumed by it under this Lease Agreement, as well as liability imposed by law, and shall insure both Lessor and Lessee but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for Lessor and Lessee.

## SECTION ELEVEN ASSIGNMENT AND SUBLETTING

Lessee shall not, without the prior written consent of Lessor, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Lessee. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Lessor. The Assignee of Lessee, at option of Lessor, shall become directly liable to Lessor for all obligations of Lessee hereunder, but no sublease or assignment by Lessee shall relieve Lessee of any liability hereunder.

## **SECTION TWELVE EVENTS OF DEFAULT**

The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Lessee: (a) Lessee abandons or vacates the Premises; (b) Lessee fails to comply with or abide by and perform any other obligation imposed upon Lessee under this Lease; (c) Lessee is adjudicated bankrupt; (d) A permanent receiver is appointed for Lessee's property and such receiver is not removed within sixty (60) days after written notice from Lessor to Lessee to obtain such removal; (e) Lessee, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be reduced or payment thereof deferred; (f) Lessee makes an assignment for benefit of creditors; or (g) Lessee's effects are levied upon or attached under process against Lessee, which is not satisfied or dissolved within sixty (60) days after written notice from Lessor to Lessee to obtain satisfaction thereof.

## **SECTION THIRTEEN REMEDIES UPON DEFAULT**

Upon the occurrence of an event of default, Lessor may terminate this lease and assume possession of the premises upon sixty (60) days written notice. During the sixty (60) day period, the Lessee shall have the right to remedy the default and remain in possession of the lease pursuant to the terms stated herein.

## **SECTION FOURTEEN QUIET ENJOYMENT**

So long as Lessee observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, but always subject to the terms hereof.

## **SECTION FIFTEEN ATTORNEY'S FEES**

In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Lessor or Lessee, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and costs.

## **SECTION SIXTEEN ENVIRONMENTAL LAWS**

(a) Lessee shall not bring onto the Premises any Hazardous Materials (as defined below) without the prior written approval by Lessor. Any approval must be preceded by submission to Lessor of appropriate Material Safety Data Sheets (MSD Sheets). In the event of approval by Lessor,

Lessee covenants that it will (1) comply with all requirements of any constituted public authority and all federal, state, and local codes, statutes ordinances, rules and regulations, and laws, whether now in force or hereafter adopted relating to Lessee's use of the Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic, or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "Hazardous Materials"); (2) comply with any reasonable recommendations by the insurance carrier of either Lessor or Lessee relating to the use by Lessee on the Premises of such Hazardous Materials; (3) refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Premises; and (4) remove all Hazardous Materials from the Premises, either after their use by Lessee or upon the expiration or earlier termination of this lease, in compliance with all applicable laws.

(b) Lessee shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Lessee shall provide Lessor with copies of all such items upon request Lessee shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any environmental law or regulation by Lessee, or related in any manner to Hazardous Materials. In addition, Lessee shall provide Lessor with copies of all responses to such correspondence at the time of the response.

(c) Lessee hereby indemnifies and holds harmless Lessor, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, from time to time, and regulations promulgated thereunder, any so-called state or local "Superfund" or "Superlien" law, or any other federal, state or local statute, law or ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials) paid, incurred or suffered by, or asserted against, Lessor as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises on any Hazardous Materials caused by Lessee or Lessee's agents, employees, invitees or successors in interest. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the premises if such Hazardous Materials were stored on the Premises by Lessee, its agents, employees, invitees or successors in interest.

(d) If Lessee fails to comply with the Covenants to be performed hereunder with respect to Hazardous materials, or if an environmental protection lien is filed against the premises as a result of the actions of Lessee, its agents, employees or invitees, then the occurrence of any such events shall be considered a default hereunder.

(e) Lessee will give Lessor prompt notice of any release of Hazardous Materials,

reportable or non-reportable, to federal, state or local authorities, of any fire, or any damage occurring on or to the Premises.

(f) Lessee will use and occupy the Premises and conduct its business in such a manner that the Premises are neat, clean and orderly at all times with all chemicals or Hazardous Materials marked for easy identification and stored according to all codes as outlined above.

(g) The warranties and indemnities contained in this Paragraph shall survive the termination of this Lease.

#### **SECTION SEVENTEEN ABANDONMENT**

Lessee shall not abandon the Premises at any time during the Lease term. If Lessee shall abandon the premises or be dispossessed by process of law, any Personal Property belonging to Lessee and left on the Premises shall, at the option of Lessor, be deemed abandoned, and available to Lessor to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

#### **SECTION EIGHTEEN MEMORANDUM OF LEASE**

Lessor and Lessee shall execute a short form lease (Memorandum of Lease) in recordable form, setting forth such provisions as either party may wish to incorporate. The cost of recording the memorandum of lease shall be borne by the Lessee.

#### **SECTION NINETEEN ADJOINING PROPERTY**

Lessee agrees to pay for architectural and engineering design for the construction of a parking structure, not to exceed three levels to be located west of the demised premises and building to be constructed by Lessee. The construction, maintenance, and responsibility for operating the parking structure so constructed shall be the responsibility of the Lessor.

The Lessee will pay for the creation of a landscape plan for the park area to be created east of the demised premises and Main Street as shown on Scheme One, site plan referred to herein. The Lessor shall be responsible for the cost of implementation of the landscape plan and also for the maintenance of the landscape park.

It is understood and agreed between the parties that the Lessor is not obligated under the terms and provisions of this Lease Agreement to construct a parking structure. In the event Lessor chooses not to construct a parking structure on the property adjoining the demised premises, the parties shall amend this Lease Agreement to include a sufficient area of land to enable Lessee to construct parking to be used in connection with the improvements on the demised premises. Said

parking shall meet the requirements of the Town of Blowing Rock Land Use Ordinance and shall be constructed by Lessee at Lessee's expense.

**SECTION TWENTY  
EARLY TERMINATION OF LEASE**

The Lessee will have five (5) years from the date of execution of the lease to begin construction of the museum as described herein, or this lease will terminate upon demand of the Lessor. Once construction has commenced, the museum is to be completed within two years from the commencement of construction.

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



TOWN OF BLOWING ROCK

By: *J.B. Laurence*  
Mayor

ATTEST

*Scott E. Heide*  
Town Manager

THE BLOWING ROCK ART AND HISTORY  
MUSEUM, INC.

By: *Steve E. ...*  
President



**NORTH CAROLINA - WATAUGA COUNTY**

The foregoing certificate(s) of

Evalyn Sudderth, Notary Public, Watauga County, NC,

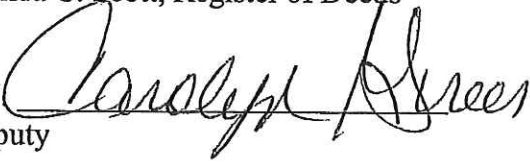
Gail M. Coffey, Notary Public, Watauga County, NC,

is (are) certified to be correct.

This the 25 th day of August 2003.

Wanda C. Scott, Register of Deeds


BY  
Deputy



STATE OF NORTH CAROLINA, COUNTY OF WATAUGA

I, Gail M. Coffey, a Notary Public of the County and State aforesaid, certify that Scott E. Hildebrand personally came before me this day and acknowledged that he is the Town Manager of the Town of Blowing Rock, and that by authority duly given and as the act of The Town of Blowing Rock, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Scott E. Hildebrand as its Town Manager.

Witness my hand and official stamp or seal, this 21<sup>st</sup> day of August, 2003.

Gail M. Coffey (SEAL)  
Notary Public  


My Commission expires: 11-03-04

STATE OF NORTH CAROLINA, COUNTY OF WATAUGA

I, Evalyn Sudderth, notary public, certify that Welborn Alexander personally came before me this day and acknowledged that he is the President of The Blowing Rock Art and History Museum, Inc., a corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 20<sup>th</sup> day of August, 2003.



Evalyn Sudderth (SEAL)

My commission expires: March 29, 2008

Notary Public

North Carolina, Watauga County

The foregoing certificate(s) of \_\_\_\_\_ is certified to be correct. This instrument was presented for registration this \_\_\_\_ day of \_\_\_\_\_, 2003, at \_\_\_\_ A.M., P.M., and duly recorded in the Office of the Register of Deeds for Watauga County, North Carolina, in Book \_\_\_\_\_ at page \_\_\_\_\_.

This \_\_\_\_ day of \_\_\_\_\_, 2003.

Wanda C. Scott  
Watauga County Register  
of Deeds  
by: \_\_\_\_\_