

LEASE

LANDLORD (the "Town"):

Board of Selectmen of the Town of Littleton  
Littleton Historical Society

TENANT:

PROPERTY:

Houghton Memorial Building and Land  
Rogers Street  
Littleton, Massachusetts

TERM:

Ninety-nine (99) years

COMMENCEMENT DATE:

April 1, 1990

USE:

Historical Museum and Reference Library

LEASE

THIS LEASE made between the Board of Selectmen of the Town of Littleton (the "Town") and the Littleton Historical Society, a private 501(c)(3) charitable organization, with a mailing address of Littleton ("Tenant").

PREAMBLE

The parties are entering into the within Lease in the expectation that the Town will have a historically valuable building occupied and used in a manner consistent with the spirit of the terms of its donation to the Town for the next ninety-nine years. In structuring the terms and conditions herein the parties acknowledge that when the Building was accepted by the Town in 1895, the Town agreed to keep the property insured and provide for the expenses of maintaining and repairing the Building. It is intended that the Town shall continue to comply with such agreement throughout the term of the Lease.

Article I - Leased Premises. The Town leases to the Tenant the Floughton Memorial Building (the "Building") and the land upon which it is located, which has an address of 4 Rogers Street, Littleton.

Article II - Term. TO HAVE AND TO HOLD beginning with the 1st day of April, 1990 ("the Commencement Date") and ending on the 31st day of March, 2089 ("the Expiration Date") both dates inclusive. This Lease is contingent upon judicial allowance of the Town's cy pres petition and legislative authorization of a long-term lease. The Town shall not deliver possession of the Premises until the cy pres petition has been allowed and final judgment entered. The Town shall not be liable for any damages caused by failure to deliver, nor shall this Lease be void or voidable, but the Commencement Date and the Expiration Date shall be extended. In no event shall the term of the Lease be extended beyond ninety-nine years, without legislative authorization.

Article III - Rent

Rent is payable in equal annual installments of one dollar (\$1.00) on the first day of each year at the office of the Town Treasurer.

Article IV - Use. The Building shall be used and occupied by Tenant solely for the purpose of a historical museum and reference library and such other lawful use incidental thereto, but for no other purpose. Initially, the Building will be open to the public two afternoons a week and a public open house one Sunday a month. Special events, meetings, school and various groups will be scheduled by appointment. The Society will assume the

7. responsibility for filling the museum staff requirement through a volunteer program.

TOWN MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE PREMISES ARE FIT FOR A PARTICULAR USE OR PURPOSE, INCLUDING WITHOUT LIMITATION THE USE AS SPECIFIED HEREIN, EXCEPT AS OTHERWISE REQUIRED BY LAW.

Article V - Installation of Equipment and Floor Capacity. Tenant shall not place any load upon any floor of the Premises which exceeds the floor load capacity (calculated on a square foot basis) and which is allowed by law. Tenant will not move any safe, heavy machinery, heavy equipment, freight, bulky matter or fixtures into or out of the Building without prior written notice to the Town. The moving and installation of such machines and equipment shall be at the sole risk and hazard of the Tenant.

Article VI - Condition of Premises, Remodelling. Tenant accepts the Premises in the present condition. Tenant shall not alter, remodel, make any structural change, nor install any additional equipment, fixtures, or air conditioning without the prior written consent of Town. Tenant will bear the cost of all alterations, remodeling and decorating of the Premises, and ensure they are done in a good and workmanlike manner in compliance with all applicable laws. Non-structural changes to be made by the Tenant will require thirty (30) days written notice to the Town.

Article VII - Town's Covenants. Town shall be responsible for maintaining the structure of the Building in the same condition as at the Commencement Date or as it may be put during the term of this lease, reasonable wear and tear and damage by fire and other casualty only excepted, and Town shall be responsible for maintaining the grounds in good order and repair, except that Town shall have no responsibility with respect to any obligation hereinabove stated if caused by Tenant's negligence or wanton acts.

Town shall be responsible for the repair and replacement of all electrical, plumbing, heating, ventilation, and other mechanical installations, and the surface disposal system servicing the building, subject to appropriation of funds by Town Meeting.

#### Article VIII - Tenants' Covenants.

Article VIII.1 - Utilities. Tenant shall pay for its use of all utilities, including heat, electricity and water as they become due and payable.

Article VIII.2 - Signs. Tenant shall not erect any signs or lettering visible from the exterior of the Building or attach any awnings or canopies to the exterior of the Building without obtaining Town's prior written consent.

Article VIII.3 - Maintenance, Repair, Yield-Up. Unless otherwise specifically provided herein, Tenant shall, at its own expense, keep and maintain the Premises in good order, repair and condition and shall be responsible for the routine maintenance of all electrical, plumbing, heating, ventilation and other mechanical installations therein. Tenant shall keep all windows and doors of the Premises in good order and repair, at its own expense, and shall, at the end of the Term or soon termination, peaceably surrender the Premises and all erections, alterations and additions thereon made to or upon the same, to Town, broom clean and in the same repair and condition as the Premises were in on the Commencement Date and as such erections, alterations and additions were when completed, reasonable wear and tear, fire and other casualty only excepted; and will remove all personal property, goods and effects. Tenant shall be responsible for all damage or injury to the Building caused by Tenant's installation or removal of furniture, fixtures or equipment. Provided that Town, in its sole discretion, may require Tenant to remove any erections, additions, alterations or fixtures Tenant has installed and restore the Premises to the condition they were in on the Commencement Date.

Article VIII.4 - Assignment - Subleasing. Tenant shall not assign, sublet, underlet, pledge or encumber (collectively referred to as "Transfer") this lease.

Article VIII.5 - Compliance with Law and Insurance Policies. Tenant, at its sole expense, shall comply with all laws, orders and regulations of Federal, State, County, and Town Authorities. Tenant shall not do or permit to be done anything upon the Premises which will invalidate, or be in conflict with, fire insurance policies covering the Building and fixtures and property therein and shall not do, or permit to be done, anything upon the Premises which might subject Town to any liability or responsibility for injury to any person or to property; and Tenant, at its sole expense, shall comply with all rules, order, regulations or requirements of the Board of Fire Underwriters, or any other similar body, and shall not do or permit anything to be done or kept on the Premises, except as permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization, or other authority having jurisdiction. Except for those items necessary for the cleaning and maintenance of Tenant's business, which shall be properly stored to minimize the risk of fire and explosion, there shall not be brought or kept in or on the Premises any inflammable, combustible or explosive fluid, material, chemical or substance, nor shall any unusual or other objectionable odors permeate or emanate from the Premises. If the insurance premiums for the Building increase because of anything Tenant does or permits to be done on the Premises, Tenant shall pay the full amount of such increase. Tenant may submit alternative proposals for insurance providing the same coverage

secured by the Town. That the Premises are being used for the purpose set forth in Article VI hereof shall not relieve Tenant from the foregoing duties.

Article VIII.6 - Tenant's Risk. Except as modified by statute, all merchandise, furniture, fixtures and property which may be on or about the Premises shall be at the sole risk and hazard of Tenant, and if the whole or any part of the Building is destroyed or damaged by fire, water, or by the leaking or bursting of water pipes, or in any other manner, no part of such loss or damage will be charged to Town unless caused by the Town's willful conduct or gross negligence, and in any event, Town shall not be liable for consequential or indirect damages.

Article VIII.7 - Insurance and Indemnification. The Tenant covenants and agrees to defend, indemnify and save the Town, its officials, agents, servants and employees harmless from any and all claims and demands for damages to persons or property suffered on account of the acts, action, fault or omission of the Tenant or arising from the violation by it of any law, ordinance, or statute or from the use of the premises by the Tenant.

The Tenant covenants and agrees that at the commencement of the term hereof and for each successive term thereafter, it shall provide and send to the Town public liability policies of insurance or evidence thereof, insuring both the Tenant and the Town for public liability in such amounts as may be reasonably designated from time to time by the Town. If such policies are accepted by the Town, they shall become a part of this lease.

All insurance shall be with companies authorized to do business in Massachusetts and approved by the Town and shall be in such forms, terms and conditions as are acceptable to the Town and shall include the Town as an additional named insured.

The Town and the Tenant mutually covenant and agree that the demised premises shall be protected and insured against loss by fire and other casualties for the term of the lease and each successive term thereafter in such amounts and terms as may be designated from time to time by the Town. Said Insurance shall be obtained initially in the following amounts and shall be subject to change by the Town upon reasonable notice, and shall extend in coverage in the demised premises:

Bodily Injury:	\$500,000.00 per occurrence
	\$500,000.00 aggregate
Property Damage:	\$500,000.00 per occurrence
	\$500,000.00 aggregate

The Tenant covenants and agrees that it will save the Town harmless from all loss and damage occasioned by the use or escape of water upon said

premises, or by the bursting of the pipes, as well as from any claim or damage arising from neglect in not removing snow and ice from the roof of the building, or from the sidewalks bordering upon the premises so leased, which shall be the duty of the Tenant, or by any nuisance made or suffered on the premises.

It is agreed that in the event that the Tenant neglects to provide or cannot secure the insurance on their part to be obtained as herein provided, or in the event the same or any part thereof is cancelled or a policy or policies lapse for whatever reason, so that at any time of the term of the lease there is in force less than the required types and amounts of insurance, the Town may, by giving notice in writing to the Tenant, terminate this lease, and in such event, the lease will terminate in accordance with the notice; provided, however, that the lease will not be construed to have been terminated if within seven (7) business days following such notice, the required insurance is obtained and evidence thereof delivered to the office of the Board of Selectmen.

Notwithstanding any other provision of this lease, in the event that the Tenant does not have in full force and effect the required insurance, then in that event all operations and activities on the premises shall immediately cease, and the Tenant shall take all necessary steps to secure the premises and prevent access to and use of the same, until such time as the required insurance is obtained or the lease is terminated.

Article VIII.8 - Town's Access to Premises. The Board of Selectmen, the Board of Health or its agent, the Building Inspector, and any other agent duly appointed by the Board of Selectmen, may at reasonable times enter to view the Premises for any purpose. In case of an emergency on the Premises or in the Building, Town or its representative may enter the Premises (forcibly, if necessary) at any time to take such measures as may be needed to cope with such emergency. In the event of such emergency, Town shall make a reasonable effort to have a representative of the Tenant present.

Article VIII.9 - Waste. Tenant shall not overload, damage or deface the Premises nor suffer or permit same to be done, nor commit waste, nor without Town's prior written consent, permit any hole to be made in the stone or brickwork of the Building, nor use any equipment that requires outdoor venting.

Article IX - Fire and Other Damage; Subrogation.

A. If the Premises are partially damaged by fire or other cause without the fault or neglect of Tenant, Tenant's servants, employees or agents, the damages shall be repaired by and at the expense of Town and the rent, until such repairs shall be made, apportioned according to the part of the Premises which is usable by Tenant. But if such partial damage is due to the fault or neglect of Tenant, Tenant's servants, employees or agents, the damage shall be repaired by Town but there shall be no apportionment or abatement of rent. Such repairs shall be made promptly, subject to delay on account of "labor troubles" or any other cause beyond Town's control. Town shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting from such delays.

If the Building or Premises are substantially damaged or the Premises are rendered substantially untenantable by fire or other cause, rent shall be abated as of the date of the casualty, according to the nature and extent of the damage, and if Town decides not to restore or not to rebuild the same, or if the Building shall be so damaged that Town decides to demolish it (whether or not Town thereafter decides to rebuild it), Town may, within sixty (60) days after such fire or other cause, give Tenant a notice in writing of such decision and thereupon the term shall expire upon the thirtieth (30th) day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Town. If the Premises are not in fact restored by Town within six (6) months after the fire or other casualty, then Tenant may terminate this lease by written notice to Town within thirty (30) days after said six-month period. Town shall not be obligated to repair or restore the Premises if the cost of doing so exceeds the insurance(premiums)it receives on account of such fire or other casualty.

B. Town and Tenant hereby release each other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, provided, however, that this release shall be applicable and in force and effect only to the extent permitted by law and only with respect to loss or damage occurring during such time as the releasor's policies contain a clause or endorsement to the effect that any such release shall not adversely affect policies or prejudice the right of the releasor to recover thereunder, and provided Town and Tenant each agree that it will request its insurance carriers to include in its policies, whether or not such policies are required hereunder, such a clause or endorsement. If extra cost shall be charged, each party, at its election, may pay the same, but shall not be obligated to do so. In any of Tenant's insurance policies with respect to the Premises which do

not contain a waiver of subrogation rights, Tenant shall have Town designated as one of the insured.

Article X - Tenant's Default. If Tenant neglects or fails to perform or observe any of Tenant's obligation and covenants, including the payment of rent, additional rent, or any other sum due the Town for a period of sixty (60) days after written notice to it from the Town, or, if such default shall reasonably require longer than sixty (60) days to cure, and shall not within said period commence and diligently proceed to cure such default, the Town may terminate this lease by written notice to the Tenant, without prejudice to any remedy which otherwise might be used for arrears of rent or breach of covenant.

Article XI - Town's Default. The Town shall not be deemed to be in default unless such default remains uncured for more than sixty (60) days following written notice from Tenant specifying the nature of such default, or such longer period as may be reasonably required to correct such default. The Town's liability for maintenance and repair shall always be limited to the cost of making such repair or accomplishing such maintenance or repair. In no event shall the Town be liable for consequential or any indirect damages. The provisions of this Section are subject to the provisions of Article IX dealing with fire and other casualty.

Article XII - Town's Right to Perform Tenant's Covenant. Tenant and Town agree that, if either fails to perform any other act as required in this lease, the other party, in its sole discretion, may make any payment or perform any other act on the part of the non-performing party in such manner and to such extent as the performing party may reasonably deem desirable. The making of any such payment or the performing of any other act by a party shall not waive, or release the non-performing party from its obligations. All amounts so paid by the Town shall be payable to the Town on demand, with interest thereon at a rate of one and one-half percent (1-1/2%) per month, and the Tenant covenants to pay such amount promptly. In addition, the performing party shall have all the rights and remedies provided for in Article X or elsewhere in this lease.

Article XIII - Notices. All notices shall be given by certified mail, return receipt requested, and shall be addressed to the Littleton Board of Selectmen, Town Hall, Littleton, or to such other place designated by written notice to the Tenant; and to the Tenant prior to its occupancy of the Premises, at its address as set forth in this lease, and, following occupancy, at the Premises, or to such other place as may be designated by written notice to the Town.

Article XIV - Entire Agreement. This lease sets forth the entire agreement between the parties and cannot be modified or amended except in writing, duly executed by the respective parties.

Article XV - Partial Invalidity. The invalidity of one or more phrases, sentences, clauses or articles shall not affect the remaining portions of this lease, and if any part of this lease should be declared invalid by the final order, decree or judgment of a court or competent jurisdiction, this lease shall be construed as if such invalid phrases, sentences, clauses or articles had not been inserted.

Article XVI - Non-Waiver Provision. No assent or waiver, express or implied, by either party to the breach of any provision of this lease, and no waiver, express or implied, of any such agreement or condition shall be deemed to be a waiver of or assent to any succeeding breach. The acceptance by the Town of rent or other payment or silence by either party as to any breach shall not be construed as waiving any of the party's rights. No payment by the Tenant or acceptance by the Town of a lesser amount than is due the Town from the Tenant shall be deemed to be anything but payment on account, and the acceptance by the Town of a check for a lesser amount with an endorsement or statement thereon or upon a letter accompanying said check that said lesser amount is payment in full shall not be deemed an accord and satisfaction, and the Town may accept said check without prejudice to recover the balance due or pursue any other remedy.

Article XVII - Counterparts and Headnotes. This lease is executed in duplicate, both copies of which are identical, and either one of which is to be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copy. The headnotes throughout this lease and the coversheet are for convenience or reference only, and shall in no way be held or deemed to define, limit, explain, describe, modify, or add to the interpretation, construction or meaning of any provision of this lease.

Executed this 26 day of March, 1990.

Town:  
Littleton Board of Selectmen

Tenant:  
Littleton Historical Society

By: Donald J. Hanley  
Chairman  
Daniel J. Hanley

By: Harold L. Gale  
President

Paul J. Duran  
John J. Dwyer  
Richard D. McElroy

Mar 13 2008 5:30PM

Town of Littleton

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