

VILLAGE OF YELLOW SPRINGS, OHIO

RESOLUTION 2019-32

APPROVING A LEASE WITH JOHN BRYAN COMMUNITY POTTERY

WHEREAS, the Village owns the building currently housing John Bryan Community Pottery (the Penguin Building); and

WHEREAS, the Village desires to enter into a five-year lease with John Bryan Community Pottery; and

WHEREAS, John Bryan Community Pottery desires to stay in the building under specific conditions,

NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY RESOLVES THAT:

Section 1. Village Council approves the lease with John Bryan Community Pottery in a form substantially similar to Exhibit A.

Section 2. The Village Manager is hereby authorized and directed to execute the attached lease agreement (Exhibit A) effective July 1, 2019.

SIGNED: _____
Brian Housh, President of Council

PASSED: 7-1-2019

ATTEST: _____
Judy Kintner, Clerk of Council

ROLL CALL:

Brian Housh __Y__ Marianne MacQueen __Y__ Kevin Stokes _ABSENT__

Lisa Kreeger ____Y__ Kineta Sanford __Y__

Lease Agreement

This LEASE AGREEMENT (“**Lease**”) entered into this ____ day of _____, 2019 by and between the **Village of Yellow Springs, OHIO**, an Ohio municipal corporation (“**Lessor**”) and the **JOHN BRYAN COMMUNITY POTTERY, INC.**, an Ohio 501(c)(3), corporation (“**Lessee**”).

Section 1.

Lessor hereby leases to the Lessee, and Lessee hereby leases from Lessor, the building commonly referred to as the “Penguin Building” and the associated back yard, kiln pavilion and wood storage and located at 100 Dayton Street, Yellow Springs, Ohio 45387, (the “**Premises**”). Lessor hereby reserves the use of the two left of the three garage bays located in the Penguin Building, as well as the room at the extreme southwest corner of the Penguin Building.

Section 2.

(a) Term. The term of this Lease shall be for five (5) years (“**Initial Term**”) and shall commence effective as July 1, 2019 (the “**Commencement Date**”) and shall end on June 30, 2024 (the “**Termination Date**”), unless renewed pursuant to Section 2(b). A lease year shall run for the twelve (12) month period following the day and month of the Commencement Date (each a “**Lease Year**”).

(b) Renewal Term. Provided Lessee is not in default under any of the terms of the Lease, Lessee shall have the option to renew this Lease for one (1) additional term of five (5) Lease Years (the “**Renewal Term**”), if so agreed upon by both parties, commencing with the termination of Initial Term by giving written notice of exercise to Lessor not less than ninety (90) days before the expiration of the Initial Term. The terms of this Lease for the Renewal Term shall be determined at the time of the renewal. As used in this Lease, the phrase “**Term**” shall refer to the Initial Term and the Renewal Term, as applicable.

Section 3.

(a) Rent. Lessee agrees to pay to Lessor at the following address Bryan Center 100 Dayton Street, Yellow Springs, Ohio 45387, or at such other place designated by Lessor, beginning on the Commencement Date, the following base rent (“**Rent**”):

Lease Year	Monthly Rent	Annual Rent
1	\$300	\$3,600
2	\$315	\$3,780
3	\$330.75	\$3,969
4	\$347.29	\$4,167.45
5	\$364.65	\$4,375.82

(b) Payment and Delinquent Payment. Rent shall be due and payable in advance on the 1st day of each and every month, without demand, setoff, deduction or counterclaim. If Lessee does not pay to Lessor on or before the due date any amount due hereunder, Lessee shall also pay to Lessor a sum equal to the amount of the late payment plus a late charge equal to one and one-half percent (1.5%) of the delinquent amount. Late charge rates shall be retroactive to the date the original payment was due and shall continue until the full amount is current. All late charges shall be an additional part of the rent reserved under this Lease.

Section 4.

Lessor shall pay directly to the appropriate taxing authority all real estate taxes and assessments levied against the Premises, which become due and payable during the Term. Lessee shall not be responsible for payment of any real estate taxes or assessments levied against the Premises.

Section 5.

Lessor, at its expense, will be responsible for all interior and exterior maintenance and for all repairs and replacements to the Premises, including without limitation, the repair, replacement and maintenance of the driveway and all parking area, the landscaping, the roof and all interior or exterior structural components of the Penguin Building. Lessee shall keep the Premises in good and clean condition at all times. Lessee shall reimburse Lessor for the first three Lease Years an amount equal to one-third (1/3) of the maintenance, repair and replacement costs to the Penguin Building based on the description and estimate for work as of June 1, 2019, up to a maximum amount of Twelve Thousand Dollars (\$12,000) with the three payments due July 1, 2020; July 1, 2021; July 1, 2022.

Section 6.

The Premises shall be used exclusively for the purpose to provide instruction and classes to those who wish to learn ceramic and pottery skills. It is understood and agreed by the Lessor that such students may be subject to charges for material, instruction, and to cover other, incidental expenses incurred by Lessee, but that such instructional activities are offered for their educational and cultural value in accordance with 501(c)(3) operational guidelines. Lessee shall keep the Premises in a clean, well-maintained and orderly condition and free of noxious or injurious materials relevant to the use of the space as a ceramic and potter studio and all other nuisances and shall not commit waste on the Premises. Lessee shall comply with all covenants, conditions and restrictions of record affecting the Premises and all laws, rules and regulations, orders and directives of any governmental agency or authority having jurisdiction over the Premises, including, but not limited to, the zoning code of the Lessor, and shall promptly pay all costs, expenses, fines and penalties resulting from failure to observe any of the foregoing.

Section 7.

Lessee shall be responsible for payment of all charges against the Premises for sanitary sewer, gas, heat, electricity, water, telephone, internet services, cable, security monitoring, and any other utility services or public or private services furnished to the Premises, including any assessment against the Premises for making such services available. It is agreed that Lessee may share use of Lessor's solid waste dumpster or other solid waste container at no cost.

Section 8.

(a) Lessee shall procure and maintain a "commercial general liability" insurance policy with policy limits of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$2,000,000 annual aggregate. Lessee shall furnish Lessor with a certificate of insurance evidencing Lessor as an additional insured.

(b) Lessee agrees to keep all of Lessee's personal property situated within or on the Premises, insured for the benefit of Lessee and Lessor against loss or damage by fire, earthquake, smoke damage or other casualty, insurable under a special form "all-risk" coverage (including vandalism and malicious mischief) in an amount not less than one hundred percent (100%) of the full replacement value thereof.

(c) Lessee will procure an appropriate clause in, or endorsement on, insurance required by Lessee under this Lease, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery, and Lessee agrees that it will not make any claim against, or seek to recover from, Lessor for any loss or damage to its property or the property of others resulting from fire or other hazards covered or normally covered by such insurance. The release and covenant not to sue will include all losses of the type for which such insurance is to be carried and will not be limited by the actual amount of insurance recovery. Lessee will be responsible for any deductible or co-insurance on its policy, regardless of the fault or negligence of the Lessor. Because the provisions of this Section 8 are intended to preclude the assignment of any claim by way of subrogation or otherwise to an insurance company or any other person, Lessee will give to each insurance company which has issued to it one or more policies of insurance notice of the terms of this Section and have such policy(ies) properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this Section. Lessee also agrees to provide Lessor, upon Lessor's request, with adequate evidence of such waiver of subrogation.

Section 9.

Lessee shall indemnify, save harmless and defend Lessor from any and all claims, damages or losses, including without limitation, reasonable attorneys' fees and litigation expenses, arising directly or indirectly from or related to the use or occupancy of the Premises by Lessee, its employees, agents, contractors, licensees and invitees, or the conduct or management of Lessee's business on the Premises, or arising by reason of

Lessee's failure to perform any covenant of this Lease to be performed by Lessee, or by reason of injury, illness or death of any person or the destruction of any property arising out of any condition of the Premises or its use. If Lessor pays a sum of money by reason of the foregoing, then the sum so paid by Lessor, together with all losses, shall be considered additional rent due in the month succeeding such payment and shall be collectible at that time.

Section 10.

Should damage occur to the Premises during the term of the Lease, Lessor shall be permitted to either restore the Premises or terminate this Lease.

Section 11.

Lessee shall not make any alterations, additions or improvements (collectively, "**Alterations**") to the Premises without the prior written consent of Lessor. All Alterations shall be made in a workmanlike manner so as not to weaken the Premises or lessen the value of the Premises and shall be done in compliance with all laws, ordinances, codes and regulations of governmental authorities having jurisdiction over the Premises.

Section 12.

(a) Events of Default. The following events shall constitute an event of default under this Lease:

- (i) If Lessee shall breach this Lease by failing to make any payment of money, including rent and real estate taxes, when due and fails to remedy the breach within ten (10) days; or
- (ii) If Lessee shall breach any provision of this Lease other than for the payment of money or maintaining insurance, and fails to remedy the breach within thirty (30) days after written notice of said breach from Lessor, except if, at the end of the thirty (30) day period, the cure cannot reasonably be completed, but Lessee has promptly undertaken the cure and diligently pursued the cure throughout the period, then the cure period shall be extended for a time that is necessary to complete the cure with continued diligent efforts; or
- (iii) If Lessee fails to maintain in effect at all times the insurance required to be maintained by Lessee pursuant to this Lease.

(b) Lessor's Remedies. In the event of Lessee's default, Lessor shall have the right to enter upon the Premises and repossess and enjoy the same as if this Lease had not been made, with or without process of law, including without limitation, by use of self-help means such as changing the locks, and to remove all persons by force or otherwise, without being liable in damages for this removal, and, upon demand by Lessor, Lessee

shall surrender complete and peaceable possession of the Premises. This Lease shall then terminate at Lessor's option. Whether or not Lessor elects to terminate this Lease, Lessor may immediately recover from Lessee, and Lessee shall be liable to Lessor for, all rent and other sums due and unpaid up to the time of such reentry. If Lessor elects to terminate this Lease, Lessor shall be entitled to the damages caused by Lessee's default, which shall include (a) the costs of reletting the Premises, (b) the total amount of rent Lessee is obligated to pay for the balance of the Term of this Lease, and (c) all additional sums to which Lessor may be entitled under applicable law. Lessee's obligation to pay rent and all other sums owed hereunder shall survive any termination of this Lease due to Lessee's default. If Lessor does not elect to terminate this Lease, Lessor may, without waiving or postponing any other rights given it by law or provided for in this Lease, relet the Premises on such terms as it deems reasonably necessary or appropriate, and apply the proceeds, less all expenses of reletting, to payment of past due rent and the rent due for the balance of the Term and hold Lessee liable for the difference. In no event shall Lessee be entitled to any excess rents received by Lessor upon reletting the Premises. The expenses of reletting shall include, without limitation, attorneys' fees actually paid in recovering and reletting the Premises; the cost of all repairs, additions and improvements necessary to prepare the Premises for reletting; and all brokerage commissions and fees paid with respect to any reletting. These remedies shall not be deemed exclusive, and Lessor shall have all other rights and remedies provided in law or equity.

Section 13.

Lessee may not sublet, mortgage or otherwise encumber the Premises or its interest hereunder or assign the Lease without prior written consent of Lessor, which consent shall be in Lessor's sole and absolute discretion. In the event of a subletting or assignment, Lessee and its successors shall remain primarily liable to Lessor for the performance of all the obligations of Lessee under this Lease. The consent of Lessor to any one assignment or sublease pursuant hereto shall not be deemed to be a waiver of the provisions of this Section with respect to any subsequent assignment or sublease.

Section 14.

Upon the termination of the Lease, Lessee shall surrender the Premises to Lessor in the same or better condition as of the Commencement Date, with all systems and fixtures in good working order and free of defects, ordinary wear and tear excepted. If Lessee continues in possession of the Premises after the expiration of the Term or the Renewal Term, as applicable, such holding over shall be construed to be a tenancy at sufferance at a rental rate equal to one hundred twenty five percent (125%) of the monthly installments of Rent during the immediately preceding term, which such Rent shall be prorated on a per diem basis for every day the holdover continues, and which shall otherwise be paid on the terms and conditions of this Lease.

Section 15.

Exhibit A to Resolution 2019-32

This Lease shall be construed under the laws of Ohio. If one or more of the provisions contained in this Lease shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 16.

No amendment, modification or alteration of the terms hereof shall be binding unless it is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto. This Lease may be executed by the parties in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Time is of the essence of this Lease.

[Signature Page Follows]

Exhibit A to Resolution 2019-32

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be signed on the day and year first above written.

“Lessor”

Village of Yellow Springs, OHIO an Ohio
municipal corporation

By: _____
Name: _____
Title: _____

“Lessee”

**JOHN BRYAN COMMUNITY POTTERY,
INC.**
an Ohio not-for-profit corporation

By: _____
Name: _____
Title: _____

Approved as to Form Village Solicitor

STATE OF _____, COUNTY OF _____, ss:

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, the _____ of the Village of Yellow
Springs, Ohio, an Ohio municipal corporation, on behalf of said municipal corporation.

Notary Public

STATE OF _____, COUNTY OF _____, ss:

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by _____, the _____ of John Bryan Community
Pottery, Inc., an Ohio not-for-profit corporation, on behalf of said not-for-profit corporation.

Notary Public

