

AGREEMENT FOR HISTORICAL SERVICES

THIS AGREEMENT is entered into this ____ day of _____, 2021, by and between the **VILLAGE OF WELLINGTON**, a municipal corporation organized and existing under the laws of the State of Florida, referred to as “**WELLINGTON**,” and the **WELLINGTON HISTORICAL SOCIETY, INC.**, a Florida not-for-profit corporation, referred to as “**WELLINGTON HISTORICAL SOCIETY**.”

WITNESSETH:

WHEREAS, WELLINGTON HISTORICAL SOCIETY was created to provide historical, cultural, educational, and civic opportunities to the residents of Wellington on a nondiscriminatory basis; and,

WHEREAS, WELLINGTON HISTORICAL SOCIETY desires to assist WELLINGTON in providing such opportunities to residents within its community; and

WHEREAS, WELLINGTON is desirous of permitting the WELLINGTON HISTORICAL SOCIETY to use certain parts of the Wellington Community Center (“**WCC**”), or such other facilities as the Village is able to provide, on such terms and conditions as more particularly provided for below; and

WHEREAS, WELLINGTON HISTORICAL SOCIETY, an IRC 501(c)(3) Organization, raises and expends funds in furtherance of its goal of preserving the unique history of Wellington through the collection and cataloging of artifacts and the development of educational programming; and

WHEREAS, it is a purpose of WELLINGTON to assist civic organizations within its boundaries, and WELLINGTON desires to do so in a cost-effective manner.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

The above recitals are true and correct and are incorporated herein by reference.

- 1. ACCESS TO RECORDS.** WELLINGTON HISTORICAL SOCIETY agrees to grant to WELLINGTON, at reasonable times, access to all records, whether kept at WELLINGTON or at the corporate office of WELLINGTON HISTORICAL SOCIETY, if any.
- 2. EDUCATIONAL PROGRAMMING.** WELLINGTON HISTORICAL SOCIETY shall offer programs in cooperation with WELLINGTON to further the education and appreciation of the citizens of WELLINGTON with respect to WELLINGTON’S history (both before and after incorporation) for which WELLINGTON may provide support such as stage setup or exhibit space, as applicable, at the WCC or other such location within Wellington’s municipal

boundaries as may be deemed desirable by WELLINGTON and WELLINGTON HISTORICAL SOCIETY, all on a space available basis.

3. **USE OF WELLINGTON FACILITIES.** WELLINGTON may provide, without charge, the WCC facilities or such other location within WELLINGTON'S municipal boundaries as may be requested by WELLINGTON HISTORICAL SOCIETY from time to time. WELLINGTON reserves the right to relocate all activities of WELLINGTON HISTORICAL SOCIETY to such other location(s) as it deems necessary, upon reasonable notice. The parties to this Agreement agree to work with each other to accommodate WELLINGTON HISTORICAL SOCIETY uses and WELLINGTON uses. WELLINGTON will endeavor to provide additional rooms at its facilities for WELLINGTON HISTORICAL SOCIETY programs and uses if the same are available. However, WELLINGTON HISTORICAL SOCIETY recognizes that such space shall only be available if not being used for some other event or matter and is on a "first-come, first-served basis."
4. **WELLINGTON EVENTS.** WELLINGTON HISTORICAL SOCIETY shall participate in events organized by WELLINGTON when the parties believe that such participation is within the scope of WELLINGTON HISTORICAL SOCIETY's purpose and appropriate to, and will benefit, the success of such event. To that end, and for other purposes of this Agreement, WELLINGTON may endeavor to make available to WELLINGTON HISTORICAL SOCIETY WELLINGTON'S communications personnel (which may mean such personnel utilizing WELLINGTON equipment and facilities), subject to availability, for the production and presentation of oral histories and of the other programming or presentation developed by WELLINGTON HISTORICAL SOCIETY which can be used to support WELLINGTON events but which may also be used by WELLINGTON HISTORICAL SOCIETY in furtherance of its own activities.
5. **HISTORICALLY-ORIENTED PROGRAMMING.** WELLINGTON HISTORICAL SOCIETY shall provide historically-oriented programming for WELLINGTON's community channel and other media, which WELLINGTON may broadcast at such time and with such frequency as WELLINGTON reasonably elects. To assist WELLINGTON HISTORICAL SOCIETY in doing so, WELLINGTON may endeavor to make available WELLINGTON'S communications personnel, subject to availability, for the production and presentation of oral histories, lectures and other programming developed by WELLINGTON HISTORICAL SOCIETY in furtherance of this Section.
6. **FOUNDERS PLAQUE.** WELLINGTON HISTORICAL SOCIETY shall, upon request from the WELLINGTON Village Council from time to time, make recommendations of persons whose names will appear on WELLINGTON's "Founders Plaque" according to such standards for qualification as the Village Council may approve.
7. **LOCAL BROADCASTING.** WELLINGTON may, subject to availability, broadcast WELLINGTON HISTORICAL SOCIETY programming on WELLINGTON'S government access television channel.

- 8. RELEASE, INDEMNIFICATION AND HOLD HARMLESS.** In consideration for this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WELLINGTON HISTORICAL SOCIETY hereby releases, indemnifies, and holds harmless WELLINGTON, its officers, agents, elected officials, and employees (“**Indemnified Parties**”) from and against all claims, damages, actions, losses, and expenses including, without limitation, claims by or on behalf of WELLINGTON HISTORICAL SOCIETY, its employees, officers, members, participants, spectators, or attendees, for personal injury, illness, death, medical bills or any other type of injury or damage, together with attorneys’ fees, at both the trial and appellate level, arising out of, resulting from, or relating to events, activities, or programs held pursuant to this Agreement or its use of any Wellington facilities, or WELLINGTON HISTORICAL SOCIETY’s violation of any rule, law, code, ordinance, emergency order, or federal, state, or local health guideline with respect the events, programs, or activities required or permitted by this Agreement or the use of any Wellington facility to hold such events, programs, or activities, whether caused in whole or in part by the negligence of the Indemnified Parties or otherwise. WELLINGTON HISTORICAL SOCIETY acknowledges, understands, and agrees that this provision is binding upon it, as well as its successors, assigns, and legal representatives. Nothing contained herein shall be construed or interpreted as consent by WELLINGTON to be sued, nor as a waiver of sovereign immunity beyond the waiver or monetary limits provided in section 768.28, Florida Statutes. The provisions of this paragraph shall survive the termination of this Agreement and are in addition to, and supplemented by, the Release, Indemnification, and Hold Harmless Agreement Relating to Coronavirus/COVID-19 attached hereto as **Exhibit “A”** and incorporated herein by this reference.
- 9. EFFECTIVE DATE; TERM.** This Agreement shall become effective upon execution by all parties and shall continue through September 30, 2022, at which time it shall automatically terminate unless specifically extended in writing by both parties.
- 10. TERMINATION.** Except as otherwise specified in this Agreement, either party may terminate this Agreement for any reason upon providing the other party with thirty (30) days written notice. Additionally, given the ongoing uncertainty relating to the novel coronavirus/COVID-19, WELLINGTON may cancel this Agreement or withdraw its consent for WELLINGTON HISTORICAL SOCIETY to use any Wellington staff and/or facilities at any time if WELLINGTON, in its sole discretion, determines that such staff and/or facilities cannot be used in accordance with current federal, state, or local health guidelines or WELLINGTON’S policies and procedures, or that use of the staff and/or facilities poses a threat to the general health, safety, or welfare of the community. WELLINGTON shall not be liable to WELLINGTON HISTORICAL SOCIETY for any cost, fee, or other damages incurred by WELLINGTON HISTORICAL SOCIETY in connection with the termination of this Agreement or the withdrawal of its consent for WELLINGTON HISTORICAL SOCIETY to use its facilities.
- 11. COVID-19 PROCEDURES.** WELLINGTON HISTORICAL SOCIETY agrees that it will, at all times, conduct its events, activities, programs, and other uses of Wellington’s staff and/or facilities in accordance with all CDC guidelines and governmental rules, orders, policies and ordinances and other health guidelines, for vaccinated and non-

vaccinated individuals, including face mask requirements, if any, and that WELLINGTON HISTORICAL SOCIETY, its employees, officers, members, participants, spectators, and attendees shall practice safe social distancing and wear a mask if required during all events, activities, programs, and other uses of Wellington's facilities.

12. INSURANCE. WELLINGTON HISTORICAL SOCIETY agrees to procure and maintain, at its sole cost and expense, and in a form and content acceptable to WELLINGTON, the following insurance policies and coverage requirements:

- A. General Liability Insurance – General liability insurance from an insurance company licensed in the State of Florida and acceptable to WELLINGTON. The insurance policy shall be evidenced by a certificate of insurance submitted to WELLINGTON upon execution of this Agreement. WELLINGTON HISTORICAL SOCIETY shall name “The Village of Wellington” as an additional insured under the general liability policy, with minimum limits of \$1,000,000 per occurrence with a \$2,000,000 aggregate.
- B. Such other insurance as deemed appropriate by WELLINGTON's Risk Management Department, provided that if WELLINGTON HISTORICAL SOCIETY determines that the cost thereof is prohibitive, it may terminate this Agreement upon ten (10) days prior written notice to WELLINGTON.
- C. WELLINGTON may cancel this Agreement at any time if WELLINGTON HISTORICAL SOCIETY fails to comply with any of the insurance provisions herein.

13. INDEPENDENT CONTRACTOR. The parties shall each be and act as independent contractors and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between WELLINGTON HISTORICAL SOCIETY and WELLINGTON. Each party acknowledges and agrees that neither has nor shall give the appearance or impression of having legal authority to bind or commit the other party in any way.

14. USE OF TRADEMARKS OR SERVICE MARKS. Except as expressly provided herein, neither party shall have the right to use in any way the corporate or trade name, trademark(s), service mark(s), logo(s) or other identification of the other party without its prior written consent.

15. FAILURE TO OBJECT NOT A WAIVER. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other party which is in violation of the terms hereof shall not be construed as a waiver thereof, nor of any future breach of subsequent wrong conduct.

16. COOPERATION WITH THE INSPECTOR GENERAL. Pursuant to Ordinance No. 2011-009, Palm Beach County has established the Office of the Inspector General, which is authorized to review Village contracts and records. The Contracting Party shall fully cooperate with the Inspector General and shall provide access to the records in the manner provided herein for the Village to inspect such records. Failure to

cooperate with the Inspector General, or interfering with or impeding any investigation of the Inspector General, shall be a violation of County Ordinance 2009-049 and shall be punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

- 17. GOVERNING LAW AND VENUE.** This Agreement shall be construed in accordance with the laws of the State of Florida. Should any dispute arise from this Agreement, venue shall lie in Palm Beach County, Florida.
- 18. CONSTRUCTION AND SEVERABILITY.** This Agreement shall not be construed against the party who drafted the same as all parties to this Agreement have had legal and business experts review the adequacy of the same. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect.
- 19. ASSIGNMENT; BINDING EFFECT.** The rights and obligations under this Agreement may not be assigned by the parties hereto without the express written consent of the other party. This Agreement is binding upon the parties hereto, their heirs, successors, and assigns.
- 20. ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings or agreements in regard thereto. This Agreement cannot be altered or modified except by an amendment in writing signed by both parties.
- 21. NOTICE.** All notices required hereunder shall be sent via regular mail with a copy sent via email. All notices shall be directed as follows:

TO WELLINGTON:

Jim Barnes
Village Manager
12300 Forest Hill Boulevard
Wellington, FL 33414
jbarnes@wellingtonfl.gov

TO WELLINGTON HISTORICAL SOCIETY:

Sue Bierer
President
121 Ken Adams Way, Suite 110-C
Wellington, FL 33414
suebierer@aol.com

- 22. COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 23. HEADINGS.** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be signed in the respective names by their proper officials and under their corporate seals as of the date and year first above written.

**WELLINGTON HISTORICAL SOCIETY,
INC.** a Florida not-for-profit corporation

By: _____
Sue Bierer
President

ATTEST:

VILLAGE OF WELLINGTON, a
municipal corporation organized and
existing under the laws of the State of
Florida

By: _____
Chevelle D. Addie
Village Clerk

By: _____
Anne Gerwig
Mayor

**APPROVED AS TO FORM
LEGAL SUFFICIENCY**

By: _____
Rachel Bausch
Asst. Village Attorney

EXHIBIT “A”

Release, Indemnification, and Hold Harmless Agreement Relating to Coronavirus/COVID-19 for Wellington Facility Use

The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization and the State of Florida remains under a Public Health Emergency declared by the Governor. COVID-19 is a new virus, highly contagious, and despite reasonable precautions, may be transmitted. COVID-19 is believed to spread mainly from person-to-person through respiratory droplets produced when an infected person coughs or sneezes. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people.

WELLINGTON HISTORICAL SOCIETY, INC. (“**WELLINGTON HISTORICAL SOCIETY**”) acknowledges that the Village of Wellington (“**Wellington**”) allows members of the community to use facilities owned and operated by Wellington for group gatherings and events. WELLINGTON HISTORICAL SOCIETY is aware of the contagious nature of COVID-19 and has voluntarily chosen to hold its events, programs, and activities at Wellington facilities made available to it as set forth in the Agreement for Historical Services (“**Facilities**”). WELLINGTON HISTORICAL SOCIETY acknowledges that its use of the Facilities requires that its members, guests, and attendees follow all CDC guidelines and governmental rules, orders, policies and ordinances, including face mask requirements, and that its vaccinated and non-vaccinated members, guests, and attendees practice safe social distancing and wear a mask if required during its use of the Facilities.

WELLINGTON HISTORICAL SOCIETY knowingly acknowledges that by using the Facilities, it is exposing its members, guests, and attendees to the risk of becoming infected with COVID-19, or Multisystem Inflammatory Syndrome (MIS-C), which may result in serious personal injury, illness, permanent disability and death. WELLINGTON HISTORICAL SOCIETY understands that the risk of becoming infected with COVID-19 or MIS-C may result from the actions, negligence, and failures to act of itself and others, including but not limited to any members, guests, or attendees that attend its events, programs, and activities at the Facilities.

In consideration for being permitted the benefit and accommodation of using the Facilities during the current state of emergency relating to COVID-19 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WELLINGTON HISTORICAL SOCIETY hereby releases, indemnifies, and holds harmless Wellington, its officers, agents, elected officials, and employees (“**Indemnified Parties**”) from and against all claims, damages, actions, losses, and expenses including, without limitation, claims for personal injury, death, medical bills or any other type of injury or damage, and attorneys’ fees, at both the trial and appellate level, arising out of, resulting from, or relating to itself, its members, guests, and attendees contracting, spreading, or becoming ill from COVID-19 or MIS-C as a result of its use of the Facilities or Wellington property or its violation of any rule, law, code, ordinance, emergency order,

or federal, state, or local health guideline with respect to its use of the Facilities whether caused in whole or in part by the negligence of the Indemnified Parties or otherwise.

WELLINGTON HISTORICAL SOCIETY acknowledges, understands, and agrees that all provisions of this Release shall be binding upon it, as well as its legal representatives, successors, and assigns. WELLINGTON HISTORICAL SOCIETY's agreement to indemnify and hold harmless the Indemnified Parties includes attorneys' fees and costs actually incurred thereby, regardless of whether or not suit is brought or any appeal is taken therefrom. WELLINGTON HISTORICAL SOCIETY acknowledges and agrees that neither Wellington nor any of the other parties indemnified or held harmless herein shall ever be deemed an insurer against any loss, damage, injury or death occurring in or with respect to the use of the Facilities. WELLINGTON HISTORICAL SOCIETY expressly agrees that the foregoing Release is intended to be as broad and inclusive as permitted by law.

PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. BY SIGNING THIS FORM WELLINGTON HISTORICAL SOCIETY IS VOLUNTARILY ASSUMING SOLE RISK AND AGREEING TO INDEMNIFY AND HOLD HARMLESS THE VILLAGE OF WELLINGTON (INCLUDING ITS OFFICERS, AGENTS, ELECTED OFFICIALS, AND EMPLOYEES) FOR ANY LOSS, DAMAGE, INJURY, OR DEATH, THAT MAY BE SUSTAINED BY WELLINGTON HISTORICAL SOCIETY OR OTHER PERSONS THAT RESULTS FROM THE RISK OF EXPOSURE TO OR CONTRACTION OF COVID-19 OR MIS-C IN CONNECTION WITH WELLINGTON HISTORICAL SOCIETY'S FACILITIES USE. WELLINGTON HISTORICAL SOCIETY HAS THE RIGHT TO REFUSE TO SIGN THIS FORM, AND THE VILLAGE OF WELLINGTON HAS THE RIGHT TO REFUSE TO LET WELLINGTON HISTORICAL SOCIETY USE THE FACILITIES IF IT DOES NOT SIGN THIS FORM.

WELLINGTON HISTORICAL SOCIETY, INC., a
Florida not-for-profit corporation

By: _____
Sue Bierer, President

Date: _____, 2021