

SETTLEMENT AGREEMENT and MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT and MUTUAL RELEASE (the “Agreement”) is made and entered into by and between THE TOWN OF CARRBORO (the “Town”) and The Arts Center, Inc. (the “Arts Center”) (collectively, the “Parties”) this the ____ day of September, 2019.

WITNESSETH:

WHEREAS, on or about May 29, 2018, the Town and the Arts Center entered into a Development Agreement related to the possible development and construction on property owned by the Town located at 203 S. Greensboro St. in Carrboro, N.C. (the “Development Agreement”);

WHEREAS, the Arts Center subsequently exercised its rights to terminate the Development Agreement;

WHEREAS, certain disputes arose between the Town and the Arts Center regarding the Arts Center’s obligation to pay a share of certain costs and fees incurred by the Town in connection with the Development Agreement prior to its termination;

WHEREAS, the Town and the Arts Center have enjoyed a mutually beneficial relationship for over 45 years and wish to continue that relationship in the future;

WHEREAS, the Parties therefore participated in a Mediated Settlement Conference on August 27, 2019, which resulted in a settlement agreement (the “Mediated Settlement Agreement”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, subject to approval by the Board of Aldermen of the Town and the Board of Directors of the Arts Center;

WHEREAS, the Board of Aldermen of the Town and the Board of Directors of the Arts Center have now both formally approved the terms of the Mediated Settlement Agreement; and

WHEREAS, the Town and the Arts Center now wish to formalize the Mediated Settlement Agreement and to fully and finally resolve the above referenced disputes between them.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants as set forth below, the adequacy and sufficiency of which are hereby acknowledged, the Town and the Arts Center hereby agree as follows:

1. Settlement Payment: The Arts Center shall pay the total sum of Eighty-Five Thousand Dollars (\$85,000) to the Town in full settlement of the claims against it in the above referenced dispute. Payments to be made in three payments of \$28,333.33 on or before December 31, 2019, \$28,333.33 on or before December 31, 2020, and \$28,333.34 on or before December 31, 2021.

2. Waiver of Fees: The Town shall provide a waiver of up to Ten Thousand (\$10,000) Dollars for Development Permit Fees for the new building to be constructed by The Arts Center in the Town of Carrboro limits.

3. Town Funding: The Arts Center agrees it will not seek any funding from the Town during the Town's current fiscal year ending June 30, 2020. Notwithstanding the foregoing, the Arts Center may seek funding through the Carrboro Tourism Development Authority. The Town agrees it will fairly consider any requests for funding made by the Arts Center for funding to occur in future fiscal years without applying any negative connotations arising out of the disputes resolved through this Agreement.

4. Release by the Town: The Town, for itself and its present and future board members, officials, officers, employees, agents, successors, and assigns, hereby fully releases, acquits, and forever discharges the Arts Center and its subsidiaries, predecessors, successors, affiliated entities, present and future officers, directors, shareholders, employers, employees, members, managers, agents, attorneys, insurers, servants, reinsurers, and assigns of and from any and all past, present or future claims, violations, happenings, demands, losses, contracts, damages, proceedings, actions, causes of action, suits (whether at law or in equity), controversies, agreements, obligations, liabilities, demands of whatsoever kind or nature, now existing, whether known or unknown, discovered or undiscovered, foreseen or unforeseen, relating to or arising out of the Development Agreement.

5. Release by the Arts Center: The Arts Center, for itself and its subsidiaries, predecessors, successors, affiliated entities, present and future officers, directors, shareholders, employers, employees, members, managers, agents, attorneys, insurers, servants, reinsurers, and assigns, hereby fully releases, acquits, and forever discharges the Town and its present and future board members, officials, officers, employees, agents, successors, and assigns of and from any and all past, present or future claims, violations, happenings, demands, losses, contracts, damages, proceedings, actions, causes of action, suits (whether at law or in equity), controversies, agreements, obligations, liabilities, demands of whatsoever kind or nature, now existing, whether known or unknown, discovered or undiscovered, foreseen or unforeseen, relating to or arising out of the Development Agreement.

6. Compromise. It is understood and agreed that this settlement is a compromise of doubted and disputed claims, and that the payment made hereunder is not to be construed as an admission of liability on the part of the parties hereby released, by whom liability is expressly denied.

7. Costs and Attorney's Fees: Each party shall bear their own costs including their own attorneys' fees and a proportionate share of the costs of mediation.

8. Authority: The Parties represent and warrant that they have taken all actions and obtained all authorizations, consents, and approvals as are conditions precedent to their authority to execute this Agreement.

9. Voluntary Agreement. The Parties declare that they have carefully read this Agreement, that they have been fully advised in connection with this Agreement by legal counsel

of their own choice, that this Agreement has been fully explained to them prior to its execution and that they understand its terms and legal effect, and they sign this Agreement as their own free act.

10. Construction. The Parties have each had the opportunity to participate in the drafting of this Agreement, which is the result of negotiations between the Parties. It is, therefore, specifically agreed that, in the event of any dispute with respect to the proper interpretation of any term of this Agreement, no one party shall be deemed to be the drafter.

11. Warranty of Ownership of Claims. Each of the Parties warrants and represents that it is the sole holder and owner of each and every claim, cause of action, right or chose in action relating to the matters that are asserted or could have been asserted by such party against the other party released herein, and that it has made no assignment, in whole or in part, of these claims, causes or rights to any other party.

12. Governing Law: This Agreement shall be interpreted and construed in accordance with the laws and rules of the State of North Carolina, including its statutes of limitations, without giving effect to any conflict-of-laws rule that would result in the application of the laws of a different jurisdiction. In addition, the Parties consent to the jurisdiction of the North Carolina General Court of Justice, Orange County, over any claims arising under or relating to this Agreement, or the relationship between the Parties.

13. Counterparts: This Agreement may be executed in one or more counterparts, each of which taken together will constitute a single binding agreement. The execution of this Agreement by electronic or scanned signatures is as binding upon the Parties as original signatures.

14. Invalid Provision to Affect No Others. If any provision of this Agreement is held determined, or adjudicated to be invalid, unenforceable, or void for any reason, each such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity and enforceability of such remaining provisions.

15. Entire Agreement. The Parties agree that this Agreement contains the entire agreement between the Parties and the terms hereof are contractual in nature and not merely recitals and shall not be modified or amended except by written instruments signed by all the Parties or their representatives.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned parties hereto have caused this Settlement Agreement and Mutual Release to be executed by their authorized officers on the day and year first above written.

The Town of Carrboro

By: _____

Its: _____

The Arts Center, Inc.

By: _____

Its: _____

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This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____
Title: _____
Date: _____