

JOINT USE AGREEMENT

Joint Use of Town Park, Plaza and Cain Center for the Arts

This **JOINT USE AGREEMENT** (this “Agreement”) dated as of _____, 2021 (the “Effective Date”) is made and entered into by and between **THE TOWN OF CORNELIUS** (the “Town”) and **CORNELIUS ARTS/COMMUNITY CENTER, INC.** dba “Cain Center for the Arts” (“CAIN CENTER”) (the Town and CAIN CENTER collectively, the “Parties”).

Background and Purpose

- A. **Description of Property.** Pursuant to a Deed and Covenants and a Joint Easement Agreement (collectively, the “Transfer Agreements”) (attached hereto and incorporated herein as Exhibit A) Town intends to transfer to CAIN CENTER a portion of the property located within the corporate limits of the Town and identified as “Parcel 1 Cain Lot” as generally shown on the map attached hereto and incorporated herein by reference as Exhibit B (the “Cain Lot”). The resulting adjoining properties depicted on Exhibit B and the Cain Lot will be hereinafter collectively referred to as the “Property.”
- B. **Improvements to the Property.** The Town and CAIN CENTER have worked cooperatively and will cause to be constructed a Town-owned Park (the “Park”), a CAIN CENTER-owned Cain Center for the Arts (the “Arts Center”) and a CAIN CENTER-owned exterior plaza (the “Plaza”) upon the Property (collectively, “The Facilities”). The Term “Arts Center” as used in this Agreement and the MOU shall mean those spaces within the building constructed and owned by Cain Center located on the Cain Lot that are available generally for use by third parties including the theater and its associated spaces; conference rooms, classrooms, bathrooms, and lobby space.
- C. **Joint Use of the Property.** Pursuant to the Transfer Agreements, Town and CAIN CENTER intend to jointly use the Facilities from time to time as set forth herein.
- D. **Purpose of this Agreement.** The purpose of this Agreement is to confirm the agreed upon terms and conditions of the joint use of the Facilities, as set forth herein, once construction is completed and the Facilities are open to the public.

NOW, THEREFORE, the parties hereto, for themselves and their successors and permitted assigns, and pursuant to the authority provided in North Carolina General Statutes agree as follows:

1. RIGHT OF USE OF PARK, PLAZA and ARTS CENTER.

- a. Use of Park: Beginning on the Effective Date, Town grants to the CAIN CENTER and to CAIN CENTER's employees and invitees, the non-exclusive right to use the Park in accordance with Town's rules and regulations applicable to the use of the Park and also in accordance with scheduling and other operational policies and procedures established by the parties under the Annual Memorandum of Understanding to be entered into by the Parties ("Annual MOU") as provided for in Section 6. Moreover, Town reserves the exclusive right to use the Park for i) maintenance purposes; and ii) Town sponsored sport and recreation programs and activities, Monday through Friday between the hours of 8:00 am and 4:00 pm from time to time (for example, outdoor tai chi, yoga classes) ("Town Programs") and iii) downtown events including but not limited to no more than ten (10) festivals, parades, events and celebrations offered to the public at large ("Park Community Events") at dates and times to be reasonably determined by the Town prior to a scheduling date determined by the Parties in the Annual MOU ("Scheduling Date") (collectively, the "Town's Reserved Hours").
 - b. Use of Plaza and Arts Center: Beginning on the Effective Date, CAIN CENTER grants to the TOWN and to TOWN'S employees and invitees, the non-exclusive right to use the Arts Center and Plaza in accordance with Cain Center's rules and regulations applicable to the use of the Arts Center and Plaza and also in accordance with scheduling and other operational policies and procedures established by the parties under the Annual MOU as provided for in Section 6. Moreover, Cain Center grants to the Town the exclusive right to i) use the Plaza and Arts Center's bathrooms for up to 10 total Park Community Events and at dates and times to be reasonably determined by the Town and Cain Center prior to the Scheduling Date and subject to policies and procedures established in the annual MOU and ii) Arts Center bathrooms during Town Programs. In addition, Cain Center grants to Town the exclusive right to use the Arts Center and Plaza for up to twelve (12) annual "Town-Sponsored Opportunities" defined as i) community programs or meetings; ii) Town sponsored government programs, meetings or training sessions; or iii) Town-sponsored opportunities benefiting under-served Cornelius citizens, also in accordance with scheduling and other operational policies and procedures established by the parties under the Annual MOU as provided for in Section 6.
2. REPAIRS AND MAINTENANCE. The Town shall be responsible for the maintenance and repair of the Park. CAIN CENTER shall be responsible for the maintenance and repair of the Plaza and Arts Center. Notwithstanding the foregoing, CAIN CENTER shall pay for damage to the Park caused by CAIN CENTER, such damage to include excessive wear and tear requiring maintenance and repairs over and above maintenance planned and scheduled during Town's Reserved Hours. Town shall pay for damage to the Arts Center or Plaza caused by Town, such damage to include excessive wear and tear to structure, furniture, equipment and fixtures. CAIN CENTER and Town shall, from time to time, work cooperatively together to share repair and maintenance expenses for all Facilities if circumstances warrant.

3. **OPERATING EXPENSES/UTILITIES.** Except as set forth herein and in the Annual MOU, the Town shall be responsible for all operating expenses and services required by the Town in connection with the Park, including, but not limited to, the cost of utilities and management and operation. Except as set forth herein and the Annual MOU, CAIN CENTER shall be responsible for all operating expenses and services required by CAIN CENTER in connection with the Arts Center and Plaza, including, but not limited to, the cost of utilities and management and operation. Notwithstanding the foregoing, the CAIN CENTER shall be responsible for excess utility expenses at the Park for CAIN CENTER events; and Town shall be responsible for excess utility expenses at the Plaza or Arts Center for Town events, the calculation of which shall be agreed to by the Parties each year in the Annual MOU.
4. **USE AND OPERATION.** The Plaza and Arts Center shall be used by the Parties for those uses set forth in the Transfer Agreements and operated in accord with the CAIN CENTER's normal policies, practices and procedures to the extent not inconsistent with the other provisions of this Agreement and the Annual MOU. Additionally, and when otherwise not scheduled for public or private events ("Unscheduled Hours"), The Park and Plaza shall be used by the Parties for the operation of a public park which shall be open to the general public. During Unscheduled Hours, the Park and Plaza will be operated in accord with the Town's normal parks and recreation policies, practices and procedures to the extent not inconsistent with the other provisions of this Agreement (and the Annual MOU).
5. **SCHEDULING.** CAIN CENTER shall be responsible for coordinating the scheduling of the Facilities. In order to facilitate scheduling, Town Staff will provide the CAIN CENTER Executive Director, or designee, no later than the Scheduling Date, a schedule of the Town's Reserved Hours for the Park, Plaza and Arts Center and Town-Sponsored Opportunities. Maintenance, Park Community Events, Town-Sponsored Opportunities and Town Programs presented on or before the Scheduling Date shall have first priority scheduling at all Facilities. In the event there is a scheduling conflict between a CAIN CENTER scheduled event and a Park Community Event, Town-Sponsored Opportunity or Town Program presented on or before the Scheduling Date, the parties shall work cooperatively to accommodate the Town's requests or provide a reasonable alternative date. Notwithstanding the foregoing, the Parties agree that each year CAIN CENTER shall reserve for the Town all Facilities for three dates upon which the Town hosts annual Park Community Events to include: i) the Saturday after Thanksgiving ("Light Up Cornelius" festival); ii) November 11 (Veterans Day Celebration) and iii) Memorial Day (Memorial Day Celebration). This procedure will not preclude Town Staff requests for additional event dates that CAIN CENTER will endeavor to grant; Town events submitted after the Scheduling Date shall be cooperatively scheduled. The Parties acknowledge that the Park may, upon occasion, and without notice, be temporarily closed or require additional repair and maintenance as a result of unanticipated weather events,

extraordinary wear and tear and/or damage caused by use or over-use of Park green space (“Extraordinary Events”). The Town shall notify CAIN CENTER promptly of any required temporary closure. CAIN CENTER shall cooperate with Town during Extraordinary Events and Reserved Hours and comply with any temporary access restrictions reasonably imposed by the Town.

Additional details as to scheduling and other operation policies and procedures shall be established by the parties in the Annual MOU.

6. **RULES & REGULATIONS; MEMORANDUM OF UNDERSTANDING.** The Parties shall have the right to establish, modify, publish and enforce reasonable and uniform rules and regulations applicable to use of their respective Facilities, consistent with the Parties use of the Facilities for purposes specified in Sections 1 and 4. The Parties agree to comply with such rules, regulations, policies and procedures, and to use best efforts to cause its employees, agents, guests, and invitees to comply. Such rules and regulations, in addition to scheduling and other operational policies and procedures to be established by the parties, shall be documented in the separate Annual MOU, as the same may be modified from time to time. The Annual MOU need only be approved by CAIN CENTER’s Executive Director or designee, and the Town Parks and Recreation Department Director or designee.
7. **TAXES.** CAIN CENTER and the Town shall each pay all taxes and assessments, if any, levied upon their respective furnishings, fixtures, equipment and other personal property located on the Property. CAIN CENTER and the Town shall each obtain and pay for all permits or licenses required by law, ordinance, statute or regulation in connection with the conduct of their respective use of the Facilities. Each Party shall pay all taxes and assessments, if any, levied upon their own Facilities (including the underlying land).
8. **SIGNAGE.** The Parties shall work cooperatively to approve and place appropriate permanent exterior signage upon the Property prior to commencement of operations of the Property at locations deemed necessary to inform the public of the history of the Property, the location of the Park, Plaza and Arts Center and the rules governing use. Additionally, the Parties will work cooperatively with regard to the naming of the Park and it’s amenities including the conditions under which such names may be removed and/or changed. The placement of such signs shall not interfere with the Parties use of the Property. Each Party shall pay for and maintain their own signs. Should either Party desire to place additional, permanent signage upon the Property, such signage must comply with Town ordinances, be properly permitted and approved by the property owner. Each Party reserves the right to remove signage placed upon its property in violation of this Section 8.
9. **PERSONAL PROPERTY; REMOVAL OF PERSONAL PROPERTY.** Each Party shall provide, at its expense, the equipment it deems appropriate to be used on the Facilities

during its usage times. Such equipment shall be removed from the Facilities in accordance with Facilities rules as established in the Annual MOU.

10. NONDISCRIMINATION. The parties hereto, for themselves, covenant and agree, that (i) no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, creed, color, sex, or national origin in the use of the Facilities; and (ii) in the furnishing of services thereon and thereto no person shall be excluded from participation herein, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, creed, color, sex or national origin.
11. LIENS. Each of the parties shall keep the Facilities free from any and all liens of any nature for any work done, labor performed or materials furnished thereon at the instance or request of, or on the behalf of, each party; and each party shall defend, indemnify and save harmless the other party from and against any and all claims, liens, demands, costs and expenses of any nature for such work done, labor performed, or materials furnished.
12. INDEMNITY AND INSURANCE. It is expressly agreed and understood that CAIN CENTER will not be liable for any claims, damages, losses or expenses of any kind whatsoever, whether to persons or property (including, but not limited to, those claims, damages, losses or expenses resulting from or by reason of CAIN CENTER's negligent acts or omissions) arising out of, related to or connected with any accident, occurrence or event on or about the Facilities when the accident, occurrence or event takes place while Town is using the Facilities pursuant to this Agreement. It is also agreed and understood that the Town will not be liable for any claims, damages, losses or expenses of any kind whatsoever, whether to persons or property (including, but not limited to, those claims, damages, losses or expenses resulting from or by reason of Town's negligent acts or omissions) arising out of, related to or connected with any accident, occurrence or event on or about the Facilities when the accident, occurrence or event takes place while CAIN CENTER is using the Facilities pursuant to this agreement. As a result of this express agreement and understanding, each party will at all times indemnify and hold harmless, and defend at its own expense, the other party (and its employees, agents and officers) with respect to all aforementioned claims, damages, losses or expenses, regardless of whether such claims, damages, losses or expenses are covered by the other's insurance, except as set forth in the next paragraph only.

Each Party shall be responsible for maintaining property hazard coverage, including vandalism and malicious mischief coverage on their respective facilities during the Term of this Agreement at full replacement cost. CAIN CENTER and Town hereby mutually release and discharge each other from all claims or liabilities arising from or caused by fire or other casualty covered by the above insurance within the policy coverage limits.

In addition, each party shall maintain a policy of comprehensive general liability insurance with a minimum limit of liability of one million dollars (\$1,000,000.00) for bodily injury and for property damage and, an umbrella liability policy with a minimum limit of liability of one million dollars (\$1,000,000.00), to be effective while it is using the Facilities pursuant to this Agreement. Within fifteen (15) days after the date hereof, each party shall deliver to the other certificates of insurance certifying that the insurance specified in this paragraph is in full force and effect. Such policies shall contain contractual coverage or name the parties to this Agreement as additional insureds. All insurance shall be affected by valid and enforceable policies issued by insurers of recognized responsibility; and all such policies shall, to the extent obtainable, contain an agreement by the insurers that such policies shall not be cancelled without at least thirty (30) days prior written notice to the parties.

13. DEFAULT. Should either Party default in the performance of any term, covenant or condition to be performed by such Party and such default is not remedied within thirty (30) days from and after written notice is provided specifying said default, or, if such default cannot be remedied within that period, is not begun and diligently and continuously pursued within that period, the non-defaulting Party may declare this Agreement and, except as otherwise provided herein all rights and interests created thereby to be terminated (provided however, the Transfer Agreements shall remain in full force and effect).
14. NOTICES. Every notice, approval, consent or other communication authorized or required by this Agreement shall not be effective unless the same shall be in writing and sent by either hand delivery or by confirmed e-mail.

- a. If intended for the Town it shall be addressed to:

Town Manager
Town of Cornelius
21445 East Catawba Ave.
PO Box 399
Cornelius, NC 28031
agrant@cornelius.org

- b. If intended for CAIN CENTER shall be addressed to:

or to such other address or to such other person, firm or corporation as either party may designate by notice given from time to time in accordance with this Section 14.

Any notice given in accordance with the provision of this article shall be deemed to have been given as of the date such notice is received.

15. RELATIONSHIP. Nothing in this Agreement shall be deemed to make the parties joint ventures or partners nor to create an interest in or right different from nor additional to those established in the Transfer Agreements.
16. SEVERABILITY. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
17. AMENDMENTS. This Agreement may be amended only by written instrument executed by the parties hereto.
18. WAIVER, CONSENT AND APPROVAL. Any consent or approval required hereunder and any waiver of a provision hereof shall be effective only if given in writing signed by the representative of the party to be charged, and then such waiver, consent or approval shall be effective only in the specific instance and for the purpose given. Whenever under this Agreement the approval or consent of a party is required, such approval shall not be unreasonably withheld or delayed.
19. APPLICABLE LAW. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina, and any action brought in connection herewith shall be brought in Mecklenburg County, North Carolina.
20. ENTIRE AGREEMENT. The entire agreement, intent and understanding between CAIN CENTER and the Town concerning the joint use of Facilities is contained in the provisions of this Agreement and the Annual MOU. Terms used herein without definition shall have the meaning given in any of the Contribution Agreement, the Annual MOU, the Transfer Agreements (collectively, with this Agreement, the "Project Documents").

IN WITNESS WHEREOF, the parties hereto have caused these present to be duly executed in duplicate, with all the formalities required by law as of the day and year first above written.

TOWN OF CORNELIUS

By: _____
Mayor

Attest: _____
Clerk

CORNELIUS ARTS/COMMUNITY CENTER, INC.

By: _____
Chairperson

Attest _____
Clerk

EXHIBIT LIST

Exhibit A: Transfer Agreements

Exhibit B: Map