

NORTH CAROLINA SPECIAL WARRANTY DEED

Drawn by: Kevin M. Bringewatt, Bringewatt Wolter & Snover, PLLC, P.O. Box 453,
Davidson, NC 28036

Mail to: Grantee

Excise tax¹: \$ 0.00

Tax Parcel Number(s): 00521212

This Deed, made as of this ____ day of _____, 2021 by and between the TOWN OF CORNELIUS, a North Carolina municipal corporation (“Grantor”), and CORNELIUS ARTS/COMMUNITY CENTER, INC., a North Carolina non-profit corporation (“Grantee”), having an address of [insert]

The designations “Grantor” and “Grantee” as used herein shall include said parties, their heirs, successors and assigns (including, without limitation, any successor in interest to the Property, as defined below, hereby conveyed), and shall include singular, plural, masculine, feminine or neuter as required by context.

WHEREAS, Grantor is authorized, pursuant to N.C.G.S. §160A-488, to establish and support public museums, art galleries, art centers, arts facilities and arts programs; and

WHEREAS, the Grantor and Grantee have agreed to certain covenants and restrictions (the “Covenants”), set forth on Exhibit A attached hereto and incorporated herein by reference;

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, donate and convey unto the Grantee in fee simple, the Property; provided, however, that if the Grantee fails to abide by the terms of the Covenants, then the Grantor shall have the right to reenter and retake the premises after complying with the notice and cure provisions set forth Exhibit A. For clarification, once the Grantor exercises its right to reenter and

¹NTD: We suggest that language be added by the Grantor supporting the legal conclusion that this is a tax free conveyance.

retake the premises, the interest of the Grantee, its successors, and assigns, in the Property will extinguish, this instrument shall be void, and the Grantor will own the Property in fee simple.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, donate and convey unto the Grantee in fee simple, all that certain lot or lots or parcels of land situated in Mecklenburg County, North Carolina and more particularly described as follows:

[insert plat reference] (the "Property").

TO HAVE AND TO HOLD the aforesaid Property and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

TOGETHER WITH certain easements over a portion of the adjoining property retained by Grantor as set forth in that certain Joint Easement Agreement between Grantor and Grantee recorded with this Deed.

AND the Grantor covenants with the Grantee that Grantor has done nothing to impair such title as Grantor received and that Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor except for the exceptions hereinafter stated.

Title to the Property hereinabove described is subject to the following exceptions:

- Easements and restrictions of record, specifically including the Joint Easement Agreement referenced above
- Ad valorem taxes (if any);
- Any matters that would be revealed by a current and accurate survey;
- The Covenants.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name as of the day and year first above written.

TOWN OF CORNELIUS

By: _____
Andrew Grant, Town Manager

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____ a Notary Public of the County and State aforesaid, certify that Andrew Grant (the "Signatory") personally came before me this day and acknowledged that he is Manager of the Town of Cornelius, and that by authority duly given and as the act of the corporate body, the foregoing instruction was signed in its name by him as its Manager.

Witness my hand and official stamp or seal, this the ____ day of _____, 2021.

Notary Public

Print Name

My Commission Expires: _____

[SEAL]

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EXHIBIT A
COVENANTS

Grantor covenants for itself, its successors, and assigns (which hereby are deemed to include every successor in interest to the Property hereby conveyed), or any part thereof, that the Property is hereby conveyed subject to the conditions, restrictions, and limitations hereinafter set forth which are covenants running with the land ("Covenants"), to which Grantee, and its successors and assigns, agree to abide; and that Grantee, its successors, and assigns, hereby covenants and agrees that, in the event the Property is sold or otherwise disposed of, these Covenants shall be inserted in the instrument of conveyance.

1. IMPROVEMENTS. Grantee shall cause to be constructed on the Property a building and related improvements (the "Improvements") in accordance with the design plans that have been approved by both Grantor and Grantee. Grantee shall use commercially reasonable efforts to complete the Improvements by [_____, 20[___] ("Target Completion Date") and in no event later than _____, 20[___] ("Outside Completion Date") (For clarity provided, however, that any failure to complete the Improvements by such the Target Completion Date date shall not be considered a breach of these Covenants, but failure to complete by the Outside Completion Date shall be considered a brach of these Covenants). The Improvements shall become part of the Property and are included in definition of "Property" as set forth herein.

2. PERMITTED USE.

- (a) The Property shall be used by Grantee and its successors-in-interest for purposes permitted by and consistent with N.C.G.S. 160A-488 consisting of the following (the "Intended Use"): the operation of a community arts and cultural center open to the public and all auxiliary uses specifically including, but not limited to, (i) lease for production of or presentation of arts, cultural and related events, (ii) lease by third parties for private events, including celebratory events, such as weddings and private parties, (iii) lease for music, dance, operatic and educational instruction of all kinds and (iv) distribution and sale of merchandise related to arts and craft activities related to the events carried on at the Property. As part of the Intended Use, Grantee, its successors-in-interest, tenants, agents and assigns shall have the rights to provide on-site food and beverages of all types for events held thereon so long as done in accordance with applicable laws. For clarity, ceasing operations for the Intended Use (to the extent that such cessation extends for a period that violates the requirement for Minimum Utilization, as defined hereinbelow) shall be a violation of this use restriction entitling Grantor to reenter and retake the Property as set forth herein.
- (b) Grantee agrees that, after the Improvements are completed, from and after the day that the Property is first open for business to the public, subject to Grantors' compliance with the terms and conditions of any agreement between Grantor and Grantee related to the Property and subject to Force Majeure, Grantee will cause the Property to be operated for the Intended Use in a manner sufficient to constitute

the Minimum Utilization. For purposes of this Special Warranty Deed, (a) "Force Majeure" means any delay or default in performance due to acts of God, flood, fire, casualty, war, terrorism, accident, strike, lockout or other labor dispute, pandemic, public health event, public emergency, or government condemnation, or any other event or condition outside the reasonable control of Grantee (including, without limitation, any maintenance, repair, restoration, remodeling, demolition, reconstruction or expansion of any Improvements to render them suitable for the Intended Use), and (b) "Minimum Utilization" means that, Grantee shall operate the Property primarily for the Intended Use for an average of forty (40) hours per week without any period of interruption longer than six (6) consecutive months (other than due to Force Majeure). At any time and from time to time (but no more than one (1) time in each calendar year) upon Grantor's reasonable request, Grantee or its successor-in-interest shall provide a report calculating and describing the operation of the Property for the Intended Use for any specified time period that has then elapsed within eighteen (18) months prior to the date such request is made.

3. LIMITATIONS REGARDING TRANSFER OF GRANTEE'S INTEREST.

Grantee will not voluntarily sell, assign, sublease, transfer or otherwise convey any of Grantee's rights or obligations under this Deed and/or interest in the Property (in any event, a "Grantee Conveyance") without the prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Grantee may effect a Grantee Conveyance of all (but not a portion) of Grantee's rights and obligations under this Deed and/or interest in the Property to an Authorized Transferee (as defined hereafter) without the prior written consent of, but upon written notice to, Grantor. For purposes of this Deed, "Authorized Transferee" shall mean any entity that is either (i) owned or controlled by Grantee or (ii) is a not-for-profit entity qualified under Section 501(c)(3) of the Internal Revenue Code of the United States of America and organized and existing to carry out the purposes set forth in Section 2. In addition, it is expressly contemplated that Grantee may grant one or more liens (collectively, the "Lien") on the Property to one or more financial institutions or other lenders (collectively, the "Lender"; which term is deemed to include its successors and assigns) in order to secure repayment of funds advanced to Grantee for the construction of the Improvements and/or the operation or protection of the Property, and that the grant of such Lien to a Lender is permitted hereunder; provided, however, that if, in the exercise of its rights under the Lien, a Lender (i) dispossess Grantee of the Property (whether temporarily or permanently, including, without limitation, through any appointment of a receiver, conservator or similar person or entity to operate and protect the Property, the Minimum Utilization requirement shall continue to be maintained (subject to tolling however, for any period during which legal proceedings are pending with a Lender in regard to the Property and such Lender's Lien) and (ii) any transfer of title to the Property (whether through foreclosure, deed-in-lieu of foreclosure or otherwise) must only be made to an Authorized Transferee. Any attempted Grantee Conveyance not authorized under this Section 3 will be null and void.

4. REMEDIES. In the event of violation of any of the above Covenants, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to Grantor. No failure on the part of Grantor to enforce any Covenant herein,

nor the waiver of any right hereunder by Grantor, shall discharge or invalidate such Covenant or any other covenant, condition, limitation or restriction hereof, or affect the right of Grantor to enforce the same in the event of a subsequent breach or default.

Notwithstanding anything to the contrary in this Deed, in the event of a violation of these Covenants, Grantor shall give Grantee and any Lender with a recorded Lien on the Property, written notice of the nature of the violation (at the addresses specified in the documents of record for Grantee and such Lender) and such Grantee (and such Lender) may cure the same within one hundred eighty (180) days following the giving of said notice. Grantee shall provide Grantor, in writing, the notice address for any such Lender.

If said violation is not cured within the said one hundred eighty (180) day period, Grantor shall have the right to reenter and retake the Property. Notwithstanding the foregoing, if the default cannot reasonably be cured within said one hundred eighty (180) day period, but Grantee or a Lender is diligently pursuing curing such default, the one hundred eighty (180) day time period shall be extended to such longer time as shall be reasonably necessary to cure such default but in no event longer than one (1) year from the date of notice. **For clarification, once Grantor exercises its right to reenter and retake the Property, the interest of Grantee, its successors, and assigns in the Property will extinguish, this instrument shall be void, and Grantor will own the Property in fee simple.**

Furthermore, if said violation is not cured within the said one hundred eighty (180) day period, Grantor shall also have an easement to enter and go upon such portion of the Property to repair, maintain, and correct the violation of these Covenants. The violating Grantee shall reimburse Grantor within sixty (60) days, for all sums expended to correct any Covenant violations. Grantor shall also have a lien enforceable in accordance with the provisions of North Carolina General Statute § 44A against the violating Grantee's (or its successors' or assigns') portion of the Property for all sums expended to correct the violation of these restrictions. Such lien shall be subordinate to the interest of any mortgagee (including, without limitation, any Lender), irrespective of when its interest attached, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

In a case where a court finds that a violation has occurred, the court may require Grantee to reimburse Grantor for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees.

5. MISCELLANEOUS

- a. Grantor or his or her designee(s) shall have the right to enter the Property and its structures at reasonable times, after giving reasonable notice, for the purpose of inspecting the buildings and grounds to determine if there is compliance by Grantee with the terms of these Covenants, and to aid in review of proposed development plans.
- b. These Covenants shall be binding on the Parties hereto, their successors, and assigns in perpetuity, and the Property shall permanently remain subject to these Covenants.

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- c. The acceptance of the delivery of this Deed shall constitute conclusive evidence of the agreement of Grantee to be bound by these Covenants and to perform the obligations set forth herein.
- d. Should any Covenant be declared unenforceable, the validity and enforceability of the remainder of the Covenants contained herein shall not be affected thereby.

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