



GIFT AGREEMENT

This Gift Agreement ("Agreement"), effective as of March 1, 2022 ("Effective Date"), is made and entered into by and between **Jim & Colleen Ludington** ("Donors") and Cornelius Arts Community Center, Inc (DBA Cain Center for the Arts), a North Carolina nonprofit corporation, (the "CACC"), the Board of Directors of the CACC (the "Board").

RECITALS

Donors wish to make a charitable gift designated for the use and benefit of the CACC in the construction of an arts and community center within the town limits of Cornelius, North Carolina (the "Center"). The Board and the CACC desire to accept such gift for the construction of the Center.

The parties enter into this Agreement to set forth the express terms and conditions for the Donors' gift to the CACC and to memorialize each party's rights, duties and obligations with respect to the Gift and the construction of the Center.

AGREEMENT

Based upon the Recitals above, and in consideration of the mutual promises and benefits hereunder, the parties hereto hereby agree as follows:

1. **Gift.** In accordance with the terms of this Agreement, Donors hereby irrevocably pledge to the CACC the following gift of \$147,500.00 ("Gift") as Capital Campaign Contributions.
2. **Payment of the Gift.** The Donors irrevocably pledge to pay the Gift to the CACC in accordance with the terms of this Agreement and the following schedule:

Payment Amount: \$50,000.00	Date Due:	Upon signing of this gift agreement
Payment Amount: \$50,000.00	Date Due:	March 1, 2023
Payment Amount: \$47,500.00	Date Due:	March 1, 2024

Donors may accelerate the payment of the Gift, or any portion thereof, at any time in Donors' discretion so long as the cumulative total of all payments from the Donors to the CACC equals the amount of the Gift and is consistent with the foregoing schedule. Until the Gift is satisfied, any



payment by the Donors to the CACC shall be presumed to be a payment of the Gift, unless otherwise expressly stated. Donors shall make all Gift payments to the CACC via check, electronic funds transfer, stocks or other securities, or other methods mutually agreed upon by the Donors and the Board.

3. **Use of the Gift.** The CACC shall designate each payment of the Gift as a Capital Campaign Contribution and any payment of the Gift made under this Agreement may only be used for the design and construction of the Center and ancillary activities related to the design and construction of the Center ("Construction Expenses"). The CACC will deposit all Gift payments into a CACC escrow account established for payment of Construction Expenses and shall provide Donors with copies of escrow account statements upon request. The CACC may pay the escrowed amount for Construction Expenses.
4. **Acknowledgement.** The CACC Board will acknowledge the Gift by naming the Center's **Green Room** ("Naming"). The Donors may, in their sole discretion, decline public acknowledgement of the Gift and request anonymity, in which case the Donors and the Board will mutually agree on a different name for the **Green Room**. Donors and Donors' heirs may also remove its name from the **Green Room** in their sole discretion upon notice to the CACC and the Board regarding the same.

Before the Naming is erected, Donors shall demonstrate reasonable and timely Gift payments. After the Naming is affixed, Donors will make any remaining Gift payments required under this Agreement. Subject to the terms of this Agreement, the Naming will last in perpetuity.

5. **Termination of Naming.** In addition to any rights and remedies available at law, the Board may terminate this Agreement and all rights and benefits of the Donors hereunder, including terminating the Naming, upon the occurrence of the following:
 - a. If Donor defaults on any payment of the Gift required under this Agreement and fails to correct such default within 10 days of receiving written notice from the CACC of such default; or
 - b. If the Board (i) unanimously determines, in its reasonable and good faith opinion, that circumstances have changed such that continued association with Donors and the



continuation of the Naming provided for herein would significantly adversely impact the reputation, image, mission or integrity of the CACC, (ii) provides Donors, or Donors' heirs, with written notice stating the grounds for the Board's determination, and (iii) and gives Donors, or Donors' heirs, 30 days to respond to the Board's determination or provide an alternative name for the **Green Room**, which the Board may accept or decline in its discretion, which will not be unreasonably exercised.

Upon any such termination of this Agreement and/or the Naming hereunder, the Board and the CACC shall have no further obligation or liability to Donors and shall not be required to return any portion of the Gift already paid. The Board, however, may in its sole and absolute discretion determine an alternative recognition for any portion of the Gift already received.

6. **Modification of Naming.** If during the useful life of the Center, the Center is closed, deconstructed or destroyed, and is not reasonably expected or planned to be reopened or reconstructed, then the Naming will cease.
7. **Publicity.** For purposes of publicizing the Gift and the Naming, the CACC may, without charge, photograph the Donors and use the names, likenesses, and images of the Donors in photographic, audiovisual, digital, or any other form of medium (the "Media Materials") and use, reproduce, distribute, exhibit, and publish the Media Materials, including in brochures, website postings, informational and marketing materials, and reports and publications describing the CACC's development and business activities; provided, however, Donors must approve, in their sole discretion, the use of Donors' photographs, names, likenesses and images before the same becomes part of the Media Materials.
8. **Assignment.** This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.
9. Representations and Warranties of the CACC and the Board. The CACC and the Board hereby represent and warrant to Donors as follows:



- a. Existence, Formation and Tax-Exempt Status. The CACC is (i) a nonprofit corporation duly formed, validly existing, and in good standing under the laws of North Carolina, (ii) recognized by the Internal Revenue Service as a tax-exempt organization and public charity under Section 501(c)(3) of the Internal Revenue Code (the "Code"), and (iii) the enumerated conditions and restriction set forth herein are in furtherance of and consistent with the CACC's charitable or other permitted purposes under IRC 170(c)(2)(B), and
 - b. Execution, Delivery and Enforceability. The CACC and the Board have the full legal right, power and authority required to enter into, execute and deliver this Agreement, and to perform fully its obligations hereunder. This Agreement has been duly authorized, executed and delivered by an appropriate authorized officer of both the CACC and the Board, and is the legal, valid and binding obligation of the CACC and the Board, enforceable against the CACC and the Board in accordance with its terms.
10. **Alternative Use of Funds.** In the event that any portion of the Gift from the Donors is unspent after completion of the Center, which could include overfunding the Construction Expenses, upon incompleteness or failure to construct the Center, or upon failure to reach the Funding Goal, the CACC agrees and covenants that such unspent funds will go to the CACC Capital Endowment Fund, which will insure the maintenance and upkeep of the building.
11. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.
12. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Subject to the sovereign immunity of the State of North Carolina, any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and



heard in Charlotte, North Carolina, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.

ACCEPTED AND AGREED TO:

DONORS

DONOR

DONOR

Date:

**BOARD OF DIRECTORS OF CAIN
CENTER FOR THE ARTS**

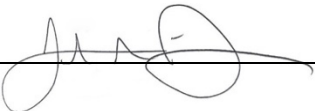
By: 

Name: Greg Wessling

Title: President and Board Chair

Date: December 10, 2021

**CAIN CENTER
FOR THE ARTS**

By: 

Name: Justin Dionne

Title: Executive Director

Date: _____