Resolution No. R-03-11

COPY

RESOLUTION TO APPROVE THE PURCHASE OF THAT REAL PROPERTY DESCRIBED IN BOOK 2229 AT PAGE 23, BUNCOMBE COUNTY REGISTRY, KNOWN AS THE ARTS CENTER FROM THE BLACK MOUNTAIN-SWANNANOA ARTS CENTER, INC.

WHEREAS, the Board of Aldermen of the Town of Black Mountain, North Carolina, has approved an agreement whereby it will acquire the real property described in Book 2229 at Page 23, Buncombe County Registry, known as the Arts Center from the Black Mountain-Swannanoa Center for the Arts, Inc., upon its approval of the purchase of said property and upon its adoption of a resolution of intent to obtain financing to reimburse the general fund for the money expended for the purchase price; and

WHEREAS, the Town has adopted a resolution to obtain financing to reimburse the general fund; and

WHEREAS, the Town desires to support the arts in the community by purchasing the real property to be used as an art center, an authorized public use of property for which it can expend public funds for such acquisition; and

WHEREAS, the Town and the Black Mountain-Swannanoa Center for the Arts, Inc., have agreed upon the terms of such purchase and a subsequent leasing of the property to the Black Mountain-Swannanoa Center for the Arts, Inc., which will pay for and develop the arts programming in the facility on the real property.

NOW, THEREFORE, BE IT RESOLVED that the Town of Black Mountain, North Carolina, shall purchase the real property located described in Book 2229 at Page 23, Buncombe County Registry, known as the Arts Center, for the sum of $200,000.00, and hereby directs the Town Manager to proceed to purchase said real property, subject to the terms and conditions of the agreement between the Town and the Black Mountain-Swannanoa Center for the Arts, Inc.

I move the adoption of the foregoing resolution.

Joann G. Brown
Alderman

READ, APPROVED AND ADOPTED, this the 11th day of August, 2003.

Wm. Michael Begley
Wm, Michael Begley, Mayor

ATTEST:

Shirley J. Raines
Shirley J. Raines, Town Clerk

Anthony N. Caudle, Town Manager

Approved as to form:

Town Attorney

F:\town\03-271,town.res to purchase.wpd

STATE OF NORTH CAROLINA

COPY

LEASE AND OPERATING AGREEMENT

COUNTY OF BUNCOME

THIS AGREEMENT (the "Agreement" or "Lease") is made and entered into as of the 14th day of August, 2003, by and between the TOWN OF BLACK MOUNTAIN ("Lessor") and the BLACK MOUNTAIN–SWANNANOA CENTER FOR THE ARTS, a North Carolina non-profit corporation doing business as the "Black Mountain Center for the Arts" ("Lessee");

W-I-T-N-E-S-S-E-T-H

WHEREAS, the a benefactor of Lessee purchased the property described on Exhibit A attached hereto and incorporated herein by reference (such property, together with any and all improvements thereon, the "Premises" or "Arts Center") from the Lessor in 1995 for a purchase price of approximately $100,000.00 for the benefit of Lessee in order to preserve the building that formerly served as Town Hall for the Town of Black Mountain; and

WHEREAS, the Lessee conducted a capital campaign to raise funds privately and in the public sector in order to renovate the Premises to its present condition in order to serve as a facility for arts programming for the community; and

WHEREAS, the Lessor contributed approximately $300,000 in such capital campaign for such renovation; and

WHEREAS, the Lessee desires to transfer the Premises to the Lessor by that deed substantially in the form of Exhibit B attached hereto in order to (i) transfer the benefits and responsibilities of ownership of the facility to Lessor, (ii) demonstrate the community nature of the project and (iii) secure the future of the arts in the Swannanoa Valley by restricting the use of the Premises to arts programming; and

WHEREAS, the Lessor desires to accept title to the Premises by such deed to (i) accept the benefits and responsibilities of ownership of the facility and (ii) demonstrate that the arts are an integral part of the cultural life of the community; and

WHEREAS, as consideration for such transfer, the Lessor has agreed to (i) pay in full the $200,000.00 debt secured by the Premises and evidenced by that Promissory Note dated January 31, 2000 payable by Lessee to the Charles L. Kagel Residual Trust in the original principal amount of $200,000.00 (the "Kagel Note") and secured by that Deed of Trust dated January 31, 2000 and recorded in the Buncombe County, North Carolina Registry at Book 2229, Page 23, (the "Kagel Deed of Trust") and (ii) lease the premises to the Lessee pursuant to the terms hereof;

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Conditions Precedent. This Agreement shall be subject to the following conditions precedent:

(a) Receipt by the Lessor of a duly executed North Carolina Special Warranty Deed substantially in the form of Exhibit B attached hereto and incorporated herein by reference transferring fee simple interest in the Premises to Lessor and restricting use of the Premises to arts programming as defined therein;

(b) Satisfaction by Lessor of the Kagel Note and cancellation of the Kagel Deed of Trust; and

(c) Delivery by each of the parties hereto of evidence of the insurance coverages required by paragraphs 15 and 17 hereof.

2. Condition of Premises. Lessee hereby agrees to accept the leased premises in their condition at the commencement of the term of the Lease and agrees to surrender the same at the termination of this Lease in good condition, ordinary wear and tear and casualty damage excepted.

3. Term. This Lease shall begin as of the date hereof and, unless sooner terminated as herein provided, shall exist and continue for a period of twenty-five (25) years, unless extended by agreement of the parties. Every five (5) years on the anniversary date hereof, Lessee shall have the option to extend the term of this Agreement for an additional five (5) years at the same rental and terms provided in this Agreement, as it may have been amended from time to time, such that upon exercise of such option on the first such anniversary date and acceptance by Lessor the remaining term hereunder would again be twenty-five (25) years. In order to exercise this option, Lessee shall give written notice to Lessor not more than one (1) year and not less than thirty (30) days prior to such anniversary date of Lessee's offer to extend. Unless such offer to extend is rejected by Lessor within thirty (30) days of the date of such offer, this Agreement shall be extended for a five (5) year period beginning with the ending date of the term this Agreement immediately prior to such extension. Upon such an extension, the parties hereto agree to file an additional deed to the Premises substantially in the form of Exhibit B hereto extending the use restrictions therein. In the event Lessee holds over after such stated term, the tenancy shall become at most a tenancy at will. In the event that (i) Lessee shall merge with any other entity without the prior written consent of Lessor and (ii) the Lessee shall not be the surviving corporation of such merger, then the lease set out in this Agreement shall terminate.

4. Rental. From the commencement date of the term of this Lease, Lessee shall pay as rental for the premises the sum of One Dollar ($1.00) per year, payable in advance on or before each anniversary date of this Lease.

5. Charges for Electricity, Sewer and Water. During the term of the Lease, Lessee shall pay all charges for utilities consistent with Lessor's policy for municipal buildings.

6. Repairs and Maintenance.

(a) Lessor shall at its expense during the term of the Lease keep the premises in good order and repair and in safe condition, including but not limited to (i) all exterior and structural portions of the Arts Center, including exterior walls, glass and roof; (ii) all driveways, sidewalks, drainage systems and parking areas which comprise a part of the Arts Center, (iii) all plumbing and electrical systems, (iv) all components of the heating and air conditioning system except for filter replacement, and all elevators and components, (v) structural integrity of all floors, ceilings and interior walls and partitions; (vi) all doors and windows; and (vii) all replacements of a capital nature including but not limited to replacement of the roof or any portion thereof and floor replacement, if necessary. All fixtures (i.e., lighting fixtures, plumbing fixtures and appliances, electrical appliances and fixtures (other than fixtures which may be components of the heating and air conditioning systems)) shall be maintained by the Lessee until such time as it is no longer practical or feasible to repair such fixtures, at which time the Lessor will replace such fixtures.

(b) Lessor shall provide pest control where it affects the structural integrity of the building. Lessee shall provide an annual needs assessment (where reasonable,) and other assessments on an "as needed" basis for provision of the foregoing repairs, maintenance and replacements that shall be presented to the Lessor from time to time.

(c) The Lessor will be notified of needed repairs and make the repairs with Town personnel or with Town vendors. In the event of after-hours emergency repairs, the Lessee staff will contact the Police Department dispatcher who will in turn contact the Town's on-call Public Works personnel to make such immediate emergency repairs. In an extreme emergency where there is immediate risk of injury to persons or damage to property and the Public Works cannot promptly remedy the problem, the Lessee may contact an outside vendor to remedy the problem and submit the bill for such repair service to the Lessor. If Lessor deems the actions taken by the Lessee to be appropriate, Lessor will promptly reimburse Lessee for such emergency repairs to the extent the charges are reasonable under the circumstances. All maintenance, repairs and replacement shall be done in a manner reasonably satisfactory to the parties.

(d) Lessee shall make repairs necessitated by the negligence or willful misconduct of Lessee, its employees, agents, contractors servants or licensees. Lessee shall at its expense keep in good order and repair all signs and other fixtures, equipment, furniture and machinery forming a part of, or associated with, the performances and programs located in or conducted in the Arts Center from time to time as part of Lessee's use of the premises as a performing arts center (as opposed to fixtures, equipment and machinery forming part of the structure or systems of the facility). All routine janitorial or custodial services and other routine operational personnel shall be provided at Lessee's expense.

7. Use and Operation of the Property.

(a) Lessee is a nonprofit corporation under the laws of the State of North Carolina and is a 501(c)(3) corporation for purposes of federal income taxation and shall maintain such status for the term of this Agreement.

(b) Subject to and consistent with requirements necessary to guarantee the 501(c)(3) status of Lessee, Lessee shall have sole responsibility and authority for the management, operation and programming of the Arts Center. The Arts Center shall be used by Lessee principally and primarily for the purpose of providing a variety of "arts programming" open to and for the benefit of the general public. "Arts programming" shall refer to programs for the performing arts, visual arts and literary arts, and may include dance, drama, music, painting, drawing, sculpture, printmaking, photography, film, video, architecture, design, literature and related programs and activities for the education, cultural advancement and enjoyment of the general public. Notwithstanding the foregoing, Lessor expressly consents to Lessee's incidental use of the whole or portions of the Premises for purposes other than "arts programming."

8. Maintenance Reserve Fund. It is the intent of Lessor to establish and maintain a structural and systems maintenance reserve fund for the Premises in an amount not less than $20,000.00 in order to ensure the availability of funds necessary to provide for the maintenance and repairs of the Premises that are the responsibility of the Lessor hereunder, provided, however, that the reserve fund shall not be construed to require the expenditure of the total amount of such fund in any budget year nor to limit Lessor's liability for such maintenance and repairs to such amount.

9. Property Taxes. It is the assumption of the Lessor and Lessee that the Premises is not subject to ad valorem taxation. However, should the Premises become subject to ad valorem or other taxes during the term hereof, then such taxes shall be the responsibility of, and paid by, the Lessor. Notwithstanding the foregoing, Lessee shall pay all taxes and assessments, if any, levied upon its furnishings, fixtures, equipment and other personal property located in or on the premises. Lessee shall obtain and pay for all permits or licenses required by any governmental law, ordinance, statute or regulations in connection with the conduct of its business upon the premises.

10. Removal of Trade Fixtures, Equipment and Personal Property. Lessee may remove within thirty (30) days after a termination of this Agreement trade fixtures, equipment and personal property that Lessee has placed on the Premises, provided Lessee restores the Premises to its same condition as at the time of the construction or installation thereof, normal wear and tear excepted.

11. Improvements. Lessee may, in its reasonable discretion at any time during the term hereof, make improvements at its expense to the Premises that do not materially adversely affect the value of the Premises. However, any permanent improvements or alterations to the Premises by Lessee or Lessor shall be subject to the prior written approval of Lessor and Lessee, which approval shall not be unreasonably withheld. Lessor shall have thirty (30) days to respond to any proposed improvement or alteration given in writing and delivered to Lessor's Town Manager. If not disapproved within

such period, with reasons for said disapproval, the proposed alteration or improvement shall be deemed approved. All permanent alterations and improvements shall become part of the Premises upon the termination hereof. Any temporary improvements, trade fixtures, equipment and personal property will remain the property of Lessee and Lessor shall execute a waiver of interest in said property upon request of Lessee.

12. Improvements Affecting Exterior Design. Any material improvements to or alterations of the exterior design of the Arts Center shall be subject to the prior written approval of Lessee and Lessor.

13. Nondiscrimination. Lessee, for itself, its successors in interest and assigns, as a part of the consideration hereof, does covenant and agree, that (1) 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 Arts Center; and (2) in the furnishing of services thereon and thereto, no person shall be excluded from participation therein, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, creed, color, sex or national origin.

14. Liens. Lessee shall keep the Premises free from any and all liens of any nature for any work done, labor performed or materials furnished thereon at the instance or request, or on behalf of Lessee; and Lessee shall indemnify and save harmless Lessor from and against any and all claims, liens, demands, costs and expenses of any nature for such work done, labor performed or materials furnished.

15. Indemnity and Insurance.

(a) Lessee will indemnify and save harmless Lessor, its employees, agents and officers from and against any and all losses, claims, suits, damages or expenses, including but not limited to reasonable attorneys fees, arising out of or in any manner connected with Lessee's occupancy, use or operation of the Premises, including acts of co-tenants, artists, or other occupants and blatant defects for which Lessee has not requested repair, maintenance or replacement or otherwise notified Lessor, excepting, however, losses, damages, suits, claims or expenses caused by the willful or grossly negligent acts or omissions of Lessor, its officers, agents, employees or contractors.

(b) Lessor will indemnify and save harmless Lessee, its employees, agents, directors and officers from and against any and all losses, claims, suits, damages or expenses, including but not limited to reasonable attorneys fees, arising out of or in any manner connected with Lessor's ownership or occupancy, use or operation of the Premises, excepting, however, losses, damages, suits, claims or expenses caused by the willful or grossly negligent acts or omissions of Lessee, its officers, agents or employees.

(c) Lessee shall procure and maintain in full force and effect during the term of this Lease at Lessee's expense a policy of commercial general liability insurance covering bodily injury and property damage liability insurance including the broad form liability endorsement for an amount not less than $1,000,000.00 each occurrence, $2,000,000.00 annual aggregate, along with an excess umbrella liability limit of $1,000,000.00 each occurrence and $2,000,000.00 annual aggregate. Lessee shall at its

expense provide and maintain workman's compensation insurance meeting the requirements of the State of North Carolina. The policies of insurance shall provide that the same shall not be cancelled or materially altered until a 30-day written notice of cancellation, material change or nonrenewal has been served upon Lessor's Town Manager. Lessee shall file with Lessor satisfactory evidence, as approved by Lessor's Town Manager, that the required insurance policies are in effect upon execution hereof. In the event any of the policies of insurance required herein is cancelled or not renewed, Lessee shall, prior to the effective date of such cancellation or nonrenewal, procure other insurance in the amounts and in accordance with the conditions set forth herein.

16. Assignment and Sublease. Except for temporary subleases or licenses to users of the Arts Center in the ordinary course of operation consistent with the provisions of paragraph 6 hereof, Lessee shall not assign or sublet all or any substantial part of the Arts Center without the prior written consent of Lessor.

17. Property Insurance Coverage. Lessor shall at its expense carry fire and extended coverage, vandalism, malicious mischief insurance coverage upon the building improvements on the Premises, including machinery, equipment and fixtures, in the full replacement value thereof and shall name the Lessee as an additional insured for Lessee's interest, if any, in such improvement. Lessee shall carry at its expense insurance coverage upon Lessee's contents, fixtures and equipment of the building in the full replacement value thereof and shall name Lessor as an additional insured for the Lessor's interest, if any, in such contents, fixtures and equipment. The policy to be carried by Lessee shall provide that the same shall not be cancelled or materially altered until a 30-day written notice of cancellation, material change or nonrenewal has been served upon Lessee and Lessor's Town Manager. Lessee and Lessor shall provide to each other the necessary evidence of the above insurance coverage in the form of certificates of insurance.

18. Waiver and Subrogation. Lessor and Lessee agree that in the event any part or parts of the leased Premises or contents thereof are damaged or destroyed by fire or other casualty, the rights or claims of either party, its agents, successors or assigns against the other with respect to such liability for any loss, destruction or damage resulting therefrom, including loss suffered as a result of the negligence of either party or their agents, are hereby released and discharged to the extent such loss, destruction or damage is covered by insurance, and any and all subrogation rights or claims under any insurance coverages insuring the Premises, fixtures and contents are hereby waived to the extent such loss, destruction or damage is covered by insurance. All policies of fire or other insurance covering the Premises, fixtures or contents shall contain a clause or endorsement providing, in substance, that the insurance shall not be prejudiced if the assurers have waived any rights of recovery or subrogation against any person or persons prior to the date of loss, destruction or damage.

19. Untenantable Premises. If the Arts Center is partially damaged by or becomes untenantable by reason of fire or other casualty or condemnation of the Premises to the extent of 50% or less of its replacement value, Lessor shall repair such damage as quickly as is reasonably possible. If the Arts Center is completely destroyed or rendered untenantable by fire or other casualty or condemnation or is damaged to the extent of greater than 50% of its replacement value, Lessor shall repair such damage within the limits of the hazard insurance proceeds payable with respect to the Premises as quickly as is reasonably possible unless Lessor and

Lessee shall mutually determine by written agreement that the improvements on the Premises have been so materially damaged that Lessor shall not reconstruct. If said improvements are so materially damaged that Lessor and Lessee agree that Lessor shall not reconstruct, then Lessor shall provide temporary and then permanent housing for Lessee acceptable to Lessee in Lessee's reasonable discretion, within the limits of said insurance proceeds.

20. Default.

(a) Should Lessee default in the performance of any term, covenant or condition to be performed by Lessee and such default is not remedied within thirty (30) days from and after written notice to Lessee by Lessor's Town Manager specifying said default, or if such default cannot be remedied within that period, and the remedial effort is not commenced within that period and diligently and continuously pursued, or in the vent Lessee abandons its use of the Premises, Lessor may at its option: (i) re-enter the Premises and take possession thereof and terminate this Agreement; (ii) perform any obligations of Lessee under this Agreement (other than obligations of Lessee pursuant to Paragraph 7 hereof) and Lessee shall reimburse Lessor for costs incurred in performing such obligations; (iii) enforce its rights hereunder through the remedy of specific performance, or (iv) exercise any other remedies available at law or in equity.

(b) Should Lessor default in the performance of any term, covenant or condition to be performed by Lessor and such default is not remedied within thirty (30) days from and after written notice to Lessor by Lessee specifying said default, or if such default cannot be remedied within that period, and the remedial effort is not commenced within that period and diligently and continuously pursued, Lessee may at its option: (i) terminate this Agreement; (ii) perform any obligations of Lessor under this Agreement and Lessor shall reimburse Lessee for costs incurred in performing such obligations; (iii) enforce its rights hereunder through the remedy of specific performance, or (iv) exercise any other remedies available at law or in equity.

21. Security. Lessor and Lessee shall jointly develop and implement a security plan to provide for the safety and protection of visitors and employees of the Arts Center and the property located in or forming a part of the Arts Center.

22. Sale of Premises; Right of First Refusal.

(a) A sale by the Lessor of all or a portion of the Premises shall be made specifically subject to all of the terms, conditions, covenants and provisions hereof. Any purchaser of the Premises shall specifically assume in writing the responsibilities and obligations of Lessor hereunder. Any deed transferring title to the Premises to such Purchaser shall continue the use restrictions contained in the deed attached hereto as Exhibit B. In the event the Lessor shall offer, or receive a bonafide offer acceptable to the Lessor, for the sale of the Premises to any party other than Lessee, Lessee shall have the right to purchase the Premises (i) under the same terms and conditions as contained in such offer or (ii) upon payment of a purchase price equal to the amount the Lessor contributed to the Arts Center in the capital campaign to renovate the Premises to its condition as of the date hereof *plus* the amount of the Kagel Note paid by Lessor *plus* the

amount of interest paid on the financing entered into by Lessor in order to pay the indebtedness represented by the Kagel Note *less* the amount originally paid to Lessor for the transfer of the Premises to the Preservation Society of Asheville and Buncombe County, Inc. Lessor shall promptly give Lessee written notice of the terms and conditions on any offer to purchase or sell the Premises received by or on behalf of Lessor ("Offer to Purchase"). Within thirty (30) days of such notice, Lessee shall notify Lessor in writing of its intent to exercise its option to purchase described in this paragraph 22 ("Lessee's Notice"). Lessee shall have six (6) months from the date of Lessee's Notice to deliver to Lessor the purchase price for the Premises in immediately available funds or such other terms of payment as Lessee and Lessor shall agree in writing. If Lessee shall fail to deliver the purchase price within such six (6) month period, Lessee's option to purchase the Premises with respect to such Offer to Purchase shall expire.

(b) In the event Lessee exercises its option contained in paragraph 22(a) above to acquire the Premises from Lessor and later resells the Premises, any profit on such sale realized by Lessee shall be shared between Lessor and Lessee as follows: (i) if Lessee resells the Premises within one (1) year after purchase from Lessor, Lessor shall be paid the full net profit; (ii) if Lessee resells the Premises more than one (1) year but less than or equal to two (2) years after purchase from Lessor, Lessor shall be paid ninety percent (90%) of the net profit and Lessee shall retain 10% of such profit; (iii) if Lessee resells the Premises more than two (2) years but less than or equal to four (4) years after purchase from Lessor, Lessor shall be paid seventy-five percent (75%) of the net profit and Lessee shall retain twenty-five percent (25%) of such profit; (iv) if Lessee resells the Premises more than four (4) years but less than or equal to six (6) years after purchase from Lessor, Lessor shall be paid sixty percent (60%) of the net profit and Lessee shall retain forty percent (40%) of such profit; (v) if Lessee resells the Premises more than six (6) years but less than or equal to eight (8) years after purchase from Lessor, Lessor shall be paid forty (40%) of the net profit and Lessee shall retain sixty percent (60%) of such profit; (vi) if Lessee resells the Premises more than eight (8) years but less than or equal to ten (10) years after purchase from Lessor, Lessor shall be paid twenty percent (20%) of the net profit and Lessee shall retain eighty percent (80%) of such profit; and (vii) if Lessee resells the Premises more than ten (10) years after purchase from Lessor, then Lessee shall retain one hundred percent (100%) of such profits.

(c) In the event Lessee and Lessor negotiate a termination of this Lease in order to permit Lessee to build or occupy another facility, then Lessor shall make a diligent and reasonable effort to sell the Premises. Upon such sale of the Premises, any profit on such sale realized by Lessor shall be shared between Lessor and Lessee as follows: (i) if Lessor sells the Premises within one (1) year after such termination, Lessee shall be paid the full net profit; (ii) if Lessor sells the Premises more than one (1) year but less than or equal to two (2) years after purchase such termination, Lessee shall be paid ninety percent (90%) of the net profit and Lessor shall retain 10% of such profit; (iii) if Lessor sells the Premises more than two (2) years but less than or equal to four (4) years after such termination, Lessee shall be paid seventy-five percent (75%) of the net profit and Lessor shall retain twenty-five percent (25%) of such profit; (iv) if Lessor sells the Premises more than four (4) years but less than or equal to six (6) years after such termination, Lessee shall be paid sixty percent (60%) of the net profit and Lessor shall

retain forty percent (40%) of such profit; (v) if Lessor sells the Premises more than six (6) years but less than or equal to eight (8) years after such termination, Lessee shall be paid forty (40%) of the net profit and Lessor shall retain sixty percent (60%) of such profit; (vi) if Lessor sells the Premises more than eight (8) years but less than or equal to ten (10) years after such termination, Lessee shall be paid twenty percent (20%) of the net profit and Lessor shall retain eighty percent (80%) of such profit; and (vii) if Lessor sells the Premises more than ten (10) years after such termination, then Lessor shall retain one hundred percent (100%) of such profits. The share of the proceeds received by the Lessee must be used for the purchase or operation of an arts center within the Black Mountain community.

(d) A "sale" of the Premises under subsection (a) or (b) of this paragraph 22 shall mean the conveyances, transfer, assignment or other alienation of all or part of the real property by deed to any person or entity, by the execution of an installment sale contract on the real property in favor of any person or entity, or by the lease of the real property with an option to purchase in favor of any person or entity, except for any deed executed and recorded for the sole purpose of having the record ownership of the property reflect any change of name of the parties to this Agreement or in compliance with other provisions of this Agreement.

23. Quiet Enjoyment. Lessor warrants that it is the sole owner of the Premises and all improvements constructed thereon and has the right to lease the same to Lessee upon the terms and conditions set forth herein; and that the same are free from all encumbrances, restrictions and tenancies, except those in its deed(s) and easements from the Lessee, and that Lessee shall quietly hold and enjoy the leased Premises for the full term hereof so long as it does not remain in default in the performance of its covenants hereunder beyond any applicable curative period.

24. Notices. Any and all notices to be given under this Lease or otherwise may be served by enclosing the same in a sealed envelope addressed to the party intended to receive the same, at its address and deposited in the United States Mail as certified mail return receipt requested with postage prepaid. When so given, such notice shall be effective from the date of mailing of same. For purposes hereof, unless otherwise provided in writing by the parties hereto, the address of Lessor and the proper party to receive such notices on its behalf is the Town Manager, 102 Montreat Road, Black Mountain, North Carolina 28711, and the address of Lessee and the property party to receive such notices on its behalf is Executive Director, Black Mountain Center for the Arts, 225 West State Street, Black Mountain, North Carolina 28711.

25. Relationship. The relationship between Lessor and Lessee is strictly that of landlord and tenant, and nothing contained in this Agreement shall be deemed or construed to grant Lessee any fee interest in the Arts Center, in addition to any such interest held by Lessee in the Lessee Improvements.

26. Severability. In the event that 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.

27. Amendments. This Agreement may be amended only by written instrument executed by the parties hereto.

28. 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.

29. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Stat of North Carolina, and any action brought in connection herewith shall be brought in Buncombe County, North Carolina.

30. Inspection. Lessor shall have the right at reasonable times and upon reasonable prior notification to Lessee to inspect the Premises.

31. Arbitration. In the event of a dispute between the parties that cannot be resolved through negotiation, the parties agree to submit the dispute to arbitration. The parties shall select an arbitrator who is acceptable to both parties. If the parties so choose, they may select a person knowledgeable in the law of property and leases who is not a trained or certified arbitrator. Any fees charged by the arbitrator will be paid equally by the two parties. Arbitration shall be held in accordance with the Uniform Arbitration Act as set out in N.C.G.S. §1-567.1 et seq. and the arbitration decision or award shall be binding upon all parties.

32. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

33. Entire Agreement. The entire agreement, intent and understanding between Lessor and Lessee concerning the Arts Center is contained in the provisions of this Agreement and any stipulations, representations, promises or agreements, written or oral, made prior to contemporaneously with the Agreement shall have no legal or equitable effect or consequence unless reduced to writing herein.

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

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

LESSEE:
BLACK MOUNTAIN-SWANNANOA CENTER FOR THE ARTS

By: _____
Chair

[CORPORATE SEAL]

ATTEST:

_____
Secretary

LESSOR:
TOWN OF BLACK MOUNTAIN

[CORPORATE SEAL]

By: _____
Mayor

ATTEST:

_____
Town Clerk

Approved as to form:

_____
Town Attorney

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

This the 14th day of August, 2003, personally came before me, Ronald E Sneed, a notary public for said county and state, SARA MARCIA P. RAFTER, who, being by me duly sworn, says that he/she is Chair of the BLACK MOUNTAIN- SWANNANOA CENTER FOR THE ARTS, that the seal affixed to the foregoing instrument in writing is the corporate seal of the company, and that said writing was signed and sealed by him/her, in behalf of said corporation, by its authority duly given. And the said SARA MARCIA P. RAFTER acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 14th day of August, 2003

My commission expires: 10/25/2007

RONALD E. SNEED NOTARY PUBLIC BUNCOMBE COUNTY, N.C.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

This the 14th day of August, 2003, personally came before me, Rhonda K. Simmons, a notary public for said county and state, WM. MICHAEL BEGLEY, who, being by me duly sworn, says that he/she is Mayor of the TOWN OF BLACK MOUNTAIN, that the seal affixed to the foregoing instrument in writing is the seal of the TOWN OF BLACK MOUNTAIN, and that said writing was signed and sealed by him/her, in behalf of said TOWN OF BLACK MOUNTAIN, by its authority duly given. And the said WM. MICHAEL BEGLEY acknowledged the said writing to be the act and deed of said TOWN OF BLACK MOUNTAIN.

WITNESS my hand and notarial seal, this the 14th day of August, 2003

Rhonda K. Simmons

My commission expires: 12-08-2006

Exhibit A

Rider attached to Special Warranty Deed dated August 14, 2003, executed by Black Mountain-Swannanoa Center for the Arts.

DESCRIPTION

Being the .21 acre tract conveyed to the Grantor in that deed from the Town of Black Mountain recorded in Buncombe County Deed Book 1827 at page 503, plus that .15 acre tract conveyed to the Grantor in that deed from the Town of Black Mountain recorded in Buncombe County Deed Book 1827 at page 505. By acceptance hereof, Grantee agrees to comply with those restrictive covenants set forth on Exhibit A which is attached hereto and incorporated herein by reference, which restrictive covenants shall run with the land and encumber the above described property at all times hereafter. Grantee understands and agrees that the restrictive covenants constitute a direct benefit to the Grantor's purpose and this conveyance would not have occurred absent and restrictive covenants being placed upon the property by Grantor and being enforceable by Grantor.

(ATTACHMENT)

WHEREAS, as consideration for such transfer, the Grantee has agreed to (i) pay in full the $200,000.00 debt secured by the Premises and evidenced by that Promissory Note dated January 31, 2000 payable by Grantor to the Charles L. Kagel Residual Trust in the original principal amount of $200,000.00 and secured by that Deed of Trust dated January 31, 2000 and recorded in the Buncombe County, North Carolina Registry at Book 2229, Page 23, and (ii) lease the premises to the Grantor pursuant to the terms that Lease and Operating Agreement dated as of the date hereof by and between Grantor and Grantee the ("Lease");

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree TO RESTRICT THE USE OF THE PREMISES as follows:

The Premises shall be used principally and primarily for "arts programming." As used herein, "arts programming" shall refer to programs for the performing arts, visual arts and literary arts, and may include dance, drama, music, painting, drawing, sculpture, printmaking, photography, film, video, architecture, design, literature and related programs and activities for the education, cultural advancement and enjoyment of the general public. Notwithstanding the foregoing, incidental use of the whole or portions of the Premises for purposes other than "arts programming" shall be expressly permitted. Provided, however, that the foregoing use restriction shall automatically terminate upon the occurrence of the following events:

(i) the Grantor shall file Articles of Dissolution with the North Carolina Secretary of State; or

(ii) the Grantor and Grantee shall negotiate a termination of the Lease in order that the Grantor can build or occupy another facility; or

(iii) Grantor shall (A) merge with any other entity without the prior written consent of Grantee and (B) Grantor shall not be the surviving corporation of such merger.

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

Easements of record and in place, restrictions of record, the use provisions of any governmental ordinance affecting the above, taxes for the current year and those restrictions set forth on Exhibit A attached hereto and incorporated herein by reference. The property hereinabove described is also subject to the following use restrictions:

WHEREAS, a benefactor of Grantor purchased the property hereinabove described (such property, together with any and all improvements thereon, the "Premises" or "Arts Center") from the Grantee in 1995 for a purchase price of approximately $100,000.00 for the benefit of Grantor in order to preserve the building that formerly served as Town Hall for the Town of Black Mountain; and

WHEREAS, the Grantor conducted a capital campaign to raise funds privately and in the public sector in order to renovate the Premises to its present condition in order to serve as a facility for arts programming for the community; and

WHEREAS, the Grantee contributed approximately $300,000 in such capital campaign for such renovation; and

WHEREAS, the Grantor desires to transfer the Premises to the Grantee hereby in order to (i) transfer the benefits and responsibilities of ownership of the facility to Grantee, (ii) demonstrate the community nature of the project and (iii) secure the future of the arts in the Swannanoa Valley by restricting the use of the Premises to arts programming; and

WHEREAS, the Grantee desires to accept title to the Premises by such deed to (i) accept the benefits and responsibilities of ownership of the facility and (ii) demonstrate that the arts are an integral part of the cultural life of the community; and