

NORTH CAROLINA

AGREEMENT

GUILFORD COUNTY

THIS AGREEMENT (“Agreement”) made this ____ day of May 2018, by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation with its principal place of business at 211 South Hamilton Street, High Point, North Carolina 27260 (“City”), the **HIGH POINT ARTS COUNCIL, INC.**, a North Carolina non-profit corporation with its principal place of business at 121 South Centennial Street, High Point, North Carolina 27260 (“Arts Council”), and the **HIGH POINT COMMUNITY FOUNDATION**, a North Carolina non-profit corporation, with its principal place of business at 212 East Green Drive, Suite 2756, High Point, North Carolina, 27262 (“Community Foundation”), each referenced individually as “Party” and collectively as “Parties.”

RECITALS:

WHEREAS, the Arts Council owns certain real property and structure located at 121 South Centennial Street, High Point, North Carolina (“Centennial Arts Station property”); and

WHEREAS, the Centennial Arts Station property is home to the High Point Arts Council, Children’s Carousel Theatre, High Point Ballet, High Point Community Concerts, High Point Community Theatre and Piedmont Artists; and

WHEREAS, on November 6, 2012, the Arts Council secured financing from Bank of North Carolina to acquire the Centennial Arts Station property, and Bank of North Carolina now holds a first deed of trust on the Centennial Arts Station property with a principal balance of \$362,648; and

WHEREAS, the Arts Council and the other nonprofit organizations occupying the Centennial Arts Station property have a significant positive economic and cultural impact on the City, its citizens and the surrounding areas; and

WHEREAS, this Agreement will provide for financial assistance and support for the Arts Council, thereby helping to assure receipt of economic and cultural value to High Point and its citizens; and

NOW THEREFORE, in consideration of the mutual promises and other valuable consideration expressed herein, the Parties agree as follows:

TERMS:

1. Responsibilities of the Arts Council.

- (a) No later than June 30, 2018, the Arts Council shall place into a designated account with the Community Foundation an amount not to exceed Ninety Thousand Six Hundred Sixty-Two Dollars (\$90,662.00) (“2018 Arts Council Deposit”). These funds must come from private donations or other sources acceptable to the City and cannot be obtained in in such a manner that results in additional encumbrances on

the Centennial Arts Station property. The designated account with the Community Foundation will be for the sole purpose of satisfying the Arts Council's remaining first mortgage debt arising from the Arts Council's purchase of the Centennial Arts Station property.

- (b) No later than June 30, 2019, the Arts Council shall place into a designated account with the Community Foundation an amount not to exceed Ninety Thousand Six Hundred Sixty-Two Dollars (\$90,662.00) ("2019 Arts Council Deposit"). These funds must come from private donations or other sources acceptable to the City and cannot be obtained in in such a manner that results in additional encumbrances on the Centennial Arts Station property. The designated account with the Community Foundation will be for the sole purpose of satisfying the Arts Council's remaining first mortgage debt arising from the Arts Council's purchase of the Centennial Arts Station property.
- (c) The Arts Council acknowledges that, in addition to the first deed of trust described above, it has a line of credit associated with the Centennial Arts Station property with an estimated balance of \$250,000. Arts Council acknowledges that the City is not providing assistance for payment of this debt and Arts Council shall maintain full responsibility for making timely and adequate payments associated with the line of credit.

2. **Responsibilities of the City.**

- (a) If the Arts Council by June 30, 2018, places into the designated account with the Community Foundation an amount as set forth above, the City by July 15, 2018, shall place into the same designated account with the Community Foundation an amount which matches the 2018 Arts Council Deposit not to exceed Ninety Thousand Six Hundred Sixty-Two Dollars (\$90,662.00) ("2018 City Deposit").
- (b) If the Arts Council by June 30, 2019, places into the designated account with the Community Foundation an amount as set forth above, the City by July 15, 2019, shall place into the same designated account with the Community Foundation an amount which matches the 2019 Arts Council Deposit not to exceed Ninety Thousand Six Hundred Sixty-Two Dollars (\$90,662.00) ("2019 City Deposit").

3. **Responsibilities of the High Point Community Foundation.**

- (a) Prior to June 12, 2018, the Community Foundation shall establish an account into which the Arts Council and the City can deposit the funds called for in this Agreement.
- (b) After the Parties' 2018 contributions required herein have been placed into the designated account, the Community Foundation shall arrange for the transfer of the deposited funds to Bank of North Carolina or to a subsequent holder of the first mortgage deed of trust on the Centennial Arts Station property, with said funds

being applied toward the principal balance owing on the first mortgage deed of trust.

- (c) After the Parties' 2019 contributions required herein have been placed into the designated account, the Community Foundation shall arrange for the transfer of the deposited funds, to the extent necessary to satisfy the first mortgage deed of trust debt, to Bank of North Carolina or to a subsequent holder of the first mortgage deed of trust on the Centennial Arts Station property.
- (d) If there are any remaining funds in the designated account after the payments by the Community Foundation set forth in 3 (b) and (c) above, the Community Foundation shall pay these funds toward other debt of the Arts Council relating to the Centennial Arts Station property, with this payment being approved in advance by the City. In the event there are no outstanding debts, remaining funds shall be refunded to the Parties.

4. **Future Encumbrances on the Centennial Arts Station Property.** The Arts Council shall not borrow against, mortgage, sell or otherwise place or cause to be placed any lien against the Centennial Arts Station property without the prior written consent of the High Point City Council for a period of ten (10) years from the date of this Agreement.

5. **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law).

6. **Successors and Assigns.** The Agreement shall be binding upon the parties, their successors and permitted assigns. The Parties shall not assign, sublet or transfer any interest in the Agreement without the prior written consent of the other party, which may be withheld for any reason.

7. **Captions.** The captions contained in the Agreement are for convenience and reference only, and do not define, describe, extend or limit the scope or intent of the Agreement or the scope or intent of any provision contained herein.

8. **Severability.** The invalidity of one or more phrases, sentences, clauses or sections in the Agreement shall not affect the validity of the remaining portions of the Agreement, so long as the material purpose of the Agreement can be determined and effectuated.

9. **No Waiver.** Any failure by either party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such party thereafter to enforce any such provision.

10. **Entire Agreement.** This Agreement, including the Exhibits and/or Attachments, sets forth the entire Agreement between the Parties. All prior conversations or writings between the Parties hereto or their representatives are merged within and extinguished. This Agreement shall not be modified except by a writing subscribed to by all the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

HIGH POINT ARTS COUNCIL, INC.

By: _____

Print Name: _____

Title: _____

ATTEST

In witness whereof, said corporation has caused this instrument to be executed by its President or Vice President and attested by its Secretary or Asst. Secretary this the _____ day of _____, 20__.

(SEAL)

Attest: _____
Secretary/Asst. Secretary (Signature)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledge that he/she is the Secretary of High Point Arts Council, Inc. a non-profit corporation organized in the state of North Carolina and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and official seal or seal, this the _____ day of _____, 20____.

_____ (Notary Public)

(SEAL/STAMP)

My Commission Expires: _____

CITY OF HIGH POINT

By: _____

Print Name: _____

Title: _____

Lisa Vierling, City Clerk

APPROVAL BY CITY ATTORNEY

Approved as to form:

JoAnne L. Carlyle, City Attorney

Date: _____

APPROVAL BY FINANCE OFFICER

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

Jeffrey A. Moore, Director of Financial Services

Date: _____

HIGH POINT COMMUNITY FOUNDATION

By: _____

Print Name: _____

Title: _____

ATTEST

In witness whereof, said corporation has caused this instrument to be executed by its President or Vice President and attested by its Secretary or Asst. Secretary this the ____ day of _____, 20__.

(SEAL)

Attest: _____
Secretary/Asst. Secretary (Signature)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledge that he/she is the Secretary of High Point Community Foundation a non-profit corporation organized in the state of North Carolina and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/her as its Secretary.

Witness my hand and official seal or seal, this the _____ day of _____, 20__.

(Notary Public)

(SEAL/STAMP)

My Commission Expires: _____