RESOLUTION NO.: 2020-30

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT AND LEASE BETWEEN THE TOWN OF SIGNAL MOUNTAIN AND THE SME PRESERVATION FUND, FOR THE OPERATION OF THE MOUNTAIN ARTS COMMUNITY CENTER FOR THE 2020-2021 FISCAL YEAR.

WHEREAS, the TOWN owns the building which once housed the Signal Mountain Elementary School (SME); and,

WHEREAS, the SME building is now home to the Mountain Arts Community Center (MACC), which has been operated as a department of the TOWN; and,

WHEREAS, the TOWN holds the historic SME building and the MACC to be valuable assets to the community; and,

WHEREAS, the SME Preservation Fund (SMEPF) is a 501c3 charitable organization registered with the State of Tennessee and is permitted to receive tax-exempt contributions, donations, and grants under the laws of the State of Tennessee and the United States of America to support fund raising activities within this community; and,

WHEREAS, the SMEPF has operated, for over two years, to support and assist the TOWN in its efforts to preserve, repair and improve the functionality of the SME building and grounds and, as a result, improve the operational space for the MACC and enhance and expand the community's use of the property; and,

WHEREAS, the SMEPF desires to assume the responsibility for the operation of the MACC during the 2020-2021 fiscal year and has made a formal proposal to the TOWN for such arrangement; and,

WHEREAS, pursuant to Tennessee Code Annotated 13-4-104, the Signal Mountain Municipal Planning Commission has reviewed and approved the proposal and related MOA and Lease documents; and,

WHEREAS, the SMEPF and the TOWN wish to enter into an agreement and lease as a partnership for the betterment of the community;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, that the Town Manager be and is hereby authorized to enter into a Memorandum of Agreement and Lease, as attached hereto, with the SME

Preservation Fund, through its principal agents for the operation of the Mountain Arts Community Center for the 2020-2021 fiscal year.

Dan Landrum, Mayor	Recorder
6-22-20	6-22-20
Date	Date

MEMORANDUM OF AGREEMENT BETWEEN THE TOWN OF SIGNAL MOUNTAIN AND THE SME PRESERVATION FUND NONPROFIT

This MEMORANDUM OF AGREEMENT [hereinafter Agreement] is entered into this the ___ day of _____, 2020, by and between the TOWN OF SIGNAL MOUNTAIN [hereinafter TOWN] and the SME Preservation Fund [hereinafter SMEPF] for the purpose of setting forth the parties' understanding of the obligations, responsibilities and authorities of each party relative to the operation of the Mountain Arts Community Center [hereinafter MACC] and the programs, events and functions held therein or on associated property.

WHEREAS, the MACC is currently operated as a department and function of the Town of Signal Mountain; and,

WHEREAS, the MACC is operated in the former Signal Mountain Elementary School building [hereinafter the BUILDING]; and,

WHEREAS, the TOWN values both the function of the MACC and the historic BUILDING in which it is operated; and,

WHEREAS, the nonprofit SMEPF also values the function of the MACC and the historic BUILDING in which it operates and wishes to assume responsibility for the operation of the MACC and secure a lease for the BUILDING so they may grow the programs and functions of the MACC and raise funds to invest in, improve, restore and preserve the BUILDING; and

WHEREAS, the nonprofit SMEPF and the TOWN wish to enter into this agreement as a partnership for the betterment of the community;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

The TOWN and SMEPF agree that, effective_____, 2020, the SMEPF shall assume responsibility for the continuing operation of the Mountain Arts Community Center, during the term of this agreement. The TOWN and SMEPF shall also enter into a separate lease agreement for the BUILDING for a specific term of use. The terms of this MOA are to be considered separate and apart from the terms of said lease agreement.

ARTICLE I
AGREEMENTS AND UNDERSTANDINGS OF THE PARTIES

1. The SMEPF shall assume full responsibility for the operation of the Mountain Arts Community Center and development and establishment of programs, functions and events during the term of this agreement. The SMEPF further agrees that, to the extent possible given COVID-19 requirements and protocols, the MACC will continue to function in a manner consistent with prior operations, providing space for lessons, meetings, cultural activities, community events and Town functions.

2. The SMEPF agrees that all funds solicited in connection with the MACC or the BUILDING and all revenue generated through the operation of the MACC as well as all expenses and fund distributions associated with same shall be subject to annual accounting review and auditing by the Town. All records of the operation of MACC or Building shall be subject to the Tennessee Open Records Act and the Tennessee Open Meetings Act to the extent required by Tenn. Code Ann. 8-44-102 and shall be reviewable at any time upon request by the Town Manager.

3. The SMEPF agrees to provide a quarterly accounting report to the TOWN's Finance Director each year during the term of this agreement. Reports will be due by the last business day of the month following the end of each calendar quarter. The TOWN may request an annual audit and a copy of the associated Financial Report will be provided to the TOWN.

4. The SMEPF recognizes and agrees that all financial obligations of the TOWN relating to the MACC are subject to the availability of funds and budgetary constraints set by the Town Council during each year and dependent upon the appropriation of funds.

5. The Town agrees that the SMEPF may solicit funds for the operation of MACC and for the general maintenance and repair of the BUILDING. SMEPF shall conduct routine repair and improvement work to the BUILDING to the extent that such work is necessary to maintain the BUILDING in proper condition for use as permitted herein. Projects that are extensive in nature and/or represent a cost of more than $10,000.00 in any year during the term of this agreement must be approved by the TOWN prior to initiation and/or prior to solicitation of dedicated funds.

6. The TOWN shall have no repair or maintenance obligations of any type or nature, beyond any that may be outlined in a separate lease agreement, on the BUILDING or associated property or any other structures, buildings or fixtures located thereon during the term of this agreement.

7. The SMEPF agrees to protect the historical character and integrity of the BUILDING and no renovation, repair or alteration of the BUILDING shall diminish said character or integrity without prior written approval of the TOWN Manager.

8. The SMEPF shall maintain general liability insurance coverage of not less than One Million Dollars and shall name and list the TOWN as an additional insured party of that coverage during the term of this agreement. Copies of such insurance coverage and notices of renewals shall be provided annually to the Town Manager.

9. The SMEPF agrees that the operation of the MACC and the activities conducted therein shall conform to all laws and ordinances and valid rules and regulations of the United States, the State of Tennessee, Hamilton County, and the Town of Signal Mountain. The SMEPF shall not keep or allow anything to be kept on the premises, or use, operate or maintain the premises for any purpose or any manner which is contrary to the law of any applicable government authority.

10. Any materials prepared for public distribution, such as brochures, flyers, promotional materials or any other form of publicity related to specific fundraising projects or solicitation campaigns seeking donations to benefit the MACC, the BUILDING or associated property shall contain the following statement explaining the relationship between the TOWN and the.

The Mountain Arts Community Center (MACC) is operated by SME Preservation Fund (SMEPF), a 501(c)(3) Nonprofit Corporation. The facility is leased from the Town of Signal Mountain and the responsibility for all programs, activities, events and functions therein is assumed by SME Preservation Fund.

ARTICLE II
TERM OF THE AGREEMENT

The initial term of this Agreement shall be for a one year period beginning on July 1, 2020. Any agreements initiated by SMEPF relative to the operation of MACC, (teachers, programs, space rental, etc.) may not extend beyond the term of this Agreement.

ARTICLE III
TERMINATION OR DISSOLUTION

1. Termination by the SMEPF or TOWN.

The SMEPF or TOWN may terminate this Agreement as follows:

a. At the expiration of the initial term of this Agreement, or any subsequent term of this Agreement, by ninety (90) days prior written notice to the other party of the intention to not renew this Agreement; or

b. At any time with cause as provided below in Section 2.

2. Termination for Cause.

Either party may terminate this Agreement for cause as provided herein. For purposes of this Agreement, "cause" shall be defined as: (a) the appointment of a receiver, trustee or liquidator; filing of a voluntary petition in bankruptcy; making a general assignment for the benefit of creditors; filing of a petition seeking a reorganization or arrangement with creditors; the entering by a court of competent jurisdiction of any order, judgment or decree adjudicating either party bankrupt or approving a petition seeking reorganization of such party; or the appointment of a receiver, trustee or liquidator of such party, or of all or a substantial part of the assets of either party or dissolution of the SMEPF; (b) either party's failure to perform any material obligation under this Agreement which failure is not cured within thirty (30) days of written notice from the other party specifying the nonperformance. Once the thirty (30) days after receiving such notice has lapsed, the Agreement shall be terminated effective as of that date. In the event the actions necessary to cure a default under this Section 2 cannot be reasonably taken within thirty (30) days, this Agreement may not be terminated if the SMEPF commences a cure within thirty (30) days after receiving such notice and thereafter diligently pursues completion of the cure.

3. Special Termination.

In the event that any federal, state or local law or regulation currently existing or hereinafter enacted, or of any final and non-appealable construction or interpretation of such law or regulation (whether federal, state or local), or enforcement of such laws or regulations hereinafter occurs which makes substantial performance of this Agreement illegal or upon the dissolution of the SMEPF, this Agreement shall be terminated, unless the parties mutually agree and enter into a written modification of this Agreement to make substantial performance of the Agreement legal or to otherwise qualify local operations as may be required by law.

4. Effect of Termination.

Unless prior or subsequent agreements remain in force to direct and control the relationship between SMEPF and the TOWN and the disposition of associated funds, upon termination of this Agreement as provided herein,

under either Section 1, 2 or 3 above, ALL funds which have been solicited and received for the benefit of the MACC, the BUILDING or associated property shall be immediately paid to the TOWN by the SMEPF and shall be restricted and appropriated by the TOWN for same or consistent projects.

ARTICLE IV
GENERAL PROVISIONS

1. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Tennessee.

2. Amendments.

This Agreement may be amended only by written agreement signed by all parties and attached hereto.

3. Waiver.

No waiver of any right under this Agreement shall be deemed effective unless contained in a writing signed by the party charged with such waiver. Additionally, no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future such right or of any other right arising under this Agreement.

4. Effect on Prior Agreements.

This Agreement shall be supplemental and complementary to any prior agreements between SMEPF and the TOWN. In the case of any conflict, the terms of this agreement shall govern, except as provided in Article III, Section 4 of this agreement.

5. Additional Documents and Acts.

In connection with this Agreement, as well as all transactions by this Agreement, each party agrees to execute and deliver such additional documents and instruments, and to perform such additional acts, as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement, and all such transactions. All approvals of any party hereunder shall be in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of July 1, 2020.

DATED this _____ day of_____, 20__.

For the TOWN	For the SMEPF
_____	_____
Town Manager – Boyd A. Veal	Board President
_____	_____
Authorizing Resolution #	Board Secretary
	_____
	Board Treasurer

Proposed MACC Budget 2020/2021

	TOWN PROVIDES		
239	Permits (kitchen)	$50.00	
241	Electricity	$13,000.00	
242	Water	$6,000.00	
245	Comm. Services	$1,500.00	
248	Gas (heating)	$11,000.00	
262	Piano Tuning	$2,500.00	
265	Rep. & Maint. Grounds	$3,000.00	
266	Rep. & Maint. Building	$3,000.00	
299	Contract Svcs-Alarm (ADS)	$1,500.00	
511	Prop. & Liability Ins.	$5,309.00	
	TOTAL	$46,859.00	
	Cleaning Service		
	General Grounds Maint.		
	Capital Improvements (HVAC)	$56,000.00	
Proposed	2020/2021 Budget	$46,859.00	
	HVAC Project	$56,000.00	
	TOTAL	$102,859.00	
Predicted	2020/2021 Budget	$183,365.00	
	Projected Revenue	$25,000.00	
	TOTAL	$158,365.00	

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made effective as of _____, 20__, (the "Effective Date") by and between the TOWN OF SIGNAL MOUNTAIN, TENNESSEE, a Tennessee municipal corporation, (the "Town"), and the SME PRESERVATION FUND, a Tennessee 501(c)(3) non-profit corporation (the "Tenant"), collectively, (the "Parties");

WHEREAS, the Town owns certain real property within the corporate limits of the Town of Signal Mountain at 809 Kentucky Avenue known as the "Mountain Arts Community Center" (hereafter, the "Premises"), previously known as "Signal Mountain Elementary School", which was acquired by means of a Deed of Transfer on December 7, 2009 from the Hamilton County Board of Education recorded at Book 512, Page 64 in the Register of Deeds office of Hamilton County, TN (the "Deed");

WHEREAS, the Deed contains certain restrictions on the use of the Premises ("Deed Restrictions"), whereas the property may not be used to operate a K-12 school, nor will it permit any lessees, assignees, or successors in interest to operate such a school. Any violation of this covenant will result in an automatic reversion of the Premises to the ownership and control of the Hamilton County Board of Education, and they will have no obligation to compensate Town or Tenant for the value of any improvements it or its lessees may have made during their use and possession of the Premises;

WHEREAS, the parties hereto enter into this Lease for the purpose of operating a not for profit community center for the arts, culture, education, a meeting place for civic groups, and a venue for public and private events;

WHEREAS, Tenant is qualified as a tax-exempt organization under § 501(c)(3) of the Internal Revenue Code;

NOW, THEREFORE, in consideration of the facts recited above, which both parties acknowledge are true and correct, and in consideration of their mutual promises and other good and valuable consideration, the parties hereby agree as follows:

1. **Premises**. Town hereby leases and rents to Tenant the Premises for the Term (as defined below), subject to the terms and conditions in this Lease. The area known as Boy Scout Park is not included in the Lease but is available for use by the Tenant upon scheduling and prior approval of Town during the Lease Term.

2. **Term**. The term of this Lease shall be one (1) year, beginning on _____, 2020 and ending on _____, 2021, unless earlier terminated by the terms of this Lease (the "Initial Term"). The term may be extended upon mutual agreement of the Parties. The Initial Term plus any additional renewal term shall be referred to herein as the "Term". Notwithstanding the foregoing, this Lease may be terminated by either party upon ninety (90) days' prior written notice to the other party.

3. **Rent**. Tenant shall pay the Town total annual rent of One Dollar ($1.00) in advance of the date of this Lease and receipt of the same is acknowledged by Town.

4. **Town's Right to Cancel**. The Town has the right to cancel this Lease at any time during the Lease Term if, the Premises cease being used as a Community Center or if any use occurs in violation of the Deed Restrictions for this property. Such right must be exercised, if at all, by written notice to the Tenant at least thirty (30) days prior to the effective date of the cancellation. In such case, Tenant may cure and redeem its right to this Lease (and the Lease shall not be cancelled) by re-establishing the use of the Premises as a Community Center and in compliance with all Deed Restrictions based on the written approval of the Town Manager prior to the effective date of the cancellation.

5. **Complimentary Uses**. Both parties agree that, although the Premises will be used primarily as a Community Center, the Premises may be used for purposes complementary to and consistent with that use, subject to the Deed Restrictions.

6. **Warranties**. The Town hereby affirms, covenants, warrants, and represents each of the following:

    a. The Town owns title to the Premises in the manner described in the Deed.
    b. The Town has the full right to make and enter into this Lease.

c. Except as otherwise provided herein, Tenant and its lawful successors and assigns shall have quiet and peaceful possession of the Premises during the Lease Term.

d. The Town officials executing this Lease on behalf of the Town are authorized to do so by the Town Council and the laws of the State of Tennessee.

e. The Town Attorney has reviewed this Lease and transaction and advises that this Lease is valid, enforceable and binding on the Town after consideration by the Town Planning Commission and approval by the Town Council.

7. **Uses**. Tenant shall use the Premises for use as a Community Center, and for no other purpose except as allowed in Paragraph 5. The Town acknowledges that Tenant will regularly license and/or rent the Premises for private use for the purpose of raising funds to further the operation, subject to the license restrictions set forth in Paragraphs 16, 17, and 18 below. Any use by Tenant or any licensee shall be subject to the Deed Restrictions and the provisions of this Lease. Tenant shall not use or knowingly permit any part of the Premises to be used for any unlawful purpose, nor will Tenant carry on or permit upon the Premises any offensive, noisy, or dangerous trade of business, nor any traffic or parking nuisances to the public or any adjoining neighbors. Tenant shall comply with all applicable federal, state, and Town laws, rules, and regulations and ordinances, including without limitation all applicable environmental laws.

8. **Maintenance and Upkeep**. Tenant acknowledges that the Town is a governmental entity, and that the extent of its ability to maintain and upgrade the Premises is based upon availability of public funding. The level of funding available is dependent upon the factors that are often not under the control of the Town, or is subject to more pressing governmental needs, as those needs and their priority are identified by the Town in its sole discretion. The Town agrees to budget funds and cover the costs of items outlined in the Proposal made by the SMEPF to the Town. The Town may, in its sole discretion, allocate additional funds in its budget for alterations, upgrades and improvements to the Premises, but is under no obligation to do so. It is expected that the Parties will cooperate to identify pressing needs on the Premises consistent with the goals of the organization and/or outside the conditions of any such allocation. Tenant agrees not to

spend any monies raised by the use, licensing, subleasing, or sponsoring events held at the Premises on anything other than its reasonable administrative expenses or the furtherance of its goals as a Community Center.

9. **Non-assignment**. Tenant does not have the right to assign this Lease without the express written permission of the Town, which may or may not be exercised in the Town's sole discretion.

10. **Taxes**. The Premises are currently exempt from ad valorem taxation. Since the Premises will be used by Tenant who is a 501(c)(3) non-profit corporation, it is anticipated that the Premises will continue to be exempt from taxation. However, if for any reason the Premises are taxed and such taxation is upheld, then Tenant shall pay the tax assessed to its leasehold interest, and the Town shall pay tax assessed to its underlying interest in the event that it is not exempt as a governmental entity.

11. **Buildings and Improvements**. The Town owns the buildings and improvements on the Premises and all subsequent improvements and shall have the right to build, add, remodel, alter, or destroy any and all buildings and improvements on the premises as Town chooses, subject to the Deed Restrictions. During the lease term, Town and Tenant will cooperate and communicate on the management and status of all buildings, structures, improvements, fixtures, and equipment located on the Premises, and on all maintenance, repairs, alterations, upgrades and improvements to the Premises, which shall be consistent with the goals of the organization. At the end of the Lease Term, all buildings, structures, improvements, fixtures, and equipment then located on the Premises shall remain the property of the Town.

12. **Insurance**. The Town, at its sole cost and expense, shall at any times during the Term, maintain insurance protecting the Premises against losses or damages by fire or other casualty, together with such other coverages and in such amounts as Town, in its sole discretion, shall deem acceptable. Tenant covenants and agrees with Town that Tenant shall at all times during the term of this Lease, at Tenant's expense, maintain the following insurance coverages:

a. Comprehensive general liability insurance against claims for bodily injury, death or property damage occurring in, on or about the Premises in an amount of at least $1,000,000 combined single limit for bodily injury and property damage.
b. Such other insurance as may be reasonably requested by Town
c. All policies of insurance required of Tenant above shall name Town and Tenant as insureds, as their respective interests may appear. Furthermore, all policies for the insurance to be provided by Tenant shall be in form and with companies satisfactory to the Town Attorney, and shall have terms of not less than once (1) year and Tenant shall deliver to Town such policies with evidence of the payment of premiums thereon, and shall procure renewals thereof from time to time at least twenty (20) days before the expiration thereof. The insurance obtained by Tenant as required by this section shall name Town as an additional insured.

13. **Indemnification of Town**. Tenant shall, at all times, indemnify, defend and hold harmless Town from all losses, damages, claims, liabilities, and expenses, including reasonable attorneys' fees and other expenses, which may arise or be claimed against or imposed upon or incurred by Town and be in favor of any person, firm, or corporation, for any injuries or damages to the person or property of any person, firm, or corporation, consequent upon or arising from:
    a. any use or occupancy of the Premises by Tenant or any sublessee or authorized users
    b. any act, omission, neglect, or fault of Tenant, its employees, assignees or subtenants, agents, servants, guests, customer, licensees, or volunteers in connection with the use or operation of the Premises; or
    c. any failure by Tenant to comply with any of the covenants, agreements and terms of this Lease or applicable laws, statutes, ordinances, or regulation, including without limitation the provisions of Section 7.

    If any action or proceeding is brought against the Town by reason of any such claim, Tenant upon written notice from Town shall at Tenant's cost and expense resist or defend such action or proceeding by counsel reasonably satisfactory to Town. Town shall not be liable to Tenant or any of its agents, employees, servants, or invitees for any damage to

persons or property, except due to the gross negligence or intentional misconduct of Town. Tenant understands and agrees that the indemnities provided in this Lease shall survive the expiration or earlier termination of this Lease and shall continue in full force and effect until the expiration of any applicable periods of limitation with respect to any loss or liability covered by such indemnity.

14. **Inspection**. Tenant shall permit Town and its agents to enter into and upon the Premises at all times for the purpose of inspecting the same. Town shall not be liable for any interruption of Tenant's business resulting therefrom.

15. **Approval of Licensed Events**. Licensing of events by Tenant under this Lease shall not require the consent of the Town, unless an event involves unusual potential liability issues. All Licensees must comply with the provisions found within Section 7 of this Agreement titled "Uses". Tenant shall inform the Town on at least a monthly basis of all scheduled events. The Tenant may not allow or authorize the sale or consumption of alcohol absent a Special Event Permit issued by the Town.

16. **General Regulations for Licensees**.
    a. Tenant is responsible for setting policy for any conflict that may arise between general public use of the Premises and a use requested by a Licensee.
    b. Tenant is responsible to the Town for clean-up of property, and for requiring and retaining a reasonable damage deposit from a Licensee.
    c. For every 15 minors at a Licensee's event, there must be one adult present.
    d. Pets are to be kept on a leash and Licensees and/or their guests must clean up after them.
    e. Noise from speakers or otherwise should not exceed 50 decibels at the property line.

17. **Use of Alcohol**. Use of alcohol on the Premises is allowed only when:
    a. A Licensee secures a special event liability insurance policy with $1,000,000 limits for each occurrence, with the Town listed as an additional insured. Proof of

insurance shall be provided to the Town Recorder at least seven (7) days before any event in which alcohol is served.

b. All state and Town laws pertaining to the serving of alcohol, including beer and wine, must be strictly followed. Alcohol may not be served to any person under the age of 21.

c. Alcoholic beverages may not be sold unless a special permit is obtained from the Alcoholic Beverage Commission or Town Council (Beer Board) in accordance with applicable laws or ordinances.

d. The serving, possession, or consumption of alcohol, including beer and wine on the Premises may be ordered discontinued at any time at the discretion of the Town of Signal Mountain authorities. Such discretion may be exercised in the case of inappropriate behavior, exposure to liability due to excessive drinking, intoxication of individuals, underage drinking, damage to property or injury to individuals, and other such activities which can result in the discontinuance of the serving, possession or consumption of alcohol in accordance with applicable laws or ordinances.

18. **Fires**. Other than propane devices specifically designed for outdoor cooking and/or heat, no fires are allowed on the Premises.

19. **Damage or Destruction of the Premises**. If all or a portion of the Premises shall be damaged or destroyed by fire or other cause, as determined by Town, Town shall elect, by giving notice to Tenant within thirty (30) days after such fire or other cause, to restore the Premises or terminate this Lease. If Town shall elect to terminate this Lease, the term of this Lease shall expire as of the date of the fire or other cause, and Tenant shall vacate the Premises and surrender the same to the Town. If Town shall elect to restore the Premises, such restoration shall be at the expense of Town. The Town shall have no obligation but retains the discretion to expend funds beyond any insurance proceeds received.

20. **Liens**. Tenant will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge (other than a lien, encumbrance, or charge approved in writing by the Town Manager and authorized by the Town Council in advance) upon the Premises. Nothing herein shall be construed as constituting the consent or request of Town to any contractor, subcontractor, laborer, or materialman for the performance of any labor or services or the furnishing of any materials for any improvements, alterations, addition or repair of or to the Premises.

21. **Default; Remedies**.

a. An event of default ("Event of Default") shall occur under this Lease if Tenant, at any time during the Term, shall fail to observe or perform any of Tenant's covenants, obligations and undertakings under this Lease, and if any such default shall not be cured within thirty (30) calendar days after Town shall have given to Tenant notice specifying such default or defaults. If an Event of Default occurs, Town shall have the right at its election, then or at any time thereafter while any such event of default shall continue, to:

i. Give Tenant notice of Town's intention to terminate this Lease on a day specified in such notice;

ii. Re-enter and obtain possession of the Premises, whether or not this Lease shall have been terminated, and upon such re-entry Town shall have the right, without notice, to repair or alter the Premises in such manner as Town may deem necessary or advisable so as to put the Premises in good order; or

iii. Seek any other remedy available to it at law or in equity.

b. Performance of Tenants' Obligations. If Tenant shall default in the performance of any covenant or condition in this Lease required to be performed by Tenant, Town may perform such covenant or condition for the account of and at the expense of Tenant. If Tenant, pursuant to this Lease, becomes obligated to reimburse or otherwise pay Town any sum of money in addition to rent, the amount of such reimbursement or expense shall be deemed additional rent and

shall be payable upon demand. The provisions of this Section 21 shall survive the expiration or earlier termination of this Lease.

c. Town's Liability. In the event of any default of Town, Tenant shall not seek to secure any claim for damages or indemnification by any attachment, levy, judgment, garnishment or other security proceedings against any property of Town.

d. Tenant Liability. In the event of any loss or damage to the Town, or default by Tenant or other breach of this Lease Agreement, Tenant's liability to Town shall be limited to the assets of Tenant plus the proceeds from insurance maintained by Tenant. The extent of liability or immunity for individual Directors, Officers and Employees of Tenant to Town will be provided in T.C.A. § 48-58-601(c) or other applicable law.

22. **Notices**. Whenever this Lease provides that notices shall be given, or may be given or served, upon either of the parties by the other, or whenever the law requires or gives the right of serving a notice, such notices shall be in writing and shall not be effective for any purpose until the same shall be given or served in person, or by registered or certified mail, proper postage prepaid, or by a nationally recognized overnight courier, as follows:

To Town:

Town of Signal Mountain
Attn: Town Manager
1111 Ridgeway Avenue
Signal Mountain, TN 37377

To Tenant:

SME Preservation Fund
505 Georgia Avenue
Signal Mountain, TN 37377

Either party may, at any time, change the place of receiving notice by giving written notice to the other party of such change of address. Any notice shall be deemed to have been given when served at the place shown or posted in the United States mail or delivered to a nationally recognized overnight courier as aforesaid.

23. **Surrender and Hold-Over**. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in good condition and repair, reasonable wear and tear from proper use excepted. In the event Tenant remains in possession of the Premises after the termination of this Lease, Tenant shall be a tenant at-will.

24. **Signs**. Provided that it is in compliance with all applicable laws, rules and regulations, including Town Sign Ordinance, Tenant shall be allowed to place such signs on the Premises as required with the operation of the Premises in connection with the purpose of the organization.

25. **General Provisions**.

    a. Time is of the essence of this Lease.
    b. No waiver of a breach of any covenant contained in this Lease shall be construed to be a waiver of any succeeding breach of the same covenant.
    c. All covenants, conditions, promises and obligations in this Lease contained or implied by law shall attach to and be binding upon the successors, legal representatives, and assigns of Town and Tenant.
    d. No amendment, modification, release, discharge or waiver of any provision of this Lease shall have any force, effect or value unless in writing and signed by the persons who are then authorized representatives of Town and Tenant.
    e. This instrument contains the entire agreement between the parties as of this date and the execution hereof has not been induced by either of the parties by representations, promises, or understandings not expressed in this Lease. There are no collateral agreements, stipulations, promises or understandings whatsoever

between the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this Lease.

f. The captions in this Lease are for convenience only and are not part of this Lease and do not in any way limit or amplify the terms or provisions of this Lease.

g. This Lease shall be governed by the laws of the State of Tennessee. Whenever possible, provisions of this Lease shall be interpreted in such a manner as to be valid or enforceable. In the event that any provision of this Lease is held to be invalid or unenforceable, the remaining provisions of this Lease shall not be affected thereby and shall be interpreted in such a way as to be valid and enforceable.

h. In the event of legal action between the Town and Tenant as a result of any alleged default by either party hereunder, the prevailing party shall be entitled to entry of judgment, including reimbursement by the other party for reasonable attorney's fees and costs incurred by the prevailing party, in connection with such action.

i. This Lease may be executed in counterparts, any or all of which shall constitute the agreement of the parties.

j. This Lease shall inure to the benefit of and be binding upon the Town and Tenant and their lawful successors and assigns.

IN WITNESS WHEREOF, Town and Tenant have duly executed this Lease effective as of the above indicated Effective Date.

TOWN OF SIGNAL MOUNTAIN

By:

Name:

Title:

SME PRESERVATION FUND

By:

Name:

Title: