

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Plaintiff Walt Whitman Arts Center ("Plaintiff") and Defendant Rutgers, the State University of New Jersey ("Rutgers") (collectively, Plaintiff and Rutgers shall be referred to as the "Parties").

RECITALS

WHEREAS, the Parties entered into a lease agreement on January 1, 2007 (the "2007 Lease"), which was later amended in 2008 ("Addendum"), regarding Plaintiff's tenancy at the Cooper Library (the "Premises"); and

WHEREAS, Plaintiff filed a Complaint and Order to Show Cause on July 29, 2010, bearing Docket No. L-3794-10 (the "Lawsuit"), seeking an injunction preventing Rutgers from renovating the Premises; and

WHEREAS, the Court entered an Order for temporary restraints, and continued that temporary injunctive relief pending an evidentiary hearing on September 17, 2010; and

WHEREAS, the Parties met on September 17, 2010 and engaged in settlement discussions;

NOW, WHEREFORE, Plaintiff and Rutgers have come to an agreement to amicably resolve all claims and counterclaims between the Parties based on the following terms and conditions as set forth below.

A. AMENDMENTS TO 2007 LEASE AND ADDENDUM

1. Renovations: Rutgers shall be permitted to commence renovations on the Premises immediately, subject to the following conditions:

a. Any programming scheduled by Plaintiff that will take place within two (2) months from the date of this Agreement shall be accommodated at other venues on the Rutgers Camden Campus at no cost to Plaintiff.

b. The theatre / stage space that will be renovated into classroom space shall be a multi-purpose space (the "Classroom"). Although the final details of construction shall not be determined until full and complete consultation with architects and other responsible parties, these renovations shall include, at Rutgers' cost:

i. A raised platform (the "stage"). The Parties contemplate that the stage will be configured so that it is approximately two (2) feet in height, ten (10) feet in depth and fifteen (15) feet in length, subject to architectural design approval. The location of the stage shall be chosen by Rutgers, with input from Plaintiff;

II. Seating in the form of mobile chairs, known as "tablet armchairs," which have attached desks and may be stacked and temporarily removed from the Classroom; and

III. A lectern or podium that may be removed from the stage during any scheduled programming.

c. Any existing theatre lighting currently in place at the Premises shall be evaluated for functionality and safety by an electrician chosen by Plaintiff, in the presence of and with input from an electrician chosen by Rutgers. If the existing lighting is determined to be safe and functional, such lighting will remain in place so long as it does not interfere with the use of the Classroom for educational purposes and does not incur additional cost to Rutgers. If the existing lighting is determined to be unsafe or not functional, or if the existing lighting must be removed in order for the renovations to be completed, such lighting may be removed by Rutgers as part of the renovations. If Plaintiff so chooses, it may, at its own cost, repair or replace the existing theatre lighting, so long as such lighting does not interfere with the use of the Classroom for educational purposes, does not incur additional cost to Rutgers and is appropriately approved.

d. Once the dimensions and location of the stage are finalized, Plaintiff and Rutgers shall discuss the possibility of installing a hanging curtain that may be lowered such that the stage may be used for performances. Any such curtain, if installed, must not interfere with the use of the Classroom for educational purposes, may not, at Rutgers' discretion, cover any windows that exist or will be constructed in the Classroom, and shall be installed and maintained at Plaintiff's cost.

e. Any renovation work done on the Premises by Plaintiff, including but not limited to the installation of lighting and curtains, must be approved and monitored by Rutgers.

2. Status as an "Internal Department": Rutgers shall treat Plaintiff as though it were an internal department of the University in the following respects:

a. Plaintiff shall be permitted to use any facilities located on the Rutgers Camden Campus, including but not limited to the Classroom, the Gordon Theatre and the Black Box Theatre, so long as it follows Rutgers' rules concerning the scheduling of programs and activities through Rutgers' Reservations office.

b. Plaintiff shall follow Rutgers' rules concerning the scheduling of programs and activities whenever it desires to utilize the Classroom on the Premises.

c. Plaintiff acknowledges that the Classroom may be used by other Rutgers departments and/or outside community groups, subject to the schedule set by Rutgers' Reservations office.

d. Plaintiff shall not be charged rent or fees for the use of any facilities located on the Rutgers Camden Campus, except when programming or activities take

place outside of Rutgers' normal business hours, which are Monday through Thursday, 9:00 AM to 9:00 PM, and Friday, 9:00 AM to 4:30 PM. Whenever Plaintiff uses any of Rutgers' facilities outside of Rutgers' normal business hours, Plaintiff will be charged for incremental costs incurred by Rutgers for such use, including but not limited to charges for custodial, technical and security staff. Such charges shall be passed through without any markup to Plaintiff.

e. Whenever Rutgers' rules and procedures require, or whenever the activities of Plaintiff would reasonably be expected to require, the use of support staff to accommodate Plaintiff's activities (such as but not limited to security and custodial staff and audio or lighting technicians), such staff shall be supplied by Rutgers and not an outside contractor.

f. Notwithstanding the foregoing paragraph, if Plaintiff conducts an activity at the Classroom that requires an audio or lighting technician, Plaintiff may use the audio or lighting technicians of its choice, provided: (i) such technicians are certified to operate the equipment; and (ii) Plaintiff, in such circumstances where its own technicians are used, indemnifies, defends and holds Rutgers harmless in the event any claim against Rutgers arises in connection with Plaintiff's technician's actions. The foregoing indemnity shall be automatic and arise without need of further documentation any time Plaintiff does, in fact, utilize its own audio or lighting technicians at the Classroom.

g. Plaintiff shall be subject to the same Rutgers' rules and procedures regarding parking for events as any other Rutgers internal department.

3. **Utilities:** Plaintiff shall not be responsible for any utility costs incurred on the Premises under the Addendum, including any costs incurred but not paid prior to the effective date of this Agreement.

4. **Gallery / Conference Room:** The Gallery / Conference Room located on the second floor of the Premises shall be reserved for the exclusive use of Plaintiff, as is the office space located on the first floor of the Premises. Plaintiff acknowledges that the Gallery / Conference Room is not compliant with the requirements of the Americans with Disabilities Act.

5. **Lease Duration:** The term of the 2007 Lease, as modified herein, shall be extended to December 31, 2016.

6. **Other Terms:** All terms of the 2007 Lease that are not modified herein shall remain in full force and effect.

B. LIFT OF TEMPORARY RESTRAINTS AND DISMISSAL OF SUIT

1. **Lift of Restraints:** All restraints entered by the Court preventing Rutgers from commencing renovations on the Premises shall be lifted on the effective date of this Agreement.

2. **Dismissal of Suit:** The Parties agree that they will take whatever actions necessary to dismiss the Lawsuit, including the filing of a Stipulation of Dismissal with Prejudice, immediately upon the execution of this Agreement.

C. OTHER AGREEMENTS / UNDERSTANDINGS

1. **Basement:** Rutgers agrees that it will consider the possibility of renovating or converting the basement of the Premises into a rehearsal room or other useful space, but it is expressly understood that Rutgers is under no obligation to make such renovation or conversion of that basement space.

2. **Grant Compliance:** Rutgers shall make reasonable efforts to cooperate with Plaintiff in scheduling events using the Classroom or other Campus venues as needed for Plaintiff to comply with grant requirements set forth by the New Jersey State Council of the Arts.

3. **Fully-Bargained Agreement:** This Agreement contains all the promises and understandings of the Parties. There are no other agreements or understandings between the Parties, except for the 2007 Lease, as modified by the terms herein.

4. **Governing Law:** This Agreement shall be governed by, considered and enforced in accordance with the laws of the State of New Jersey.

5. **Voluntary Entry:** The Parties acknowledge that they have read all of the terms and conditions of this Agreement and have been given a reasonable opportunity within which to consider this Agreement. The Parties further acknowledge that they have been given the opportunity to consult, and have consulted, with their respective attorneys of record regarding the terms and conditions of this Agreement prior to signing this Agreement.

6. **Acknowledgment:** The Parties sign this Agreement of their own free will in exchange for the consideration set forth herein, which they acknowledge as adequate and satisfactory.

IN WITNESS THEREOF, THE PARTIES HAVE ENTERED INTO AND
EXECUTED THIS AGREEMENT, THE EFFECTIVE DATE BEING THE LAST
EXECUTED SIGNATURE SET FORTH BELOW.

Walt Whitman Arts Center

Rutgers, the State University of New Jersey

By: *Philip E. Freeman*
Date: 10/1/10

By: _____
Date

Title: *President*

Title: _____

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