

## EMPLOYMENT AGREEMENT

AGREEMENT ("Agreement") made effective as of this 1st day of July, 2007, by and between The Arkansas Arts Center, with its principal place of business at MacArthur Park, 501 East 9<sup>th</sup> Street, Little Rock, Arkansas 72206 (the "AAC"), and Ellen A. Plummer, residing at 10 Broadview Drive, Little Rock, Arkansas 72207 (the "Director"). The Arkansas Arts Center Foundation (the "Foundation") joins in this Agreement solely for the purpose set forth in Paragraphs 10 and 15.

### WITNESSETH

WHEREAS, the AAC employed the Director pursuant to the terms of an Employment Contract dated as of November 1, 2002, which automatically renewed for successive years and which, immediately prior to the date of this Agreement remains in force (the "Prior Employment Contract"); and

WHEREAS, the AAC desires to continue to employ the Director and to enter into the Agreement embodying the terms of such employment and which terminates and replaces in its entirety the Prior Employment Contract; and

WHEREAS, the Director desires to continue to accept such employment; and

WHEREAS, the AAC and the Director desire to set forth the terms and conditions of such continued employment in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is hereby agreed by and between the AAC and the Director as follows:

1. CONTINUATION OF EMPLOYMENT.

(a) The AAC hereby employs the Director for a term beginning July 1, 2007 and ending June 30, 2009 (the "Initial Employment Term"), except as terminated earlier as provided herein, or except as extended pursuant to paragraph 1(b) hereof.

(b) The Initial Employment Term. Term shall be automatically extended for successive additional one-year periods (which are, together with the Initial Employment Term, the "Employment Term") unless either party delivers to the other, on or before one hundred eighty (180) days prior to the end of the Initial Employment Term or the then additional term, a written notice of its or her election not to extend the Employment Term, in which case the Employment Term shall not be so extended.

2. DUTIES AND RESPONSIBILITIES.

(a) During the Employment Term, the Director shall serve as the Executive Director of the AAC, performing the duties and responsibilities of this position in accordance with the AAC's bylaws, its rules and regulations, and subject to the direction and authority of the Board of Trustees (the "Board"). The Director shall have full responsibility for the day-to-day operations of the AAC, including supervision and control of all artistic and administrative personnel and programs.

The Director, as part of her responsibilities and consistent with this Agreement, shall, subject to the authority and direction of the Board:

(i) have authority to hire, compensate and terminate the AAC staff, within the approved budget of the AAC, and to establish the job descriptions, duties and responsibilities of all staff, in accordance with such policies as may be established by the Board;

(ii) oversee the preparation of the AAC's budget;

(iii) in consultation with the Treasurer, recommend to the Board, for its approval, the selection of outside certified public accountants for the AAC;

(b) The Director shall perform such other duties and services commensurate with her position, as may be assigned to her by the Board in accordance with the AAC's bylaws.

(c) The Director shall report and be responsible to the Board of the AAC. The Director shall be an ex-officio voting member of the Board and shall be entitled to attend meetings of the Board and the Committees thereof in such capacity, except as otherwise specifically requested by the Board.

(d) During the Employment Term, the Director shall devote substantially all of her business time, skills and attention to the performance of her duties hereunder and use her best efforts in such endeavors; provided, however, that the Director may manage her passive personal investments and, with the prior approval of the Board, which may be granted or denied in its sole discretion, serve on the boards or committees of corporations, or civic or charitable institutions, provided that such activities do not materially conflict with or interfere with the performance of her duties and responsibilities hereunder.

(e) Except as otherwise agreed to by the Director and the Board of the AAC, the Director shall not work for, or with, or accept, or otherwise receive, any compensation or other consideration from any other organization, firm, museum, society, person, corporation or otherwise, for services performed or to be performed by the Director.

3. BASE SALARY. The Director shall be paid as compensation an annual salary, payable bi-weekly, as determined from time to time by the Board of the AAC ("Base Salary").

4. OTHER COMPENSATION AND BENEFITS. During the Employment Term, the Executive shall be entitled to the following other compensation and benefits.

(a) Annual Bonus. The Director may receive, at the sole discretion of the Board, a performance-based bonus with respect to each fiscal year.

(b) Pension and Welfare Benefits. Except as otherwise provided herein, during the Employment Term, the Director and her eligible dependent(s) shall be entitled to participate in, or be covered under, all general broad-based pension; savings, medical, hospital, dental and vision health insurance; sick leave; short-term and long-term disability income; and group-term life insurance plans and programs provided to other full-time senior staff of the AAC, if any, in accordance with the terms of the applicable plan from time to time.

(c) Travel and Entertainment Expenses. The AAC shall pay or promptly reimburse the Director for all ordinary and necessary business travel and entertainment expenses incurred by the Director in the performance of the Director's duties under this Agreement, and in accordance with the normal policies or guidelines of the AAC with regard to travel and entertainment as in effect from time to time and in accordance with a budget approved by the AAC.

(d) Professional Dues and Club Membership Expenses. The AAC shall pay or reimburse the Director for professional dues in accordance with a budget approved by the AAC.

(e) Automobile. The AAC shall provide the Director with an automobile, automobile insurance and other automobile expenses reasonably acceptable to the AAC and the Director for business use or an allowance for a car.

(f) Vacation and Leave. The Director shall be entitled to vacation and leave in accordance with the written policies of the AAC.

(g) Taxes. The Director shall be responsible for all taxes on the Director, if any, due on any amount paid or benefits provided under this Agreement, except as specifically provided hereunder.

5. TERMINATION. The employment of the Director shall terminate prior to the expiration of the Employment Term specified in Paragraph 1 hereof upon the occurrence of any of the following events prior to such time.

(a) the death of the Director (see Paragraph 6 hereof);

(b) the termination of the Director's employment by the AAC due to the Director's disability pursuant to Paragraph 7 hereof;

(c) the termination of the Director's employment by the AAC for Cause pursuant to Paragraph 8 hereof;

- (d) the termination of the Director's employment by the AAC without Cause;
- (e) the termination of the Director's employment by the Director for Good Reason pursuant to Paragraph 10 hereof; or
- (f) the termination of the Director's employment by the Director other than for Good Reason upon ninety (90) days prior written notice.

6. DEATH PRIOR TO TERMINATION OF EMPLOYMENT. The death of the Director shall serve to terminate the Employment Term, in which event the AAC shall have no liability or further obligation to the Director or her estate under this Agreement, except for:

- (a) any due but unpaid Base Salary, any accrued but unused vacation payable pursuant to Paragraph 4(i), and/or other expenses or amounts due under Paragraph 4 hereof; and
- (b) any other amounts or benefits owing to the Director under the then applicable employee benefit plans of the AAC, paid in accordance with such plans, including but not limited to life insurance policies. (Such amounts referred to in (a) and (b) hereinafter referred to as the "Accrued Obligations.")

7. DISABILITY. If the Board reasonably shall determine that the Director has become physically or mentally incapable of performing her material duties as provided in Paragraph 2 of this Agreement and such incapacity is likely to last for a period of at least one hundred eighty (180) days from the onset of such incapacity/causes her absence for one hundred eighty (180) days in any twelve (12) month period, the AAC may, at its election at any time thereafter while the Director remains incapable of performing her material duties hereunder, terminate the Director's employment hereunder effective immediately by giving the Director notice of such termination. In such event, the AAC shall continue the Director as an employee on payroll (but not as an officer hereunder) at her same Base Salary until the earlier of:

- (a) the date she qualifies for the AAC's long-term disability policy; or
- (b) six (6) months from the onset of such incapacity.

The AAC shall have no other obligation to the Director or her dependents other than the Accrued Obligations, amounts due under the AAC's long-term disability plan, and any other benefits offered by the AAC under its then policy to employees who become disabled while employed by the AAC.

8. CAUSE. For purposes of this Agreement, Cause shall mean any of the following:

- (a) the failure by the Director to substantially perform her duties;
- (b) the Director's dishonesty, misappropriation, breach of fiduciary duty or fraud with regard to the AAC or any Affiliate or any of their assets;

(c) the Director's conviction of or the pleading of *nolo contendere* with regard to a felony (other than a traffic violation) or any other crime involving, in the sole discretion of the Board, moral turpitude, theft, dishonesty or drug-related offenses;

(d) misconduct or negligence with regard to the AAC or any Affiliate or any of their assets or employees which has a material adverse effect on the AAC or any Affiliate;

(e) the refusal of the Director to follow the proper and reasonable written direction of the Board; or

(f) any other material breach by the Director of a material provision of this Agreement that remains uncured for ten (10) days after written notice thereof is given to the Director.

9. BY THE DIRECTOR FOR GOOD REASON. Termination for Good Reason shall mean a termination by the Director within ninety (90) days after the occurrence of a Good Reason Event. For purposes of this Agreement, "Good Reason Event" shall mean the occurrence, or failure to cause the occurrence, of any of the following events without the Director's express written consent, provided that such occurrence or failure is not cured within ten (10) days of the Director giving the AAC written notice thereof.

(a) any material demotion of the Director or any material reduction in the Director's authority or responsibility as set forth herein, except, in each case, in connection with the termination of the Director's employment for Cause or disability or as a result of the Director's death, or temporarily as a result of the Director's illness or other absence;

(b) a material reduction in the Director's rate of Base Salary, except for a reduction that generally applies across-the-board to all senior staff; or

(c) a material breach by the AAC of any material provision of this Agreement; or

(d) involuntary discontinuance of the Director's participation in any employee benefit plans maintained by the AAC unless such plans are discontinued by reason of law or loss of tax deductibility to the AAC with respect to the contributions to such plans, or are discontinued as a matter of the AAC's policy applied equally to all participants.

10. OBLIGATION OF THE AAC UPON TERMINATION OF EMPLOYMENT BY THE DIRECTOR FOR GOOD REASON, BY THE AAC WITHOUT CAUSE OR UPON THE AAC GIVING NOTICE OF NON-RENEWAL. In the event that the Director terminates her employment for Good Reason pursuant to Paragraph 9 hereof, or the AAC terminates the Director's employment without Cause, or by giving notice of non-renewal pursuant to Paragraph 1(b) hereof, then, the AAC shall have no obligation to the Director, except as follows:

(a) Accrued Obligations. The AAC shall pay to the Director, within twenty (20) days after the date of termination, any Accrued Obligations including but not limited to

unreimbursed business expenses (provided that any benefits shall be paid in accordance with the terms of the applicable plan or policy);

(b) Severance.

(i) Upon termination of employment by the Director for Good Reason or by the AAC without cause, the AAC Foundation shall pay to the Director, monthly as severance, the Director's Base Salary, for a period of twelve (12) months following the date of termination.

(ii) Upon the AAC giving the Director notice, pursuant to Paragraph 1(b) of its election not to extend the employment term of the Director, the AAC Foundation shall pay to the Director monthly as severance, the Director's Base Salary for a period of twelve (12) months following such notice, which, for the last 180 days of the Employment Term shall be in lieu of the Director's Base Salary.

(c) Additional Severance. As additional severance, the AAC Foundation shall pay, if the Director is then a participant in the medical plans maintained by the AAC, the applicable COBRA premiums for the Director, her spouse and eligible dependants for the period during which severance is paid.

(d) Taxes. The Director shall be responsible for paying all taxes, if any, due on the benefits provided under this Paragraph.

(e) Obligation in the Event of the Director's Death. In the event of the Director's death prior to payment of all of the amounts due under Paragraph (a) above or subpart (i) of Paragraph (c) above, the remaining amounts or benefit for the specified periods shall continue for the benefit of the applicable persons and/or the Director's estate.

11. TERMINATION OF EMPLOYMENT BY THE AAC FOR CAUSE BY THE DIRECTOR WITHOUT GOOD REASON, OR NON-RENEWAL BY THE DIRECTOR. If Director's employment hereunder is terminated for Cause, or by the Director without Good Reason, the Director shall be entitled to receive only her Base Salary through the date of termination and any unreimbursed business expenses. All other benefits shall be determined in accordance with the plans and policies of the AAC.

(a) Notwithstanding the foregoing, the Director shall not be entitled to any amounts beyond the Accrued Obligations unless the Director executes and delivers to the AAC a release of any and all claims arising out of her employment and termination thereof, in such form as reasonably requested by the AAC.

12. MITIGATION/OFFSET. The Director shall take reasonable steps to seek other employment to mitigate the amounts payable to the Director under Paragraph 10(b). Any compensation or welfare benefits that may be provided to the Director after the date of termination, other than by the AAC or the Foundation, shall proportionately reduce the AAC's

and the Foundation's respective obligation to make any payments or provide any benefits under Paragraph 10.

13. NON-SOLICITATION. During the Employment Term and for one year thereafter, the Director shall not intentionally solicit, endeavor to entice away from the AAC, or otherwise interfere with the relationship of the AAC with any person who is employed or associated with the AAC.

14. INDEMNIFICATION. The AAC shall indemnify, defend and hold and save the Director, the Director's heirs, administrators and executors, and each of them, harmless from any and all actions and causes of action, claims, demands, liabilities, losses, damages or expenses, of whatsoever kind and nature, by a third party including judgments, interest and attorney's fees and all other reasonable costs, expenses and charges which the Director, the Director's heirs, administrators or executors, or any of them, incurred as a result of carrying out the terms and conditions of this Agreement to the extent provided by the AAC's bylaws and Arkansas law, except for gross negligence, willful misconduct or criminal acts or omissions on the part of the Director. The Director, the Director's heirs, administrators, executors, or any one of them shall promptly notify the AAC of adverse claims or threatened or actual lawsuits and shall provide complete cooperation to the AAC, its attorneys and agents in such case to the extent possible.

15. ARBITRATION. Any and all claims or controversies between the AAC, the Foundation and the Director shall be settled by arbitration in accordance with the then current commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitrator shall be selected from a panel provided by the AAA. The decision of the arbitrator shall be final and binding. Judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction. The location of the arbitration shall be Arkansas.

The parties shall equally share the cost of the arbitrator and shall each bear their own costs and expenses in the proceeding.

16. DIRECTOR'S SUCCESSORS. This Agreement is personal to the Director and, without the prior written consent of the AAC, shall not be assignable by the Director otherwise than by will or the law of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Director's legal representatives.

17. AAC'S SUCCESSORS. This Agreement shall inure to the benefit of and be binding upon the AAC and its successors. In the event of a merger, sale, transfer, consolidation or reorganization involving the AAC, this Agreement shall continue in full force, inure to the benefit of, and become an obligation of the AAC's successor.

18. MISCELLANEOUS.

(a) Mutual Agreement. This Agreement may not be altered, amended, modified, or terminated other than by a written agreement signed by the Director and the AAC, and if Paragraph 10 or 15 is altered, amended or modified, the Foundation.

(b) Joint Effect of Agreement. Nothing in this Agreement shall be deemed to create a partnership or agency relationship between the AAC and the Director to make either jointly liable with the other for any obligation arising out of the activities and services contemplated by this Agreement.

(c) Bond. The AAC may, at its option and expense, obtain a faithful performance and fidelity bond on the Director.

(d) Waiver. Waiver by either party of any term or condition of this Agreement or of any breach or default shall not constitute a waiver of any other term or condition or breach or default of this Agreement, whether similar to or different from the breach or default waived.

(e) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of the Agreement.

(f) Section Headings. The Section headings and numbers in this Agreement have been inserted for the convenience of reference only, and if there is any conflict between any such headings or numbers and the text of this Agreement, the text shall control.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which shall be considered one and the same instrument.

(h) Applicable Law. This Agreement has been executed in Little Rock, Arkansas and shall be governed in accordance with the laws of the State of Arkansas in every respect, applied without reference to principles of conflicts of laws.

(i) Notices. All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All such notices, demands and requests shall be deemed to have been properly given if served in person, sent by telefacsimile (and receipt confirmed) or by prepaid nationally recognized overnight delivery service providing proof of delivery.

(j) Termination of Employment Contract. The Prior Employment Contract is hereby terminated and the terms of employment of the Director are replaced in their entirety by this Agreement.

(k) Entire Agreement. This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter of this Agreement and supersedes all other agreements, arrangements and communications between the parties concerning such subject matter, whether oral or written.

(Signatures on following page)

IN WITNESS WHEREOF, the parties to this Agreement have signed it on the day and date first written above.

**THE AAC:**

THE ARKANSAS ARTS CENTER

By: Robert W Tucker  
Name: ROBERT W. TUCKER  
Title: PRESIDENT

**THE ARKANSAS ARTS CENTER FOUNDATION**  
(solely for the purpose set forth in Paragraphs 10 and 15)

By: Warren A. Stephens  
Name: WARREN A. STEPHENS  
Title: CHAIRMAN

**DIRECTOR:**

Ellen A. Plummer  
ELLEN A. PLUMMER

# MEMORANDUM

TO: Curtis Finch, AACF Chair  
FROM: Rocky L. Nickles  
CC: Nan Plummer  
DATE: November 22, 2002  
SUBJECT: AAC Director Expenses

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Per our phone conversation, it is my understanding that you have authorized the following expenses to be paid by the Foundation on behalf of Nan Plummer:

- “Sign-On Bonus” of \$25,000,
- Moving expenses of her and her family,
- Temporary living expenses from November, 2002 to June, 2003, including housing and reasonable travel,
- Expenses in connection with school transportation for her son,
- Travel expenses from Little Rock to Ann Arbor for up to seven trips in connection with her M.B.A. degree.

I have discussed the payment of the sign-on bonus with Nan and we have agreed that the money will be paid on January 2, 2003. All other expenses will be paid when invoiced.

If you have any questions or if I have left off any expenses, please call me.