IN THE COURT OF CLAIMS OF OHIO

THE REQUIEM PROJECT, INC. **29 East 12th Street 1st Floor C** **Cincinnati, OH 45202** **Plaintiff,**	:	
v.	:	**Case No**________________________ **Judge**__________________________
UNIVERSITY OF CINCINNATI **2600 Clifton Avenue** **Cincinnati, OH 45220** **Defendant.**	:	**COMPLAINT**
SERVE ALSO: **Mike DeWine** **Ohio Attorney General** **30 East Broad Street, 25th Floor** **Columbus, Ohio 43215**	:	

Now comes the Plaintiff, by and through counsel, and for its cause of action against the Defendant states as follows:

The Parties and Jurisdiction

1. Plaintiff The Requiem Project, Inc. ("Requiem") is a non-profit arts and education company that was formed to redevelop and reopen the Emery Theatre, a historic but long-neglected symphony hall located in Cincinnati, Ohio. Requiem is an Ohio corporation. The founders and principal employees of Requiem are Tara Gordon and Tina Manchise.

2. Defendant University of Cincinnati (UC) is a public university and entity of the State of Ohio and holds fee title to the property and building that contains the Emery Theatre.

3. Jurisdiction and venue are proper in this Court pursuant to ORC 2743 et seq., as the Defendant is a state institution.

Factual Allegations

4. The Emery Theatre (the "Theatre") is located at 1112 Walnut Street in the Over-the-Rhine neighborhood of Cincinnati. The Theatre sits inside the former Ohio Mechanics' Institute Building.

5. In 1908, Mary M. Emery donated funds to build a new building for the Ohio Mechanics' Institute ("the building"). Emery stipulated that the building was to contain a fine assembly and concert hall, which would be available to the community as well as to the school. The contract between Emery and OMI, stated that the building "...is forever to remain under the control of said The Ohio Mechanics' Institute for its uses and purposes, and for the uses and purposes mentioned in said letter making said gift and for no other uses and purposes whatsoever." The contract also stipulated that the building and assembly hall was "to be primarily for the use of... [OMI]...but also to be so constructed as to be serviceable for public and private lectures, entertainments, symphony and other concerts, May Festival rehearsals, and for such other entertainment..." Upon Mrs. Mary Emery's passing, the Emery building was bequeathed with the condition that the property was always to be used for "civic betterment." Mary Emery's donation and the agreement between Emery and the Ohio Mechanics' Institute created a charitable trust.

6. Construction of the building was completed in 1911. As Emery requested, the building contained the world-class Emery Theatre. When it opened, the theatre-style concert hall was nationally recognized as one of the best of its caliber. The Theatre was the third in a series of four theatre-style concert halls that were specifically built for the symphony orchestras of their respective cities. The four halls are Carnegie Hall in New York City (1892), Orchestra Hall in Chicago (1904), Emery Auditorium in Cincinnati (1911), and Orchestra Hall in Detroit (1919).

7. In addition to its use for school-related purposes, the Theatre was used for a wide variety of public performances, lectures, and events. The Theatre was the home of The Cincinnati Symphony, and hosted international events and lectures that included artistic icons such as Leopold Stokowski, Fritz Reiner, Arturo Toscanini, Igor Stravinsky, the Federal Theatre Project, Ottorino Respighi, John Philip Sousa, Fritz Kreisler, Anna Pavlova, Vaslav Nijinsky, Mary Wigman, Bette Davis and George Gershwin. Notable appearances at the Theatre include Martin Luther King, Jr., Eleanor Roosevelt, Thurgood Marshall, and Robert Taft. Many other major artists, organizations, civil rights activists, concerts, lectures, NAACP conferences, radio shows, and films have been held at the Theatre.

8. UC assumed control of the Ohio Mechanics' Institute in the 1969. UC acquired the Ohio Mechanics' Institute's assets, including the building and Theatre, and assumed the Ohio Mechanic's Institute obligations as trustee of the charitable trust that held the Theatre.

9. Gradually, until the late 1990s, UC allowed the building and Theatre to fall into disuse. Eventually, UC used the building for storage and the Theatre was open for events only occasionally.

10. In the late 1990s a complex plan was developed to provide funding for the Theatre and maintain the building. The plan was to renovate the majority of the building into market-rate apartments and commercial space, which, after paying off the mortgages necessary for construction, would provide funding for the Theatre. The portion of the building containing Theatre was to be subleased to a non-profit organization that was required to manage the Theatre and raise funds for its renovation and operations. In essence, the Theatre was to be benefited by the development and operation of the apartments.

11. On October 22, 1999, UC filed a complaint in Court of Common Pleas, Hamilton County, Case No. A9906550, seeking a declaratory judgment concerning the trust created by Mary M. Emery and seeking permission to carry out its plan. The Court approved UC's plan to generate funding to rehabilitate the Theatre.

12. On the same day it filed its complaint, UC entered into a 40-year lease agreement with Emery Center Apartments Limited Partnership ("ECALP") for $1 dollar per year, a then recently formed for-profit corporation. The lease is renewable at ECALP's discretion for another 40-year term, with rent set at $1 per year in the renewal term as well.

13. Under the terms of the lease, ECALP was to renovate the majority of the building into market-rate apartments and commercial space, while the portion of the building containing the Theatre was required to be subleased to Emery Center Corporation (ECC), a non-profit corporation. The sublease to ECC was likewise for a 40-year term at $1 per year. The sublease between ECALP and ECC is also dated October 22, 1999, the day UC filed its complaint.

14. ECC, as an entity, pre-existed UC's plan. ECC was created in 1988 to operate and manage the entire building as a community arts center, but became inactive. In short, ECC's initial attempt to revitalize the building and the Theatre itself failed for a variety of reasons. ECC corporate charter was cancelled by the State of Ohio in 1993.

15. ECC reinstated itself with the State of Ohio in 1998 to sublease the Theatre and act as a conduit for UC grant funds as set forth below. The newly re-constituted ECC was markedly different from the original ECC both in terms of leadership and mission. Only two members of the original ECC board of 20 plus members remained. The ECC mission as winnowed down in 1998 was simply to sublease the Theatre, accept a grant from UC and distribute those grant funds to ECALP, as further described below.

16. A vital component of the UC/ECALP plan was that UC had to get money to ECALP as the apartment project was not viable without a large influx of capital that could not realize a return on investment – in short, free money.

17. In 2001, UC provided that influx of capital. UC made the capital infusion in the form of a grant to ECC. Specifically, UC made 2 grants to ECC in the total amount of $2.8 million. Those grant agreements are attached as Exhibit 1.

18. UC was unable to grant, loan or otherwise direct money to ECALP directly as ECALP was and is a for-profit real estate company. So, ECC's status as a non-profit entity, to which UC could grant money, was pivotal to UC's plan to direct money to the for-profit ECALP.

19. After receiving the grant money of $2.8 million in public funds, ECC immediately loaned the entire sum to the for-profit ECALP to facilitate the for-profit real estate development.

20. The grant agreements from UC to ECC were unorthodox in that

a) they were structured so that UC could funnel money to a for profit development;

b) they required ECC, a non-profit entity with no material asset other than the $2.8 million in grant funds, to immediately loan this entire grant sum to a for-profit company in order to finance a speculative real estate deal;

c) they did not require ECC to demand market interest or security for the loan; and

d) $1 million in grant funds had been spent by ECALP before a grant agreement was in place.

21. The ultimate "loan" from ECC to ECALP was unorthodox in that

a) the loan did not carry market interest; there is virtually no interest on the loan from ECC to ECALP (1% per year from 2007 to re-payment, if such re-payment ever occurs);

b) although ECC was the largest source of funds for the apartment development project, its "loan" is subordinate to three other mortgages.

c) considering that the "loan" from the non-profit charity ECC to the for-profit ECALP was given effectively without interest, without meaningful security in any collateral, and without any realistic hope of being re-paid, this loan was really more like equity.

22. The UC grant to ECC and ECC loan to ECALP can only be viewed as a disguise investment by UC in a for-profit real estate venture. The $2.8 million infused by UC into this project was in effect an equity investment of public money into a speculative real estate deal. The grant transaction and associated loan were nothing more than window dressing to disguise UC's investment in a risky for-profit transaction.

23. As set forth above, UC made a $2.8 million investment in a for-profit real estate development deal using public funds, though UC, ECALP and ECC went to lengths to characterize the investment as something else (namely a grant to a non-profit theater company). Despite this significant financial commitment of public funds, UC has exercised extremely lax oversight over ECC and ECALP, allowing mismanagement, outright self-dealing and conflicts of interest to arise.

24. ECALP has not had audited financial statements since 2007. ECC has never had audited financial statements.

25. ECC board members describe ECC as "dysfunctional."

26. ECC and ECALP are composed largely of the same individuals. For example, ECC's board members are on ECALP's board and involved in ECALP's management. In meetings with the "two" groups, it is often difficult to tell who is acting or speaking for which entity. In a deposition taken in a lawsuit related to this one, when asked how he knew whether he was meeting with representatives from ECC as opposed to ECALP, Greg Mohar, UC's associate general counsel, testified "they wore hats."

27. The de facto manager of ECALP, who is also on the board of ECC, has hired her own company, ostensibly run by her husband to purportedly avoid the obvious conflict of interest, as the property manager for the Emery apartment building. Consequently, over the course of several years, ECALP and ECC have made sizable monetary payments to the company owned and run by the de facto manager of ECALP and her family. This is even more problematic given UC's written assertion that "ECC and ECALP function as non-profit type entities" with respect to the building and

Theatre, meaning that both these entities are legally required to avoid this kind of self-dealing and conflict of interest by board members and management.

28. The property management functions of this company do not include leasing activities. So, in addition to property management fees paid to a board member of ECC and ECALP, ECALP also pays a third party leasing agent. Upon information and belief, the property manager and leasing agent, who both reside in the building, pay below market rent for their homes as additional compensation for "services" in addition to the monetary fees paid to them. In addition to the conflict and self-dealing issues obviously implicated in this arrangement, these below market rentals conflict with the purported mission of ECALP and ECC to increase revenue from the apartments to support the Theatre.

29. ECC is also the controlling member of Emery Operating, LLC (Emery Operating), which in turn is, the general partner of ECALP. Despite the overlapping and intertwined board membership and control, and the fact that, in every material way, ECALP and ECC are mere alter egos of each other, there is a significant conflict between the interests of ECC and the interests of ECALP. ECALP, fundamentally, is opposed to truly developing and increasing the operations of the Theatre because

a) its management is opposed to any interruption in its income, revenue and management and leasing fees;

b) residential tenants frequently complain about Theatre operations, noises and crowds;

c) ECALP's de facto manager lives in the Emery apartments, and is personally affected by the Theatre's operation; and

d) ECALP, its board leadership and management are satisfied with the status quo (i.e., no Theatre).

There is significant disincentive for ECALP and its management to encourage the Theatre to succeed.

30. UC was aware of, or should have been aware of, the identity of ECALP management, and its vested personal interest in preserving its property management position, income and personal control over the building. Yet UC allowed a hopelessly conflicted property manager to maintain positions with ECALP and ECC, effectively precluding any realistic prospects to rehabilitate and ultimately open and operate a Theatre. None of this conflict was apparent to prospective business partners or other third parties.

31. Another manifestation of the conflict is that the renovations of the apartments undertaken by ECALP in the early 2000s irreversibly and substantially damaged the Theatre. The Theatre was left without running water, without heat, without bathrooms, without usable ingress/egress, without fire escapes, and without any easy way to provide these necessities at a later date. A functional and decorative staircase was also removed from the Theatre at the direction of ECC/UC/ECALP rendering entire floors unusable and leaving at least one floor of the Theatre completely inaccessible.

32. UC's neglect and lack of sufficient oversight has also allowed a real estate tax dispute with the Cincinnati School District Board of Education (the "School Board") to fester.

33. When renovated in 2001, the building was benefited by a 12-year property tax abatement for new residential construction in the City of Cincinnati. This abatement expired in 2012, at which time the School Board filed a complaint seeking that real estate taxes be assessed against the value of the entire building.

34. UC has attempted to maintain that it is entitled to a property tax exemption due to the building's use as one that supports UC.

35. UC's position on this point directly conflicts with its representation to the Common Pleas Court of Hamilton County in 1999 that the building's facilities were "unproductive" and were "neither required nor will be required for the use of the University."

36. In response, the School Board asserts that the building is not exempt because the building is fundamentally an apartment building that UC has leased to a for-profit corporation, ECALP, rather

than one used for a non-profit purpose. As for the public/charitable benefit of ECALP's apartment operation, the School Board notes that ECALP is providing, at best, de minimis financial support for the Theatre.

37. The dispute is ongoing in the Ohio Department of Taxation.

38. One of the arguments UC and ECALP make in support of the real estate tax exemption is that without the exemption, the apartments would not make any profit for the Theatre, and might even lose money.

39. That such a situation could occur is not consistent with idea of competent, professional property management. For this situation to arise, the professional property manager for the apartments must have not understood that the real estate tax abatement for new residential construction would end in 2012, a surprising misunderstanding in that this very same property manager applied for the initial exemption which by its terms expired in 2012. Then, the professional property manager did not charge rents sufficient so the building could pay its share of property taxes while also fulfilling its duty to provide funding to the Theatre.

40. Equally disturbing mismanagement is seen in the failure of UC or ECALP to challenge the value assigned to the OMI building by the Hamilton County Auditor. After the School Board challenged the tax exemption for tax year 2012, UC and ECALP still had the opportunity to challenge the Hamilton County Auditor's valuation of the building for 2012. Either UC as owner or ECALP as lessee could have filed a complaint against valuation at any time between January 1, 2013 and March 31, 2013 to challenge value for tax year 2012. Despite a valuation that was at least double the fair market value of the property, neither UC nor ECALP challenged the valuation for 2012.

41. From January 1, 2014 until March 31, 2014, UC and ECALP had the opportunity to challenge the valuation for tax year 2013. In another failure of management, neither UC nor ECALP

filed a valuation complaint missing yet another opportunity to reduce the ultimate cost of loss of the real estate tax exemption.

42. Neither ECALP nor UC challenged the property valuation for either 2012 or 2013 despite a frontal assault on the tax exemption for the property. This failure exposed ECALP and UC, and ultimately the Theatre, to significantly higher taxes (double) should the School Board prevail in the case.

43. Despite legal requirements that the Theatre remain open, under ECC's control from 1998 onward, the Theatre sat empty for a decade and, in fact, was adversely impacted by the construction and operation of the apartments. This is in all likelihood due to ECALP's vested interest in preferring the interests of the apartments, the apartment tenants, and ECALP management and their friends and family over the interests of the Theatre. UC's lax oversight has allowed this conflict of interest to continue unabated between ECALP and the mission of ECC. It is irresponsible and careless for UC to rely on ECC or ECALP to care for the Theatre without closer scrutiny.

Theatre Development

44. Due to growing political and community pressure, in 2008, UC asked ECC to find a viable Theatre manager and program "as soon as possible."

45. In the fall of 2008, while on a tour of the Emery apartment building, the principals of Requiem, Ms. Gordon and Ms. Manchise, were shown the Theatre and immediately saw its potential. Ms. Gordon and Ms. Manchise have significant theatre operation and performing arts experience nationally, including experience with performing arts in New York and Los Angeles. When told during their initial tour that "no one knows what to do with it" Ms. Gordon and Ms. Manchise began to formulate a plan to revitalize and utilize the Theatre.

46. On February 16, 2009, in conjunction with programming Ms. Gordon and Ms. Manchise were developing for the Theatre with the University of Cincinnati's Conservatory of Music

("CCM"), Ms. Gordon and Ms. Manchise toured the Theatre with UC's associate general counsel, Mr. Mohar, the Dean of CCM Doug Knehans and the property manager of the apartments.

47. In an email following the tour, on February 18, 2009, Mr. Mohar made clear that "arrangements for use of the theatre must be made with [ECC], which controls it." Mohar's email went on to state that UC "is no longer directly involved in the operations."

48. At every subsequent step of the way, when it came to the Theatre, Requiem was directed to negotiate with and work through ECC, not UC.

49. On November 12, 2009, per a resolution from the ECC board of trustees, Requiem was designated as the preferred sublessee of the Emery Theatre complex. The resolution was signed by Dale McGirr, the Chairman of the ECC board. Previously, Mr. McGirr had been a top official at UC. The resolution makes no mention of any requirement of any further approval of any kind by UC.

The Deal

50. Requiem and ECC signed a Binding Letter of Intent on September 17, 2010 (the "BLI" is attached as Exhibit 2). The BLI reflected the understanding of the parties that they had entered into a long-term binding agreement.

51. The BLI was signed by the principals of Requiem, and by Mr. McGirr, the chairman of the ECC board. At the time of signing, ECC represented that it represented itself, UC, and ECALP and that there was no need to get a separate signature from UC. ECC unequivocally indicated that it had authority to act on behalf of and bind UC in agreeing to the BLI.

52. The BLI set out the obligations of the parties as to fundraising, Theatre renovation, Theatre operations, and commencement of a sublease agreement in favor of Requiem.

53. At the time of signing the BLI, ECC requested "one last chance" to conduct and complete its own fundraising efforts, with a goal of having the Theatre open in time for Cincinnati's hosting of the World Choir Games in 2012. Achieving this goal required that ECC raise approximately $1.5 million by July 1, 2011. Understanding that if ECC could achieve this level of fundraising, it would

certainly benefit the Theatre which in turn furthered Requiem's mission, Requiem agreed in the BLI to give ECC an opportunity to achieve this fundraising goal. However, Requiem needed some level of certainty that if ECC failed to meet this fundraising goal, that Requiem would have exclusive possession of the Theatre. Accordingly, the BLI further provided that if ECC was unable to meet this goal by July 1, 2011, then Requiem would become the sublessee of the Theatre on substantially the same terms as ECC had in its lease with ECALP (i.e. 40 years at $1 per year).

54. There is no mention in the BLI of any condition or requirement that Requiem's sublease be subject to UC's approval. Indeed, based on the BLI and the "preferred sublessee" status of Requiem, as well as the representations that ECC represented UC in signing the BLI, UC's approval of a sublease for Requiem had, in fact, already occurred. The only conditions to effectiveness of the sublease were (i) ECC's failure to meet its fundraising goal and (ii) passage of time.

55. Based on the finalized deal, which was evidenced both by the BLI and the subsequent conduct of the parties, the principals of Requiem relocated from New York to Cincinnati permanently to devote their efforts full time to opening and operating the Theatre.

56. By July 1, 2011, ECC had not achieved the stated fundraising targets in the BLI, so Requiem accordingly obtained rights as a sublessee.

57. Another component of the BLI was that the parties enter a management agreement naming Requiem the manager of all programming at the Theatre. After executing the BLI, the parties drafted, finalized and executed a management agreement, which became effective on August 3, 2011.

Performance of the Agreement

58. Despite the alleged lack of a formal sublease, under the agreement, Requiem had the right to access, possess and occupy the Theatre as it wished. In other words, pursuant to the BLI, Requiem got "the keys to the building."

59. After months of preparation, on November 11, 2011, the Theatre officially opened, hosting a three-evening concert and fundraising event that included 15 different arts organizations and over 300 performers. An audience of 1,500 attended over the three evenings, and Requiem raised more than $120,000 for the Theatre.

60. The opening night event was hosted by Drew Lachey and included mainstage performances from The Cincinnati Symphony Orchestra, Over the Rhine, Exhale Dance Tribe, Peter Adams, and dancers from The Cincinnati Ballet. The evening included performances from CCM students, including a site specific piece written by the chair of the CCM drama department. The architectural team selected to revitalize the theatre—acclaimed Cincinnati architect John Senhauser and the nationally-renowned architectural firm Westlake Reed and Leskosky also presented.

61. In attendance on the sold-out opening night were Greg Mohar of UC, as well as nearly all ECC/ECALP board members.

62. Despite the lack of the formality of an executed lease or sublease, Requiem performed under the terms of the deal as all parties understood it at the time. Requiem staged concerts, fundraising events, dance performances and other artistic events. News reports indicated that the revitalization of the Theatre was seen as a key component in the overall rebirth of the Over-the-Rhine neighborhood. The energy and dedication to the community shown by Ms. Manchise and Ms. Gordon was praised by local elected officials and other community leaders. For instance, in 2011, Cincinnati City Council approved a grant of $150,000 specifically to Requiem for an exterior marquee for the Theatre.

63. Until being unlawfully locked out of the space in August, 2013, Requiem staged 35 events hosting a total of more than 10,000 people at the Theatre. During that time, Requiem enjoyed every right a leaseholder would have to the Theatre without objection from ECC, ECALP or UC.

64. Requiem had keys to the Theatre and could come and go as it pleased. Requiem had complete access to and control over the needed areas of the Theatre. Requiem procured the

applicable insurance that, previously, ECC had been responsible for obtaining. UC knew about and endorsed Requiem's possession, occupation and use of the premises. UC knew about and allowed Requiem to meet with donors and represent that it was restoring the Emery. UC allowed Requiem to create significant visibility for the Theatre. In fact, up to a point, UC supported and enabled Requiem's initial success.

65. UC undoubtedly benefited from Requiem's activity. Requiem established an internet presence for the Emery and significantly raised the Theatre's visibility, profile and value in the community. Since 2011 Requiem raised more funds for the Theatre and held more events than ECC had since 1999.

66. Long after the BLI was in place and after Requiem had opened the Theatre, ECC indicated for the first time that it was unable to enter into a formalized long-term sublease agreement on its own behalf because, under its lease with ECALP and ultimately UC, UC had to approve of any sublease ECC would enter into.

67. This news was surprising to Requiem, as throughout the process, UC directed Requiem to discuss and negotiate with ECC and indicated that ECC had sufficient authority to enter into any appropriate deal for the Theatre. As Mohar testified in his deposition:

> Q: . . . did you understand that (in 2009) Requiem wanted to enter into some sort of leasing arrangement at the Emery Theatre?
>
> A: They wanted a lease.
>
> Q: Did you direct them to ECC to discuss that matter?
>
> A: Yes. I said, "Arrangements for use of the theater must be made with the Emery Center Corporation which controls it."
>
> Q: And is that the position of the University?
>
> MR. FUCHS: Objection.
>
> A: That's the reality.

68. Moreover, given the representation of ECC that it spoke for and had authority to bind UC under the BLI, and given UC's subsequent ratifying acts, Requiem understood that UC had, in fact, already approved of a long-term sublease agreement with Requiem.

69. ECC's message to Requiem was that it had full authority to enter into a binding agreement for the space in question. ECC later stated that UC would "rubber stamp" any sublease it wanted to make with Requiem.

70. In the Emery building, ECALP has sublease agreements with two other non-residential entities. One sublease was entered in 2007 with a local development entity known as the Cincinnati Development Fund ("CDF"). Another sublease, also entered in 2007, was with a local coffee shop known as the "Coffee Emporium." Each sublease is signed by the sublessee and ECALP. Notably, each agreement has a signature line for UC, which is blank – unsigned – on each. None of the subleases has ever been challenged as invalid by UC or its agents.

71. Upon information and belief, either ECC or ECALP entered into a third sublease with Local Initiatives Support Corporation or "LISC", a third party entity managed by ECALP's de facto manager. Without question, LISC operated its Cincinnati office out of the 2nd floor of the apartment building whether pursuant to a written sublease or not. Upon further information and belief, UC likewise did not approve or sign the LISC sublease, whether written or oral, and never challenged the LISC sublease as being invalid or unauthorized in any way.

Certificates of Occupancy

72. ECC and, by extension, UC, were required to use best efforts to keep the Theatre licensed to allow operations, including the obligation to acquire, hold and maintain all necessary and appropriate permits and licenses.

73. In conjunction with the development of the building's residential apartments, UC allowed the Theatre's long-standing zoning designation to lapse, meaning the Theatre was no longer exempt

from the Americans with Disabilities Act (ADA). Therefore, any future rehabilitation of the Theatre would require compliance with the ADA.

74. In addition, in building the apartments UC allowed the following damage of and denigration to the Theatre to occur:

a) removal of the HVAC system;

b) removal of water and plumbing system, affecting the restrooms;

c) removal of electricity to certain areas, including box seating areas;

d) removal of ingress and egress;

e) removal of fire escapes;

f) removal of ladders and other infrastructure necessary for maintenance and overall functionality.

75. Because of these damages, the Theatre was unable to obtain a permanent certificate of occupancy and had to rely on temporary certificates.

76. When a temporary occupancy certificate expired in December 2012, UC initially refused to cooperate in renewing it, a refusal which prevented the Theatre from being used. UC eventually agreed to obtain a last temporary occupancy permit in April 2013.

77. To avoid reliance on temporary certificates of occupancy, Requiem endeavored to make the necessary infrastructure improvements needed to achieve ADA compliance and allow the issuance of a permanent certificate of occupancy. To this end, Requiem obtained a pledge of $500,000 to commence renovations that would have resulted in the issuance of a permanent certificate. However none of UC, ECALP or ECC would allow the renovation to commence.

78. UC claimed that the lack of a permanent certificate of occupancy provided sufficient basis to renege on the deal to formalize a long-term lease arrangement with Requiem. However UC and its agents were responsible for making a permanent certificate of occupancy unobtainable.

79. On January 16, 2013, ECC informed Requiem that it was electing not to renew the management agreement "for no cause."

80. In response, on January 24, 2013, Requiem once again requested that a long-term lease or sublease be formalized, as Requiem was entitled to in accord with the binding deal that had been struck and was being performed.

81. ECC responded that a lease or sublease required UC's approval and it could not finalize an agreement without UC's involvement.

82. Despite its belief that it already had an enforceable, binding agreement giving it rights to the Theatre, Requiem made a good faith effort to get UC to again approve of its sublease with ECC. Incredibly, especially when compared to UC's previous approval of the Theatre sitting empty for nearly a decade, Requiem was informed that UC would likely require significant information on Requiem's fundraising history and an agreed timeline for renovations before agreeing to a sublease between ECC and Requiem. These demands are even more appallingly unprecedented when compared to the demands upon ECC in 1999, the year in which UC gave \$2.8 million to ECC without any scrutiny of ECC's fundraising history (none), fundraising prospects (none), plans for renovation (none), or general ability to run a theater (none). In fact, UC allowed \$1 million of the grant to be spent BEFORE there was even a grant agreement in place, and thereafter allowed ECC to loan the entire \$2.8 million to ECALP, again a for-profit entity, for renovation of the apartments. None of the \$2.8 million UC gave to ECC went to the Theatre itself, and UC granted the money without any assurance of ECC's ability to even operate as a non-profit entity.

83. In stark contrast to what was represented to the Court of Common Pleas of Hamilton County in 1999, ECC never really intended to operate as a non-profit entity, filing a final return with the IRS on March 18, 2003 (attached as Exhibit 3) which states that "in 2002 the decision was made to disband" the ECC. The return also states that:

> The Emery Theatre project has been abandoned by Emery Center Corporation due to unsuccessful effort to raise funds sufficient to complete the project. Improvements made to date have been turned over to Emery Operating LLC in conjunction with the University of Cincinnati.

ECC raised no material funds for renovations and held virtually no public events. It is obvious that ECC's only intended purpose was to act as a conduit for UC to direct $2.8 million to the for-profit developer and property manager, ECALP.

84. Nevertheless, Requiem stood willing to agree to the conditions purportedly being demanded by UC, which would have satisfied the conditions promised to the Court of Common Pleas in Hamilton County in 1999. Inexplicably, UC simply stopped negotiating, and again directed Requiem to negotiate with ECC.

85. In February, 2013 the president of UC, Santa Ono, met with Cincinnati City Council Member Laure Quinlivan to discuss the deal with Requiem. After that meeting, in a public statement UC characterized the situation as Requiem "quarreling with ECC over control of the theatre" and stated that Requiem "lobbied UC to resolve the dispute in its favor." UC went on to say that "it is not in UC's interest to get involved in what is essentially a private business dispute . . . the parties need to work this out between themselves."

86. At this time, then, on one hand, UC is telling Requiem that its approval is essential to a deal with ECC, while simultaneously telling others, including a Cincinnati City Council Member, that it is not involved in the matter.

87. On April 8, 2013 attorneys for all the parties held a settlement meeting. Greg Mohar of UC attended briefly. He signed an application for a temporary certificate of occupancy for the Theatre, and then left, leaving the others to continue with the meeting to attempt to resolve the dispute.

88. ECC continued to maintain its new position that it could not agree to a sublease with Requiem without UC's involvement. UC continued to assert that any agreement must be reached with ECC. In short, ECC and UC whipsawed Requiem between themselves ensuring that even after

Requiem's significant investment of time, talent and treasure in the Emery, no formal sublease would be forthcoming.

89. In accord with the January 16, 2013 letter purporting to terminate the management agreement, ECC demanded that Requiem vacate the Theatre by August 3, 2013. Later in the month, ECC changed the locks.

90. Requiem filed a civil lawsuit against UC, ECC and ECALP in Court of Common Pleas, Hamilton County, on August 2, 2013 (the "Hamilton County action") and subsequently filed an amended complaint.

91. UC was ultimately dismissed from the Hamilton County action without prejudice.

92. ECC filed counterclaims including a claim that Requiem caused physical damage to the Theatre. ECC voluntarily dismissed the property damage claim after ECC's de facto manager admitted in deposition that Requiem had not, in fact, damaged the Theatre.

The Purchase Agreement

93. After commencement of the Hamilton County action, the parties – including UC – continued to negotiate and on May 13, 2014, all parties plus a property development company from Indiana agreed to pursue a possible global resolution of all claims. The agreement stayed the Hamilton County action while the parties negotiated and finalized an agreement whereby UC would sell the OMI building to the Indiana developer. The May 13, 2014 Agreement is attached as Exhibit 4.

94. The May 13, 2014 Agreement specified that the Hamilton County litigation was to be stayed so that "the Purchase Contract can be negotiated and approved by the UC Board of Trustees, and executed by the parties to the Purchase Contract and so that a settlement agreement and other necessary documents can be executed by the Parties consistent with the terms of the Agreement."

95. The May 13, 2014 Agreement further provided that "[i]n the event that a Purchase Contract for the sale and conveyance of the Property is not entered into among UC, CORE, Requiem (or any

related or affiliated entity, or their assignees) and others by June 30, 2014 or such other date later agreed to, in writing, by the Parties, then this Agreement shall be null and void."

96. Requiem welcomed the opportunity to negotiate, execute and deliver a Purchase Contract that would resolve its differences with UC, ECC and ECALP.

97. However, once again, UC reneged on its agreement, refusing to allow Requiem to be a party to any documents related to its Purchase Contract with the developer, a refusal directly contrary to the intent of the May 13, 2014 Agreement. Given UC's wrongful refusal to allow Requiem to participate as a party to the Purchase Contract, it was impossible that a Purchase Contract be "entered into among UC, CORE, Requiem (or any related or affiliated entity, or their assignees) and others by June 30, 2014".

Count I - Declaratory Judgment

98. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

99. Requiem is entitled to a judgment under Chapter 2721 of the Revised Code, declaring its rights under the BLI, including its entitlement to a long-term sublease of the Theatre on substantially similar terms and for the same rent as the existing sublease between ECC and ECALP.

Count II - Specific Performance

100. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

101. Requiem has performed all obligations required of it under the BLI. UC, through its agent, is in breach of the BLI by virtue of its failure and refusal to enter into a lease or sublease, or other conveyance of a leasehold interest in the Theatre. Requiem has demanded UC and ECC's performance to no avail. Accordingly, Requiem is entitled to a judgment mandating that UC and/or ECC enter into a sublease or similar conveyance instrument in favor of Requiem on substantially similar terms to the agreements between ECC and ECALP or ECALP and UC.

Count III - Breach of Contract

102. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

103. At all relevant times, ECC was acting as the agent or apparent agent of UC.

104. Due to representations of UC and ECC, Requiem reasonably believed ECC had the authority to enter into an agreement on behalf of UC.

105. Through its agent, ECC, as well as through its own actions, UC created a binding agreement with Requiem.

106. UC ratified its intent to be bound by ECC's actions and the BLI by its conduct.

107. Moreover, the conduct of the parties demonstrates the existence of a permanent, binding agreement.

108. By failing to recognize and abide by Requiem's right to sublease and ultimately allowing Requiem to be locked out of the Theatre, UC violated the BLI and the underlying agreement that was being performed.

109. Requiem has suffered damages and is entitled to monetary compensation arising from UC's breach including damage caused by ECC's removal of Plaintiff from the Theatre, lost revenue and income due to ECC's refusal to allow Plaintiff to hold events at the Theatre in 2013 and beyond, future lost income and revenue, and such other damages as may be shown at trial.

Count IV - Breach of Duty of Good Faith and Fair Dealing

110. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

111. UC and its agent, ECC, had a duty to act in good faith and deal fairly with Requiem in connection with the BLI and the agreement between the parties.

112. UC breached its duty of good faith and fair dealing by, among other things, and without limitation, refusing to consent to a sublease; refusing to even meet to discuss additional terms or

conditions it might demand for a Requiem sublease; indicating that ECC had sufficient authority to make a deal with Requiem while at the same time holding the position that its consent was required; allowing Requiem and its principals to spend money, time and effort in reliance on ECC's agreement to the BLI while secretly intending to assert that UC had never approved the BLI; allowing other tenants of the building to sublease directly with ECC and ECALP without sign-off from UC; allowing ECALP to benefit to the detriment of ECC and Requiem; refusing to allow Requiem to operate the Theatre despite having the permits to do so; by directing Requiem to deal with ECC and ECALP who were fundamentally conflicted; by representing to Requiem and others that it was interested in the preservation and success of the Theatre while continually acting contrary to its interests; and by generally preventing Requiem from recognizing the benefit of its bargain.

113. Requiem has suffered damages as a result of UC's breach of its duty of good faith and fair dealing in an amount to be determined at trial.

Count V - Breach of Contract - Breach of May 13, 2014 Agreement

114. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

115. UC, Requiem and other parties entered into May 13, 2014 Agreement as set forth above.

116. This agreement contemplated a definitive agreement to be entered into among UC, CORE, Requiem (or any related or affiliated entity, or their assignees) and others.

117. Contrary to the May 13, 2014 Agreement, UC refused to allow Requiem to be a party to any of the material underlying agreements, including any definitive purchase and sale agreement. UC, ECALP, and ECC were all contemplated parties to these agreements, but per UC's direction, Requiem was excluded from the agreements.

118. UC's action in prohibiting Requiem from being a party to the operative documents was directly contrary to the May 13, 2014 Agreement, and constitutes a material breach of the May 13, 2014 Agreement.

119. As a result of UC's material breach of the May 13, 2014 Agreement, Requiem is entitled to damages in an amount to be determined at trial.

Count VI - Estoppel

120. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

121. By its own conduct, or through the conduct of its agent, or both, UC clearly and unambiguously represented to Requiem that Requiem was entitled to sublease the Theatre on a long-term basis on substantially similar terms to the current sublease between ECC and ECALP.

122. Requiem reasonably relied on the representations of UC and its agent to Requiem's detriment. Requiem devoted several years to working full time on the Theatre project, raising hundreds of thousands of dollars and fully engaging the full time talent of its principals and staff in furtherance of the Theatre project. UC was fully aware of Requiem's efforts and investment in the Theatre project over the years, and fully aware that Requiem expected a long-term lease or sublease and relied on such expectation in making its efforts and investment.

123. Requiem's principals relocated from New York to Cincinnati in reliance on the representations and assurances that Requiem had a long-term deal related to the Theatre after signing the BLI.

124. UC is estopped from denying Requiem a formal long-term sublease.

Count VII - Estoppel - Authority of ECC

125. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

126. In words and action, UC repeatedly communicated to Requiem and others that any deal related to the Theatre had to be worked out with ECC.

127. Requiem relied on those representations and negotiated in good faith with ECC for years, to its detriment. Moreover, ECC had never sought, and UC had never given, approval for any of the

other commercial subleases in the OMI building, and UC had never before asserted that such approval was required for a valid sublease agreement; in fact, those unapproved subleases continue in effect to this day without any objection from UC that no UC approval pertained to these subleases.

128. UC should be estopped from now insisting on its right to approve a sublease between ECC and Requiem.

Count VIII - Unjust Enrichment

129. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

130. Requiem invested years of work and hundreds of thousands of dollars in the Theatre. Through branding and marketing efforts, Requiem significantly enhanced the awareness, perception, reputation and value of the Theatre. Indeed Requiem created the current vision for the potential of what the redeveloped Theatre would look like and what it would mean to the Over-The-Rhine neighborhood and to the City of Cincinnati overall. Requiem also physically cleaned and improved the Theatre, managed programming at the site, drew people in for events at the Theatre and continued to develop plans for restoration.

131. Requiem made these investments with the understanding that it had a binding long-term deal related to the Theatre. UC was aware and approved of Requiem's efforts.

132. Because of Requiem's investment of time, talent and money, the value of the Theatre and its building was significantly increased.

133. UC was unjustly enriched by the increased value created by Requiem's efforts in connection with the Theatre.

134. Requiem is entitled to damages in an amount to be determined at trial for such unjust enrichment.

Count IX - Fraud in the Inducement

135. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

136. UC represented to Requiem that ECC had full authority to agree to a long-term sublease agreement with Requiem without requiring any additional approvals, knowing full well it would later claim that ECC lacked that authority. UC intended for Requiem to rely on these representations.

137. Requiem justifiably relied on UC's representations that ECC had authority to make long term agreements related to the Theatre.

138. Requiem was damaged by its reliance.

139. Requiem is entitled to damages in an amount to be shown at trial.

Count X - Tortious Interference

140. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

141. UC knew of the BLI and ECC's obligations to Requiem under it.

142. UC and its agent ECALP had a duty not to interfere in the contractual and business relations of ECC and Requiem.

143. UC intentionally and without privilege breached this duty by, among other things, refusing to approve use of the Theatre, refusing to allow Requiem to operate the Theatre consistent with the plan UC itself promised the Court in 1999, insisting on its right to approve or consent to a sublease or assignment, refusing to consent to such assignment or sublease, and generally interfering in the business relationship contemplated in the BLI.

144. UC and its agent ECALP intentionally and without privilege breached this duty in many ways including failure to consent to a sublease or assignment, through its Board's elevation of the interests of ECALP over the interests of ECC and the Theatre, and by generally interfering with the contractual and business relationship contemplated by the BLI.

145. Requiem has suffered damages as a result of this breach by UC and its agent ECALP in an amount to be shown at trial.

Count XI - Negligence - Negligent Misrepresentation

146. Plaintiff fully incorporates each and every allegation contained in the preceding paragraphs as if fully restated herein.

147. UC had a duty to properly administer the charitable trust under which the Theatre is controlled and to ensure ECC and ECALP were effective in carrying out the wishes and objectives – and fulfilling the obligations – of UC.

148. UC also had a duty to provide accurate, reliable information to Requiem concerning the Theatre and those entities had established to care for the Theatre.

149. UC has exercised extremely lax oversight over ECC and ECALP, allowing mismanagement, self-dealing and conflicts of interest to arise.

150. One of the alleged reasons given by ECC for not finalizing its sublease with Requiem was complaints to ECALP from tenants that did not like the noise and disruption caused by activities of the Theatre. These alleged disruptions resulted from the successful revival of the Theatre by Requiem – a revival that ECC is charged with supporting. There is therefore a disincentive for ECALP and its management to want to see ECC's mission and the Theatre succeed.

151. Prior to Requiem's involvement, principals of ECALP, who themselves reside in the Emery apartments, used some of the Theatre space for their personal benefit. These principals, and their families, did not appreciate the loss of their "free" personal areas created by the Theatre's renovation.

152. UC breached its duties when it directed Requiem to work with ECC and represented that ECC was a capable, functional, and competent to carry out the tasks expected of it.

153. In particular, UC directed Requiem to negotiate and work with ECC concerning the Emery while at the same time it knew or should have known that:

- ECC had disbanded and abandoned the Emery Theatre project (as stated in a 2002 sworn statement to the IRS);

- ECC was run by the same individual that managed ECALP;

- ECALP's manager lived in the building and would be adverse to increased Theatre operations;

- ECALP's manager hired her own company to manage and maintain the apartment building and has received significant payments from ECC and ECALP;

- There was an inherent conflict of interest between ECALP and ECC, one that resulted in ECALP repeatedly choosing the interests of the apartment building over the interests of the Theatre;

- ECALP neglected to challenge a significantly inflated property valuation;

- Without a property tax exemption, ECALP manages the building so inefficiently and/or charges such below market rent that it would likely lose money;

- That neither ECC nor ECALP maintained audited financial statements;

- That ECC board members consider ECC "dysfunctional."

154. These conflicts, self-dealing and mismanagement occurred under UC's watch, with its knowledge or due to its careless oversight of the Theatre and the entities it charged with responsibility for it. It was irresponsible and careless for UC to direct other parties to work with ECC or ECALP with respect to subleasing or operating the Theatre, as neither is a bona fide, competent party, capable of making a deal.

155. Requiem relied on UC's representation that ECC was a capable, appropriate and competent party with which to transact and Requiem has suffered due to UC's negligence in making that representation.

156. Requiem is entitled to damages in an amount to be determined at trial due to the harm it suffered because of UC's negligent representation.

WHEREFORE, Plaintiff The Requiem Project demands judgment against UC that the Court:

A. Declare that Requiem is entitled to a long term sublease of the Theatre;

B. Order that UC, or the entity in possession of the Theatre, enter a long-term sublease agreement with Requiem;

C. Specifically enforce the Binding Letter of Intent;

D. Award damages against Defendant in excess of $25,000, in an amount to be determined at trial.

E. Award the cost of this action, including the Plaintiff's attorneys' fees and all such relief the Plaintiff may be entitled to in law or equity.

Respectfully submitted,

Sean P. Callan (0062266)
Matthew Curran (0077038)
MANLEY BURKE, LPA
225 West Court Street
Cincinnati, Ohio 45202-1098
Telephone: 513.721.5525
Facsimile: 513.721.4268
sean.callan@manleyburke.com
mcurran@manleyburke.com

Attorneys for Plaintiff

N:\CLIENTS\Requiem\Pleadings\Draft Court of Claims Complaint against UC - Revised 1 14 15.docx

Exhibit 1

GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is made and entered into effective as of the 31st day of January, 2000 by and between the University of Cincinnati, a state university and a body politic and corporate (the "University") and Emery Center Corporation, an Ohio not-for-profit corporation ("ECC").

WITNESSETH:

WHEREAS, the University owns certain real estate and all improvements thereon located at the intersection of Walnut Street and Central Parkway in Cincinnati, Ohio, which includes the building formerly known as the Ohio College of Applied Science Building (the "OCAS Building") and the Emery Theater Auditorium (the "Theater"), which said real estate is more particularly described on Exhibit A, attached hereto and incorporated by reference herein (hereinafter said real estate, together with the improvements located thereon, is referred to as the "Property"); and

WHEREAS, the University entered into a Lease Agreement, dated October 22, 1999, and has entered into or will enter into an Amended and Restated Lease Agreement, dated as of October 22, 1999 (the "Lease") with Emery Center Apartments Limited Partnership, an Ohio limited partnership (the "Partnership"), pursuant to which the Partnership has leased and will continue to lease the Property on a long-term basis for the purpose of: (i) enabling the Partnership to renovate and convert the OCAS Building into a 62 unit market rate apartment housing project; and (ii) entering into a long-term sublease (the "Sublease") with Emery Center Corporation, an Ohio not-for-profit corporation ("ECC"), pursuant to which ECC shall renovate, operate, maintain and improve the Theater; and

WHEREAS, the Partnership shall include as its sole General Partner Emery Operating, LLC, an Ohio limited liability company ("EOC"), which said EOC entity is an affiliate of ECC; and

WHEREAS, the intent and purpose of the University's execution and delivery of this Agreement and the Lease, and the University's consent to permit the Partnership to execute and deliver the Sublease is to promote, encourage, and facilitate plans by the Partnership and ECC, respectively, to extensively renovate, improve, maintain, and operate both the OCAS Building and the Theater independent of the continued financial support of the University; and

WHEREAS, the University has agreed to support, in part, the renovation and redevelopment of the OCAS Building with the following financial assistance: (i) provide a grant in the amount of $1,000,000 to ECC, as set forth in a certain Grant Agreement, dated as of October 22, 1999 (the "Initial Grant Agreement"), for the sole and express purpose of enabling ECC to loan such grant proceeds to the Partnership to enable the Partnership to undertake and complete the Initial Phase Construction Work (as defined in the Initial Grant Agreement); and (ii) provide a grant to ECC in the amount of $1,800,000, as set forth in this Agreement, which said grant shall be made for the sole and express purpose of enabling ECC to loan such grant proceeds to the Partnership to enable the Partnership, along with other debt and equity financing, to undertake and complete the renovation and redevelopment of the OCAS Building into 62 units of market rate apartment rental housing and other related commercial, office and retail space, and related improvements (collectively, the "Project" or the "Housing Activity"); and

WHEREAS, ECC and the University desire to enter into this Agreement for the purpose of setting forth their mutual agreements and understandings with regard to the $1,800,000 grant to be provided hereunder and the undertaking and completion of the Project.

NOW THEREFORE, for valuable considerations mutually exchanged, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Grant of Funds. The University hereby grants to ECC a sum in the amount of One Million Eight Hundred Thousand and no/100 Dollars ($1,800,000.00) (hereinafter, the "Grant Amount"), for the sole and express purpose of enabling ECC to

loan such Grant Amount to the Partnership to facilitate the undertaking and completion of the Project, which includes the redevelopment of the OCAS Building into a sixty-two (62) unit multi-family market-rate apartment project to be known as "Emery Apartments".

2. Use of Funds. The Grant Amount shall be used solely for the purposes and obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data as appropriate evidencing the costs incurred.

(a) The parties expressly acknowledge and agree that ECC shall loan the entire Grant Amount to the Partnership for the purpose of enabling the Partnership to undertake and complete the Project, such work and costs being more particularly described in the Statement of Project Budget, attached hereto as Exhibit B, incorporated by reference herein (the "Statement of Project Budget") at a cost not to exceed $9,760,356. The loan of the Grant Amount from ECC to the Partnership shall be made under terms and conditions acceptable to ECC and the Partnership, and shall be structured in a manner to enable said loan to be included within the eligible basis for the computation of certified historic structure tax credits under Section 47 of the Internal Revenue Code of 1986, as amended, which shall become available to the Partnership in connection with the completion of the Housing Activity.

(b) ECC acknowledges and agrees that the Grant Amount shall be used for no purpose other than as is expressly permitted herein.

(c) Immediately upon the complete execution of this Agreement, the Partnership shall enter into a Construction Management Agreement (the "CM Agreement") with Mansur Construction Management Services, LLC (the "Construction Manager"), pursuant to which the Construction Manager shall agree to undertake and complete the balance of the construction work referenced in the Statement of Project Budget for a guaranteed maximum price not to exceed Six Million Six Hundred Fifty-Six Thousand Four Hundred Sixty-Six and no/100 Dollars ($6,656,466.00). The parties hereto agree that the CM Agreement and the plans and specifications for the work to be undertaken and completed thereunder shall be subject to the review and approval of Ron Kull, AIA, acting on behalf of Emery Operating, LLC (i.e. the General Partner of the Partnership) and the Partnership. The CM Agreement shall require completion of the work described therein to occur within thirteen (13) months from the effective date of the CM Agreement.

3. <u>Accounting Procedures</u>. ECC shall cause the Partnership to keep all records pertaining to the Project in a manner which

is consistent with generally accepted accounting principles. All disbursements of the Grant Amount shall be supported by contracts, vouchers, invoices, and/or other data as appropriate, evidencing such disbursements.

4. Disbursement of Grant Amount. Simultaneous with the complete execution of this Agreement, the University shall transfer the Grant Amount to Security Title and Guaranty Agency, Inc. ("STGI"), the title company designated by ECC and the Partnership to disburse all funds during the construction phase of the Housing Activity. STGI shall agree to receive, hold and disburse the Grant Amount pursuant to the terms of an Escrow Agreement to be entered into by and among ECC, the Partnership and STGI, in a form attached hereto as Exhibit C, incorporated by reference herein (the "Escrow Agreement").

5. Term. The parties agree that this Agreement shall begin on the first day described above and shall expire on or before December 31, 2002, unless such dates are modified in accordance with the terms of this Agreement.

6. Audits and Inspections. At any time during normal business hours, upon reasonable prior written notice, and as so often as the University shall deem necessary, and in such a manner as to not interfere with the normal business operations, ECC shall cause the Partnership to make available to the University, for examination, all of its records with respect to

matters covered by this Agreement, including, but not limited to, records pertaining to the use and disbursement of the Grant Amount.

7. Termination. In the event that ECC fails to perform satisfactorily its obligations under this Agreement, the University may: (i) terminate this Agreement after providing ECC and other parties designated in Section 10(d) below with written notice in accordance with the notice provisions of this Agreement, of its failure to perform satisfactorily any requirements of this Agreement (the "Default Notice"), which said notice shall provide for a sixty (60) day period to cure any such cited defaults under this Agreement; or (ii) assist in developing a remedial plan to address any defaults or conditions of failure to perform along with a proposed schedule to bring such conditions of default into compliance with the terms of this Agreement. The University agrees to permit ECC, or any of the parties designated in Section 10(d) below, the opportunity to cure any condition of default cited in the Default Notice within the applicable cure period.

8. Effect of Termination. Within sixty (60) days after the termination of this Agreement, ECC shall cause to be surrendered by the Partnership all reports, documents, and materials assembled or prepared pursuant to this Agreement.

9. Adherence to State and Federal Law/Regulations. ECC agrees to comply with all applicable Federal, State and municipal laws, regulations, or ordinances in the conduct and discharge of its obligations hereunder.

10. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to, matters of validity, construction, effect and performance.

(b) Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereto.

(c) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this agreement.

(d) Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In the case of the University to:

James Wesner, Esq.
University of Cincinnati
Room 304, Administration Building
Cincinnati, Ohio 45221

In the case of ECC to:

Emery Center Corporation
c/o Stuart A. Schloss, Jr., Esq.
2800 Cincinnati Commerce Center
600 Vine Street
Cincinnati, Ohio 45202

Any Default Notice sent pursuant to this Agreement or any notice relative to the exercise of a right of termination by the University shall also be sent to:

Emery Center Apartments Limited Partnership,
an Ohio limited partnership
c/o Downtown Cincinnati, Inc.
Suite 1200
617 Vine Street
Cincinnati, Ohio 45202
(Attn: Ms. Kathy Schwab)

and

The Cincinnati Development Fund
700 Walnut Street
Cincinnati, Ohio 45202

and

The Cincinnati Equity Fund, Ltd.
617 Vine Street, Suite 1200
Cincinnati, Ohio 45202

(e) Amendments or Modifications. Either party may at any time during the term of this Agreement request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification of such changes. Should the parties consent to modification of the Agreement, then an amendment shall be circulated for execution by and among the parties hereto.

(f) Assignment. Except as provided in this Agreement, neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by ECC without the prior express written consent of the University.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their respective hands effective as of the date first written above.

THE UNIVERSITY OF CINCINNATI

By: George A. Schaefer, Jr.
George A. Schaefer, Jr.
Vice Chairman of the Board
Of Trustees

EMERY CENTER CORPORATION

By: ______________________________

Stuart A. Schloss, Jr.,
Authorized Trustee

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ACKNOWLEDGMENT

The undersigned, Emery Center Apartments Limited Partnership, acknowledges its consent to the aforementioned Grant Agreement and the obligation of the Partnership to use Grant Amount proceeds loaned to it by ECC for the express purposes set forth in this Grant Agreement.

EMERY CENTER APARTMENTS
LIMITED PARTNERSHIP

BY: EMERY OPERATING, LLC,
General Partner

By: ______________________________
Beth Sullebarger,
Authorized Manager

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GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is made and entered into as of the 22nd day of October, 1999 by and between the University of Cincinnati, a state university and a body politic and corporate (the "University") and Emery Center Corporation, an Ohio not-for-profit corporation ("ECC").

WITNESSETH:

WHEREAS, the University owns certain real estate and all improvements thereon located at the intersection of Walnut Street and Central Parkway in Cincinnati, Ohio, which includes the building formerly known as the Ohio College of Applied Science Building (the "OCAS Building") and the Emery Theater Auditorium (the "Theater"), which said real estate is more particularly described on Exhibit A, attached hereto and incorporated by reference herein (hereinafter said real estate, together with the improvements located thereon, is referred to as the "Property"); and

WHEREAS, the University intends to enter into a lease with Emery Center Apartments Limited Partnership, an Ohio limited partnership (the "Partnership"), pursuant to which the Partnership shall lease the Property on a long-term basis for the purpose of: (i) enabling the Partnership to renovate and convert the OCAS Building into a 62 unit market rate apartment housing project; and (ii) entering into a long-term sublease (the "Sublease") with Emery Center Corporation, an Ohio not-for-profit corporation ("ECC"), pursuant to which ECC shall renovate, operate, maintain and improve the Theater; and

WHEREAS, the Partnership shall include as its sole General Partner Emery Operating, LLC, an Ohio limited liability company ("EOC"), which said EOC entity is an affiliate of ECC; and

WHEREAS, the intent and purpose of the University's execution and delivery of this Agreement and the Lease, and the University's consent to permit the Partnership to execute and deliver the Sublease is to promote, encourage, and facilitate plans by the Partnership and ECC, respectively, to extensively renovate, improve, maintain, and operate both the OCAS Building and the Theater independent of the continued financial support of the University; and

WHEREAS, the University has agreed to support, in part, the renovation and redevelopment of the OCAS Building with the following financial assistance: (i) provide a grant in the amount of $1,000,000 to ECC, as set forth in this Agreement, for the sole and express purpose of enabling ECC to loan such grant proceeds to the Partnership to enable the Partnership to undertake and complete the Initial Phase Construction Work (defined below); and (ii) provide a grant to ECC in the amount of $1,800,000 which said grant shall be made pursuant to a grant agreement to be entered into by and between the University and ECC, for the purpose of enabling ECC to loan such proceeds to the Partnership to enable the Partnership, along with other debt and equity financing, to redevelop the OCAS Building into 62 units of market rate apartment rental housing; and

WHEREAS, ECC and the University desire to enter into this Agreement for the purpose of setting forth their mutual agreements and understandings with regard to the $1,000,000 grant to be provided hereunder and the undertaking and completion of the Initial Construction Phase Work.

NOW THEREFORE, for valuable considerations mutually exchanged, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. <u>Grant of Funds</u>. The University hereby grants to ECC a sum in the amount of One Million and no/100 Dollars ($1,000,000.00) (hereinafter, the "Grant Amount"), for the sole and express purpose of enabling ECC to loan such Grant Amount to the Partnership to facilitate the undertaking and completion of the Initial Phase Construction Work (defined below) which represents commencement of the redevelopment of the OCAS Building into a sixty-two (62) unit multi-family market-rate apartment project (herein referred to as the "Housing Activity" or the "Project") to be known as "Emery Apartments".

2. Use of Funds. The Grant Amount shall be used solely for the purposes and obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data as appropriate evidencing the costs incurred.

(a) The parties expressly acknowledge and agree that ECC shall loan the entire Grant Amount to the Partnership for the purpose of enabling the Partnership to: (i) undertake and complete that certain portion of the Housing Activity which consists of certain roof repair and replacement work, exterior shell and masonry work, and window replacement work to the building improvements located on the Property, such work being more particularly described on Exhibit B, attached hereto and incorporated by reference herein (collectively referred to herein as the "Initial Phase Construction Work") at a cost not to exceed $950,000.00; and (ii) enable the Partnership to pay certain permit fees, insurance premiums, legal fees and other soft costs in connection with such activity in the aggregate amount not to exceed $50,000. The loan of the Grant Amount from ECC to the Partnership shall be made under terms and conditions acceptable to ECC and the Partnership, and shall be structured in a manner to enable said loan to be included within the eligible basis for the computation of certified historic structure tax credits under Section 47 of the Internal Revenue

Code of 1986, as amended, which shall become available to the Partnership in connection with the completion of the Housing Activity.

(b) ECC acknowledges and agrees that the Grant Amount shall be used for no purpose other than as is expressly permitted herein. If said Grant Amount proceeds are not so spent, the monies and interest income accrued thereon shall be returned to the University. In furtherance of this Paragraph 2(b), the parties agree to execute and deliver the Escrow Agreement, more particularly described in Paragraph 4 below.

(c) Immediately upon the complete execution of this Agreement, the Partnership shall enter into a Construction Management Agreement (the "CM Agreement") with Mansur Construction Management Services, LLC (the "Construction Manager"), pursuant to which the Construction Manager shall agree to undertake and complete the Initial Phase Construction Work for a guaranteed maximum price not to exceed Nine Hundred Fifty Thousand and no/100 Dollars ($950,000.00). The parties hereto agree that the CM Agreement and the plans and specifications for the work to be undertaken and completed thereunder shall be subject to the review and approval of Ron Kull, AIA, acting on behalf of the General Partner and the Partnership. The CM Agreement shall require the Initial Phase Work to be completed on or before June 30, 2000.

3. Accounting Procedures. ECC shall cause the Partnership to keep all records pertaining to the Housing Activity in a manner which is consistent with generally accepted accounting principles. All disbursements of the Grant Amount shall be supported by contracts, vouchers, invoices, and/or other data as appropriate, evidencing such disbursements.

4. Scope of Work. Simultaneous with the complete execution of this Agreement, the University shall transfer the Grant Amount to Security Title and Guaranty Agency, Inc. ("STGI"), the title company designated by ECC and the Partnership to disburse all funds during the construction phase of the Housing Activity. STGI shall agree to receive, hold and disburse the Grant Amount pursuant to the terms of an Escrow Agreement to be entered into by and among the Construction Manager, the Partnership and STGI in a form attached hereto as Exhibit C, incorporated by reference herein (the "Escrow Agreement").

5. Term. The parties agree that this Agreement shall begin on the first day described above and shall expire on or before December 31, 2000, unless such dates are modified in accordance with the terms of this Agreement.

6. Audits and Inspections. At any time during normal business hours, upon reasonable prior written notice, and as so often as the University shall deem necessary, and in such a

manner as to not interfere with the normal business operations, ECC shall cause the Partnership to make available to the University, for examination, all of its records with respect to matters covered by this Agreement, including, but not limited to, records pertaining to the use and disbursement of the Grant Amount.

7. Termination. In the event that the University determines that ECC has failed to perform satisfactorily any requirements of this Agreement, or if ECC is in violation of specific provisions of this Agreement, or upon just cause, the University may: (i) terminate this Agreement after providing ECC with written notice, in accordance with the notice provisions of this Agreement, of its failure to perform satisfactorily any requirements of this Agreement (the "Default Notice"), which said notice shall provide with a forty-five (45) day period to cure any such cited defaults under this Agreement; or (ii) assist in developing a remedial plan to address any defaults or conditions of failure to perform along with a proposed schedule to bring such conditions of default into compliance with the terms of this Agreement.

8. Effect of Termination. Within sixty (60) days after the termination of this Agreement, ECC shall cause to be surrendered by the Partnership all reports, documents, and materials assembled or prepared pursuant to this Agreement and

with respect to the Initial Phase Construction Work. In the event of termination of this Agreement by the University, the University may tender notice to the Escrow Agent of such termination and provide instructions for the return or other disposition of any undisbursed Construction Funds (as defined in the Escrow Agreement). ECC shall have no liability to the University in the event of such termination.

9. Adherence to State and Federal Law/Regulations. ECC agrees to comply with all applicable Federal, State and municipal laws, regulations, or ordinances in the conduct and discharge of its obligations hereunder.

10. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to, matters of validity, construction, effect and performance.

(b) Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereto.

(c) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this agreement.

(d) Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In the case of the University to:

James Wesner, Esq.
University of Cincinnati
Room 300, Administration Building
Cincinnati, Ohio 45221

In the case of ECC to:

Emery Center Corporation
c/o Stuart A. Schloss, Jr., Esq.
2800 Cincinnati Commerce Center
600 Vine Street
Cincinnati, Ohio 45202

(e) Amendments or Modifications. Either party may at any time during the term of this Agreement request amendments or modifications. Requests for amendment or modification of this

Agreement shall be in writing and shall specify the requested changes and the justification of such changes. Should the parties consent to modification of the Agreement, then an amendment shall be circulated for execution by and among the parties hereto.

(f) Assignment. Except as provided in this Agreement, neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by ECC without the prior express written consent of the University.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their respective hands effective as of the date first written above.

THE UNIVERSITY OF CINCINNATI

By: JA Steger

Its: JOSEPH [illegible] PRESIDENT

EMERY CENTER CORPORATION

By: [signature]

Its: Authorized Trustee

ACKNOWLEDGMENT

The undersigned, Emery Center Apartments Limited Partnership, acknowledges its consent to the aforementioned Grant Agreement and the obligation of the Partnership to use Grant Amount proceeds loaned to it by ECC for the express purposes set forth in this Grant Agreement.

EMERY CENTER APARTMENTS
LIMITED PARTNERSHIP

BY: EMERY OPERATING, LLC,
General Partner

By: ______________________
Stuart A. Schloss, Jr.,
Manager

WORD/286817_4.DOC

Exhibit 2

(C)

17 September 2010

BINDING LETTER OF INTENT

BETWEEN:

THE EMERY CENTER CORPORATION (ECC) BOARD

AND

TINA MANCHISE/TARA LINDSEY GORDON THE BOARD OF THE REQUIEM PROJECT, INC.
(Requiem)

FOR:

CONTINUING COLLABORATION ON FUNDRAISING, THEATER PLANNING AND RENOVATION, AND COMMUNICATIONS/MARKETING;
COMPLETION OF A FULL MANAGEMENT AGREEMENT;
COMMITMENT TO A FUTURE LEASE AGREEMENT.

WITH

THE REQUIEM PROJECT, INC. (Requiem)

1. Fundraising I. ECC will continue to conduct Capital Fundraising through July 1, 2011. Requiem will work collaboratively with the ECC to open the Emery Theater with a full Certificate of Occupancy and the infrastructure improvements known as the "heartbeat renovation" as soon as possible, with the goal of being open for the July 2012 World Choir Games. The Requiem Project will organize fundraising meetings, documents, website design, etc. as to best help ECC with the heartbeat renovation, and the mutual goal of opening the Emery Theater as soon as possible. Separate from capital fundraising for the auditorium, The Requiem Project may conduct independent fundraising (grants, annual fund, etc.) to renovate auxiliary space and for programmatic funds that will increase the visibility and the viability of the Emery Theatre at large.
2. Fundraising II. If, as of July 1, 2011, ECC has not raised sufficient funds to commence construction bidding for the heartbeat renovation of the Emery Theater, ECC will turn over the capital campaign and overall project of re-opening and activating The Emery theatre to The Requiem Project, Inc. The Requiem Project will conduct capital fundraising and renovate the Emery Theater, subject to the Joint Renovation Management Process in item #3 below. Also, the lease described below in item #4 will be effective as of July 1, 2011. The Requiem and ECC will agree on fundraising and programming milestones. Both parties agree to transfer any funds raised for the heartbeat renovation to the appropriate corporate entity through which the costs of the heartbeat renovation must be paid pursuant to authorized contracts for such renovation.
3. Joint Renovation Management Process. ECC will continue to manage the design and construction activities and issue all contracts needed for the heartbeat renovation of the Emery Theater, but with the active participation of two designated representative(s) of Requiem in key meetings managing this process via the establishment of a Joint Project Management Team. For the purpose of continuity and the continued interests of joint interests of ECC as the landlord and Requiem as

the Manager, even if there is an early inception of the lease as discussed in item #4 below, ECC will continue as the management and contractual platform for the completion of heartbeat renovation and the Joint Project Management Team will continue to function as before until the completion of the heartbeat renovation.

4. Lease. ECC will lease the Emery Theater to the Requiem upon receipt by the Emery Theater of a permanent certificate of occupancy, unless the earlier inception date discussed in item #2 above applies. The lease will be on substantially similar terms (and the same rent) as the existing sublease now between ECALP and ECC. The Requiem Project may lease the Cincinnati Development Fund space when it vacates the space for the same rent and other space in the building (including the second floor) for nominal rent.
5. Management Agreement. ECC will enter into a management agreement that declares that Requiem manages all programming at the Emery Theater. The Requiem Project is the "brand" of The Emery, which means all artistic programming is derived, developed and funded by The Requiem Project's earned revenue and charitable donations. The "brand" includes arts programs, and community and educational programs that bring civic and marketable value to the Emery. To oversee these responsibilities, the Requiem Board of Directors will be drawn from three sources:
    1. Requiem's extensive group of national advisors who have deep experience in theater management, nonprofit organizations, strategic planning, and fundraising;
    2. Cincinnati-based community members who bring a variety of professional and community experiences to the Board;
    3. One member appointed from the ECC Board

    The Requiem Board will hire, when funds are available to do so, an Executive Director for managing the facilities and operations, renting, promotion, and community relations. Until funds are available for this appointment, the Requiem Board may choose to use part-time, graduate student internships, or other means to provide professional advice and interim management services in support of the expecting opening of the Emery Theater. The Executive Director will report to the Board and will receive regular supervision and evaluations from the Chair of the Board. Until such time as ECC agrees to suspend this right based on a successful, stabilized status of the operations of the Emery Theater, the appointment of the Executive Director shall require the affirmative vote of the ECC appointed member of the Requiem Board.

    The Requiem Board will also engage the Artistic Director(s) for the Emery Theater, and provide for the appropriate supervision and evaluation of those senior staff members.

6. No Endowment Funds. ECC will keep ownership of all endowment funds. ECC will continue to pay basic expenses of the Emery Theatre that it is now paying (e.g., insurance, utilities, maintenance, etc.) until the Emery Theater obtains a certificate of occupancy. ECC will decide, as the fiduciary trustees of the endowment, when and for what purpose to distribute funds from the endowment within the restrictions that apply to the endowment.
7. Overall. The Requiem Project and ECC will work together in good faith to carry out the terms of their agreements. Any changes to this agreement will be agreed to in writing.

Requiem provides the following description of the wide variety of their programming concept:

underserved, education programs for members of the immediate and extended local community, to name but a small few. These events will be funded as follows:

C1: Programs/programming will occur in tandem with educational and artistic programming, therefore funded by rental rates (i.e.: a local rental might be asked to offset their lowered rental rate by offering a daytime show to children in cancer recovery OR by providing a performance/visit to a local hospital OR by teaming a 'little brother/sister' with an artist during a performance).

C2: The Requiem Project dedicates a prong of their mission to earning substantial revenue to support "C" programming. C programming will be included in the budget for each fiscal year and will be what makes The Requiem Project/The Emery Center for the Arts separate from other spaces and will position the Project/Theatre for substantial local and national funding for the arts and arts-based education and programming.

Intending to be bound by this agreement, the duly authorized representatives of the parties have executed this agreement as of the 17th day of September, 2010.
The Requiem Project, Inc.
Emery Center Corporation

The Requiem Project, Inc.

By: [signature]
Name: Tina Manchise
Title: President, The Requiem Project, Inc.
Date: 18 September, 2010

By: [signature]
Name: Tara Gordon
Title: Treasurer, The Requiem Project, Inc
Date: 18 September 2010

Emery Center Corporation

By: [signature]
Name: Dale McGirr
Title: Chair, Emery Center Corporation
Date: 23 September, 2010

Exhibit 3

Form **990**

Department of the Treasury Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements

OMB No 1545 0047

2002

Open to Public Inspection

A For the 2002 calendar year, or tax year beginning , 2002, and ending , 20

B Check if applicable: ☐ Address change ☐ Name change ☐ Initial return ☒ Final return ☐ Amended return ☐ Application pending

Please use IRS label or print or type. See Specific Instructions.

C Name of organization: Emery Center Corporation

Number and street (or P O box if mail is not delivered to street address) / Room/suite: c/o Kathy Schwab, 100 East Central Parkway

City or town state or country and ZIP + 4: Cincinnati, OH 45202

D Employer identification number: 31-1237063

E Telephone number: (513) 703-0123

F Accounting method: ☐ Cash ☒ Accrual ☐ Other (specify) ▶

• Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ)

H and I are not applicable to section 527 organizations

H(a) Is this a group return for affiliates? ☐ Yes ☐ No

H(b) If "Yes," enter number of affiliates ▶

H(c) Are all affiliates included? ☐ Yes ☐ No (If "No" attach a list. See instructions)

H(d) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☐ No

I Enter 4-digit GEN ▶

G Web site ▶ N/A

J Organization type (check only one) ▶ ☒ 501(c) (3) ◀ (insert no) ☐ 4947(a)(1) or ☐ 527

K Check here ▶ ☐ if the organization's gross receipts are normally not more than $25 000 The organization need not file a return with the IRS but if the organization received a Form 990 Package in the mail it should file a return without financial data Some states require a complete return

M Check ▶ ☐ if the organization is not required to attach Sch B (Form 990, 990-EZ or 990-PF)

L Gross receipts Add lines 6b 8b 9b, and 10b to line 12 ▶

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See page 17 of the instructions)

Revenue	1	Contributions, gifts, grants, and similar amounts received				
	a	Direct public support	1a	33630		
	b	Indirect public support	1b			
	c	Government contributions (grants)	1c			
	d	Total (add lines 1a through 1c) (cash $ 33630 noncash $)			1d	33630
	2	Program service revenue including government fees and contracts (from Part VII, line 93)			2	
	3	Membership dues and assessments			3	
	4	Interest on savings and temporary cash investments			4	244
	5	Dividends and interest from securities			5	
	6a	Gross rents	6a			
	b	Less rental expenses	6b			
	c	Net rental income or (loss) (subtract line 6b from line 6a)			6c	
	7	Other investment income (describe ▶)			7	

		(A) Securities		(B) Other
8a	Gross amount from sales of assets other than inventory		8a	
b	Less cost or other basis and sales expenses		8b	
c	Gain or (loss) (attach schedule)		8c	

Revenue	d	Net gain or (loss) (combine line 8c, columns (A) and (B))			8d	
	9	Special events and activities (attach schedule)				
	a	Gross revenue (not including $ of contributions reported on line 1a)	9a			
	b	Less direct expenses other than fundraising expenses	9b			
	c	Net income or (loss) from special events (subtract line 9b from line 9a)			9c	
	10a	Gross sales of inventory, less returns and allowances	10a			
	b	Less cost of goods sold	10b			
	c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)			10c	
	11	Other revenue (from Part VII, line 103)			11	214300
	12	Total revenue (add lines 1d 2, 3, 4, 5, 6c 7 8d 9c, 10c and 11)			12	248174
Expenses	13	Program services (from line 44, column (B))			13	734062
	14	Management and general (from line 44, column (C))			14	9546
	15	Fundraising (from line 44, column (D))			15	0
	16	Payments to affiliates (attach schedule)			16	0
	17	Total expenses (add lines 16 and 44, column (A))			17	743608
Net Assets	18	Excess or (deficit) for the year (subtract line 17 from line 12)			18	(495434)
	19	Net assets or fund balances at beginning of year (from line 73, column (A))			19	495434
	20	Other changes in net assets or fund balances (attach explanation)			20	0
	21	Net assets or fund balances at end of year (combine lines 18 19 and 20)			21	0

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SCANNED APR 03 '03

Part II Statement of Functional Expenses All organizations must complete column (A) Columns (B) (C) and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others (See page 21 of the instructions.)

Do not include amounts reported on line 6b 8b 9b, 10b or 16 of Part I		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (attach schedule) (cash $ ________ noncash $ ________)	22				
23 Specific assistance to individuals (attach schedule)	23				
24 Benefits paid to or for members (attach schedule)	24				
25 Compensation of officers directors, etc	25				
26 Other salaries and wages	26				
27 Pension plan contributions	27				
28 Other employee benefits	28				
29 Payroll taxes	29				
30 Professional fundraising fees	30				
31 Accounting fees	31	880		880	
32 Legal fees	32	4706		4706	
33 Supplies	33				
34 Telephone	34	633		633	
35 Postage and shipping	35	34		34	
36 Occupancy	36				
37 Equipment rental and maintenance	37				
38 Printing and publications	38				
39 Travel	39				
40 Conferences, conventions, and meetings	40				
41 Interest	41				
42 Depreciation, depletion etc (attach schedule)	42				
43 Other expenses not covered above (itemize) a	43a				
b Repairs - maintenance	43b	3500	3500		
c Insurance	43c	2225		2225	
d miscellaneous	43d	223		223	
e See schedule attached	43e	731407	730562	845	
44 Total functional expenses (add lines 22 through 43) Organizations completing columns (B)-(D), carry these totals to lines 13—15	44	743608	734062	9546	

Joint Costs. Check ▶ ☐ if you are following SOP 98-2

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services? ▶ ☐ Yes ☐ No

If "Yes" enter (i) the aggregate amount of these joint costs $________ (ii) the amount allocated to Program services $________

(iii) the amount allocated to Management and general $ ________ and (iv) the amount allocated to Fundraising $ ________

Part III Statement of Program Service Accomplishments (See page 24 of the instructions)

What is the organization's primary exempt purpose? ▶ Restore the Emery Theatre

All organizations must describe their exempt purpose achievements in a clear and concise manner State the number of clients served publications issued etc Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others)

	Program Service Expenses (Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts, but optional for others)
a Funds are being raised to restore the Emery Theatre in 2002 the decision was made to disband the organization (Grants and allocations $ —0—)	734062
b (Grants and allocations $)	
c (Grants and allocations $)	
d (Grants and allocations $)	
e Other program services (attach schedule) (Grants and allocations $)	
f Total of Program Service Expenses (should equal line 44 column (B) Program services) ▶	734062

Part IV Balance Sheets (See page 24 of the instructions)

Note	*Where required, attached schedules and amounts within the description column should be for end-of-year amounts only*		(A) Beginning of year		(B) End of year
Assets	45 Cash—non-interest-bearing		16111	45	0
	46 Savings and temporary cash investments		1671	46	0
	47a *Accounts receivable*	47a			
	b Less allowance for doubtful accounts	47b	93133	47c	500
	48a Pledges receivable	48a			
	b Less allowance for doubtful accounts	48b		48c	
	49 Grants receivable			49	
	50 Receivables from officers, directors, trustees, and key employees (attach schedule)			50	
	51a Other notes and loans receivable (attach schedule)	51a			
	b Less allowance for doubtful accounts	51b		51c	
	52 Inventories for sale or use			52	
	53 Prepaid expenses and deferred charges			53	
	54 Investments—securities (attach schedule) ▶ ☐ Cost ☐ FMV			54	
	55a Investments—land, buildings, and equipment basis	55a			
	b Less accumulated depreciation (attach schedule)	55b		55c	
	56 Investments—other (attach schedule)			56	
	57a Land, buildings, and equipment basis	57a			
	b Less accumulated depreciation (attach schedule)	57b	636335	57c	0
	58 Other assets (describe ▶)			58	
	59 **Total assets** (add lines 45 through 58) (must equal line 74)		748250	59	500
Liabilities	60 Accounts payable and accrued expenses		4816	60	500
	61 Grants payable			61	
	62 Deferred revenue			62	
	63 Loans from officers, directors, trustees, and key employees (attach schedule)			63	
	64a Tax-exempt bond liabilities (attach schedule) University of Cinti		248000	64a	0
	b Mortgages and other notes payable (attach schedule)			64b	
	65 Other liabilities (describe ▶)			65	
	66 **Total liabilities** (add lines 60 through 65)		252816	66	500
Net Assets or Fund Balances	**Organizations that follow SFAS 117, check here ▶** ☐ **and complete lines 67 through 69 and lines 73 and 74**				
	67 Unrestricted			67	
	68 Temporarily restricted			68	
	69 Permanently restricted			69	
	Organizations that do not follow SFAS 117, check here ▶ ☑ **and complete lines 70 through 74**				
	70 Capital stock, trust principal, or current funds			70	
	71 Paid-in or capital surplus, or land, building, and equipment fund			71	
	72 Retained earnings, endowment, accumulated income, or other funds		495434	72	0
	73 **Total net assets or fund balances** (add lines 67 through 69 or lines 70 through 72. column (A) must equal line 19 column (B) must equal line 21)		495434	73	0
	74 **Total liabilities and net assets / fund balances** (add lines 66 and 73)		748250	74	500

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization How the public perceives an organization in such cases may be determined by the information presented on its return Therefore please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments

Part IV-A Reconciliation of Revenue per ~~Audited~~ Financial Statements with Revenue per Return (See page 26 of the instructions)

a	Total revenue, gains, and other support per audited financial statements ▶		a	248174
b	Amounts included on line a but not on line 12, Form 990			
(1)	Net unrealized gains on investments	$		
(2)	Donated services and use of facilities	$		
(3)	Recoveries of prior year grants	$		
(4)	Other (specify)	$		
	Add amounts on lines (1) through (4) ▶		b	0
c	Line a minus line b ▶		c	248174
d	Amounts included on line 12, Form 990 but not on line a			
(1)	Investment expenses not included on line 6b, Form 990	$		
(2)	Other (specify)	$		
	Add amounts on lines (1) and (2) ▶		d	0
e	Total revenue per line 12, Form 990 (line c plus line d) ▶		e	248174

Part IV-B Reconciliation of Expenses per ~~Audited~~ Financial Statements with Expenses per Return

a	Total expenses and losses per audited financial statements ▶		a	743608
b	Amounts included on line a but not on line 17, Form 990			
(1)	Donated services and use of facilities	$		
(2)	Prior year adjustments reported on line 20, Form 990	$		
(3)	Losses reported on line 20, Form 990	$		
(4)	Other (specify)	$		
	Add amounts on lines (1) through (4) ▶		b	0
c	Line a minus line b ▶		c	743608
d	Amounts included on line 17, Form 990 but not on line a:			
(1)	Investment expenses not included on line 6b, Form 990	$		
(2)	Other (specify)	$		
	Add amounts on lines (1) and (2) ▶		d	0
e	Total expenses per line 17, Form 990 (line c plus line d) ▶		e	743608

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated, see page 26 of the instructions)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation	(E) Expense account and other allowances
schedule attached - all board members work on as needed basis with no compensation				

75 Did any officer director, trustee, or key employee receive aggregate compensation of more than $100,000 from your organization and all related organizations, of which more than $10,000 was provided by the related organizations? ▶ ☐ Yes ☒ No
If "Yes," attach schedule—see page 26 of the instructions

Part VI Other Information (See page 27 of the instructions.)

		Line	Yes	No
76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity	76		X
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes	77		X
78a	Did the organization have unrelated business gross income of $1,000 or more during the year covered by this return?	78a		X
b	If "Yes," has it filed a tax return on **Form 990-T** for this year? N/A	78b		
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement	79	X	
80a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80a		X
b	If "Yes," enter the name of the organization ▶ .... and check whether it is ☐ exempt or ☐ nonexempt			
81a	Enter direct or indirect political expenditures. See line 81 instructions. 81a: 0			
b	Did the organization file **Form 1120-POL** for this year?	81b		X
82a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a		X
b	If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.) 82b			
83a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X	
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b		X
84a	Did the organization solicit any contributions or gifts that were not tax deductible?	84a		X
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b		
85	*501(c)(4), (5), or (6) organizations.* a Were substantially all dues nondeductible by members?	85a		
b	Did the organization make only in-house lobbying expenditures of $2,000 or less? If "Yes" was answered to either 85a or 85b, **do not** complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.	85b		
c	Dues, assessments, and similar amounts from members 85c			
d	Section 162(e) lobbying and political expenditures 85d			
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices 85e			
f	Taxable amount of lobbying and political expenditures (line 85d less 85e) 85f			
g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?	85g		
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h		
86	*501(c)(7) orgs.* Enter: a Initiation fees and capital contributions included on line 12 86a			
b	Gross receipts, included on line 12, for public use of club facilities 86b			
87	*501(c)(12) orgs.* Enter: a Gross income from members or shareholders 87a			
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.) 87b			
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX	88		
89a	*501(c)(3) organizations.* Enter: Amount of tax imposed on the organization during the year under section 4911 ▶ ______, section 4912 ▶ ______, section 4955 ▶ ______			
b	*501(c)(3) and 501(c)(4) orgs.* Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction	89b		X
c	Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 ▶			
d	Enter: Amount of tax on line 89c, above, reimbursed by the organization ▶			

90a List the states with which a copy of this return is filed ▶ OHIO

b Number of employees employed in the pay period that includes March 12, 2002 (See instructions.) 90b: 0

91 The books are in care of ▶ Kathy Schwab Telephone no. ▶ (513) 703-0173

Located at ▶ 100 E Central Parkway Cinti, OH ZIP + 4 ▶ 45202

92 *Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041*—Check here ▶ ☐ and enter the amount of tax-exempt interest received or accrued during the tax year ▶ 92 N/A

Part VII Analysis of Income-Producing Activities (See page 31 of the instructions)

Note. *Enter gross amounts unless otherwise indicated*	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclusion code	(D) Amount	
93 Program service revenue					
a Direct public support					33630
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments					244
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events					
102 Gross profit or (loss) from sales of inventory					
103 Other revenue a Forgiveness of loan					64300
b Development fee					150000
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))					248174

105 Total (add line 104, columns (B), (D), and (E)) ▶ 248174

Note. *Line 105 plus line 1d Part I, should equal the amount on line 12, Part I*

Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes (See page 32 of the instructions)

Line No ▼	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
93(a)	Public support provided funds for restoration of Emery Theatre
95	Earnings on investments generates additional funds for administration
103 a	Forgiveness of loan by University of Cinti allows dissolution of organization
103 b	Development fee generates funds for restoration of Emery Theatre

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See page 32 of the instructions)

(A) Name, address and EIN of corporation partnership or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See page 33 of the instructions)

(a) Did the organization, during the year, receive any funds, directly or indirectly, [redacted]

(b) Did the organization, during the year, pay premiums, directly [redacted]

Note *If "Yes" to (b), file Form 8870 and Form 4720 (see instru* [redacted]

Please Sign Here

Under penalties of perjury I declare that I have examined this return inc [redacted]
and belief it is true correct and complete Declaration of preparer (oth [redacted]

▶ Signature of officer [redacted]

▶ Stuart A Schloss, [redacted]
Type or print name and title

Paid Preparer's Use Only

Preparer's signature ▶ [redacted]

Firm's name (or yours if self-employed) address and ZIP + 4 ▶ Loftus - Loftus C [redacted]
3355 Kuliga Park Dr [redacted]

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k), 501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information—(See separate instructions.)

▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

2002

Name of the organization: Emery Center Corporation

Employer identification number: 31-1237063

Part I **Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees**
(See page 1 of the instructions List each one If there are none, enter "None")

(a) Name and address of each employee paid more than $50 000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
NONE				
Total number of other employees paid over $50,000 ▶				

Part II **Compensation of the Five Highest Paid Independent Contractors for Professional Services**
(See page 2 of the instructions List each one (whether individuals or firms) If there are none, enter "None")

(a) Name and address of each independent contractor paid more than $50 000	(b) Type of service	(c) Compensation
NONE		
Total number of others receiving over $50 000 for professional services ▶		

Part III Statements About Activities (See page 2 of the instructions)

			Yes	No
1	During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ▶ $ ______ (Must equal amounts on line 38, Part VI-A or line i of Part VI-B)	1		X
	Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities			
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? *(If the answer to any question is "Yes," attach a detailed statement explaining the transactions)*			
a	Sale, exchange, or leasing of property?	2a		X
b	Lending of money or other extension of credit?	2b		X
c	Furnishing of goods, services, or facilities?	2c		X
d	Payment of compensation (or payment or reimbursement of expenses if more than $1 000)?	2d		X
e	Transfer of any part of its income or assets?	2e		X
3	Does the organization make grants for scholarships, fellowships, student loans, etc ? (See **Note** below)	3		X
4	Do you have a section 403(b) annuity plan for your employees?	4		X

Note *Attach a statement to explain how the organization determines that individuals or organizations receiving grants or loans from it in furtherance of its charitable programs "qualify" to receive payments*

Part IV Reason for Non-Private Foundation Status (See pages 3 through 5 of the instructions)

The organization is not a private foundation because it is (Please check only **ONE** applicable box)

5 ☐ A church, convention of churches or association of churches Section 170(b)(1)(A)(i)

6 ☐ A school Section 170(b)(1)(A)(ii) (Also complete Part V)

7 ☐ A hospital or a cooperative hospital service organization Section 170(b)(1)(A)(iii)

8 ☐ A Federal, state or local government or governmental unit Section 170(b)(1)(A)(v)

9 ☐ A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii) **Enter the hospital's name, city, and state ▶** ______

10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit Section 170(b)(1)(A)(iv) (Also complete the **Support Schedule** in Part IV-A)

11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)

11b ☐ A community trust Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A)

12 ☐ An organization that normally receives **(1) more than 33⅓%** of its support from contributions, membership fees and gross receipts from activities related to its charitable etc , functions—subject to certain exceptions, and **(2) no more than 33⅓%** of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See section 509(a)(2) (Also complete the **Support Schedule** in Part IV-A)

13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in **(1)** lines 5 through 12 above, or **(2)** section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2) (See section 509(a)(3))

Provide the following information about the supported organizations (See page 5 of the instructions)

(a) Name(s) of supported organization(s)	(b) Line number from above

14 ☐ An organization organized and operated to test for public safety Section 509(a)(4) (See page 5 of the instructions)

↑ uncollected pledges

Part IV-A Support Schedule (Complete only if you checked a box on line 10 11, or 12) *Use cash method of accounting*

Note *You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting*

	Calendar year (or fiscal year beginning in) ▶	(a) 2001	(b) 2000	(c) 1999	(d) 1998	(e) Total
15	Gifts grants, and contributions received (Do not include unusual grants See line 28)	33630 (67433)	344016	313188	72650	696051
16	Membership fees received					
17	Gross receipts from admissions, merchandise sold or services performed or furnishing of facilities in any activity that is related to the organization s charitable etc, purpose					
18	Gross income from interest dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	244	4942	2849	598	8633
19	Net income from unrelated business activities not included in line 18					
20	Tax revenues levied for the organization s benefit and either paid to it or expended on its behalf					
21	The value of services or facilities furnished to the organization by a governmental unit without charge Do not include the value of services or facilities generally furnished to the public without charge					
22	Other income Attach a schedule Do not include gain or (loss) from sale of capital assets	214300				214300
23	Total of lines 15 through 22	180741	348958	316037	73248	918984
24	Line 23 minus line 17	180741	348958	316037	73248	918984
25	Enter 1% of line 23	1807	3490	3160	732	

26 Organizations described on lines 10 or 11 a Enter 2% of amount in column (e), line 24 ▶ **26a** 18380

b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1998 through 2001 exceeded the amount shown in line 26a **Do not file this list with your return** Enter the total of all these excess amounts ▶ **26b** 193960

c Total support for section 509(a)(1) test Enter line 24 column (e) ▶ **26c** 918984

d Add Amounts from column (e) for lines 18 8633 19 0 22 214300 26b 193960 ▶ **26d** 416893

e Public support (line 26c minus line 26d total) ▶ **26e** 502091

f **Public support percentage (line 26e (numerator) divided by line 26c (denominator))** ▶ **26f** 55 %

27 Organizations described on line 12 a For amounts included in lines 15 16 and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from each "disqualified person" **Do not file this list with your return** Enter the sum of such amounts for each year

(2001) .... (2000) .... (1999) .... (1998) ....

b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year that was more than the larger of (1) the amount on line 25 for the year or (2) $5,000 (Include in the list organizations described in lines 5 through 11 as well as individuals) **Do not file this list with your return** After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year

(2001) .... (2000) .... (1999) .... (1998) ....

c Add Amounts from column (e) for lines 15 ______ 16 ______ 17 ______ 20 ______ 21 ______ ▶ **27c** ______

d Add Line 27a total ______ and line 27b total ______ ▶ **27d** ______

e Public support (line 27c total minus line 27d total) ▶ **27e** ______

f Total support for section 509(a)(2) test Enter amount from line 23 column (e) ▶ **27f** ______

g **Public support percentage (line 27e (numerator) divided by line 27f (denominator))** ▶ **27g** %

h **Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))** ▶ **27h** %

28 Unusual Grants For an organization described in line 10 11 or 12 that received any unusual grants during 1998 through 2001, prepare a list for your records to show for each year the name of the contributor, the date and amount of the grant and a brief description of the nature of the grant **Do not file this list with your return** Do not include these grants in line 15

Part V Private School Questionnaire (See page 7 of the instructions) (To be completed ONLY by schools that checked the box on line 6 in Part IV)

			Yes	No
29	Does the organization have a racially nondiscriminatory policy toward students by statement in its charter bylaws, other governing instrument, or in a resolution of its governing body?	29		
30	Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?	30		
31	Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves?	31		
	If "Yes," please describe, if "No," please explain (If you need more space, attach a separate statement)			
32	Does the organization maintain the following			
a	Records indicating the racial composition of the student body faculty, and administrative staff?	32a		
b	Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b		
c	Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c		
d	Copies of all material used by the organization or on its behalf to solicit contributions?	32d		
	If you answered "No" to any of the above please explain (If you need more space, attach a separate statement)			
33	Does the organization discriminate by race in any way with respect to			
a	Students' rights or privileges?	33a		
b	Admissions policies?	33b		
c	Employment of faculty or administrative staff?	33c		
d	Scholarships or other financial assistance?	33d		
e	Educational policies?	33e		
f	Use of facilities?	33f		
g	Athletic programs?	33g		
h	Other extracurricular activities?	33h		
	If you answered "Yes" to any of the above please explain (If you need more space attach a separate statement)			
34a	Does the organization receive any financial aid or assistance from a governmental agency?	34a		
b	Has the organization s right to such aid ever been revoked or suspended?	34b		
	If you answered "Yes" to either 34a or b please explain using an attached statement			
35	Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev Proc 75-50 1975-2 C B 587 covering racial nondiscrimination? If "No " attach an explanation	35		

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 9 of the instructions)
(To be completed ONLY by an eligible organization that filed Form 5768)

Check ▶ a ☐ if the organization belongs to an affiliated group Check ▶ b ☐ if you checked "a" and "limited control" provisions apply

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred)		(a) Affiliated group totals	(b) To be completed for ALL electing organizations
36 Total lobbying expenditures to influence public opinion (grassroots lobbying)	36		
37 Total lobbying expenditures to influence a legislative body (direct lobbying)	37		
38 Total lobbying expenditures (add lines 36 and 37)	38		
39 Other exempt purpose expenditures	39		
40 Total exempt purpose expenditures (add lines 38 and 39)	40		
41 Lobbying nontaxable amount Enter the amount from the following table—			
If the amount on line 40 is— The lobbying nontaxable amount is—			
Not over $500,000 — 20% of the amount on line 40			
Over $500,000 but not over $1,000,000 — $100,000 plus 15% of the excess over $500,000			
Over $1,000,000 but not over $1 500,000 — $175,000 plus 10% of the excess over $1,000,000	41		
Over $1,500,000 but not over $17 000,000 — $225,000 plus 5% of the excess over $1,500 000			
Over $17,000 000 — $1,000,000			
42 Grassroots nontaxable amount (enter 25% of line 41)	42		
43 Subtract line 42 from line 36 Enter -0- if line 42 is more than line 36	43		
44 Subtract line 41 from line 38 Enter -0- if line 41 is more than line 38	44		

Caution *If there is an amount on either line 43 or line 44, you must file Form 4720*

4-Year Averaging Period Under Section 501(h)
(Some organizations that made a section 501(h) election do not have to complete all of the five columns below See the instructions for lines 45 through 50 on page 11 of the instructions)

	Lobbying Expenditures During 4-Year Averaging Period				
Calendar year (or fiscal year beginning in) ▶	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
45 Lobbying nontaxable amount					
46 Lobbying ceiling amount (150% of line 45(e))					
47 Total lobbying expenditures					
48 Grassroots nontaxable amount					
49 Grassroots ceiling amount (150% of line 48(e))					
50 Grassroots lobbying expenditures					

Part VI-B Lobbying Activity by Nonelecting Public Charities
(For reporting only by organizations that did not complete Part VI-A) (See page 11 of the instructions)

During the year did the organization attempt to influence national state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of	Yes	No	Amount
a Volunteers			
b Paid staff or management (Include compensation in expenses reported on lines c through h)			
c Media advertisements			
d Mailings to members legislators or the public			
e Publications, or published or broadcast statements			
f Grants to other organizations for lobbying purposes			
g Direct contact with legislators, their staffs, government officials, or a legislative body			
h Rallies, demonstrations seminars conventions, speeches lectures, or any other means			
i Total lobbying expenditures (Add lines c through h)			

If "Yes" to any of the above also attach a statement giving a detailed description of the lobbying activities

Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations (See page 12 of the instructions)

51 Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

		Yes	No
a Transfers from the reporting organization to a noncharitable exempt organization of			
(i) Cash	51a(i)		X
(ii) Other assets	a(ii)		X
b Other transactions			
(i) Sales or exchanges of assets with a noncharitable exempt organization	b(i)		X
(ii) Purchases of assets from a noncharitable exempt organization	b(ii)		X
(iii) Rental of facilities, equipment, or other assets	b(iii)		X
(iv) Reimbursement arrangements	b(iv)		X
(v) Loans or loan guarantees	b(v)		X
(vi) Performance of services or membership or fundraising solicitations	b(vi)		X
c Sharing of facilities, equipment, mailing lists, other assets, or paid employees	c		X

d If the answer to any of the above is "Yes," complete the following schedule Column (b) should always show the fair market value of the goods, other assets or services given by the reporting organization If the organization received less than fair market value in any transaction or sharing arrangement show in column (d) the value of the goods, other assets, or services received

(a) Line no	(b) Amount involved	(c) Name of noncharitable exempt organization	(d) Description of transfers transactions and sharing arrangements

52a Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? ▶ ☐ Yes ☐ No

b If "Yes," complete the following schedule

(a) Name of organization	(b) Type of organization	(c) Description of relationship

National Brand 45-604 Eye-Ease® 45-304 2 Pack Made in USA

Emery Center Corporation
31-1237063
12/31/02

	Initials	Date
Prepared By		
Approved By		

	Total	Program Services	Mgt – General
Page 2, Part II, Line 43e			
Administration	845		845
Architectural fees	432	432	
Consulting	22000	22000	
Loss on abandonment	640697	640697	
Uncollected pledges	67433	67433	
	731407	730562	845

Page 5, Part VI, line 79

The Emery Theatre project has been abandoned by Emery Center Corporation due to unsuccessful effort to raise funds sufficient to complete the project. Improvements made to date have been turned over to Emery Operating LLC in conjunction with the University of Cincinnati

EMERY CENTER CORPORATION
2002 BOARD OF TRUSTEES

Exhibit 4

AGREEMENT

This **AGREEMENT** ("Agreement") is made and entered into on this 13th day of May 2014 between CORE Redevelopment, LLC, an Indiana limited liability company, ("CORE"), The Requiem Project, Inc., an Ohio nonprofit corporation, ("Requiem"), University of Cincinnati, a state university of the State of Ohio and a body politic and corporate, ("UC"), Emery Center Apartments Limited Partnership, an Ohio limited partnership, ("ECALP"), and Emery Center Corporation, an Ohio nonprofit corporation, ("ECC") (CORE, Requiem, UC, ECALP, and ECC shall be collectively referred to as "the Parties"):

WHEREAS, UC holds the title to the land and building complex consisting of the former Ohio College of Applied Sciences Building, now converted into the Emery Apartments (the "Emery Apartments Building") and the Emery Theatre (the "Emery Theatre") all of which is located on real property located at 1112 Walnut Street, Cincinnati, Ohio and being more particularly described in Exhibit "A", attached hereto and incorporated by reference herein (collectively, the "Property"); and

WHEREAS, ECALP is the master lessee of the Property, pursuant to an Amended and Restated Lease Agreement, dated as of October 22, 1999, entered into with UC (the "Master Lease"); and

WHEREAS, ECC is a sublessee of the Emery Theatre pursuant to an Amended and Restated Sublease Agreement, dated as of October 22, 1999, as amended by a First Amendment to Amended and Restated Sublease Agreement, dated October 22, 1999, both entered into with ECALP (collectively, the "Sublease"); and

WHEREAS, Requiem has asserted claims against UC, ECALP, and ECC as relates to the Emery Theatre, Emery Apartments Building, the Master Lease and the Sublease, which are more specifically set forth in Requiem's lawsuit filed in the Hamilton County Court of Common Pleas, captioned as *The Requiem Project, Inc. v Emery Center Corporation, et al.,* Case No. A1305297 ("the Lawsuit"); and

WHEREAS, CORE, Requiem or other affiliated parties desire to purchase the Emery Apartments Building and Emery Theatre, respectively, under the terms of a contract to purchase to be negotiated with and executed by UC and/or others (the "Purchase Contract"); and

WHEREAS, in order to provide adequate time for CORE and Requiem to negotiate the terms of the Purchase Contract with UC and to obtain the approval of and authorization to enter into the Purchase Contract by the UC Board of Trustees at their June 24, 2014 meeting, CORE and Requiem have requested that ECALP and ECC agree to a temporary stay in all proceedings related to the Lawsuit; and

WHEREAS, ECALP and ECC will agree to grant a temporary stay in all proceedings related to the Litigation on the express and binding condition that Requiem agree to dismiss the Lawsuit with prejudice, simultaneously release and forever discharge all claims against the Parties, and that a settlement agreement evidencing such agreements and releasing any and all claims the Parties may have against one another related to the subject matters of the Lawsuit be executed contemporaneously with the execution of the Purchase Contract.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, with the intent to be legally bound, agree as follows:

1. That on or about May 6, 2014, all Parties (other than UC, who is currently not a party to the Lawsuit) shall file a joint motion in the Lawsuit requesting a stay of the Lawsuit until June 30, 2014, so that the Purchase Contract can be negotiated and approved by the UC Board of Trustees, and executed by the parties to the Purchase Contract and so that a settlement agreement and other necessary documents can be executed by the Parties consistent with the terms of this Agreement.

2. Upon execution of the Purchase Contract for the sale and conveyance of the Property, Requiem, ECALP and ECC shall promptly dismiss the Lawsuit, with prejudice, by executing and filing with the Hamilton County Common Pleas Court the Stipulation of Dismissal, With Prejudice, in the form attached hereto as Exhibit "B" incorporated by reference herein.

3. Contemporaneously with the execution of the Purchase Contract, the Parties shall enter into a confidential settlement agreement and mutual release of all claims which shall include, among other things, a mutual release of all claims by and among the Parties under which the Parties shall mutually release each other and their respective agents, representatives, board members, partners, trustees, directors, employees, assigns, subsidiaries, affiliates, agents and any other person, firm or corporation charged or chargeable with responsibility or liability of and from all claims, demands, damages, costs, expenses, and causes of action whatsoever in connection with the Lawsuit, and/or arising from any act or occurrence and particularly on account of any of the facts and circumstances which pertain, refer, or relate to any of the allegations in the Lawsuit, their dealings with one another, the Property, the Master Lease, Sublease, the Emery Apartments and the Emery Theatre.

4. In the event that a Purchase Contract for the sale and conveyance of the Property is not entered into among UC, CORE, Requiem (or any related or affiliated entity, or their assignees) ECC, ECALP, and others by June 30, 2014 or such other date later agreed to, in writing, by the Parties, then this Agreement shall be null and void.

5. This Agreement is not an admission of liability on the part of any of the Parties.

6. The Parties agree not to disparage one another to other persons, entities, or third parties. The Parties also agree not to make any disclosure of any kind concerning the terms of this Agreement or negotiation of the Purchase Contract to any person, persons or organization including, but not limited to, a statement, written or oral, to any person, newspaper, magazine, radio or television station.

7. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

8. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, and all of which taken together shall constitute one and the same Agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties. Execution of this Agreement may be completed through an exchange by facsimile or electronic transmission of the page or pages containing signatures of the Parties.

Accepted and agreed to by:

EMERY CENTER APARTMENTS LIMITED PARTNERSHIP

By: Emery Operating, LLC, Its General Partner

By: __________
Name: __________
Title: __________

EMERY CENTER CORPORATION

By: __________
Name: __________
Title: __________

THE REQUIEM PROJECT, INC.

By: __________
Name: __________
Title: __________

UNIVERSITY OF CINCINNATI

By: [signature]
Name: Daniel R. Beerck
Title: Assoc. General Counsel

CORE REDEVELOPMENT, LLC

By: __________
Name: __________
Title: __________

7. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

8. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, and all of which taken together shall constitute one and the same Agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties. Execution of this Agreement may be completed through an exchange by facsimile or electronic transmission of the page or pages containing signatures of the Parties.

Accepted and agreed to by:

EMERY CENTER APARTMENTS LIMITED PARTNERSHIP

By: Emery Operating, LLC, Its General Partner

By: ______________________
Name: ______________________
Title: ______________________

EMERY CENTER CORPORATION

By: ______________________
Name: Stuart A. Schloss, Jr.
Title: Chair

THE REQUIEM PROJECT, INC.

By: ______________________
Name: Tara Gordon
Title: Executive Director

UNIVERSITY OF CINCINNATI

By: ______________________
Name: ______________________
Title: ______________________

CORE REDEVELOPMENT, LLC

By: ______________________
Name: ______________________
Title: ______________________

7. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

8. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, and all of which taken together shall constitute one and the same Agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties. Execution of this Agreement may be completed through an exchange by facsimile or electronic transmission of the page or pages containing signatures of the Parties.

Accepted and agreed to by:

EMERY CENTER APARTMENTS LIMITED PARTNERSHIP

By: Emery Operating, LLC, Its General Partner

By:__________
Name:__________
Title:__________

EMERY CENTER CORPORATION

By:__________
Name:__________
Title:__________

THE REQUIEM PROJECT, INC.

By:__________
Name:__________
Title:__________

UNIVERSITY OF CINCINNATI

By:__________
Name:__________
Title:__________

CORE REDEVELOPMENT, LLC

By:__________
Name: JOHN T. WATSON
Title: MANAGING MEMBER

7. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

8. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, and all of which taken together shall constitute one and the same Agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties. Execution of this Agreement may be completed through an exchange by facsimile or electronic transmission of the page or pages containing signatures of the Parties.

Accepted and agreed to by:

EMERY CENTER APARTMENTS
LIMITED PARTNERSHIP

By: Emery Operating, LLC, Its General Partner

By: KA Schwab
Name: Kathy Schwab
Title: Manager

EMERY CENTER CORPORATION

By: ______________________
Name: ______________________
Title: ______________________

THE REQUIEM PROJECT, INC.

By: ______________________
Name: ______________________
Title: ______________________

UNIVERSITY OF CINCINNATI

By: ______________________
Name: ______________________
Title: ______________________

CORE REDEVELOPMENT, LLC

By: ______________________
Name: ______________________
Title: ______________________

EXHIBIT "A"

LEGAL DESCRIPTION OF EMERY APARTMENTS AND EMERY THEATRE

All that lot of ground commencing at the northeast corner of North Canal and Walnut Streets in the City of Cincinnati, County of Hamilton and State of Ohio, running thence north on the east line of Walnut Street two hundred and thirty-two (232) feet more or less to Wilkymacky Alley; thence east in the south line of said Alley one hundred and eighty (180) feet more or less to Clay Street; thence south on the west side of Clay Street two hundred and thirty two feet, more or less to North Canal Street; thence west on North Canal Street one hundred and eighty (180) feet to Walnut Street, the place of beginning.

EXHIBIT "B"

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

THE REQUIEM PROJECT, INC. et al.,	:	Case No. A1305297
Plaintiffs,	:	Judge Carl Stich Jr.
v	:	
EMERY CENTER CORPORATION, et al.	:	
Defendants.	:	**STIPULATION OF COMPLETE DISMISSAL, WITH PREJUDICE**

It is hereby stipulated by and between Plaintiff The Requiem Project, Inc., Defendant Emery Center Apartments, L.P., and Defendant Emery Center Corporation, by and through their respective counsel, that all claims and matters asserted herein are hereby dismissed, with prejudice to all further action, cost to be paid by Plaintiff. There are no other parties or claims remaining in this action.

Respectfully submitted,

/s/ Sean P. Callan
Sean P. Callan (0062266)
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Attorney for Plaintiff
The Requiem Project, Inc.

/s/ Jeffrey P. McSherry
Jeffrey P. McSherry (0055993)
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jmcsherry@bricker.com
Attorney for Defendant
Emery Center Apartments Limited Partnership

/s/ Donald J. Mooney, Jr.
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Telephone: 513-698-5070
Facsimile: 513-698-5071
dmooney@ulmer.com
Attorney for Defendant
Emery Center Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following by electronic mail this ____ day of May 2014.

Sean P. Callan
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James Cooney
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