

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this “Agreement”) is hereby entered into on this ____ day of February, 2020 (“Effective Date”) by and between **The Town of Munster, Indiana, and Munster Municipal Center Corporation** (collectively, “Munster”) and **Linden Group, Inc.** (“Linden”). Munster and Linden are each referred to herein as a “Party” and collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, Munster and Linden are parties to a lawsuit titled *Town of Munster, Indiana, et al v. Larson Danielson Construction Company, Inc., et al*, pending in the Lake County Superior Court, State of Indiana, as Cause Number 45C01-1604-PL-00035 (the “Lawsuit”);

WHEREAS, the Lawsuit arises from construction of a clubhouse and amphitheater in the town of Munster (the “Project”);

WHEREAS, Linden provided architectural services related to the Project (the “Services”);

WHEREAS, neither Party admits fault or liability with regard to any issues prior to the effective date of this Agreement, and both parties wish to settle and release all pending issues between them under the terms and conditions set out in this Agreement;

NOW, THEREFORE, in consideration of the terms and conditions set forth above and incorporated herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals and Defined Terms.** The foregoing recitals are hereby incorporated into this Agreement and made a part of hereof as though set forth herein verbatim.

2. **Payment.** For final settlement of all outstanding matters, and as consideration for entering this Agreement, the sufficiency of which is hereby acknowledged, Linden shall cause Two Hundred and Ninety Five Thousand Dollars (\$295,000.00) to be paid to Munster (the “Payment”), within seven (7) days following the Closing Date (as defined below). The Payment shall be made by check or checks, payable to The Town Munster, Indiana, and addressed to Munster c/o its counsel of record in the Lawsuit.

3. **Release of Claims.**

3.1 **Munster’s Release.** Upon the Closing Date, except for any obligations under this Agreement, Munster, on behalf of itself, its representatives, and its insurers, releases and forever discharges Linden and its shareholders, investors, successors, affiliates, related companies, principals, and insurers, from any and all claims, demands, actions, damages, losses, debts, costs, liabilities, obligations, contracts, agreements, causes of action, judgments, and suits at law or in equity of whatever nature, character, or description, anticipated or unanticipated,

known or unknown, contingent or non-contingent, foreseen or unforeseeable, prior to the Closing Date of this Agreement, including without limitation any claims that were or could have been brought in the Lawsuit, any errors, acts, omissions, or performance by Linden of the Services related to the Project, any claims of breach of agreements related to the Services or the Project, or any claims for attorneys' fees or other expenses.

3.2 **Linden Release.** Upon the Closing Date, except for any obligations under this Agreement, Linden and its shareholders, investors, successors, affiliates, related companies, principals, and insurers hereby releases and forever discharges Munster, its representatives and its insurers, from any and all claims, demands, actions, damages, losses, debts, costs, liabilities, obligations, contracts, agreements, causes of action, judgments, and suits at law or in equity of whatever nature, character, or description, anticipated or unanticipated, contingent or non-contingent, known or unknown, foreseen or unforeseeable, prior to the Effective Date of this Agreement, including without limitation any claims that were or could have been brought in the Lawsuit.

4. **No Admission of Wrongdoing.** Each Party acknowledges and agrees that this Agreement and the consideration given hereunder have been given and received purely on a compromise of a disputed claim basis, because the Parties desire to avoid any more expense and burden of protracted litigation. This Agreement does not constitute an admission that any person or entity violated any local, state, or federal ordinance, regulation, ruling, statute, rule of decision, or principle of common law, or that any person or entity engaged in any improper or unlawful conduct or wrongdoing nor shall it be construed or used as an admission of any act or fact whatsoever.

5. **No Lawsuits Regarding the Settled Matters.** Each Party represents, covenants, and warrants that, other than for the breach of this Agreement, it shall not file any civil claims, complaints, charges, or lawsuits against the other Party after the Effective Date of this Agreement with any court, governmental entity, any professional board, or any other tribunal for any matter, claim, or any incident known or unknown, related to any errors, events, acts, or omissions that arose or occurred prior to the Effective Date of this Agreement. The same above restrictions shall apply to any of a Party's owners, affiliates, representatives, agents, insurers, and people acting in concert with them.

The Parties agree that a Stipulation of Dismissal shall be filed in the Lawsuit within ten (10) days of the Closing Date affirming that all claims between and among the Parties to this Agreement shall be dismissed with prejudice.

6. **Closing Date.** Approval by the Munster Town Council is a condition precedent to Munster's obligations pursuant to this Agreement. Munster shall use commercially reasonable best efforts to secure the approval of the Munster Town Council following the Effective Date of this Agreement. In the event that the Town Council approves the settlement reflected in this Agreement, Munster shall provide written notice to Linden of the same. The date of such notice shall be the "Closing Date," as that term is used throughout this Agreement. In the event that the Town Council rejects the settlement reflected herein, this Agreement shall be null and void, and not enforceable against either Party hereto.

7. **Cooperation.** After the Closing Date, Linden agrees to attend any trial or evidentiary hearing in the Lawsuit upon request from Munster and to make any witnesses from Linden available for such hearings. Linden shall be solely responsible for the costs associated with such attendance and testimony, including without limitation salary for testifying employee(s), costs or expenses associated with travel, and any resulting attorneys' fees for Linden.

8. **Default.** If any Party defaults on the terms of this Agreement, any non-defaulting Party may, without the necessity for any notice whatsoever, pursue any remedy available to it at law or in equity. If any Party defaults on the terms of this Agreement and legal action is required to enforce its provisions, any non-defaulting Party shall be entitled to a sum equal to the attorneys' fees, expenses, and court costs incurred by it in enforcing this Agreement's provisions, in addition to any other damage to which it is entitled, from any defaulting party.

9. **Integration.** This Agreement contains the entire agreement between the Parties hereto, and fully supersedes any and all prior agreements or understandings between the Parties hereto pertaining to the subject matter of this Agreement, and no statements, promises, or inducements made by or on behalf of a Party or counsel for a Party that are not contained herein shall be binding. No amendment or modification to this Agreement shall be effective unless and until agreed to in writing and signed by all Parties hereto.

10. **Construction of Terms.** This Agreement shall be governed by and construed in accordance with the laws of the state of Indiana and any lawsuit or action brought regarding this Agreement shall be brought in Marion County, Indiana. If any provision of this Agreement or any construction or application of any provision of this Agreement is held to be unenforceable or invalid for any reason, then the validity of all the remaining provisions shall not be affected and the validity of any remaining construction or application of the provision shall not be affected, and the rights or obligations of each of the parties hereto shall be construed and enforced as if the Agreement did not contain such invalid provision or, as the case may be, invalid construction or application of such provision; provided, however, that such resulting construction and enforcement shall be generally consistent with the basic purpose of this Agreement. For this purpose, "provision" refers to any word, phrase, dollar amount, part, term, or other portion of this Agreement.

11. **Negotiated Agreement.** Each of the Parties hereto has read this Agreement and knows and understands the terms and contents. In view of such reading and understanding, and because each Party has also had the opportunity to negotiate fully the terms of this Agreement, its terms shall be interpreted and construed without any presumption or inference against a Party causing this Agreement or any part of it to be drafted.

12. **Execution Authority.** The individuals signing this Agreement on behalf of each of the Parties represent and warrant that they have the full power and authority to execute this Agreement and that upon such execution, the Parties shall be fully bound by each and every provision of this Agreement.

13. **Binding Nature of Agreement.** The Parties agree that the terms of this Agreement

are contractual in nature and are therefore binding upon the Parties and shall inure to the benefit of the heirs, executors, agents, assigns, and successors of each Party to this Agreement.

14. **Execution.** This Agreement may be executed in separate, identical counterparts, each of which is deemed to be an original, and all such counterparts together constitute one Agreement. A telecopied, facsimile, or PDF transmitted signature is equivalent to and is binding as an original signature.

15. **No Assignment.** Each Party hereby represents and warrants that it has not heretofore assigned or transferred, or purported to assign or transfer, or will make an assignment to any other person or entity, all or any part of or any interest in any claim, contention, demand, cause of action, obligation or liability of any nature, character or description whatsoever, which is or which purports to be released or discharged hereunder.

[signatures to follow]

IN WITNESS WHEREOF, the undersigned Parties have read this Agreement and agree to fully abide by the terms set forth herein.

TOWN OF MUNSTER, INDIANA

Signed: _____

By: _____

Date: _____

**MUNSTER MUNICIPAL CENTER
CORPORATION**

Signed: _____

By: _____

Date: _____

LINDEN GROUP, INC.

Signed: _____

By: _____

Date: _____