

SETTLEMENT AGREEMENT AND RELEASE

The parties to this agreement, Edmundson Foundation, Inc d/b/a the Des Moines Art Center (hereinafter “the Art Center”), and Mary Miss (hereinafter “Miss”) wish to resolve their differences and enter into a binding Settlement Agreement and Release (hereinafter “Agreement”) as described herein.

To settle all differences, Miss agrees that she will release and dismiss all claims against the Art Center and the other released parties, as defined below, with prejudice and agree to other terms and conditions described in this Agreement, in exchange for the Art Center’s total payment of Nine Hundred Thousand Dollars (\$900,000).

In exchange for this Agreement, Miss releases any and all claims and causes of action that she may have or claim to have against the Art Center, any of its parent companies or subsidiaries, and any of their predecessors, successors and assigns, affiliated entities, whether through stock ownership or otherwise, their representatives, their employees, past and/or present, their trustees, officers, directors and all other persons, relations, firms, associations and/or corporations employed by or associated with any of the aforementioned (collectively, the “Released Parties”) for any events preceding the date of this release. Miss hereby releases, acquits, and forever discharges the Released Parties from any and all liability whatsoever, for any and all claims, damages, attorneys’ fees, costs and expenses or causes of action of any nature at law or in equity arising prior to the date of this release. This release includes, but is not limited to, claims that were or could have been brought in the lawsuit currently pending in United States District Court for the Southern District of Iowa known as *Mary Miss v. Edmundson Foundation, Inc. d/b/a Des Moines Art Center*, Case No. 4:24-cv-00123 (the “Lawsuit”). Miss additionally expressly releases and waives any and all other known and unknown claims, whether foreseen or unforeseen, against the Released Parties predating this Agreement.

Miss represents and warrants that she is the owner of her claims, that she has the authority to release, waive and settle her claims, and that she has not pledged, given or sold the claims, or any portion thereof, to any other person or entity.

The parties further understand and agree:

1. This Agreement covers all injuries and damages, whether known or unknown, and which may hereafter appear or develop, and is binding upon Miss, her successors, assigns, heirs, and all others claiming by or through her.
2. The conditions recited in this Agreement are all that Miss will receive for her claims or potential claims against the Released Parties and no promise for any other or further consideration has been made by anyone.
3. This Agreement and the above-recited terms do not constitute an admission of liability on the part of any person or entity.

4. This release is executed solely in reliance upon the parties' own knowledge, belief, and judgment and not upon any representations made by the parties to this agreement or others on their behalf.
5. Upon receiving the Settlement Payment and before cashing the check for the Settlement Amount, the parties will (1) file a joint motion requesting that the temporary injunction issued by District Judge Stephen Locher on May 3, 2024 be lifted, and (2) file a stipulation dismissing the Lawsuit with prejudice.
6. Miss agrees to never file a lawsuit asserting any claims that are released by this Agreement.
7. The Art Center will pay a total of Nine Hundred Thousand Dollars (\$900,000) (the "Settlement Amount"), within fourteen (14) days of execution of this Agreement and delivery of a W-9. The Settlement Amount shall be a check payable to the Wandro, Kanne & Lalor, P.C. Trust Account and shall be delivered to her counsel, at 2015 Grand Avenue, Suite 102, Des Moines, Iowa 50312. The parties agree this payment shall be subject to a 1099.
8. Miss and the Art Center agree that they will be responsible for their own tax consequences from this settlement. Should claims be made against the Art Center regarding Miss's failure to satisfy taxes attributable to her in this matter, Miss agrees to indemnify the Art Center from any liability. Should claims be made against Miss regarding the Art Center's failure to satisfy taxes attributable to it in this matter, the Art Center agrees to indemnify Miss from any liability.
9. Upon payment of the Settlement Amount, Miss understands that the Art Center will be removing *Greenwood Pond: Double Site* in its entirety. The parties agree that the Art Center will have the authority to undertake the removal of the site in its entirety or in sections, and further agree that the Art Center has the sole authority to determine the order and means of removal. The parties understand and agree that the removal is subject to approval by the City of Des Moines, intended to begin as soon as practicable but may be impacted by seasonal weather, and that time is of the essence. The Art Center will apply for all permits necessary to remove the entirety of *Greenwood Pond: Double Site* as soon as practicable following the lifting of the injunction currently in place, and in no event later than 30 days following the lifting of said injunction. Miss expressly agrees that Section 8.2 of the Agreement for Artistic Services for Further Design Development, Working Drawings and Implementation of the Artwork (the "Artist Agreement") dated April 4, 1994, no longer applies after payment of the Settlement Amount and hereby waives all rights under Section 8.2(i) of the Artist Agreement. Miss, on behalf of any lawful heirs, legatees, executors, administrators, assigns, transferees or successors in interest waives all rights under Section 8.4 of the Artist Agreement related to the removal of the installation known as *Greenwood Pond: Double Site* that was the subject of the Lawsuit. For the avoidance of all doubt, this Agreement constitutes a written modification of the Artist Agreement as herein specified.
10. Miss acknowledges that she is unaware of any other claims that she may have against the Art Center other than those brought in the Lawsuit. Miss further acknowledges that any

such claims would be released pursuant to this Agreement. Miss understands that this representation is a material inducement for this Agreement. Based upon this representation, the Art Center agrees to settle this matter.

11. The parties agree to mutual non-disparagement as part of this Agreement and shall refrain from making disparaging comments regarding one another. This mutual non-disparagement agreement is expressly meant to protect individuals as well as entities.
12. Public Statement. Within five (5) business days from the Effective Date, the Art Center shall issue a press release acknowledging the settlement agreement, a copy of which is attached to this Settlement Agreement as Exhibit A. Miss and the Art Center shall adhere to the messaging set forth in such press release. The parties acknowledge the Art Center may have to issue additional press releases regarding the removal of the *Double Site* (e.g., related to timing, access to Greenwood Park, etc.) Any such additional press release that states a reason for the removal of the Double Site shall only state that the Double Site is being removed pursuant to the settlement agreement. The Art Center shall adhere to this messaging if asked any similar questions on the topic of removal by third parties or the media.
13. Miss acknowledges that she was advised to and did consult her attorney prior to signing this Agreement. The Art Center consulted its attorneys.
14. This document constitutes the entire agreement and understanding between the parties and supersedes any prior agreements or understandings.
15. If any portion of this Agreement is found to be unenforceable, then Miss and the Art Center desire that all other portions that can be separated from it or appropriately limited in scope shall remain fully valid and enforceable.
16. Should the need arise to enforce any portion of this Agreement, both parties agree to pay any reasonable attorney fees incurred by the prevailing party.
17. This Agreement shall be governed by and construed in accord with the laws of the State of Iowa.
18. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. Facsimile and electronic signatures shall be recognized as originals.

THAT WE HAVE READ THE FOREGOING AGREEMENT, AND UNDERSTAND ITS TERMS AND FREELY AND VOLUNTARILY SIGN THE SAME.

Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

CAUTION: THIS IS A RELEASE -- READ BEFORE SIGNING!

<p>Mary Miss</p> <p><i>Mary Miss</i></p> <hr/> <p>Date: Jan 13, 2025</p>	<p>Edmundson Foundation, Inc. d/b/a Des Moines Art Center</p> <hr/> <p>By: _____ Date: _____</p>
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Final clean

Final Audit Report

2025-01-13

Created:	2025-01-13
By:	Madison Laing (mlaing@wandrolaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAahgjRtMZBz9D1LA5MV_s_yhySgL6FTILx

"agr-release and settlement - art center_miss Final clean" History

-  Document created by Madison Laing (mlaing@wandrolaw.com)
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-  Document e-signed by Mary Miss (studio@marymiss.com)
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