

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into and effective on this \_\_\_\_ day of August 2008 by and between the Kasson Alliance for Restoration, Inc. (“KARE”) and the City of Kasson (“City”) (collectively, “Parties”).

WHEREAS, the City is the fee owner of the land and building located at 101 3rd Avenue NW in Kasson, Minnesota (collectively, “School”);

WHEREAS, the City resolved to demolish the School on November 27, 2006;

WHEREAS, in May 2007, KARE initiated a lawsuit entitled State of Minnesota, by Kasson Alliance for Restoration, Inc. v. City of Kasson, a Minnesota municipal corporation, Court File No. 20-CV-07-516, in Dodge County District Court (“Lawsuit”) to enjoin demolition of the School under the Minnesota Environmental Rights Act;

WHEREAS, by Order dated June 7, 2007, the Court granted KARE a temporary injunction prohibiting demolition of the School pending the outcome of the Lawsuit, condition on the posting of a \$50,000 bond;

WHEREAS, KARE posted the \$50,000 bond which is in effect as of the date of this Agreement;

WHEREAS, the Parties desire to settle the Lawsuit and all claims between them, whether existing now or arising in the future, regarding the School.

NOW, THEREFORE, for good and valuable consideration, including the foregoing recitals and the mutual covenants, terms, and conditions set forth below, the Parties agree as follows:

1. The foregoing recitals are hereby incorporated in and made part of this Agreement.
2. At the time of executing this Agreement, the Parties shall execute a Stipulation of Dismissal with Prejudice of the Lawsuit, without an award of costs, disbursements, or attorneys’ fees to any party, which shall include dissolution of the temporary injunction and release of the bond posted by the Plaintiff, in the form attached hereto as Exhibit A.
3. At the time of executing this Agreement, the Parties shall execute the full mutual release attached hereto as Exhibit B and incorporated herein.
4. The Parties agree to have a Reuse Study done for the School, subject to the terms and conditions in this Agreement, and anticipate that it could cost up to \$30,000. The City shall provide matching funds for the Reuse Study cost up to a maximum of \$15,000.00. Any grant money received for the Reuse Study from federal or

state sources will be apportioned equally between the Parties. Equal contributions from each party shall be paid promptly and directly to the contractor selected to perform the Reuse Study, at such times and in such amounts as specified in the contract. If the contract calls for installment or progress payments, each party shall pay matching amounts on each occasion, unless otherwise agreed. If KARE breaches its obligation to pay its portion of the Reuse Study cost in accordance with the terms of this paragraph and the Reuse Study contract, the City may either a) fulfill the terms of the Reuse Study contract and seek damages against KARE, or b) terminate this Agreement, in which case all further obligations under this Agreement are null and void except that the obligations in paragraphs 2 and 3 herein shall survive. In the event the City claims KARE has failed to pay its portion of the Reuse Study cost in accordance with this paragraph or the Reuse Study contract, the City will give KARE written notice of the default and fifteen days from receipt of the notice to cure the default before proceeding with remedies under this paragraph; a copy of the notice shall be sent to KARE's counsel Mark Anfinson.

5. The Reuse Study shall be conducted by or at the direction of a reputable and qualified firm or individual, as approved by the City and KARE. Robert Vogel, Daniel Hoisington and Jeff Allman may not be selected to perform the Reuse Study, though they may participate in the Reuse Study and continue to consult with the Parties in any other capacity. For purposes of the Reuse Study only, the City and KARE shall be joint contracting parties with the firm or individual selected. KARE shall be responsible for preparing an initial draft of a Request for Proposals ("RFP") seeking qualified candidates to perform the Reuse Study. The draft shall be submitted to the City for review and approval not later than November 1, 2008. The City shall provide its response not later than November 30, 2008. As soon as reasonably possible thereafter, the final version of the RFP shall be issued, a contractor selected, and a contract executed. The RFP shall specify that the Reuse Study is to be completed and the final report provided to the Parties not more than seven months after execution of the contract. If the Reuse Study is not complete and the final report not provided to the Parties within seven months after the date of contracting, or at such later time as approved by the City, any further obligations under this Agreement are null and void except that the obligations in paragraphs 2 and 3 herein shall survive.
6. If the Reuse Study identifies one or more viable, sustainable uses that will preserve the historical integrity of the School and can be implemented within a reasonable period of time, as determined by the City, the City will not demolish the School until after August 31, 2011. In the event that the Reuse Study does not identify a use satisfying the conditions in this paragraph, the City has no further obligations under this Agreement, and the Agreement may be terminated at the discretion of the City.
7. Nothing in this Agreement creates any lien, ownership or other interest in the School in favor of KARE and the City retains ownership of the School. After

August 31, 2011 or in the event that this Agreement terminates or becomes null and void, the City may dispose or reuse the School or real property in any manner it deems appropriate, including, without limitation, demolition. Until such times, however, the City shall maintain sole ownership of the School and the real property on which it is located, shall not transfer any interest in the School or the real property to third parties, and shall not permit any encumbrance to attach to the School or the real property, unless otherwise agreed to by the Parties. In the event the City decides to demolish the School, it will mitigate the demolition through historical and architectural documentation to the extent it deems appropriate.

8. KARE will not challenge the City's May 23, 2007 Negative Declaration that an Environmental Assessment Worksheet ("EAW") is not required to demolish the School or any of the City's future decisions related to the need for an EAW, Environmental Impact Statement, or any other form of environmental review concerning the School or the City's disposition of the School through, without limitation, reuse, demolition, sale, rehabilitation, or any other manner it deems appropriate upon expiration or termination of this Agreement.
9. While this Agreement is effective, the City may use the School for all purposes it deems appropriate, including, without limitation, police training and related activities, consistent with its use in the past, provided that such uses do not cause material damage or harm to the structural integrity or exterior appearance of the School. If such uses should cause any damage to portions of the School that would increase exposure of the interior of the School to the elements (such as broken windows), the City will make reasonable efforts to secure the building.
10. The City will allow KARE's officers and directors regular monthly access to the School, or as otherwise permitted by the City upon 72 hours written notice by KARE, which permission shall not be unreasonably withheld. Such access is permitted under this paragraph in order for KARE to show the School to potential donors and supports, not to conduct any tests. Entry into the School by any persons other than City representatives and employees is expressly conditioned on executing the waiver of liability and covenant not to sue attached hereto as Exhibit C and incorporated herein.
11. The Parties will work together in good faith to provide information, authorizations, or letters of recommendation necessary for either the City or KARE to apply for grants or other financing for the Reuse Study and with respect to participating in the Reuse Study. Mark Anfinson will make requests for participation by the City in such applications on KARE's behalf directly to the City, which shall have the sole discretion to evaluate and either process or reject the request.
12. This Agreement is binding upon the City and KARE, including, without limitation, KARE's directors, officers, and members. In the spirit of retaining

local control over KARE, should KARE be dissolved at any time before August 31, 2011, this Agreement is null and void, except that the obligations in paragraphs 2 and 3 herein shall survive, unless the majority of members and supporters of any successor organization to KARE reside within the Kasson area. In the event KARE ceases to exist, a successor organization meeting the conditions of this paragraph must be designated and qualify within 30 days.

13. If any reuse for the School identified in the Reuse Study requires a referendum for any purpose, KARE agrees not to challenge the results of the referendum. The City shall not state a position in favor, or against, any such future referendum, and shall not work for any particular referendum result. The City will give KARE two weeks notice of any public hearings where any such referendum will be discussed, and shall provide KARE with a copy of any proposed referendum language for review and comment within that two week period.
14. The Parties will work together in good faith with respect to implementing the terms of this Agreement.
15. By entering into this Agreement, the City does not express any opinions or recommendations concerning the possible future reuse of the School. Nothing in this Agreement shall be binding on any elected official as to a particular position on or desired outcome for the School. Nothing in this Agreement shall be construed as a waiver of any city processes, permits required concerning reuse, rehabilitation, or development of the School; and the City by entering this Agreement is not agreeing to any future use of the School or waiving the discretion with which it is vested in dealing with regulatory, real property and development issues.
16. On or about the effective date of this Agreement, the Parties will issue a joint news release generally indicating that an amicable settlement of the Lawsuit has been reached, as approved by their undersigned counsel, with no further comment.
17. The Dodge County District Court shall retain jurisdiction for the sole purpose of enforcing this Agreement and resolving any disputes over the terms of this Agreement.

Dated: \_\_\_\_\_, 2008

Dated: \_\_\_\_\_, 2008

George C. Hoff (#45846)  
Shelley M. Ryan (#348193)  
Hoff, Barry & Kozar, P.A.  
775 Prairie Center Drive, Suite  
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3109 Hennepin Ave. S.  
160 Minneapolis, MN 55408  
tel: (612) 827-5611  
fax: (612) 827-3564

*Attorneys for Defendant City of Kasson*

*Attorney for Plaintiff Kasson Alliance for Restoration, Inc.*

**Signed 13 August 2008**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF KASSON

KASSON ALLIANCE FOR RESTORATION, INC.

\_\_\_\_\_  
Mayor Timothy Tjosaas

\_\_\_\_\_  
By:  
Its:

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of August, 2008, by \_\_\_\_\_, the \_\_\_\_\_ of the Kasson Alliance for Restoration, Inc., on behalf of said corporation.

\_\_\_\_\_  
Notary Public

**Exhibit A**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DODGE

THIRD JUDICIAL DISTRICT

State of Minnesota,  
By Kasson Alliance for Restoration, Inc.,

Case Type: Other Civil  
Court File No: 20-CV-07-516

Plaintiff,

v.

**STIPULATION OF DISMISSAL  
WITH PREJUDICE AND  
ORDER**

City of Kasson, a Minnesota  
municipal corporation,

Defendant.

The above parties, through their undersigned attorneys, hereby stipulate and agree that the foregoing matter, having been fully compromised and settled, may be and hereby is, dismissed with prejudice, without costs or disbursements to either party. The parties further stipulate and agree that pursuant to the Settlement Agreement entered into between the parties and attached hereto as Exhibit A, the temporary injunction issued pursuant to the Court’s Order dated June 7, 2007 may be and hereby is dissolved and the \$50,000 bond posted by Plaintiff pursuant to the Court’s Order dated June 7, 2007 is released.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
George C. Hoff (#45846)  
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*Attorneys for Defendant City of Kasson*

Dated: \_\_\_\_\_, 2008

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fax: (612) 827-3564

*Attorney for Plaintiff*

**ORDER**

Pursuant to the foregoing Stipulation of Dismissal with Prejudice, IT IS HEREBY ORDERED that:

- 1) the above-entitled action is dismissed with prejudice and without costs and disbursements to any of the parties; and
- 2) the temporary injunction issued pursuant to the Court's Order dated June 7, 2007 is dissolved; and
- 3) the \$50,000 bond posted by Plaintiff pursuant to the Court's Order dated June 7, 2007 is released.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Dated: \_\_\_\_\_, 2008

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Judge of District Court

**EXHIBIT B**

**RELEASE OF CLAIMS**

In consideration of the Settlement Agreement entered into between the Kasson Alliance for Restoration, Inc. (“KARE”) and the City of Kasson (“City”) in the matter of State of Minnesota by Kasson Alliance for Restoration, Inc. v. City of Kasson, Dodge County Court File No. 20-CV-07-516 (“Lawsuit”), KARE and its directors, officers, shareholders, members, insurers, agents, servants, managers, employees, successors, heirs, executors, assigns and administrators and the City and its insurers, agents, servants, managers, successors, heirs, executors, assigns and administrators completely release and forever discharge each other from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses and compensation whatsoever, including court costs, legal expenses, engineering and other consultant or expert fees and attorneys fees, that they may now or hereafter have on account of or in any way related to any and all known and unknown, foreseen and unforeseen injuries suffered or sustained by them, which in any way relate to or arise out of the Lawsuit.

KARE and its directors, officers, shareholders, members, insurers, agents, servants, managers, employees, successors, heirs, executors, assigns and administrators also completely release and forever discharge the City and its insurers, agents, servants, managers, successors, heirs, executors, assigns and administrators from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses and compensation whatsoever, including court costs, legal expenses, engineering and other consultant or expert fees and attorneys fees, that they may now or hereafter have on account of or in any way related to any and all known and unknown, foreseen and unforeseen injuries suffered or sustained by them, arising out of or in any way related to the following: the City’s May 23, 2007 Negative Declaration that an Environmental Assessment Worksheet (“EAW”) is not required to demolish the structure located at 101 3<sup>rd</sup> Avenue NW, Kasson, Minnesota (“School”); the City’s past or future decisions related to the need for an EAW, Environmental Impact Statement (“EIS”) or any other environmental review concerning the School; and the City’s past and future actions or inactions related to the disposition of the School through, without limitation, reuse, demolition, sale, or rehabilitation.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF KASSON

KASSON ALLIANCE FOR RESTORATION, INC.

\_\_\_\_\_  
Mayor Timothy Tjosaas

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
City Clerk



**EXHIBIT C**

**WAIVER OF LIABILITY AND  
COVENANT NOT TO SUE**

In consideration of receiving permission to enter property and/or the structure(s) owned by the City of Kasson and located at 101 3rd Avenue North West, Kasson, Minnesota 55944 (collectively, "Property") on \_\_\_\_\_, I hereby RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE the City of Kasson and its insurers, agents, servants, employees, managers, successors, heirs, executors, assigns and administrators (collectively, "RELEASEES") from any and all liability, claims, demands, actions and causes of action whatsoever arising out of or related to any loss, damage, bodily injury, sickness, disease, death, or injury to or destruction of tangible property, however caused, while on or in the Property.

I further agree to VOLUNTARILY ASSUME FULL RESPONSIBILITY FOR ANY RISK OF LOSS, PROPERTY DAMAGE, OR PERSONAL INJURY, INCLUDING DEATH, which may be sustained by me, or any injury to or destruction of tangible property, as a result of being on or in the Property, however caused.

I further agree to INDEMNIFY, DEFEND, AND HOLD HARMLESS the City of Kasson and its insurers, agents, servants, employees, managers, successors, heirs, executors, assigns and administrators from any and all loss, liability, damages, or costs, including without limitation attorneys' fees, which they may incur due to my entry on or in the Property.

It is my express intent that this Agreement shall bind the members of my family, including my spouse, if any, and my heirs, assigns and personal representatives and shall be deemed as a RELEASE, WAIVER, DISCHARGE AND COVENANT NOT TO SUE the above-named RELEASEES.

In signing this Agreement, I acknowledge and represent that I have read the Agreement, understand it, and sign it voluntarily as my own free act and deed; no oral representations, statements, or inducements, apart from the terms and conditions in this Agreement, have been made; I am at least eighteen (18) years of age and fully competent; and I execute this Agreement for full, adequate, and complete consideration fully intending to be bound by the same.

**THIS IS A RELEASE AND WAIVER OF LEGAL RIGHTS. READ BEFORE SIGNING AND OBTAIN INDEPENDENT LEGAL COUNSEL IF DESIRED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Please Print)