

1 **RESOLUTION NO. _____**

2
3 **A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO**
4 **EXECUTE A HISTORIC PRESERVATION EASEMENT FOR THE**
5 **OAKLAND & FRATERNAL HISTORIC CEMETERY PARK LOCATED**
6 **IN LITTLE ROCK, ARKANSAS, TO THE STATE OF ARKANSAS,**
7 **ACTING BY AND THROUGH THE ARKANSAS HISTORIC**
8 **PRESERVATION PROGRAM; AND FOR OTHER PURPOSES.**
9

10 **WHEREAS**, the City's Oakland & Fraternal Historic Cemetery Park was listed in the National Register
11 of Historic Places beginning on April 20, 2010, and

12 **WHEREAS**, earlier this year, the City of Little Rock was awarded a Twenty-Four Thousand, Nine
13 Hundred Eighty-Six Dollar (\$24,986.00) grant from the Arkansas Historic Preservation Program for repair
14 work needed for the stone masonry and wrought iron gates at the College and Barber Street entrances to
15 the Cemetery, and

16 **WHEREAS**, a requirement to receive the grant funding is the provision to the Arkansas Historic
17 Preservation Program of a Historic Preservation Easement relative to the portion of the Cemetery premises
18 where the stone masonry and wrought iron gate repair work will be conducted to assist in preserving and
19 maintaining the Cemetery and its architectural, archaeological, historical and cultural features, and

20 **WHEREAS**, the provision of this Historic Preservation Easement to the Arkansas Historic
21 Preservation Program will assist in maintaining the value and significance of the Oakland & Fraternal
22 Historic Cemetery Park to the City of Little Rock and the State of Arkansas and allow funding of much of
23 the needed repair work for the stone masonry and wrought iron gates at the College and Barber Street
24 entrances to the Cemetery, to be reimbursed through the grant from the Arkansas Historic Preservation
25 Program.

26 **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY**
27 **OF LITTLE ROCK, ARKANSAS:**

28 **Section 1.** The Mayor and City Clerk are hereby authorized to execute a Historic Preservation
29 Easement to the State of Arkansas, acting by and through the Arkansas Historic Preservation Program, on
30 the portion of the Oakland & Fraternal Historic Cemetery Park premises relative to the repair of stone
31 masonry and wrought iron gates at the College and Barber Street entrances to the Cemetery. The easement
32 is to be substantially in the form attached to this resolution as Exhibit A and as approved by the City
33 Attorney.

1 **Section 2. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or
2 word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or
3 adjudication shall not affect the remaining portions of the resolution, which shall remain in full force and
4 effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the
5 resolution.

6 **Section 3. Repealer.** All ordinances, resolutions, bylaws, and other matters inconsistent with this
7 resolution are hereby repealed to the extent of such inconsistency.

8 **ADOPTED: September 19, 2017**

9 **ATTEST:**

APPROVED:

10

11 _____
12 **Susan Langley, City Clerk**

_____ **Mark Stodola, Mayor**

13 **APPROVED AS TO LEGAL FORM:**

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15 _____
16 **Thomas M. Carpenter, City Attorney**

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1 **EXHIBIT A**

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4 Resource Number: PU5892
5 Name of Property: Oakland & Fraternal Historic Cemetery Park
6 Physical Address: 2101 Barber Avenue
7 Little Rock, AR 72206
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9 **HISTORIC PRESERVATION EASEMENT**

10 This preservation and conservation easement, made the ____ day of _____, 2017, by and
11 between CITY OF LITTLE ROCK (“Grantor”) and THE STATE OF ARKANSAS, ACTING BY AND
12 THROUGH THE ARKANSAS HISTORIC PRESERVATION PROGRAM, A DIVISION OF THE DE-
13 PARTMENT OF ARKANSAS HERITAGE (“Grantee”).

14 **WITNESSETH:**

15 **WHEREAS**, the Grantee is a qualifying recipient of qualified conservation contributions under 26
16 U.S.C. Section 170, being part of the Internal Revenue Code, as amended from time to time (hereinafter
17 the “Code”);

18 **WHEREAS**, the Grantee is authorized to accept Conservation Easements for all purposes set forth in
19 Ark. Code Ann. § 15-20-401 (the “Act”) to retain and protect property having significant architectural,
20 archeological, historical, or cultural aspects;

21 **WHEREAS**, the Grantor is owner in fee simple of certain real property in Pulaski County, Arkansas
22 (hereinafter the “Premises”), said Premises including two (2) structure(s) commonly known as stone
23 masonry and wrought iron gates at the College and Barber Street entrances to the Oakland & Fraternal
24 Historic Cemetery Park (hereinafter the “Property”), and is more particularly described below;

25 **WHEREAS**, the Premises was listed in the National Register of Historic Places on April 20, 2010, and
26 is warranted by Grantor to be a certified historic structure;

27 **WHEREAS**, the Grantor and Grantee recognize the historical, cultural, architectural or archaeological
28 value and significance of the Premises, and have the common purpose of conserving and preserving the
29 aforesaid value and significance of the Premises;

30 **WHEREAS**, the grant of a Preservation and Conservation Easement by Grantor to Grantee on the
31 Property referred to herein will assist in preserving and maintaining the Premises and its architectural,
32 archaeological, historical and cultural features;

33 **WHEREAS**, the grant of a Preservation and Conservation Easement by Grantor to Grantee on the
34 Property will assist in preserving and maintaining the aforesaid value and significance of the Premises both
35 to Grantor and Grantee;

1 **WHEREAS**, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a
2 Conservation Easement on the Property;

3 **NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable
4 consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant, bargain,
5 sell and convey unto the Grantee, TO HAVE AND TO HOLD the same unto Grantee, an easement in gross
6 in perpetuity (which easement is more particularly described below and will hereafter be referred to as the
7 “Easement”) in and to that certain real Property, owned by the Grantor, and more particularly described as:
8 Stone masonry and wrought iron gates at the College and Barber Street entrances to the Oakland & Fraternal
9 Historic Cemetery Park.

10 **LEGAL PROPERTY DESCRIPTION**

11 **Collage Street Entrance (North Easement):** A HISTORIC PRESERVATION EASEMENT
12 BEING A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION
13 11, TOWNSHIP 1 NORTH, RANGE 12 WEST, PULASKI COUNTY, ARKANSAS, BEING
14 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE
15 SOUTHEAST QUARTER, SAID SECTION 11; THENCE ALONG THE NORTH LINE
16 THEREOF NORTH 88°09'08" WEST 430.41 FEET TO THE NORTHEAST CORNER OF
17 THE OAKLAND NATIONAL CEMETERY; THENCE CONTINUE ALONG SAID
18 NORTH LINE NORTH 88°09'08" WEST 832.60 FEET TO THE POINT OF BEGINNING
19 A CONSERVATION EASEMENT; THENCE NORTH 36°16'47" WEST 4.23 FEET;
20 THENCE NORTH 0°00'00" EAST 5.37 FEET; THENCE NORTH 88°09'08" WEST 24.64
21 FEET; THENCE SOUTH 00°00'00" EAST 5.96 FEET; THENCE SOUTH 34°49'20" WEST
22 7.48 FEET; THENCE NORTH 89°42'56" WEST 21.0 FEET; THENCE SOUTH 00°13'38"
23 WEST 3.50 FEET; THENCE SOUTH 89°44'35" EAST 74.90 FEET; THENCE NORTH 3.5
24 FEET; THENCE SOUTH 89°59'10" WEST 20.46 FEET; THENCE NORTH 36°16'47"
25 WEST 3.43 FEET TO THE POINT OF BEGINNING CONTAINING 577 SQUARE-FEET,
26 MORE OR LESS.

27 **Barber Street Entrance (West Easement):** A HISTORIC PRESERVATION EASEMENT
28 BEING A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION
29 11, TOWNSHIP 1 NORTH, RANGE 12 WEST, PULASKI COUNTY, ARKANSAS, BEING
30 DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE
31 SOUTHEAST QUARTER, SAID SECTION 11; THENCE ALONG THE NORTH LINE
32 THEREOF NORTH 88°09'08" WEST 430.41 FEET TO THE NORTHEAST CORNER OF
33 THE OAKLAND NATIONAL CEMETERY; THENCE CONTINUE ALONG SAID
34 NORTH LINE NORTH 88°09'08" WEST 1,657.32 FEET TO A POINT ON THE EAST

1 **RIGHT-OF-WAY LINE OF BARBER STREET; THENCE ALONG THE EAST RIGHT-**
2 **OF-WAY LINE OF BARBER STREET SOUTH 01°02'51" WEST 1239.83 FEET TO THE**
3 **POINT OF BEGINNING OF SAID PRESERVATION EASEMENT; THENCE CONTINUE**
4 **ALONG SAID EAST RIGHT-OF-WAY OF BARBER STREET SOUTH 01°02'51" WEST**
5 **55.84 FEET; THENCE SOUTH 88°57'09" EAST 4.49 FEET; THENCE NORTH 38°51'32"**
6 **EAST 12.77 FEET; THENCE NORTH 01°02'51" EAST 33.26 FEET; THENCE NORTH**
7 **30°48'53" WEST 14.71 FEET; THENCE NORTH 88°57'09" WEST 4.56 FEET TO THE**
8 **POINT OF BEGINNING CONTAINING 600 SQUARE-FEET, MORE OR LESS.**

9 The Survey of the Property is attached hereto and incorporated herein as Attachment 4.

10 The Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding
11 servitude upon said Property of the Grantor, and to that end Grantor covenants on behalf of itself, its
12 successors and assigns, with Grantee, its successors and assigns, including that such covenants shall run as
13 a binding servitude, in perpetuity, upon the Property, each of the following covenants and stipulations,
14 which contribute to the public purpose in that they aid significantly in the preservation of the Property and
15 surrounding land area, and which help maintain and assure the present and future integrity of the Property:

16 **1. Description of Facades.** In order to make more certain the full extent of Grantor's obligations and
17 the restrictions on the Property, and in order to document the external nature of the Property as of the date
18 hereof, attached hereto as Exhibit A and incorporated herein by this reference are a set of photographs
19 depicting the exterior surfaces of the Property and an affidavit specifying certain technical and locational
20 information relative to said photographs satisfactory to Grantee, attached hereto as Exhibit B. It is
21 stipulated by the between Grantor and Grantee that the external nature of the Property as shown in Exhibit
22 A is deemed to be the external nature of the Property as of the date the photographs were taken and that the
23 external nature of the Property remained the same until the execution of the Grant Contract, Grant No. 18-
24 HPRG-05, between the Arkansas Historic Preservation Program and the City of Little Rock hereof and as
25 of the date this instrument is first recorded in the real estate records of the county wherein the Property is
26 located. The external nature of the Property as shown in Exhibit A is hereinafter referred to as the "Facades."

27 **2. Grantor's Covenants.** In furtherance of the easement herein granted, Grantor undertakes, of itself,
28 to do (and to refrain from doing as the case may be) upon the Property each of the following, which
29 contribute to the public purpose of significantly protecting and preserving the Premises:

30 (a) Grantor shall not demolish, remove or raze the Property or the Facades except as provided in
31 Paragraphs 6 and 7.

32 (b) Without the prior express written permission and approval of the Grantee (which shall be granted
33 or withheld solely in the discretion of Grantee), signed by a duly authorized representative thereof, it being
34 understood and agreed by Grantor that such authorization may not be obtained orally, by estoppel or waiver,

1 or in any other manner other than as expressly set forth above (the "Approval"), Grantor shall not undertake
2 any of the following actions:

3 (i) increase or decrease the height of the Facades or the Property;

4 (ii) adversely affect the structural soundness of the Facades;

5 (iii) make any changes in the Facades including the alteration, partial removal, construction,
6 remodeling or other physical or structural change including any change in surfacing, with respect
7 to the appearance or construction of the Facades, with the exception of ordinary maintenance
8 pursuant to Paragraph 2(c) below;

9 (iv) erect anything on the Property or on the Facades which would prohibit them from being
10 visible from street level, except for a temporary structure during any period of approved alteration
11 or restoration;

12 (v) permit any significant reconstruction, repair, repainting or refinishing of the Facades that
13 alters their state from the existing condition. This subsection (v) shall not include ordinary
14 maintenance pursuant to Paragraph 2(c) below; and

15 (vi) erect, construct or move anything on the Premises that would encroach on the open land
16 area surrounding the Property and interfere with a view of the Facades or be incompatible with the
17 historic or architectural character of the Property or the Facades.

18 (c) Grantor agrees at all times to maintain the Property in a good and sound state of repair and to
19 maintain the Facades and the structural soundness and safety of the Property and to undertake the minimum
20 maintenance program attached as Exhibit C so as to prevent deterioration of the Facades. Subject to the
21 casualty provisions of Paragraphs 5, 6 and 7, this obligation to maintain shall require replacement,
22 rebuilding, repair and reconstruction whenever necessary to have the external nature of the Property at all
23 times appear to be and actually be the same as the Facades.

24 (d) No buildings or structures, including satellite receiving dishes, camping accommodations or mobile
25 homes not presently on the Property shall be erected or placed on the Property hereafter, except for
26 temporary structures required for the maintenance or rehabilitation of the Property, such as construction
27 trailers, without the express written consent of Grantee.

28 (e) No signs, billboards, awnings or advertisements shall be displayed or placed on the Property;
29 provided, however, that Grantee may, with an Approval, erect such signs or awnings as are compatible with
30 the preservation and conservation purposes of this Easement and appropriate to identify the Property and
31 any activities on the Premises or in the buildings.

32 (f) There shall be no removal, destruction or cutting down of large trees or landscaping integral to the
33 preservation and conservation purposes of this Easement; provided, however, that Grantor may, with an
34 Approval, undertake such landscaping of the Property as is compatible with the preservation and

1 conservation purposes of this Easement and which may involve removal or alteration of present
2 landscaping, including trees, shrubs or other vegetation.

3 (g) No dumping of ashes, trash, rubbish or any other unsightly or offensive materials shall be permitted
4 on the Property.

5 (h) The Property shall be used only for purposes consistent with the preservation and conservation
6 purposes of this Easement.

7 (i) After the date the Easement is recorded, the Property (or any part thereof or interest therein) shall
8 not be subdivided, re-platted, or subjected to change in allowed land uses including without limitation
9 action to change the allowed land uses or land use classification and the Property shall not be leased,
10 mortgaged, sold, devised or conveyed (including without limitation conveyance of an easement or
11 restrictive covenant) except as a unit.

12 (j) No utility transmission lines, except those reasonably necessary for the existing Buildings, may be
13 created on the Property, subject to utility easements recorded as of the date this Easement is recorded.

14 **3. (a) Public View.** Grantor agrees not to obstruct the substantial and regular opportunity of the
15 public to view the exterior architectural features of any building, structure or improvements of the Property,
16 from adjacent publicly accessible areas such as public streets.

17 **-or-**

18 **(b) Public Access.** Grantor shall make the Property accessible to the public on a minimum of two
19 (2) days per year from 10:00 AM - 4:00 PM and at other times by appointment, to permit persons affiliated
20 with educational organizations, professional architectural associations and historical societies to study the
21 Property. Any such public admission may be subject to restrictions having an Approval as reasonably
22 designed for the protection and maintenance of the Property. Grantee, on request of the Grantor, shall
23 furnish such guides and/or guardians as may reasonably be necessary or desirable for such restrictions. Such
24 admission may also be subject to a reasonable fee, if any, having an Approval. The Grantee may make
25 photographs, drawings or other representations documenting the significant historical, cultural or
26 architectural character and features of the Property and distribute them to magazines, newsletters or other
27 publicly available publications, or use them to further its stated purposes.

28 **4. Standards for Review.** In exercising any authority created by the Easement to inspect the Property
29 or the Facades; to review any construction, alteration, repair or maintenance; or to review casualty damage
30 or to reconstruct or approve reconstruction of the Property following casualty damage, Grantee shall apply
31 the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; issued and as may be
32 amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the
33 “Standards”) and state or local standards considered appropriate by Grantee for review of work affecting
34 historically or architecturally significant structures or for construction of new structures within historically,
35 architecturally or culturally significant areas. Grantor agrees to abide by the Standards in performing all

1 ordinary repair and maintenance work and the minimum maintenance program described in Paragraph 2(c)
2 and contained in Exhibit C. In the event the Standards are abandoned or materially altered or otherwise
3 become, in the sole judgment and discretion of the Grantee, inappropriate for the purposes set forth above,
4 the Grantee may apply reasonable alternative standards and notify Grantor of the substituted standards.

5 **5. Casualty Damage or Destruction.** In the event that the Property or any part thereof shall be
6 damaged or destroyed by casualty, the Grantor shall notify the Grantee in writing within one (1)-day of the
7 damage or destruction, such notification including what, if any, emergency work has already been
8 completed. For purposes of this instrument, the term “casualty” is defined as such sudden damage or loss
9 as would qualify for a loss deduction pursuant to Section 165(c)(3) of the Code (construed without regard
10 to legal status, trade or business of the Grantor or any applicable dollar limitation). No repairs or
11 reconstruction of any type, other than temporary emergency work to prevent further damage to the Property
12 and to protect public safety, shall be undertaken by Grantor without an Approval. Within four (4) weeks of
13 the date of damage or destruction, the Grantor shall submit to the Grantee a written report prepared by a
14 qualified restoration architect and/or an engineer, if required, acceptable to the Grantor and the Grantee
15 which shall include the following:

16 (a) An assessment of the nature and extent of the damage;

17 (b) A determination of the feasibility of the restoration of the Facades and reconstruction of damaged
18 or destroyed portions of the Property; and

19 (c) A report of all work necessary to return the Property to the condition existing at the time the Grant
20 Contract was executed or to the condition to which the Property may have been altered only where
21 alterations are done, pursuant to an Approval as set forth in Paragraph 2 of the Easement (the “Prior
22 Condition”). If, in the opinion of the Grantee, after reviewing such report, the purpose and intent of the
23 Easement will be served by restoration and reconstruction of the Property to the Prior Condition, the Grantor
24 shall, within eighteen (18) months after the date of such change or destruction, complete the restoration and
25 construction of the Property in accordance with plans and specifications having an Approval up to at least
26 the total of the casualty insurance proceeds as may be necessary to restore the appearance of the Facades to
27 the Prior Condition, and additional cost of work not performed or monies advanced (Grantee having no
28 obligation to advance funds) by Grantee shall constitute a lien on the Property until repaid by Grantor.

29 **6. Grantee’s Remedies Following Casualty Damage.** The foregoing notwithstanding, in the event
30 of damage resulting from casualty, as defined at Paragraph 5, which is of such magnitude and extent as to
31 defeat the purposes of this Easement, as determined by Grantee acting with sole discretion, then:

32 (a) Grantee may elect to reconstruct the Property using insurance proceeds, donations or other funds
33 received by Grantor or Grantee on account of such casualty, but otherwise at its own expense (such expense
34 of Grantee to constitute a lien on the Property until repaid in full); or

1 (b) Grantee may elect to choose any salvageable portion of the Facades and remove them from the
2 Property, extinguish the Easement pursuant to Paragraph 26, and this Easement shall thereupon be of no
3 further force and effect, and Grantee shall execute and deliver to Grantor acknowledged evidence of such
4 fact suitable for recording in the land records of the county wherein the Property is located, and Grantor
5 shall deliver to Grantee a good and sufficient Bill of Sale for such salvaged portions of the Facade.

6 **7. Review After Casualty Loss.** If, in the opinion of the Grantee, restoration and reconstruction
7 would not serve the purpose and intent of the Easement, then the Grantor shall continue to comply with the
8 provisions of the Easement and seek an Approval for altering demolishing, removing or razing the
9 Buildings and constructing new improvements on the Property.

10 **8. Grantee's Covenants.** The Grantee covenants that:

11 (a) Grantee is and will remain a qualified organization for purposes of Section 170(h) of the Code. In
12 the event that the Grantee's status as a qualified organization is successfully challenged, then the Grantee
13 shall promptly select another qualified organization and transfer all of its rights and obligations under the
14 Easement to it, which shall be the sole and exclusive remedy of Grantor.

15 (b) In the event that the Grantee shall at any time in the future become the fee simple owner of the
16 Property, Grantee for itself, its successors and assigns, covenants and agrees, in the event of a subsequent
17 conveyance of the same to another, to create a new preservation and conservation easement either to retain
18 such easement in itself or to convey such easement to a similar unit of federal, state or local government or
19 local, state or national organization whose purposes, inter alia, are to promote preservation or conservation
20 of historical, cultural or architectural resources, and which is a qualified organization under Section
21 170(h)(3) of the Code.

22 (c) Grantee may, at its discretion and with prior notice to Grantor, convey, assign or transfer this
23 Easement to a unit of federal, state or local government or to a similar local, state or national organization
24 whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural
25 resources, and which at the time of the conveyance, assignment or transfer, is a qualified organization under
26 Section 17(h)(3) of the Code, provided that any such conveyance, assignment or transfer requires that the
27 preservation and conservation purposes for which the Easement was granted will continue to be carried out.

28 **9. Inspection.** Grantor hereby agrees that representatives of Grantee shall be permitted at all
29 reasonable times to inspect the Property, including the Facades, to determine compliance with this
30 Easement and maintenance of structural soundness and safety. Inspection of the Property will not, in the
31 absence of evidence of deterioration, take place more often than annually, and may involve reasonable
32 testing of structural condition. Inspection of the Property will be made at a time mutually agreed upon by
33 Grantor and Grantee, and Grantor covenants not to unreasonably withhold its consent in determining a date
34 and time for such inspection.

1 **10. Grantee's Remedies.** Grantee has the following legal remedies to correct any violation of any
2 covenant, stipulation or restriction herein, in addition to any remedies now or hereafter provided by law:

3 (a) Grantee may, following thirty (30) days written notice to Grantor, institute suit to enjoin such
4 violation by ex parte, temporary, preliminary and permanent injunction, including prohibitory and
5 mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance
6 required by this Easement.

7 (b) Representatives of the Grantee may, following reasonable notice to Grantor, enter upon the
8 Property, correct any such violation, and hold Grantor, its successors and assigns responsible for the cost
9 thereof.

10 (i) Such cost until repaid shall constitute a lien on the Property.

11 (ii) Grantee shall exercise reasonable care in selecting independent contractors if it chooses to
12 retain such contractors to correct any such violations, including making reasonable inquiry as to
13 whether any such contractor is properly licensed and has adequate Liability Insurance and Worker's
14 Compensation Coverage.

15 (c) Grantee shall also have available all other legal and equitable remedies to enforce Grantor's
16 obligations hereunder.

17 (d) Exercise by Grantee of one remedy hereunder shall not have the affect of waiving or limiting any
18 other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use
19 of any other remedy or the use of such remedy at any other time.

20 **11. Notice from Government Authorities.** Grantor shall deliver to Grantee copies of any notice,
21 demand, letter or bill received by Grantor from any government authority within five (5) days of receipt by
22 Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's
23 compliance with such notice, demand, letter to bill, where compliance is required by law.

24 **12. Notice of Proposed Sale.** Grantor shall promptly notify Grantee in writing of any proposed sale
25 of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential
26 new owners prior to sale closing.

27 **13. Runs with the Land.** The obligations imposed by this Easement shall be effective in perpetuity
28 and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be
29 binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming
30 under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall
31 include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no
32 obligation pursuant to this instrument where such person shall cease to have any interest in the Property by
33 reason by a bona fide transfer, solely except for violations in existence at the time of transfer, for which
34 Grantor and all successors to Grantor shall be jointly and severally responsible, except that Grantee may

1 seek enforcement against any person deemed responsible without necessity of joining all such responsible
2 persons.

3 **14. Recording.** Grantee shall do and perform all acts necessary to prompt recording of this instrument
4 in the real estate records of the county wherein the Property is located, and Grantor shall pay for the expense
5 of recording. Provide Proof of Ownership is provided as Attachment 2.

6 **15. Existing Liens.** Except for those matters shown in Exhibit D hereto, Grantor warrants to Grantee
7 that no lien or encumbrance exists on the Property as of the date hereof. Grantor shall immediately cause
8 to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property
9 which may have priority over any of the rights, title or interest of Grantee in the Property.

10 **16. Subordination of Mortgages.** Grantor warrants and represents to Grantee that all mortgages, liens,
11 charges and encumbrances (solely except for ad valorem and other county or municipal taxes) and other
12 rights in the Property held by all persons or entities other than Grantee (the "Lienholder(s)") are subject and
13 subordinate at all times to the rights of the Grantee pursuant to this Easement. Grantor warrants and
14 represents that there are no Lienholders, and the agreement of any future Lienholder to subordinate all of
15 their interest in the Property to the Easement is attached as Exhibit E. The following provisions apply to all
16 Lienholders now existing or hereafter claiming an interest in the Property:

17 (a) If a Lienholder has the right to receive the proceeds of condemnation proceedings arising from any
18 exercise of the power of eminent domain as to all or any part of the Property or the right to receive insurance
19 proceeds as a result of any casualty, hazard or accident occurring to or about the Property, the Lienholder
20 shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in
21 preference to Grantee until the debt owed to such Lienholder is paid off and discharged, notwithstanding
22 that the interest of the Lienholder is subordinate to the Easement.

23 (b) If a Lienholder has received an assignment of the leases, rents and profits of the Property as security
24 or additional security for a loan, then the Lienholder shall have a prior claim to the leases, rents and profits
25 of the Property and shall be entitled to receive same in preference to Grantee until the debt owed to such
26 Lienholder is paid off, notwithstanding that the interest of the Lienholder is subordinate to the Easement.

27 (c) Until a Lienholder or purchaser at foreclosure obtains ownership of the Property, the Lienholder or
28 purchaser shall have no obligation, debt or liability under the Easement.

29 (d) Before exercising any right or remedy due to breach of the Easement except the right to enjoin a
30 violation hereof, Grantee shall give all Lienholders of record written notice describing the default, and the
31 Mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

32 (e) Nothing contained in the above paragraphs or in the Easement shall be construed to give any
33 Mortgage the right to extinguish this Easement by taking title to the Property by foreclosure or otherwise.

1 **17. Plaques.** Grantee agrees that Grantor may provide and maintain a plaque on the Facades or the
2 Property, which plaque shall not exceed eighteen (18) by twenty-four (24) inches in size, giving notice of
3 the significance of the Property and the existence of this Easement.

4 **18. Indemnification; Immunity.** The Grantor hereby agrees to pay, protect, indemnify, hold harmless
5 and defend at its own cost and expense, the Grantee, its agents, directors and employees or independent
6 contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenses
7 (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in any way
8 relating to the administration, performed in good faith, of this Easement, including but not limited to the
9 granting or denial of consents hereunder, the reporting on or advising as to any condition on the Property,
10 and the execution of work on the Property. In the event that the Grantor is required to indemnify the Grantee
11 pursuant to the terms of the Easement, the amount of such indemnify, until discharged, shall constitute a
12 lien on the Property. In addition, Grantor (and all other persons or entities claiming rights hereunder)
13 acknowledges and agrees that nothing contained in this Easement, or otherwise, shall defeat, affect or act
14 to waive the sovereign and governmental immunity enjoyed and inuring in favor of Grantee. The Grantee
15 acknowledges and accepts the fact that entry into this Historic Preservation Easement by Grantor and
16 Grantee in no way reduces, diminishes, or waives all statutory and other immunities that the Grantor enjoys
17 by virtue of Grantor's status as a municipal corporation and governmental entity.

18 **19. Taxes.** Grantor shall pay immediately, when first due and owing, all applicable general taxes,
19 special taxes, special assessments, water charges, sewer service charges and other charges which may
20 become a lien on the Property. Grantee is hereby authorized, but in no event required or expected, to make
21 or advance, upon three (3) days prior written notice to Grantor, in the place of Grantor, any payment relating
22 to any applicable taxes, assessments, water rates, sewer rentals and other governmental or municipality
23 charge, fine, imposition or lien asserted against the Property and may do so according to any bill, statement
24 or estimate procured from the appropriate public office without inquiry into the accuracy of such bill,
25 statement or assessment or into the validity of such tax, assessment, sale or forfeiture.

26 **20. Insurance.** The Grantor shall keep the Property insured by an insurance company having a size of
27 Class XIV or better and having a rating of A+ or better by Best's Insurance Reports for the full
28 replacement value, if such policy is available, and, if not, for the full appraised value, against loss from the
29 perils commonly insured under standard fire and extended coverage policies. Such insurance shall include
30 Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days
31 notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the
32 policy as to the other insured party. Furthermore, the Grantor shall deliver to the Grantee certificates
33 evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or
34 renewed policies at least ten (10) days prior to the expiration of such policy. The Grantee shall have the
35 right to provide insurance at the Grantor's cost and expense, should the Grantor fail to obtain same.

1 **21. Liens.** No lien shall be filed against the Property by Grantee, but the obligations under this
2 Agreement are enforceable pursuant to all methods available to Grantee under law and this Agreement.

3 **22. Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to
4 the other party shall be in writing and shall be mailed postage prepaid by first class mail, or hand delivered;
5 if to Grantor, then at the Little Rock City Attorney’s Office, City Hall, 500 West Markham Street, Room
6 310, Little Rock, AR 72201, and if to Grantee, then to Arkansas Historic Preservation Program, 1100 North
7 Street, Little Rock, Arkansas 72201, Attention: Conservation Easement Officer. Each party may change
8 its address set forth herein by a notice to such effect to the other party.

9 **23. Evidence of Compliance.** Upon request by Grantee, Grantor shall promptly furnish Grantee with
10 evidence of Grantor’s compliance with any obligation of Grantor contained in this Easement.

11 **24. Stipulated Value of Grantee’s Interest.** Grantor acknowledges that upon execution and recording
12 of the Easement, Grantee shall be immediately vested with a real property interest in the Property and that
13 such interest of Grantee shall have a stipulated fair market value, for purposes of allocating net proceeds in
14 an extinguishment pursuant to paragraph 26, equal to the ratio between the fair market value of the
15 Easement and the fair market value of the Property prior to considering the impact of the Easement
16 (hereinafter the “Easement Percentage”). In the event Grantor does not claim a charitable gift deduction for
17 purposes of calculating federal income taxes and submit a Qualified Appraisal, the Easement Percentage
18 shall be zero percent (0%).

19 **25. Qualified Appraisal.** In the event Grantor claims a federal income tax deduction for donation of a
20 “qualified real property interest” as that term is defined in Section 170(h) of the Internal Revenue Code,
21 Grantor shall provide Grantee with a copy of all appraisals (hereinafter, the “Qualified Appraisal” as that
22 term is defined in P.L. 98-369, 155(a), 98 Stat. 691 (1983), and by reference of the Easement. Upon receipt
23 of the Qualified Appraisal, this fully executed Easement, and any endowment requested hereunder by
24 Grantee (if any), Grantee shall sign any appraisal summary form prepared by the Internal Revenue Service
25 and submitted to the Grantee by Grantor.

26 **26. Extinguishment.** Grantor and Grantee hereby recognize that an unexpected change in the
27 conditions surrounding the Property may make impossible the continued ownership or use of the Premises
28 for the preservation and conservation purposes and necessitate extinguishment of the Easement. Such a
29 change in conditions includes but it not limited to partial or total destruction of the Property or the Facade
30 resulting from a casualty of such magnitude that Grantee approves demolition as explained in Paragraphs
31 5,6, and 7, or condemnation or loss of title of all or a portion of the Property or the Facade. Such an
32 extinguishment must be either the result of a final judicial proceeding or have an Approval. Grantor shall
33 be solely responsible for determining, reporting and paying any taxes, penalties or other sums, in addition
34 to the legal, taxes and other effects of any extinguishment of the Easement.

1 **27. Interpretation and Enforcement.** The following provisions shall govern the effectiveness,
2 interpretation and duration of the Easement.

3 (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of
4 property shall not apply in the construction or interpretation of this Easement, and this Easement shall be
5 interpreted broadly to affect its preservation and conservation purposes and the transfer of rights and the
6 restrictions on use herein contained as provided in the Act.

7 (b) This Easement shall extend to and be binding upon Grantor and all persons hereafter claiming under
8 or through Grantor and the word “Grantor” when used herein shall include all such persons, whether or not
9 such persons have signed this Easement or then have an interest in the Property. Anything contained herein
10 to the contrary notwithstanding, a person shall have no obligation pursuant to this Easement where such
11 person shall cease to have any interest (present, partial, contingent, collateral or future) in the Property by
12 reason of a bona fide transfer for full value, solely except for violations in existence at the time of transfer,
13 for which Grantor and all successors to Grantor shall be jointly and severally responsible without necessity
14 of joining all such responsible persons. Any right, title or interest herein granted to Grantee also shall be
15 deemed granted to each successor and assign of Grantee and each such following successor and assign
16 thereof, and the word “Grantee” shall include all such successors and assigns.

17 (c) This Easement is executed in counterparts, each page of which (including exhibits) has been
18 initialed by Grantor and Grantee for purposes of identification. In the event of any disparity between the
19 counterparts produced, the recorded counterpart shall constitute the agreement of the parties.

20 (d) Except as expressly provided herein, nothing contained in this Easement grants, nor shall be
21 interpreted to grant, to the public any right to enter on the Premises or into the Property.

22 (e) To the extent that Grantor owns or is entitled to development rights which may exist now or at
23 some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property
24 may be developed to use more intensive (in terms of height, bulk or other objective criteria regulated by
25 such ordinances) than the Premises are devoted as of the date hereof, such development rights shall not be
26 exercisable on, above or below the Property during the term of the Easement, nor shall they be transferred
27 to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation
28 purposes of the Easement.

29 (f) For purposes of furthering the preservation of the Property and of furthering the other purposes of
30 this Easement, and to meet changing conditions, Grantor and Grantee are free to amend jointly the terms of
31 this instrument in writing without notice to any party; provided, however, that no such amendment shall
32 limit the perpetual duration or interfere with the preservation and conservation purposes of this Easement.
33 Such amendment shall become effective upon recording among the real estate records of the county where
34 the Property is located.

1 (g) The invalidity of any statute providing authority for Grantee to enter into this Easement or any part
2 of this Easement shall not affect the validity and enforceability of the remaining portions of this Easement
3 according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and
4 their assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason
5 of a statute, common law or private agreement either in existence now or at any time subsequent hereto.

6 (h) Nothing contained in this Easement shall be interpreted to authorize or permit Grantor to violate
7 any ordinance or regulation relating to building materials, construction methods or use. In the event of any
8 conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify
9 Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to
10 accommodate the purposes of both this instrument and such ordinance or regulation.

11 (i) This Easement reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous
12 correspondence, undertakings, agreements and representations are null and void upon execution hereof,
13 unless set out in this instrument.

14 **IN WITNESS WHEREOF**, on the date first shown above, Grantor has caused this preservation and
15 conservation easement to be executed, sealed and delivered; and Grantee has caused this instrument to be
16 accepted, sealed and executed in its corporate name by its Director and attested by its Secretary.

17 **GRANTOR:**

18 City of Little Rock,
19

20 **By** _____
21 **Signature** Mark Stodola

22
23 _____
24 **Title** Mayor

25
26 _____
27 **Date**

28
29 **GRANTEE:**

30 STATE OF ARKANSAS, Acting by and through the Arkansas Historic Preservation Program, a
31 Division of the Department of Arkansas Heritage
32

33 _____
34 **Printed name**

35
36 _____
37 **Signature**
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Title

Date

GRANTOR Notary Public

STATE OF ARKANSAS)

) ss. ACKNOWLEDGMENT

COUNTY OF PULASKI)

On this ____ day of _____, 2017, before me, a notary public, personally appeared Mark Stodola and Susan Langley, who acknowledged himself and herself to be the Mayor and City Clerk respectively of the City of Little Rock, a municipal corporation in the state of Arkansas, and that he and she, as such officials, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:
(SEAL)

GRANTEE Notary Public

STATE OF ARKANSAS)

) ss. ACKNOWLEDGMENT

COUNTY OF PULASKI)

On this ____ day of _____, 2017, before me, a notary public, personally appeared Stacy Hurst, who acknowledged herself to be the Director of the Department of Arkansas Heritage and the State Historic Preservation Officer (SHPO), and that she, as such SHPO, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

My commission expires:
(SEAL)

EXHIBIT A

PHOTOGRAPHS OF PROTECTED PROPERTY

(BASELINE DOCUMENTATION)

(EACH PHOTOGRAPH MUST BE LABELED)

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EXHIBIT B

VERIFICATION AFFIDAVIT

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I verify that I took the photographs of _____
Name of property

on _____
Date Signature

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1 **EXHIBIT C**

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3 **MINIMUM MAINTENANCE STANDARDS**

4
5 The property will be maintained in accordance with the U.S. Secretary of the Interior's Standards
6 for Rehabilitation.

7
8 **The Secretary of the Interior's Standards for Rehabilitation**

9 <http://www.nps.gov/history/hps/tps/tax/rhb/stand.htm>

10 The Standards (Department of Interior regulations, 36 CFR 67) pertain to historic buildings of all
11 materials, construction types, sizes, and occupancy and encompass the exterior and the interior,
12 related landscape features and the building's site and environment as well as attached, adjacent, or
13 related new construction. The Standards are to be applied to specific rehabilitation projects in a
14 reasonable manner, taking into consideration economic and technical feasibility.

15 1. A property shall be used for its historic purpose or be placed in a new use that requires
16 minimal change to the defining characteristics of the building and its site and environment.

17 2. The historic character of a property shall be retained and preserved. The removal of historic
18 materials or alteration of features and spaces that characterize a property shall be avoided.

19 3. Each property shall be recognized as a physical record of its time, place, and use. Changes
20 that create a false sense of historical development, such as adding conjectural features or
21 architectural elements from other buildings, shall not be undertaken.

22 4. Most properties change over time; those changes that have acquired historic significance in
23 their own right shall be retained and preserved.

24 5. Distinctive features, finishes, and construction techniques or examples of craftsmanship
25 that characterize a property shall be preserved.

26 6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of
27 deterioration requires replacement of a distinctive feature, the new feature shall match the old in
28 design, color, texture, and other visual qualities and, where possible, materials. Replacement of
29 missing features shall be substantiated by documentary, physical, or pictorial evidence.

30 7. Chemical or physical treatments, such as sandblasting, that cause damage to historic mate-
31 rials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using
32 the gentlest means possible.

1 8. Significant archeological resources affected by a project shall be protected and preserved. If
2 such resources must be disturbed, mitigation measures shall be undertaken.

3 9. New additions, exterior alterations, or related new construction shall not destroy historic
4 materials that characterize the property. The new work shall be differentiated from the old and
5 shall be compatible with the massing, size, scale, and architectural features to protect the historic
6 integrity of the property and its environment.

7 10. New additions and adjacent or related new construction shall be undertaken in such a
8 manner that if removed in the future, the essential form and integrity of the historic property and
9 its environment would be unimpaired.

10

11 _____
12 **Signature** **Date**

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1 **EXHIBIT D**

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3 **AFFIDAVIT OF EXISTING LIENS OR ENCUMBRANCES**

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5 X There are no liens or encumbrances on this property.

6
7 There are liens or encumbrances on this property.

8 [Please complete the Subordination Agreement]

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10 _____
11 **Signature**

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ATTACHMENT 1



SCOX

EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
06/30/2017

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY BancorpSouth Insurance Services, Inc. P. O. Box 251510 Little Rock, AR 72225		PHONE (A/C, No, Ext): (501) 664-7705	COMPANY Affiliated FM Insurance Company P. O. Box 7500 Johnston, RI 02919	
FAX (A/C, No): (501) 664-8052		E-MAIL ADDRESS:		
CODE:		SUB CODE:		
AGENCY CUSTOMER ID #: CITYOFL-02				
INSURED City of Little Rock 500 West Markham Little Rock, AR 72201		LOAN NUMBER		POLICY NUMBER GN938
		EFFECTIVE DATE 11/01/2016	EXPIRATION DATE 11/01/2017	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION
 MacArthur Museum of Military History - 503 E 9th St, Little Rock, AR
 Oakland Fraternal Cemetery -2102 Barber St, Little Rock, AR

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION	PERILS INSURED	BASIC	BROAD	SPECIAL	AMOUNT OF INSURANCE	DEDUCTIBLE
COVERAGE / PERILS / FORMS						
Buildings Special (Including theft), Replacement Cost					\$8,527,200	\$25,000
Contents Special (Including theft), Replacement Cost					\$738,000	\$25,000
Buildings Special (Including theft), Replacement Cost					\$2,177,000	\$25,000
Contents Special (Including theft), Replacement Cost					\$64,610	\$25,000

REMARKS (Including Special Conditions)

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS	<input type="checkbox"/> ADDITIONAL INSURED	<input type="checkbox"/> LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE
	<input type="checkbox"/> MORTGAGEE		
	LOAN #		
AUTHORIZED REPRESENTATIVE The State of Arkansas, Acting By and Through The Arkansas Historic Preservation Program			

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ATTACHMENT 2

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[LEGAL TITLE OR DEED TO PROPERTY]

ATTACHMENT 3

[AUTHORIZATION TO CONVEY EASEMENT]

(If Necessary)

Usually only included for AHPP Grant Recipients

**(QUORUM COURT RESOLUTION, BOARD OF TRUSTEES LETTER,
CITY COUNCIL, ETC.)**

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[SURVEY OF PROPERTY0