RESOLUTION ________

A RESOLUTION TO CONSENT TO THE ASSIGNMENT OF A CERTAIN LEASE AGREEMENT, AS AMENDED, FOR THE BENEFIT OF OAKLAND & FRATERNAL HISTORIC CEMETERY PARK; TO AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE A THIRD AMENDMENT TO LEASE AGREEMENT; AND FOR OTHER PURPOSES.

WHEREAS, on June 11, 1959, the City and East 26th Street Development Corporation (“Original Lessee”) entered into a certain Lease Agreement (“Original Lease Agreement”) for the benefit of the Oakland & Fraternal Historic Cemetery Park, which Original Lease was recorded with the Pulaski County Circuit Clerk’s Office at Book 1,029, Pages 238 through 244, and had an expiration date of December 11, 1974; and

WHEREAS, by Amendment to Lease Agreement dated January 27, 1977 (the “First Amendment”), the City and the Original Lessee amended the Original Lease Agreement by agreeing to honor a Sub-Lease contraction executed February 23, 1962, with a sublessee, Worthen Bank and Trust Company, and consented to the assignment by the Original Lessee of its rights in the Original Lease Agreement, as amended, to S. Sherman, Ruby S McCaskill and Sam Strauss, Jr., as Trustee for Steven Strauss, Sam Strauss, III, and Susan Strauss (“First Assignees”); and

WHEREAS, by Assignment of Lease dated January 20, 1977 (“First Assignment”), recorded with the Pulaski County Clerk’s Office at Book 1,740, Pages 667 through 672, the Original Lessee assigned the Original Lease Agreement, as amended, to First Assignees; and

WHEREAS, by Assignment of Lease dated July 25, 1983 (“Second Assignment”), recorded September 15, 1983, as Instrument No. 83-47637, Ruby S. McCaskill assigned to Lee S. Thalheimer and Bruce Thalheimer all her undivided interest as a lessee in the Original Lease Agreement, as amended; and

WHEREAS, the First Amendment was modified to change the name of one of the First Assignees from S. Sherman to Sherman Realty Co., Inc. by initialing and recorded same as Instrument No. 83-47637 (the “Modified First Assignment”); and

WHEREAS, by an Amendment and Renewal of Lease Agreement last executed on October 11, 2001 (the “Second Amendment”), recorded with the Pulaski County Clerk’s Office on October 22, 2001, as Instrument No. 2001082279, the City, as lessor, and Lessee East Roosevelt Road Shopping Center, LLC, as the assignee of the Original Lease Agreement, as amended, extended the term of the Original Lease.
Agreement, as amended, for an additional thirty (30) years; to make certain improvements to the buildings thereon, namely a Kroger Store and a Family Dollar Store; to obtain additional rent for the benefit of Oakland & Fraternal Historic Cemetery Park; and other matters set forth therein.

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

Section 1. The Little Rock City Board of Directors hereby consents to the assignment of the Original Lease Agreement, as amended, by East Roosevelt Road Shopping Center, LLC, to Assignee LMS Properties, LLC.

Section 2. The Board of Directors hereby authorizes the Mayor and City Clerk to execute the Third Amendment to Lease Agreement attached to this resolution as Exhibit A to memorialize this consent to assignment of the Original Lease Agreement, as amended.

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

Section 4. Repealer. All laws, ordinances, resolutions, or parts of the same, that are inconsistent with the provisions of this resolution, are hereby repealed to the extent of such inconsistency.

PASSED: October 20, 2015

ATTEST:          APPROVED:

____________________________________  ____________________________________
Susan Langley, City Clerk          Mark Stodola, Mayor

APPROVED AS TO LEGAL FORM:

____________________________________
Tom Carpenter, City Attorney

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THIRD AMENDMENT TO LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("Third Amendment") is made and entered into by and between the City of Little Rock (hereinafter "Lessor" or "City") whose address is 500 West Markham Street, Little Rock, Arkansas, East Roosevelt Road Shopping Center, LLC, an Arkansas limited liability company (hereinafter "Lessee"), and the LMS Properties, LLC (hereinafter "Assignee"), whose address is 111 Center Street, Suite 1510, Little Rock, Arkansas, 72201.

WITNESSETH:

WHEREAS, on June 11, 1959, the City and East 26th Street Development Corporation ("Original Lessee") entered into a certain Lease Agreement ("Original Lease Agreement") for the benefit of the Oakland & Fraternal Historic Cemetery Park, which Original Lease was recorded with the Pulaski County Circuit Clerk’s Office at Book 1029 at pages 238 through 244 and had an expiration date of December 11, 1974; and

WHEREAS, by Amendment to Lease Agreement dated January 27, 1977 (the "First Amendment"), the City and the Original Lessee amended the Original Lease Agreement by agreeing to honor a Sub-Lease contraction executed February 23, 1962 with a sublessee, Worthen Bank and Trust Company, and consented to the assignment by the Original Lessee of its rights in the Original Lease Agreement, as amended, to S. Sherman, Ruby S McCaskill and Sam Strauss, Jr, as Trustee for Steven Strauss, Sam Strauss, III and Susan Strauss ("First Assignees"); and

WHEREAS, by Assignment of Lease dated January 20, 1977 ("First Assignment"), recorded with the Pulaski County Clerk’s Office at Book 1740 Page 667 through Page 672, the Original Lessee assigned the Original Lease Agreement, as amended, to First Assignees; and

WHEREAS, by Assignment of Lease dated July 25, 1983 ("Second Assignment"), recorded September 15, 1983, as Instrument Number 83-47637, Ruby S. McCaskill assigned to Lee S. Thalheimer and Bruce Thalheimer all her undivided interest as a lessee in the Original Lease Agreement, as amended; and

WHEREAS, the First Amendment was modified to change the name of one of the First Assignees from S. Sherman to Sherman Realty Co., Inc. by initialing and recorded same as Instrument Number 83-47637 (the "Modified First Assignment"); and

WHEREAS, by an Amendment and Renewal of Lease Agreement last executed on October 11, 2001 (the "Second Amendment"), recorded with the Pulaski County Clerk’s Office on October 22, 2001 as Instrument Number 2001082279, the City, as lessor, and Lessee, as the assignee of the Original Lease Agreement, as amended, extended the term of the Original Lease Agreement, as amended, for an
additional 30 years; to make certain improvements to the buildings thereon, namely a Kroger Store and a
Family Dollar Store; to obtain additional rent for the benefit of Oakland Fraternal Cemetery; and other
matters set forth therein; and

WHEREAS, on _______________, the City of Little Rock Board of Directors adopted Resolution
No. __________ to authorize consent to the assignment of the Original Lease Agreement, as amended, by
Lessee to Assignee; and

WHEREAS, the City Board of Directors also authorized the Mayor and City Clerk to execute this
Third Amendment to Lease Agreement, inter alia, memorialize the consent to the assignment by
Lessee to Assignee.

WHEREAS, the City and Lessee desire to enter into this Third Amendment to Lease Agreement as
set forth below.

NOW, THEREFORE, INCONSIDERATION OF THE PREMISES TO BE DEMISED, THE
INTENTIONS OF THE PARTIES, AND OTHER COVENANTS, CONDITIONS, WARRANTIES
AND AGREEMENTS HEREAFTER SET FORTH, IT IS HEREBY AGREED AS FOLLOWS:

1. CONSENT TO ASSIGNMENT AND AMENDMENT AND RENEWAL OF
ORIGINAL LEASE AGREEMENT, AS AMENDED. The City, as lessor, hereby consents
to an assignment by Lessee to Assignee of all of Lessee’s rights pursuant to the Original
Lease Agreement, as amended, and Assignee agrees to assume all liabilities and obligations
of Lessee arising pursuant to the Original Lease Agreement, as amended, after the date of the
assignment of the Original Lease Agreement, as amended, to Assignee. Upon the assignment
to and assumption of the Original Lease Agreement, as amended, by Assignee, the Lessor
hereby releases East Roosevelt Shopping Center, L.L.C. from any obligations under the
Original Lease Agreement, as amended, occurring after the effective date of such assignment
and assumption.

2. SERVICE OF NOTICE. Upon the assignment of the Original Lease Agreement, as
amended, to Assignee, the Assignee agrees to give to the City the Assignee’s address for
written notice given pursuant to the Original Lease Agreement, as amended.

3. DUPLICATE ORIGINALS, COPIES. This Third Amendment shall be executed in
duplicate originals. Any copy of this Amendment shall be deemed admissible as an original
and shall be deemed authentic for any other use.

4. EFFECTIVE DATE. This Third Amendment shall become effective when signed
by all parties hereto and the closing of the transfer of the Lessee’s interest in the Original
Lease, as amended, from Lessee to Assignee.

5. AUTHORITY. The officials who executed this Third Amendment hereby represent
and warrant that they have full and complete authority to act on behalf of the City and the
Lessee, respectively, and that by their signature below, the terms and provisions hereof,
constitute valid and enforceable obligations of each party.

6. ASSIGNMENT / SUBLEASE / MORTGAGE. The Original Lease, as amended,
is further hereby amended by adding the following provision:

“The Lessee shall not assign or otherwise transfer this Lease, as amended,
without the prior written consent of the Lessor, which consent shall not to be
unreasonably withheld, conditioned or delayed by Lessor, provided, however, that
Lessee shall have the right, without the consent of the Lessor, (i) to sublease all or
part of the leased premises during the term of this Lease, subject to the restrictions set
forth in Section 7 below; and (ii) to grant a mortgage in Lessee's interest in the Lease
to secure Lessee's indebtedness. A consent of Lessor to one assignment shall not be
deemed to be a consent to any subsequent assignment by any other person. Consent
by Lessor may be given by the City Manager for the City without further
authorization or approval by the Board of Directors of the Lessor.”

7. RESTRICTIONS ON SUBLEASES. The Original Lease, as amended, is further
hereby amended by adding the following provisions:

No sublease from Lessee to a sublessee shall allow the subtenant use of its
premises for any of the following:

(a) Any unlawful purpose or in any way which would constitute a legal
nuisance to an adjoining occupant;
(b) a discotheque, dance hall, or night club;
(c) a massage parlor;
(d) a funeral parlor;
(e) a bingo parlor;
(f) any use which emits a strong, unusual, offensive or obnoxious odor,
fumes, dust or vapors, or any strong, unusual or offensive sound which
can be heard outside the premises, except that any usual paging system
may be allowed;
(g) any assembling, manufacturing, distilling, refining, smelting,
agricultural, or mining operation;
(h) any mobile home park, trailer court, labor camp, junk yard, recycling
facility, or stock yard;
(i) any dry cleaners performing onsite cleaning services;
(j) any automobile, truck, trailer or recreational vehicles storage, display or body shop repair operation;
(k) any living quarters, sleeping apartments, or lodging rooms;
(l) any veterinary hospital or animal raising facilities (except this provision shall not prohibit pet shops and shall not prohibit the provision of veterinary services in connection with pet shops or pet supplies business);
(m) any establishment selling or exhibiting materials or devices which have been adjudicated to be pornographic by any court, and any adult bookstore, adult video store, or adult movie theater;
(n) any establishment which sells sex toys;
(o) any bar or tavern; provided, however, a bar within a restaurant shall be permitted;
(p) any pool or billiard hall, gun range, shooting gallery, or amusement or video arcade; and
(q) any use which creates fire, explosives, or other hazards.

8. ESTOPPEL CERTIFICATES. The Original Lease, as amended, is further hereby amended by adding the following provision:

That within thirty (30) days after written request of the Lessee, Lessor will from time to time issue to the Lessee, to a prospective sublessee or to any mortgagee of either such party, an estoppel certificate stating: (i) whether to the best knowledge of the Lessor, any default exists under the Original Lease, as amended, and, if there are known defaults, specifying the nature thereof; (ii) whether to Lessor's knowledge, the Original Lease, as amended, has been assigned, modified, or amended in any way (or if it has, then stating the nature thereof); and (iii) that to Lessor's knowledge the Original Lease, as amended, is, as of that date, in full force and effect. Such certificate may be executed by the City Manager on behalf of Lessor without further authorization or approval by the Board of Directors of the Lessor.

9. PRIOR LEASE AND AMENDMENT TO PRIOR LEASE. On the effective date, all other terms of the Original Lease Agreement, as amended by First Amendment and Second Amendment, shall remain in full force and effect, except as amended by this Third Amendment and currently there are no defaults.

IN WITNESS WHEREOF, the parties have set their hands and seals.
CITY OF LITTLE ROCK
By: Mark Stodola, Mayor

Date: __________________________

ATTEST:

Susan Langley, City Clerk

East Roosevelt Road Shopping Center, LLC

APPROVED AS TO LEGAL FORM:

Thomas M. Carpenter, City Attorney
ACKNOWLEGMENT

STATE OF ARKANSAS   
COUNTY OF PULASKI   

On this day personally appeared before me the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified and acting, the within named Mark Stodola and Susan Langley, to me well known as the Mayor and City Clerk, respectively, of the City of Little Rock, Arkansas, and state that they had executed the foregoing Third Amendment to Lease Agreement pursuant to the provisions of Resolution No. ________ for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and official seal this ____ day of ___________, 2015.

__________________________________________________________________________

Notary Public

My Commission expires:

_______________________________________
(Notarial Seal)

ACKNOWLEGMENT

STATE OF ARKANSAS   
COUNTY OF PULASKI   

On this day personally appeared before me the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified and acting, the within named ___________, to me well known as the ___________ of LMS Properties, LLC, and state that he had executed the foregoing Third Amendment to Lease Agreement for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and official seal this ____ day of ___________, 2015.

_______________________________________
(Notarial Seal)

My Commission expires:
ACKNOWLEDGMENT

STATE OF ARKANSAS       )
COUNTY OF PULASKI       ) ss.

On this day personally appeared before me the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified and acting, the within named _______________________, to me well known as the ____________________ of East Roosevelt Road Shopping Center, LLC, and state that he had executed the foregoing Third Amendment to Lease Agreement for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and official seal this ____ day of ___________, 2015.

______________________________
Notary Public

My Commission expires

______________________________
(Notarial Seal)