

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE A HISTORIC PRESERVATION EASEMENT FOR THE OAKLAND MAUSOLEUM LOCATED IN THE CITY OF LITTLE ROCK, ARKANSAS, TO THE STATE OF ARKANSAS, ARKANSAS HISTORIC PRESERVATION PROGRAM; AND FOR OTHER PURPOSES.**

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

**WHEREAS**, earlier this year, the City of Little Rock was awarded a Seventy-Two Thousand Dollar (\$72,000) grant from the Arkansas Historic Preservation Program for stabilization work needed for the nearly hundred year-old Oakland Mausoleum, and

**WHEREAS**, a requirement to receive the grant funding is the provision to the Arkansas Historic Preservation Program of a historic preservation easement of the Oakland Mausoleum to assist in preserving and maintaining it and its architectural, archaeological, historical and cultural features, and

**WHEREAS**, the provision of a historic preservation easement of the Oakland Mausoleum to the Arkansas Historic Preservation Program will assist in maintaining the value and significance of the Oakland Mausoleum to the City of Little Rock and the State of Arkansas and allow funding of much of the stabilization work to be reimbursed through the grant from the Arkansas Historic Preservation Program.

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

**Section 1.** The Mayor and City Clerk are hereby authorized to execute a historic preservation easement to the State of Arkansas, acting by and through the Arkansas Historic Preservation Program, on the Oakland Mausoleum. The easement is to be substantially in the form attached and as approved by the City Attorney.

**Section 2. *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 3. *Repealer.*** All laws, ordinances, resolutions, or parts of the same, that are inconsistent





WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Premises will assist in preserving and maintaining the aforesaid value and significance of the Premises both to Grantor and Grantee;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a conservation easement on the portion of the Premises that includes the Building;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant, bargain, sell and convey unto the Grantee, TO HAVE AND TO HOLD the same unto Grantee, an easement in gross in perpetuity (which easement is more particularly described below and will hereafter be referred to as the "Easement") in and to that certain real property and the exterior surfaces of the Building located thereon (the "Property"), owned by the Grantor, and more particularly described as:

#### LEGAL PROPERTY DESCRIPTION

Beginning at a point in Lot 236, Block G, Oakland Cemetery, Little Rock, Arkansas, twelve (12) feet west of the east line of the said lot on Center Street and seven and one half (7 1/2) feet north of the south line of said lot, thence due north through Lots 236, 235, 234, 233, 232, 231, 230, and nine and one half (9 1/2) feet into Lot 229, being a total distance north and south of the one hundred seven (107) feet, thence west through Lots 229 and 208, and fourteen (14) feet into Heliotrope Street due west a distance of thirty-two (32) feet, thence due south a distance of one hundred seven (107) feet in Heliotrope Street, thence due east fourteen (14) feet in Heliotrope Street, through Lots 201 and 236 to the starting point; the whole describing a parallelogram one hundred seven (107) feet by thirty-two (32) feet.

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

1. Description of Facades. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Property and the Building, and in order to document the external nature of the Building as of the date hereof, attached hereto as Exhibit "A" and incorporated herein by this reference are a set of photographs depicting the exterior surfaces of the Buildings and surrounding property and an affidavit specifying certain technical and locational information relative to said photographs satisfactory to Grantee, attached hereto as Exhibit "B". It is stipulated by the between Grantor and Grantee that the external nature of the Building as shown in Exhibit "A" is deemed to be the external nature of the Building as of the date the photos were taken and that the external nature of the Building remained the same until the execution of the Grant Contract, Grant # 15-HPRG-05, between the Arkansas Historic Preservation Program and the City of Little Rock. The external nature of the Building(s) as shown in Exhibit "A" is hereinafter referred to as the "Facades."

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

- (a) Grantor shall not demolish, remove or raze the Building or the Facades except as

provided in Paragraphs 6 and 7.

(b) Without the prior express written permission and approval of the Grantee (which shall be granted or withheld solely in the discretion of Grantee), signed by a duly authorized representative thereof, it being understood and agreed by Grantor that such authorization may not be obtained orally, by estoppel or waiver, or in any other manner other than as expressly set forth above (the "Approval"), Grantor shall not undertake any of the following actions:

(i) increase or decrease the height of the Facades or the Building;

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

(iii) make any changes in the Facades including the alteration, partial removal, construction, remodeling or other physical or structural change including any change in surfacing, with respect to the appearance or construction of the Facades, with the exception of ordinary maintenance pursuant to Paragraph 2(c) below, however, Grantee is authorized to remove and replace any concrete apron surrounding the Facades for the purpose of repairing or stabilizing the Building following an approved design and archaeological review by AHPP;

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

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

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

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

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

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

(f) There shall be no removal, destruction or cutting down of large trees or landscaping integral to the preservation and conservation purposes of this Easement; provided, however,

that Grantor may, with an Approval, undertake such landscaping of the Property as is compatible with the preservation and conservation purposes of this Easement and which may involve removal or alteration of present landscaping, including trees, shrubs or other vegetation.

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

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

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

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

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

-or-

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

4. Standards for Review. In exercising any authority created by the Easement to inspect the Property, the Building or the Facades; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; issued and as may be amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the "Standards") and state or local standards considered appropriate by Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally or culturally significant areas. Grantor agrees to abide by the Standards in performing all ordinary repair and maintenance work and the minimum maintenance program described in paragraph 2(c) and contained in Exhibit "C". In the event the Standards are abandoned or materially altered or otherwise become, in the sole judgment and discretion of the Grantee, inappropriate for the purposes set forth above, the Grantee may apply reasonable alternative standards and notify Grantor of the substituted standards.

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

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

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

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

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

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

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

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

8. GRANTEE’S COVENANTS. The Grantee covenants that:

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

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

(c) Grantee may, at its discretion and without prior notice to Grantor, convey, assign or transfer this Easement to a unit of federal, state or local government or to a similar local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, and which at the time of the conveyance, assignment or transfer, is a qualified organization under Section 17(h)(3) of the Code, provided that any such conveyance, assignment or transfer requires that the preservation and conservation purposes for which the Easement was granted will continue to be carried out.

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

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

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

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

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

(ii) Grantee shall exercise reasonable care in selecting independent contractors if it chooses to retain such contractors to correct any such violations, including making reasonable inquiry as to whether any such contractor is properly licensed and has adequate liability insurance and worker's compensation coverage.

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

(d) In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection therewith, including all reasonable court costs and attorneys', architectural, engineering and expert witness fees.

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

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

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

13. Runs with the Land. The obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest in the Property by reason by a bona fide transfer, solely except for violations in existence at the time of transfer, for which Grantor and all successors to Grantor shall be jointly and severally responsible, except that Grantee may seek enforcement against any person deemed responsible without necessity of joining all such responsible persons.

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

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

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

Property:

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

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

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

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

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

17. Plaques. Grantee agrees that Grantor may provide and maintain a plaque on the Facades or the Building, which plaque shall not exceed 18 by 24 inches in size, giving notice of the significance of the Building or the Property and the existence of this Easement.

18. Indemnification; Immunity. The Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, the Grantee, its agents, directors and employees or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenses (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in any way relating to the administration, performed in good faith, of this Easement, including but not limited to the granting or denial of consents hereunder, the reporting on or advising as to any condition on the Property, and the execution of work on the Property. In the event that the Grantor is required to indemnify the Grantee pursuant to the terms of the Easement, the amount of such indemnify, until discharged, shall constitute a lien on the Property. In addition, Grantor (and all other persons or entities claiming rights hereunder) acknowledges and agrees that nothing contained in this Easement, or otherwise, shall defeat, affect or act to waive the sovereign and governmental immunity enjoyed and inuring in favor of Grantee.

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

20. Insurance. The Grantor shall keep the Property insured by an insurance company having a size of Class XIV or better and having a rating of "A+" or better by Best's Insurance Reports for the full replacement value, if such policy is available, and, if not, for the full appraised value, against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a property such as the Property protected by a preservation and conservation easement. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, the Grantor shall deliver to the Grantee certificates evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. The Grantee shall have the right to provide insurance at the Grantor's cost and expense, should the Grantor fail to obtain same. In the event the Grantee obtains such insurance, the cost of such insurance shall be a lien on the Property until repaid by the Grantor.

21. Liens. Any lien on the Property created pursuant to any paragraph of the Easement may be enforced by all available means, methods and remedies provided by this Easement and by law.

22. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by first class mail, or hand delivered; if to Grantor, then at City of Little Rock, c/o City Manager, 500 West Markham, Little Rock, AR 72201, and if to Grantee, then to Arkansas Historic Preservation Program, 323 Center Street, Suite 1600, Little Rock, Arkansas 72201, Attention: Conservation Easement Officer. Each party may change its address set forth herein by a notice to such effect to the other party.

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

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

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

26. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued ownership or use of the Property for the preservation and conservation purposes and necessitate extinguishment of the Easement. Such a change in conditions includes but it not limited to partial or total destruction of the Building or the

Facades resulting from a casualty of such magnitude that Grantee approves demolition as explained in paragraphs 5,6, and 7, or condemnation or loss of title of all or a portion of the Property, the Building or the Facades. Such an extinguishment must be either the result of a final judicial proceeding or have an Approval. Grantor shall be solely responsible for determining, reporting and paying any taxes, penalties or other sums, in addition to the legal, taxes and other effects of any extinguishment of the Easement.

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

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

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

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

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

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

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

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

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

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

[Signatures follow on next page.]

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

**GRANTOR:**  
**CITY OF LITTLE ROCK**

\_\_\_\_\_  
**Printed name**

By \_\_\_\_\_  
**Mark Stodola, Mayor (Signature)**

\_\_\_\_\_  
**Date**

By: \_\_\_\_\_  
**Susan Langley, City Clerk (Signature)**

\_\_\_\_\_  
**Date**

**GRANTEE:**  
**STATE OF ARKANSAS**  
**Acting by and through the Arkansas Historic Preservation Program**

\_\_\_\_\_  
**Printed name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**



**EXHIBIT "A"**

**PHOTOGRAPHS OF PROTECTED PROPERTY**

**(BASELINE DOCUMENTATION)  
(EACH PHOTOGRAPH MUST BE LABELED)**

**EXHIBIT "B"**

**VERIFICATION AFFIDAVIT**

I verify that I took the photographs of \_\_\_\_\_  
**Name of property**

on \_\_\_\_\_.  
**Date**

\_\_\_\_\_  
**Signature**

**EXHIBIT "C"**

**MINIMUM MAINTENANCE STANDARDS**

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

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

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

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

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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**Signature**

---

**Date**

**EXHIBIT "D"**

**AFFIDAVIT OF EXISTING LIENS OR ENCUMBRANCES**

- There are no liens or encumbrances on this property.
- There are liens or encumbrances on this property.  
[Please complete the Subordination Agreement]

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**ATTACHMENT "1"**

**[PROOF OF INSURANCE]**

**ATTACHMENT "2"**

**[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.)**

**ATTACHMENT "4"**

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT, made this day, by and between the State of Arkansas, acting by and through the Arkansas Historic Preservation Program, with principal offices at 323 Center Street, Suite 1500, Little Rock, Arkansas 72201 ("Grantee") and \_\_\_\_\_ with an address at ("Lender").**

WITNESSETH:

WHEREAS, by Easement dated \_\_\_\_\_, \_\_\_\_\_, being recorded in the real estate records of \_\_\_\_\_ County, Arkansas on \_\_\_\_\_, 20\_\_ [as Instrument No. \_\_\_\_] [at Book\_\_\_\_, Page\_\_\_\_] (hereinafter referred to as the "Easement"), \_\_\_\_\_ and \_\_\_\_\_, his wife (collectively, the "Grantor"), granted to Grantee a historic preservation easement covering certain premises located in \_\_\_\_\_ County, Arkansas (the "Property"), a more particular description of which Property appears in Exhibit 1", attached hereto

WHEREAS, the Property is encumbered by a mortgage recorded in the real estate records of \_\_\_\_\_ County, Arkansas on \_\_\_\_\_, \_\_\_\_\_, [as Instrument No. \_\_\_\_\_] [at Book\_\_\_\_, Page\_\_\_\_], (the "Mortgage") in favor of Lender and securing indebtedness in the approximate amount of (\$ \_\_\_\_\_); and

WHEREAS, Grantee and Lender desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the following Subordination, Non-Disturbance and Attornment Agreement;

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and promises herein contained, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantee and Lender agree as follows:

1. The Mortgage, the rights of Lender thereunder, and all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewal, substitution, extension, modification and replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto, are and shall be subject and subordinate to the Easement and the rights of Grantee thereunder, and to all of the terms, conditions and provisions thereof. In the event that Lender or any other person acquires any title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure (the Lender, any other such person and their participants, successors and assigns being collectively referred to as the "Purchaser"), Grantee covenants and agrees to attorn to and recognize and be bound to Purchaser as the new owner of the Property, but the Easement shall continue in full force and effect as a granted to Grantee by Purchaser, and, notwithstanding anything to the contrary herein or in the Mortgage, the provisions of the Easement will continue to run with the land unaffected by the conveyance to Purchaser.

2. Lender agrees that so long as the Easement is of record:

a. the rights of Grantee in and to the Property shall not be terminated or disturbed by any steps or proceedings taken by Lender in the exercise of any of its right under the Mortgage or the indebtedness secured thereby;

b. the easement shall not be terminated or affected by said exercise of any remedy provided for in the Mortgage, and Lender hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, shall be made subject to the Easement and the rights of Grantee thereunder.

3. In no event shall Lender or any other Purchaser be liable for any act or omission of Grantor or any prior owner.

4. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective participants, successors, and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any Purchaser of the Property at foreclosure or other sale taken pursuant to the Mortgage.

5. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.

6. This Agreement may be signed in counterparts.

7. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

8. This Agreement shall be governed by Arkansas law.

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

**GRANTOR:**

**CITY OF LITTLE ROCK**

**Mark Stodola**

\_\_\_\_\_  
**Printed name**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

-

\_\_\_\_\_  
Date

Susan Langley

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

-

\_\_\_\_\_  
Date

**LENDER**

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Signature

---

Title

-

---

Date

**GRANTEE:**  
THE STATE OF ARKANSAS,  
Acting by and through the Arkansas Historic Preservation  
Program

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Printed name

---

Signature

---

Title

---

Date

1 **GRANTOR Notary Public**

2  
3 STATE OF ARKANSAS )  
4 ) ss. ACKNOWLEDGMENT  
5 COUNTY OF \_\_\_\_\_ )  
6

7 On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a notary public, personally  
8 appeared \_\_\_\_\_, who acknowledged himself/herself to be the  
9 \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, and that he/she, as  
10 such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes  
11 therein contained.

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

13  
14 Notary Public

15  
16 My commission expires:  
17 (SEAL)  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

28 **LENDER Notary Public**

29  
30 STATE OF ARKANSAS )  
31 ) ss. ACKNOWLEDGMENT  
32 COUNTY OF \_\_\_\_\_ )  
33

34 On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a notary public, personally  
35 appeared \_\_\_\_\_, who acknowledged himself/herself to be the  
36 \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_, and that he/she, as  
37 such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes  
38 therein contained.

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

40  
41 Notary Public

42  
43 My commission expires:  
44 (SEAL)  
45  
46

1 **GRANTEE (AHPP) Notary Public**

2  
3 STATE OF ARKANSAS)

4 ) ss. ACKNOWLEDGMENT

5 COUNTY OF PULASKI)

6  
7 On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a notary public,  
8 personally appeared Frances McSwain, who acknowledged herself to be the director of the Arkansas  
9 Historic Preservation Program (AHPP), a state agency, and that she, as such director, being authorized so  
10 to do, executed the foregoing instrument for the purposes therein contained.

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

12  
13 Notary Public

14  
15 My commission expires:

16  
17 (SEAL)

18  
19  
20  
21  
22