



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

3        **Section 1.** All necessary City officials and employees are authorized to execute an agreement with the  
4 Arkansas Arts Center Board of Trustees, and the Arkansas Arts Center Foundation, to set forth the  
5 maintenance duties and requirements for the City of Little Rock in substantially the same form as set forth  
6 in Exhibit A to this Resolution.

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

12        **Section 8. Repealer.** All laws, ordinances, resolutions, and parts of the same that are inconsistent with  
13 the provisions of this ordinance are hereby repealed to the extent of such inconsistency, particularly those  
14 provisions of Ordinances No. 5,235, 10,576, and 11,111, that set out any provisions as to the responsibilities  
15 of the City for the maintenance of the buildings and grounds of the Arkansas Arts Center.

16 **PASSED: November 3, 2015**

17 **ATTEST:**

**APPROVED:**

18  
19 \_\_\_\_\_  
20 **Susan Langley, City Clerk**

\_\_\_\_\_ **Mark Stodola, Mayor**

21 **APPROVED AS TO LEGAL FORM:**

22  
23 \_\_\_\_\_  
24 **Thomas M. Carpenter, City Attorney**

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2 **EXHIBIT A: MAINTENANCE AGREEMENT**

3 THIS MAINTENANCE AGREEMENT (“Agreement”) is made and entered into as of this \_\_\_\_\_  
4 day of \_\_\_\_\_, 2015 (the “Effective Date”), by and among **THE CITY OF LITTLE ROCK,**  
5 **ARKANSAS**, an Arkansas municipality (the “City”), **ARKANSAS ARTS CENTER**, an agency of the  
6 City of Little Rock, Arkansas (“AAC”), and **THE ARKANSAS ARTS CENTER FOUNDATION**, an  
7 Arkansas nonprofit corporation (the “Foundation”) (The City, AAC and the Foundation referred to herein  
8 individually as, a “Party”, or collectively as, the “Parties”).

9 **PREAMBLE.**

10 Execution of this Agreement is preceded by a long-standing relationship between the Parties hereto and  
11 their successors, dating back to the early 1930s, centered on the establishment, operation and expansion of  
12 a fine arts museum for the benefit and enjoyment of the citizens of the City of Little Rock, Arkansas. During  
13 this tenure, the Parties (and their successors) have operated pursuant to various and differing agreements  
14 and understandings, all of which have been performed with contributions of significant funds, assets and  
15 resources pledged by the Parties hereto. Because this Agreement embodies the long-term plans and  
16 objectives of the Parties concerning the subject matter herein, and the respective rights, duties and  
17 obligations of the Parties have varied significantly in the past, the Recitals set forth below are intended by  
18 the Parties to provide some historical background and context to the subject matter agreed upon herein  
19 below.

20 **RECITALS.**

21 **WHEREAS**, the City is the owner of that certain tract of real property situated in the City of Little  
22 Rock, Pulaski County, Arkansas, commonly known as MacArthur Park and formerly known as the Little  
23 Rock City Park (the “Property”);

24 **WHEREAS**, on May 6, 1935, the City passed Ordinance No. 5235 of the City of Little Rock, Arkansas  
25 (“Ordinance 5235”), authorizing construction of a museum of fine arts building upon the Property (the  
26 “Museum Building”) and establishing the Board of Trustees of the Museum of Fine Arts (the “Board”) to  
27 manage and control the Museum Building and its exhibits;

28 **WHEREAS**, Ordinance 5235 also provided that (i) the Museum Building shall be erected and  
29 completed at no cost to the City; (ii) following its completion, the Museum Building shall revert to and  
30 become the property of the City, free of any encumbrances or charges; and (iii) the cost of maintaining the  
31 Museum Building and its exhibits, including the lighting, heating, cleaning, necessary caretaking and  
32 supervision, shall be assumed by the City;

33 **WHEREAS**, the City subsequently passed Ordinance No. 10,576 of the City of Little Rock, Arkansas,  
34 dated July 8, 1957 (“Ordinance 10,576”), which authorized the Board to raise funds and establish an

1 endowment to extend the Museum Building and equip such added facilities, and occupy such additional  
2 areas of the Property, as necessary;

3 **WHEREAS**, Ordinance 10,576 also provided that (i) such construction and equipment shall be  
4 completed or added at no cost to the City; and (ii) nothing contained in Ordinance 10,576 shall be construed  
5 as relieving the City of its obligation to maintain the Museum Building as required in Ordinance 5235;

6 **WHEREAS**, the City subsequently passed Ordinance No. 11,111 of the City of Little Rock, Arkansas,  
7 dated September 6, 1960 ("Ordinance 11,111"), which changed the name of the Museum of Fine Arts to  
8 the Arkansas Arts Center and granted the Board additional authority to plan, design, construct and equip  
9 further additions and modifications to the Museum Building, as well as occupy such additional areas  
10 adjoining the Museum Building as needed to accommodate such additions;

11 **WHEREAS**, Ordinance 11,111 also repealed Ordinance 5235 and 10,576, and provided that (i) such  
12 additions and modifications shall be completed or added at no cost to the City; and (ii) nothing contained  
13 in Ordinance 11,111 shall be construed as relieving the City of its commitment to make a single  
14 appropriation of capital funds in the amount of \$75,000.00 and other additional funds for the annual cost of  
15 maintaining the Museum Building;

16 **WHEREAS**, on December 1, 1994, the City pledged additional funds in the amount of \$1,000,000.00  
17 for expansion of the Museum Building, which were dispersed by the City in five (5) installments between  
18 December 1, 1995 and December 9, 1998;

19 **WHEREAS**, AAC currently utilizes and occupies the Museum Building as the venue for all AAC  
20 programs and for exhibition of an art collection open to the public for viewing free of charge;

21 **WHEREAS**, the Foundation is the owner of the art collection currently exhibited within the Museum  
22 Building and upon the adjacent grounds depicted on the attached **Exhibit A** (the "Foundation's Art  
23 Collection");

24 **WHEREAS**, rather than providing city employees or contractors, the City has historically appropriated  
25 and paid annual sums to AAC to be applied to offset the cost of maintaining the Museum Building pursuant  
26 to the above-referenced Ordinances and agreements;

27 **WHEREAS**, the funds appropriated and paid by the City to AAC for maintenance of the Museum  
28 Building have varied greatly through the years, and the cost of maintaining the Museum Building has  
29 continued to increase as the Museum Building was expanded and has aged; and

30 **WHEREAS**, the Parties hereto desire to execute this Agreement in order to establish, acknowledge  
31 and memorialize in writing their various understandings and agreements with respect to the continued use  
32 and maintenance of the Museum Building for their benefit and for the intended benefit of the citizens of the  
33 City of Little Rock, Arkansas.

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35 //

1 AGREEMENT.

2 NOW, THEREFORE, for and in consideration of Ten and No/100 United States Dollars (\$10.00) in  
3 hand paid and the mutual covenants and conditions contained herein, and of other good and valuable  
4 consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally  
5 bound, the Parties hereby covenant and agree as follows:

6 1. **Incorporation of Recitals.** The statements set forth above are not mere recitals of fact but are true,  
7 correct and contractual in nature, constituting an integral part of this Agreement and are incorporated herein  
8 by this reference with the same force and effect as if set forth herein as agreements of the Parties, except in  
9 the event of a conflict between the incorporated recitals and the numbered sections of this Agreement, the  
10 numbered sections of this Agreement shall control.

11 2. **Terms Defined.** For purposes of this Agreement, the capitalized terms set forth in this Section 2  
12 shall have the following meanings, unless the context otherwise specifically requires:

13 (a) **“Building”** shall mean and refer to the Museum Building or other similar, suitable successor  
14 building owned by the City and provided to AAC in the event the Museum Building is no longer  
15 suitable or sufficient for exhibition of the Foundation’s Art Collection, together with all structures and  
16 improvements of any nature whatsoever (including all supports, foundations and structures) located or  
17 to be located therein, or attached or to be attached thereto, as well as all apparatus, fixtures, structural  
18 components and equipment necessary for the complete and convenient use, occupancy, enjoyment and  
19 operation contemplated herein, including without limitation all appliances, machinery, garage  
20 equipment, ventilating equipment, wiring, fittings, controls, communications equipment, switchboards,  
21 antennae, electrical components and equipment, flooring, water heating equipment and water tanks,  
22 furniture, furnishings, building materials, supplies, machines, chillers, motors, engines, boilers, stokers,  
23 pumps, fans, vents, blowers, dynamos, furnaces, elevators, ducts, shafts, pipes, roofing components and  
24 equipment, plumbing, specialized heating and air conditioning components necessary to protect the  
25 Foundation’s Art Collection and equipment, lighting, lifting, ventilating, refrigerating, cooking,  
26 medical, laundry and incinerating equipment, walls and partitions, awnings, signs, sign structures and  
27 supports, call and sprinkler systems, fire prevention and extinguishing apparatus and equipment,  
28 compressors, vacuum cleaning systems, disposals, dishwashers, ranges, ovens and other kitchen and  
29 cafeteria equipment. Notwithstanding the foregoing, the term **“Building”** does not include any  
30 paintings, drawings, sculptures, fountains or other similar artistic designs or works of art owned or  
31 controlled by, or loaned to, the Foundation and exhibited within the Building or upon the adjacent  
32 grounds (or affixed thereto).

33 (b) **“Building Grounds”** shall mean and refer to all parking areas, open or green space areas,  
34 entrances, driveways, sidewalks, skywalks, loading areas, ramps, porches, bridges, tunnels,  
35 monuments, fountains, exterior sprinkler systems and irrigation components, exterior building and

1 security lighting, parking area lighting and landscaping (including without limitation all trees, grass,  
2 shrubbery, flowers, ornamental plantings and beds, and all other similar exterior areas, landscaping  
3 elements and improvements) adjacent to the Building.

4 (c) “Building Maintenance” shall mean and refer to those future and/or routine items, materials,  
5 equipment, services, maintenance, repairs, up-keep, replacements and personnel more fully described  
6 on the attached Exhibit B and any and all other similar and/or routine items, maintenance, services,  
7 restorations, alterations, improvements, repairs and replacements to the Building (or any portion  
8 thereof) and/or Building Grounds (or any portion thereof), including without limitation any and all  
9 future and/or routine mowing, edging, leaf and debris removal, snow and ice removal, irrigation,  
10 weeding, trimming, mulching, planting, landscaping and other similar maintenance and up-keep  
11 (including any and all appropriate or required replacements and repairs).

12 (d) “Capital Maintenance” shall mean and refer to any and all necessary or required capital  
13 improvements to the Building and any and all necessary or required repairs, maintenance and  
14 replacements to any of the structural components or infrastructure of the Building, including without  
15 limitation those certain items listed on the attached Exhibit C.

16 (e) “Emergency” shall mean and refer to a condition or circumstance that causes or presents an  
17 imminent threat or danger of material damage to the Building, the Building Grounds or the  
18 Foundation’s Art Collection, or a material interruption of or interference with AAC’s business  
19 operations in, on or from the Building or the Building Grounds.

20 (f) “Museum Building Grounds” shall mean and refer to those portions of the Building Grounds  
21 servicing the Museum Building designated as the “Museum Building Grounds” on the attached Exhibit  
22 A.

23 3. **Building Use and Occupancy.** Subject to the terms and conditions set forth herein, AAC shall  
24 have the exclusive, irrevocable right to utilize and occupy the Building provided by the City hereunder for  
25 exhibition of the Foundation’s Art Collection and all artistic and educational programs provided by AAC,  
26 and for any other uses desired by AAC not prohibited by applicable law for so long as AAC continues to  
27 utilize and occupy the Building for exhibition of the Foundation’s Art Collection to the public free of  
28 charge. Notwithstanding the foregoing, the City shall have the right to utilize the Building from time to  
29 time upon mutual agreement of the Parties.

30 4. **Utilities.** The City shall be solely responsible for the procurement and payment of all water, gas  
31 and electric utilities servicing the Property, the Building, the Building Grounds and all improvements  
32 located thereon. AAC shall be solely responsible for the procurement and payment of all other utilities,  
33 including without limitation all charges for cable, internet, telecommunications and other data services.

34 5. **Insurance.** Throughout the term of this Agreement, the City shall be solely responsible for  
35 insuring, at its cost and expense, the Building to the extent the City insures other buildings owned by the

1 City. Any such policy obtained by the City shall name AAC and the Foundation as additional insureds,  
2 contain a provision stating the insurance provided thereby will not be terminated or modified without at  
3 least thirty (30) days' prior written notice to AAC and the Foundation, and include a waiver of subrogation  
4 against AAC and the Foundation. AAC and the Foundation shall have the right at any time to request a  
5 certificate of insurance or such other evidence as either may desire to confirm the existence of the insurance  
6 required by this Section 5. Without limiting the foregoing, in addition to any insurance for the Building  
7 maintained by the City, AAC and the Foundation shall also have the right to maintain insurance on the  
8 Building, at the sole cost and expense of AAC and the Foundation, in such amounts as are deemed  
9 acceptable to the AAC and the Foundation. AAC and the Foundation shall be solely responsible for  
10 insuring, at their cost and expense, the Foundation's Art Collection and any other personal property of AAC  
11 or the Foundation located within the Building or upon the Building Grounds.

12 6. **Maintenance and Repairs.** The Parties acknowledge and agree one of the primary objectives in  
13 entering into this Agreement is to establish and acknowledge in writing the duties and obligations of each  
14 Party with respect to the restoration, maintenance, up-keep and expansion of the Building and Building  
15 Grounds provided by the City. In crafting and negotiating the terms of this Agreement, the Parties  
16 acknowledge the terms set forth herein are intended to apply and govern the Parties' duties and obligations  
17 with respect to the Museum Building, as well as any other Building and Building Grounds provided by the  
18 City hereunder. As for the Museum Building, the Parties acknowledge and agree that immediate, future  
19 and routine repairs and maintenance are needed and necessary to ensure the Museum Building remains a  
20 suitable venue for housing and exhibiting the Foundation's Art Collection, and for all AAC programs, for  
21 the current and future citizens of the City of Little Rock. To ensure all such repairs and maintenance are  
22 completed in a timely and efficient manner, the Parties agree all future restoration, maintenance, repairs  
23 and expansions shall be completed pursuant to the following terms and conditions, and each Party hereby  
24 covenants, warrants and represents to the other Parties to diligently commence, perform and complete their  
25 respective duties and obligations and make all necessary and appropriate efforts to comply in all material  
26 respects with the provisions detailed herein below. Being mindful of these expressed agreements,  
27 objectives and intentions, the Parties agree as follows:

28 (a) **Third-Party Contractors.** Unless the City elects to do so to the satisfaction of AAC and the  
29 Foundation, all Building Maintenance and Capital Maintenance to the Building and the Building  
30 Grounds contemplated herein shall be completed or provided by third-party contractors selected and  
31 employed by AAC, in AAC's sole and absolute discretion, subject to the terms and conditions contained  
32 herein. Additionally, all security personnel and services for the Building and the Building Grounds  
33 shall be provided by third-party contractors (Whelan Security or a suitable successor) selected and  
34 employed by AAC. All third-party bidding and contracting, and all items and services to be completed  
35 or provided hereunder, shall comply with all applicable laws, conform to the City's purchasing policies

1 and be completed in a good and workmanlike manner, free of any material or structural defects. All  
2 bonds, insurance and other security associated with the provision of such items and services shall inure  
3 to the benefit of the City. Further, AAC, the Foundation and all third-party contractors and service  
4 providers employed pursuant to this Agreement shall: (i) comply with all reasonable instructions,  
5 requests and guidance of the City relating to the performance of any of the foregoing, as well as the  
6 provision of any other items and services to be provided hereunder; (ii) maintain all records relating  
7 thereto; and (iii) allow the City to inspect such records at reasonable times, upon advance request.

8 (b) Building Maintenance. Unless the City elects to do so to the satisfaction of AAC and the  
9 Foundation, AAC shall from time to time throughout the term of this Agreement employ such third-  
10 party contractors and personnel as required or deemed necessary by AAC to perform any and all  
11 Building Maintenance, including without limitation any and all Building Maintenance necessary or  
12 required to maintain the Building and the Building Grounds in good condition and repair, to an  
13 aesthetically pleasing condition and in a manner and condition substantially similar to that of Riverside  
14 Park and Clinton Presidential Park as exists as of the date of this Agreement. In addition to the Building  
15 Maintenance contemplated in this Section 6(b), in the event of an Emergency, AAC is hereby  
16 authorized by the Parties to take any and all steps and actions deemed necessary, required or appropriate  
17 by AAC (including performance of any necessary or required Building Maintenance) to cure such  
18 Emergency without the need to obtain prior consent or approval from the Parties.

19 (c) Capital Maintenance. Unless the City elects to do so to the satisfaction of AAC and the  
20 Foundation, AAC shall from time to time throughout the term of this Agreement employ such third-  
21 party contractors and personnel as required or deemed necessary by AAC to perform any and all Capital  
22 Maintenance, including without limitation any and all Capital Maintenance necessary or required to  
23 maintain the Building in good condition and repair, to an aesthetically pleasing condition and in a  
24 manner and condition substantially similar to that of other similar art museums. In addition to the  
25 Capital Maintenance contemplated in this Section 6(c), in the event of an Emergency, AAC is hereby  
26 authorized by the Parties to take any and all steps and actions deemed necessary, required or appropriate  
27 by AAC (including performance of any necessary or required Capital Maintenance) to cure such  
28 Emergency without the need to obtain prior consent or approval from the Parties.

29 (d) Payment of Costs and Expenses. The City shall annually appropriate and provide to AAC  
30 funds to be applied towards the annual costs and expenses of: (i) the utilities for which the City is  
31 responsible for under this Agreement (ii) any third-party contractors, service providers or other  
32 personnel employed (and for which the City is responsible for) under this Agreement; and (iii) any and  
33 all other Building Maintenance and Capital Maintenance completed under this Agreement (collectively,  
34 the "AAC Expenses"). On or before September fifteenth (15<sup>th</sup>) of each year during which this  
35 Agreement remains in effect, AAC shall prepare and provide to the City a written request for funds



1 detailing the estimated annual cost and expense of the AAC Expenses. As soon as possible after receipt  
2 of the written estimate, the City shall, in good faith, make all appropriate and reasonable efforts, take  
3 all appropriate and reasonable actions and steps, and obtain all necessary approvals and consents to  
4 appropriate funds sufficient to cover the AAC Expenses as may be required on a periodic basis by  
5 applicable law, including without limitation the adoption or execution of such instruments, documents  
6 or ordinances necessary or required to appropriate and provide the requested funds.

7 Notwithstanding anything contained herein to the contrary, each and every year this Agreement remains in  
8 effect the City covenants, agrees and guarantees to annually appropriate and provide to AAC funds to be  
9 applied towards the AAC Expenses in an annual amount of not less than Seven Hundred Thousand and  
10 No/100 United States Dollars (\$700,000.00) (the "Basic Maintenance Funds"). The City acknowledges and  
11 agrees its obligation to appropriate the Basic Maintenance Funds is independent of and in addition to the  
12 City's obligation to appropriate and provide funds for any cost or expense incurred by AAC in curing an  
13 Emergency as contemplated in Sections 6(b) and 6(c) of this Agreement and any additions or expansions  
14 to the Building for which the City is responsible under Section 7 of this Agreement.

15 **7. Building Additions and Expansions.** So long as this Agreement continues to be effective, AAC  
16 shall have the right to complete any additions and expansions to the Building necessary or desired by AAC  
17 for exhibition of the Foundation's Art Collection or any other use of the Building permitted herein. All  
18 such additions and expansions shall conform in all material respects with the plans and specifics approved  
19 by AAC, the Foundation and the City prior to the commencement of any construction activities and  
20 completed in a manner consistent with the quality and appearance of other similar art museums. AAC,  
21 either personally or through its third-party contractors, shall furnish all professional designs, engineering  
22 plans, contracts, construction materials and supplies, superintendence, administration, licenses, permits,  
23 facilities, tools, machinery, equipment, personnel and labor necessary or desired by AAC. Subject to  
24 reimbursement by the City as set forth below, AAC and the Foundation shall be responsible for the cost  
25 and expense of any additions and expansions to the Building, including without limitation all architectural,  
26 engineering and third-party contractor costs and expenses, and the cost and expense of all construction  
27 materials and supplies. Upon completion of any such additions and expansions to the Building, the City  
28 shall, in good faith, make all appropriate and reasonable efforts, take all appropriate and reasonable actions  
29 and steps, and obtain all necessary approvals and consents to appropriate funds available from the City's  
30 annual budget to be applied towards such costs and expenses. Following completion of any such additions  
31 or expansions to the Building, the same shall be deemed dedicated to the City by AAC and the Foundation.  
32 Additionally, the Parties agree that, in the event the Foundation's Art Collection is removed from the  
33 Building and relocated to another venue not provided by the City, any professional designs or plans  
34 prepared or procured by AAC or the Foundation in connection with any planned additions or expansions to  
35 the Building shall be transferred to and become the property of the City.

1        8. **Remedies.**

2            (a) **Remedies of the City.** In the event (i) AAC fails to utilize and occupy the Building as provided  
3 herein; or (ii) the Foundation's Art Collection is removed from the Building or otherwise made  
4 unavailable for viewing by the public free of charge (provided, however, AAC and the Foundation shall  
5 have the right to close the Building, and remove or otherwise make unavailable the Foundation's Art  
6 Collection for viewing by the public, at any time and from time to time as the Foundation or AAC deem  
7 necessary or convenient to allow for any maintenance, construction, installation, repair, replacement,  
8 restoration, expansion, addition or improvement contemplated herein), the City shall have the right to  
9 terminate this Agreement, in which case each Party shall have no further obligations or duties to any  
10 other Parties hereto, and the Foundation's Art Collection shall be relocated to such location deemed  
11 desirable by the Foundation.

12            (b) **Remedies of AAC and the Foundation.** In the event the City for any reason fails to allocate  
13 any funds as required by this Agreement in its annual budget for any given fiscal year, AAC or the  
14 Foundation shall have the right to either: (i) terminate this Agreement, effective as of the last day in the  
15 fiscal year for which sufficient funds were budgeted and appropriated as required herein, in which case  
16 each Party shall have no further obligations or duties to any other Parties hereto, and the Foundation's  
17 Art Collection shall be relocated to such location deemed desirable by the Foundation; or (ii) assume  
18 full responsibility for all Building Maintenance and Capital Maintenance, including all cost and expense  
19 related thereto (provided, however, in no event shall AAC or the Foundation have any responsibility or  
20 obligation to maintain any portion of the Building Grounds other than the Museum Building Grounds),  
21 in which case AAC and the Foundation shall have the right to possess and occupy the Building for so  
22 long as the Building is utilized for exhibition of the Foundation's Art Collection. The Parties agree  
23 termination of this Agreement or assumption of the Building Maintenance and Capital Maintenance by  
24 AAC or the Foundation for non-appropriation or non-payment by the City is not a default hereunder,  
25 and the City shall not incur any liability or penalty as a result thereof.

26            9. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable  
27 under any present or future law, and if the rights or obligations of any Party hereto under this Agreement  
28 will not be materially and adversely affected thereby: (i) such provision will be fully severable; (ii) this  
29 Agreement will be construed and enforced as if such provision had never comprised a part hereof; (iii) the  
30 remaining provisions of this Agreement will remain in full force and effect and will not be affected by such  
31 provision or its severance wherefrom; and (iv) in lieu of such provision, there will be added automatically  
32 as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such provision as  
33 may be possible.

34            10. **Construction.** This Agreement has been jointly drafted, reviewed, negotiated and agreed to, and  
35 shall be deemed to have been prepared jointly by, the Parties hereto, each being sophisticated in transactions

1 such as the one contemplated by this Agreement and each having the benefit and advice of legal counsel  
2 (or the opportunity to seek such counsel), and shall not be construed in favor of or against any Party to this  
3 Agreement. All headings contained in this Agreement are inserted only as a matter of convenience and in  
4 no way define, limit or extend the scope or intent of this Agreement and should not be considered in  
5 interpreting this Agreement. The references in this Agreement to Sections, unless otherwise indicated, are  
6 references to sections of this Agreement.

7 11. **No Modification.** Nothing herein shall amend, alter or affect the terms, provisions, conditions,  
8 rights and obligations of any Party in and to any other agreement between such Parties unless the provisions  
9 of this Agreement are in direct contravention of such terms, provisions, conditions, rights or obligations  
10 established by any other agreement and the terms, provisions, conditions, rights or obligations of this  
11 Agreement cannot be interpreted in a manner consistent with such existing terms, provisions, conditions,  
12 rights or obligations, in which case the terms, provisions, conditions, rights and obligations created by this  
13 Agreement shall control.

14 12. **Binding Effect; Governing Law.** This Agreement shall be binding upon and shall inure to the  
15 benefit of the Parties hereto, and their respective heirs, successors, assigns and representatives. This  
16 Agreement is governed by and shall be construed in accordance with the laws of the State of Arkansas.

17 13. **Time of the Essence.** The Parties acknowledge and agree time is of the essence with respect to all  
18 provisions of this Agreement.

19 14. **No Waiver.** The failure of any Party referenced herein to enforce any of the provisions of this  
20 Agreement, or any rights with respect hereto, or the failure to exercise any right provided for herein, will  
21 in no way be considered a waiver of such provisions, rights or elections, or in any way affect the validity  
22 of this Agreement. The failure of any Party referenced herein to enforce any such provisions, rights or  
23 remedies will not prejudice such Party from later enforcing or exercising the same or any other provisions,  
24 rights or remedies which it may have under this Agreement. No course of performance, course of dealing,  
25 custom of usage or practice which may evolve between the Parties referenced herein shall waive or diminish  
26 the right of such Party to insist upon the performance by other Parties in strict accordance with the terms  
27 hereof.

28 15. **No Partnership.** This Agreement does not and shall not be construed to create any obligation or  
29 relationship such as an agency or employee/employer relationship, partnership, joint venture, franchise or  
30 other similar legal relationship under the laws of any state or the federal government. Each Party to this  
31 Agreement is solely liable for its actions and shall not be liable for the actions of another Party.

32 16. **Exhibits.** Any and all Exhibits cited or referenced in this Agreement or attached to this Agreement  
33 are part of this Agreement. All exhibits and schedules annexed hereto are expressly made a part of this  
34 Agreement as though fully set forth herein, and all references to this Agreement herein or in any such  
35 exhibit or schedule shall refer to and include all such exhibits and schedules.

1        17. **Notices.** Any notice or communication required or permitted hereunder shall be deemed to be  
2 delivered and received upon the earlier of actual receipt by the intended recipient or, whether actually  
3 received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail,  
4 return receipt requested, addressed to the intended recipient at the address shown below, or deposited with  
5 a nationally recognized overnight delivery service (*i.e.*, FedEx), service fully paid for, addressed to the  
6 intended recipient at the address shown below:

7        **ACC:**                    Arkansas Arts Center  
8                                    501 East Ninth Street  
9                                    Little Rock, Arkansas 72202

10       **The Foundation:**       Arkansas Arts Center Foundation  
11                                    501 East Ninth Street  
12                                    Little Rock, Arkansas 72202

13       **With a copy to:**        Quattlebaum, Grooms & Tull PLLC  
14                                    111 Center Street, Suite 1900  
15                                    Little Rock, Arkansas 72201  
16                                    Attn: John E. Tull, III, Esq.

17       **The City:**                    Little Rock City Attorney's Office  
18                                    500 West Markham, Suite 310  
19                                    Little Rock, Arkansas 72201  
20                                    Attn: City Attorney

21 All notices and demands shall be effective upon receipt if personally delivered or two (2) business days  
22 after the date of mailing, if mailed. Notice of a change in the foregoing addresses shall be given in  
23 compliance with this Section 17.

24       18. **Non-Discrimination.** The Parties acknowledge and agree this Agreement is made and entered into  
25 subject to the express covenant and agreement of each Party that performance of any term, condition,  
26 provision, duty or obligation set forth herein, by any Party, or any employee or other person acting through  
27 or under the direction or control of any Party, shall fully comply with all federal, state and local laws,  
28 regulations and ordinances prohibiting discrimination on the basis of race, color, creed, religion, sex,  
29 national origin, age, disability, marital status, sexual orientation, gender identity, or genetic information,  
30 including without limitation Ordinance No. 21,031 of the City of Little Rock, Arkansas, dated April 21,  
31 2015.

32       19. **Materiality.** Each and every term, condition, covenant, provision and requirement contained  
33 herein is material to this Agreement.

34       20. **Authority of Signors.** This Agreement is authorized, executed, acknowledged and effective  
35 pursuant to (i) the final ordinance adopted by the City of Little Rock Board of Directors, which shall not be

1 subject to repeal by referendum passed by a vote of the public, attached hereto as **Exhibit D**, (ii) the duly  
2 executed resolution approved by the Board of Directors of AAC attached hereto as **Exhibit E** and (iii) the  
3 duly executed resolution approved by the Board of Directors of the Foundation attached hereto as **Exhibit**  
4 **F**.

5 21. **Counterparts.** This Agreement, including all attached exhibits, may be executed at different times  
6 and in any number of originals or counterparts and by each Party on a separate counterpart, each of which  
7 shall be deemed an original but all of which together shall constitute only one agreement, notwithstanding  
8 all the Parties shall not have signed the same counterpart. In proving this Agreement, it shall not be  
9 necessary to produce or account for more than one such counterpart signed by the Party against whom  
10 enforcement is sought. Facsimile and email signatures shall be deemed valid on all documents related to  
11 this Agreement. Any signature page from one counterpart may be appended to another counterpart to create  
12 a fully executed counterpart hereof.

13 **IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement, by their authorized  
14 representatives, effective on the date first above written.

15 **THE CITY:**  
16 **THE CITY OF LITTLE ROCK, ARKANSAS,**  
17 an Arkansas municipality  
18 By: \_\_\_\_\_  
19 Name: \_\_\_\_\_  
20 Title: \_\_\_\_\_

21 **AAC:**  
22 **ARKANSAS ARTS CENTER,**  
23 an Agency of the City of Little Rock, Arkansas  
24 By: \_\_\_\_\_  
25 Name: \_\_\_\_\_  
26 Title: \_\_\_\_\_

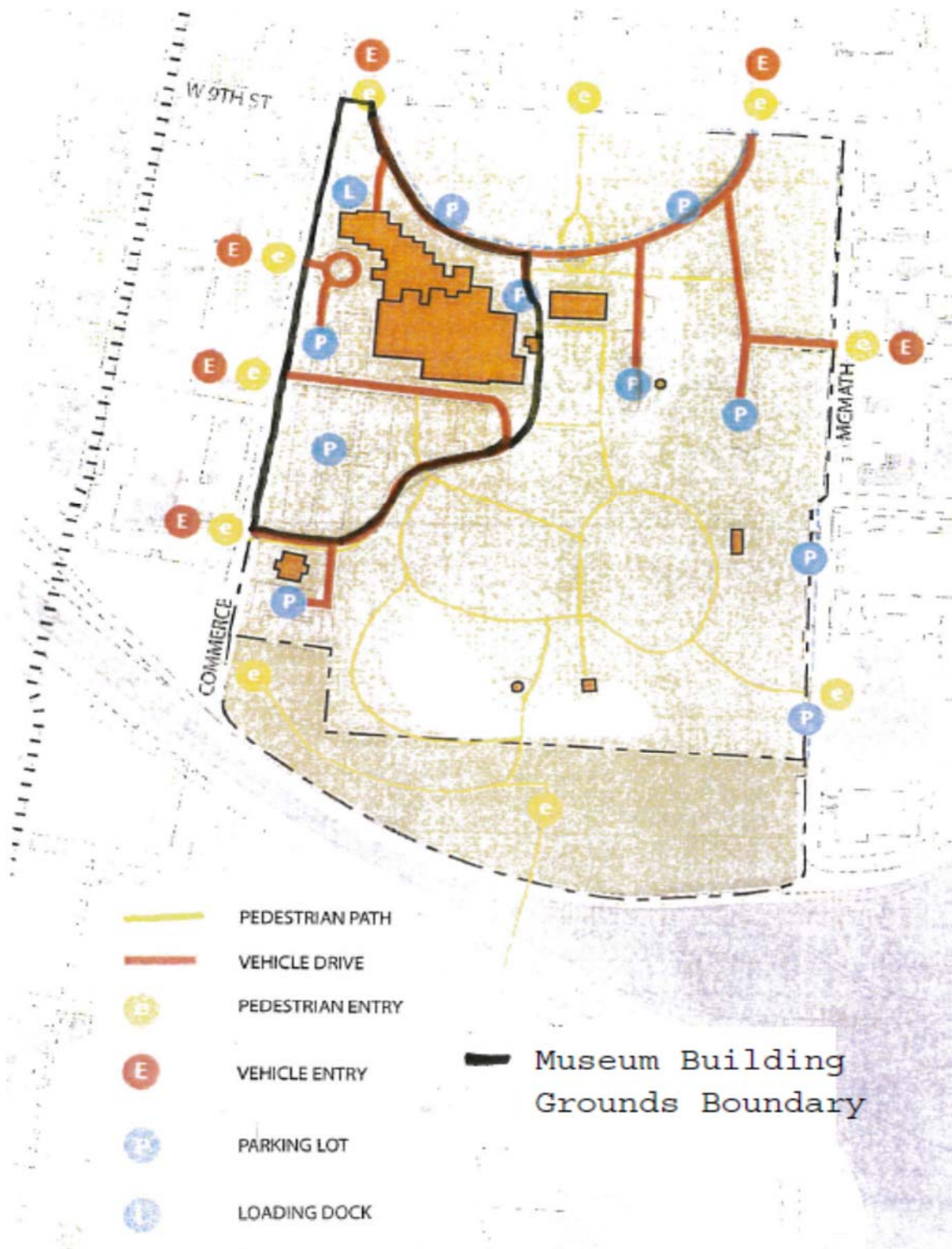
27 **THE FOUNDATION:**  
28 **THE ARKANSAS ARTS CENTER FOUNDATION,**  
29 an Arkansas nonprofit corporation  
30 By: \_\_\_\_\_  
31 Name: \_\_\_\_\_  
32 Title: \_\_\_\_\_

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**EXHIBIT A**

[DEPICTION OF BUILDING GROUNDS]



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**EXHIBIT B: DESCRIPTION OF BUILDING MAINTENANCE**

- 1       1. General Building Maintenance:
- 2           a. Electrical;
- 3           b. Plumbing;
- 4           c. Elevator;
- 5           d. Paint (non-exhibition/gallery);
- 6           e. Floor, wall, ceiling repairs (non-exhibition related);
- 7           f. Locks and electronic security;
- 8           g. HVAC Repairs and Maintenance (including all related annual maintenance contracts); and
- 9           h. All roof repairs (including quarterly inspections).
- 10       2. Grounds Maintenance, including but not limited to the following:
- 11           a. Mowing;
- 12           b. Edging;
- 13           c. Blowing of leaves;
- 14           d. Snow and ice removal;
- 15           e. Sprinkler maintenance;
- 16           f. Fountain maintenance; and
- 17           g. Landscaping/Grounds Maintenance (including weeding, trimming, mulching, planting,
- 18                 watering, lighting, etc.).
- 19       3. Annual Service Contacts:
- 20           a. Pest Control;
- 21           b. Fire Extinguisher;
- 22           c. First Aid/Emergency Response;
- 23           d. Elevator Inspection;
- 24           e. Sprinklers (indoor);
- 25           f. Janitorial Services;
- 26           g. Solid Waste and recycling removal;
- 27           h. Security Services/Personal for hours AAC open to the public (currently 41 hours/week);
- 28           i. The Arkansas Arts Center Director of Grounds and Maintenance (the “G&M Director”)
- 29                 employed by AAC to oversee certain day-to-day operations of the Arts Center, which
- 30                 include the following duties and responsibilities: (i) coordinating, directing, implementing,
- 31                 managing, overseeing and supervising the day-to-day operation, performance and
- 32                 completion of all Building Maintenance and Capital Maintenance), and all expansions and
- 33                 additions to the Building and the Building Grounds contemplated herein; (ii) selecting,
- 34                 managing and supervising all third-party contractors, service providers and security
- 35                 personnel employed pursuant to this Agreement; and (iii) performing, overseeing and

1 directing all minor maintenance, up-keep and repairs to the Building and the Building  
2 Grounds which do not, in the G&M Director's reasonable opinion, require or necessitate  
3 the employment of a third-party contractor or service provider.

4 **EXHIBIT C: DESCRIPTION OF CAPITAL MAINTENANCE**

- 5 1. Any and all of the Building's structural components or similar infrastructure, including, but not  
6 limited to, the following:
- 7 a. Flooring;
  - 8 b. Roof;
  - 9 c. Permanent walls (excluding temporary exhibition walls);
  - 10 d. Windows; and
  - 11 e. Permanent external and internal doors.
- 12 2. Any and all of the Building's mechanical equipment and systems, including, but not limited to,  
13 the following:
- 14 a. HVAC system;
  - 15 b. Boilers;
  - 16 c. Elevators;
  - 17 d. Electrical components and systems;
  - 18 e. Exhaust systems;
  - 19 f. Lighting components and systems; and
  - 20 g. Security cameras and control system.
- 21 3. Any and all of the Building's exterior mechanical or electrical equipment and systems, including,  
22 but not limited to, exterior lighting and fountains.

23 **EXHIBIT D: CITY RESOLUTION**

24 **EXHIBIT E: ARKANSAS ARTS CENTER RESOLUTION**

25 **EXHIBIT F: ARKANSAS ARTS CENTER FOUNDATION RESOLUTION**

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