

WHEN RECORDED RETURN TO:
City of Phoenix
City Manager's Office
Historic Preservation Office
200 W. Washington Street, 17th Floor
Phoenix, Arizona 85003

EXEMPT UNDER A.R.S. 11-1134 (A) (2)

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (the "Easement") is made as of the _____ day of _____, 2009, by and between _____, (individually or collectively, the "Property Owner"), whose principal address is _____, Phoenix, Arizona 850____ and the City of Phoenix, a municipal corporation organized and existing under the laws of the State of Arizona, (the "City").

RECITALS

A. The City is authorized under Arizona's Uniform Conservation Act, Arizona Revised Statutes, Sections 33-271 through 276, inclusive (collectively, as and if amended, the "Act") to accept easements to protect property significant in Arizona history and culture for the education of the general public.

B. The City is a municipal corporation whose responsibilities include the protection of the public interest in preserving architecturally significant structures within the City of Phoenix.

C. The Property Owner is the owner in fee simple of that certain property located at _____ Phoenix, Maricopa County, Arizona, which is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"), including all improvements and buildings thereon (the "Structures"). (Any reference to the "Property" hereinafter shall be deemed to include each of the "Structures".)

D. The Property is listed on the Phoenix Historic Property Register; and the Property Owner and the City recognize the historical or architectural value and significance of the Property and have the common purpose of conserving and preserving the aforesaid value and significance of the Property.

E. On _____, 2009, the Property Owner executed an Exterior Rehabilitation Program Agreement (the "Program Agreement"), wherein the Property Owner has agreed to sell to the City an Easement on the roof and exterior surfaces of each of the Structures (the "Facades") and any associated fences, walls, or fixtures (the "Fixtures") and all vegetation, patios, driveways, and ground surfaces (the "Landscaping") ("Facades", "Fixtures", and "Landscaping" collectively the "Site"), and use the proceeds of the sale together, if applicable, with a matching amount of Property Owner's funds or own labor to rehabilitate the Site.

F. In order to effectuate the obligations of the Property Owner under the Program Agreement, the Property Owner desires to sell, grant, convey, transfer and assign to the City and the City, pursuant to the Act, desires to accept an Easement on the Site.

AGREEMENT

NOW, THEREFORE, in consideration of the City's agreement to pay the Property Owner up to \$ _____, (the "Purchase Price") subject to the terms and conditions of the Program Agreement, the Property Owner and the City hereby agree as follows:

1. Grant of Easement: The Property Owner does hereby irrevocably grant, convey, transfer and assign unto the City an Easement, as provided for under the Act, in gross, for a term of fifteen (15) years from the date hereof through and including _____, 2024 (the "Term"), in and to the Site, and which covenants contained herein contribute to the public purpose of conserving and preserving the Site and accomplishing the other objectives set forth herein.

2. Property Owner's Covenants: In furtherance of the Easement herein granted, the Property Owner hereby covenants and agrees with the City as follows:

2.1 Documentation of the Exterior Condition of the Facades and Site. For the purpose of this Easement, within thirty (30) days following the Property Owner's request for reimbursement from the Historic Preservation Bond Fund, Property Owner or the Property Owner's designee shall depict the Site in an original set of photographs (the "Photographs") which shall be filed in the office of the City of Phoenix Historic Preservation Officer, or designated successor. The exterior condition and appearance of the Site as depicted in the Photographs (the "Present Site") is deemed to describe their external nature as of the date thereof.

2.2 Maintenance of the Site. The Property Owner will, at all times, maintain each of the Structures and their respective Facades, as well as the remainder of the Site, in a good and sound state of repair in accordance with the City's existing guidelines for the historic district in which the Property is located (the "Standards") so as to prevent the deterioration of the Site or any portion thereof; to prevent visual obstruction of the Site from public viewpoints such as adjacent streets; and prevent the intrusion of new improvements, walls, fences, statues, landscaping or fixtures which substantially modify the public view of the Site and its associated streetscape and open space, and are deemed to be not in accordance with the Standards. The Property Owner will request and obtain advance approval from the City Historic Preservation Office prior to implementing any physical changes to the Structures, Facades or Fixtures, including but not limited to: changes to the roof, foundation work, exterior surfaces, windows, or doors; any removal of mature vegetation; any demolition work or new construction; any construction or alteration of patios, decks or porches; any construction or alteration of features such as fencing, walls, statuary, paving and grading; any new stucco or re-stuccoing work; or, any masonry work, such as tuckpointing, paint removal, pressure water cleaning, chemical cleaning or application of sealants. In no event is sandblasting or other mechanical or abrasive cleaning method permitted. This provision does not apply to routine maintenance, installation of sprinkler systems, or landscaping except for hardscape improvements and removal of mature vegetation. Subject to the casualty provisions of Paragraph 4 below, this obligation to maintain shall require replacement, repair and reconstruction according to the Standards within a reasonable time whenever necessary to have the Site at all times appear to be the same as the Present Site.

2.3 Maintenance of the Structural Elements. The Property Owner will maintain and repair the Structures and Fixtures as is required to ensure the structural soundness and the safety of the Structures and Fixtures.

2.4 Inspection. In order to periodically observe the Site, representatives of the City shall have the right to enter the Property to inspect the Site. This inspection will be made at a time mutually agreed upon by the Property Owner and the City.

2.5 Conveyance and Assignment. The City may convey, transfer and assign this Easement to a similar local, state or national organization whose purpose, inter alia, is to promote historic preservation, and which is a "qualified organization" under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, provided that any conveyance or assignment requires that the conservation purposes for which this Easement was granted will continue to be carried out.

2.6 Insurance. The Property Owner, at its sole cost and expense, shall at all times (a) keep the Structures insured at their replacement cost value on an "all risk" basis to ensure complete restoration of the Site in the event of loss or physical damage. Said property coverage policy shall contain provisions which ensure that the face amount of the policy is periodically adjusted for inflation, and the Property Owner shall provide a Certificate of Insurance to the City evidencing such insurance, including an endorsement naming the City as a loss payee; and (b) carry and maintain liability insurance in an amount satisfactory to the City to protect against injury to visitors or other persons on the Property, and to provide a Certificate of Insurance to the City evidencing such insurance, and naming the City as an additional insured on the policy.

2.7 Visual Access. The Property Owner agrees not to substantially obstruct the opportunity of the general public to view the exterior architectural, historical and archaeological features of the Site from adjacent publicly accessible areas such as public streets and sidewalks. If the Site is not visible from a public area, then the Property Owner agrees that the general public shall be given the opportunity on a periodic basis to view the characteristics and features of the Site which are preserved by this Easement to the extent consistent with the nature and conditions of the Property.

3. Warranties and Representations of the Property Owner. The Property Owner hereby represents and warrants to the City as follows:

3.1 Information Furnished, True and Correct. All information given to the City by the Property Owner in order to induce the City to accept this Easement, including all information contained in this Easement, is true, correct and complete.

3.2 Legal, Valid and Binding. This Easement is in all respects, legal, valid and binding upon the Property Owner and enforceable in accordance with its terms, and grants to the City a direct, valid and enforceable conservation easement upon the Site.

3.3 No Impairment of Easement. The Property Owner, for itself, its heirs, personal representatives, and assigns, has not reserved, and to Property Owner's knowledge, no other person or entity has reserved any rights, the exercise of which may impair the Easement granted herein.

4. Application of Insurance Proceeds. Subject to the insurance proceeds requirements of any recorded Deed of Trust or Mortgage applicable to the Property, in the event of damage or destruction of any of the Structures or Fixtures resulting from casualty, the Property Owner agrees to apply all available insurance proceeds and donations to the repair and reconstruction of each of the damaged Structures or Fixtures. In the event the City determines, in its reasonable discretion, after reviewing all bona fide cost estimates in light of all available insurance proceeds and other monies available for such repair and reconstruction, that the damage to the Structures or Fixtures is of such magnitude and extent that repair and reconstruction of the damage would not be possible or practical,

then the Property Owner may elect not to repair or reconstruct the damaged Structures or Fixtures. Notwithstanding the foregoing, in the event the City notifies the Property Owner in writing that the City has determined that repair and reconstruction of the damaged Structures or Fixtures is impossible or impractical and that the damaged Structures present an imminent hazard to public safety, the Property Owner will, at Property Owner's sole cost and expense, raze the damaged Structures or Fixtures and remove all debris, slabs, and any other portions and parts of the damaged Structures or Fixtures within the time period required by the City to protect the health, safety and welfare of the public, unless the Property Owner has commenced and is diligently pursuing repair or reconstruction of the damaged Structures or Fixtures. Upon razing of the damaged portion of the Structures or Fixtures, the City shall release any interest it has in the insurance proceeds for the damaged Structures or Fixtures. Nothing in this paragraph is intended to supersede or impair the rights to insurance proceeds of a lienholder pursuant to a recorded deed of trust or mortgage applicable to the Property.

5. Indemnification. The Property Owner covenants that Property Owner shall pay, protect, indemnify, hold harmless and defend the City at the Property Owner's sole cost and expense from any and all liabilities, claims, costs, attorneys' fees, judgments or expenses asserted against the City, its mayor, city council members, employees, agents or independent contractors, resulting from actions or claims of any nature arising out of the conveyance, possession, administration or exercise of rights under this Easement, except in such matters arising solely from the gross negligence of the City, its mayor, city council members, employees and agents.

5.1 Survival of Indemnification. The obligations of the Property Owner under this indemnification shall continue beyond the term of this Easement for a period of two (2) years.

5.2 Explanation of Indemnification. For purposes of explanation of Paragraph 5 only, and without in any manner limiting the extent of the foregoing indemnification, the Property Owner and the City agree that the purpose of Paragraph 5 is to require the Property Owner to bear the expense of any claim made by any third party against the City, which arises because the City has an interest in the Property as a result of this Easement. The Property Owner will have no obligation to the City for any claims which may be asserted against the City as a direct result of the City's intentional misconduct or gross negligence.

6. Default/Remedy. In the event the Property Owner (a) fails to perform any obligation of the Property Owner set forth herein or in the Program Agreement, or otherwise comply with any obligation or restriction set forth herein, or (b) any representation or warranty of the Property Owner set forth herein, is determined by the City to have been untrue when made, in addition to any remedies now or hereafter provided by law and in equity, the City or its designee, following prior written notice to the Property Owner, may (aa) institute suit(s) to enjoin such violation by ex parte, temporary, preliminary or permanent injunction, including prohibitory and or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance required under this Easement, or (bb) enter upon the Property, correct any such violation, and hold the Property Owner responsible for the cost thereof, and such cost until repaid shall constitute a lien on the Property, or (cc) revoke the City's acceptance of this Easement by written notice to the Property Owner and the Property Owner shall reimburse the City all or part of the Purchase Price. Determination of the amount due to the City shall be made as follows: during the first half of the Term of the Easement, the Property Owner shall reimburse the City the full amount of the Purchase Price. Thereafter, on each anniversary of the execution of the Easement, the amount the Property Owner shall pay in the event of a default shall be reduced by a pro-rata portion of the original amount of the Purchase Price for the remaining years of the Term. In the event the Property Owner violates any of

Property Owner's obligations under this Easement, the Property Owner shall reimburse the City for any and all costs and expenses incurred in connection therewith, including all court costs and attorneys' fees.

7. Waiver of Remedy. The exercise by the City or its designee of any remedy hereunder shall not have the effect 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.

8. Waiver of Claims for Diminution in Value of Property Under Proposition 207. By executing this Easement on the Property, Property Owner, its heirs, successors or assigns, hereby voluntarily waives Property Owner's right to make any claim for any diminution in the value of the Property pursuant to A.R.S. 12-1134 that may directly or indirectly occur as a result of this Easement. The Property Owner understands that this Waiver shall run with the Property and be binding upon subsequent landowners and successors in interest. Property Owner acknowledges that the Easement and this Waiver are granted voluntarily and without duress and based on consideration as set forth herein and in the Program Agreement.

9. Effect and Interpretation. The following provisions shall govern the effectiveness and duration of this Easement:

9.1 Interpretation. Any rule of strict construction designed to limit the breadth of restriction 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 the transfer of rights and restrictions on use herein contained.

9.2 Invalidity of the Act. This Easement is made pursuant to the Act as the same now exists or may hereafter be amended, but the invalidity of such Act or any part thereof, or the passage of any subsequent amendment thereto, shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties hereto to agree and to bind themselves, their successors, heirs and assigns, as applicable, during the Term hereof, whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto.

9.3 Violation of Law. Nothing contained herein shall be interpreted to authorize or permit the Property Owner to violate any ordinance or regulation relating to building materials, construction methods or use, and the Property Owner agrees to comply with all applicable laws, including, without limitation, all building codes, zoning laws and all other laws related to the maintenance and demolition of historic property. In the event of any conflict between any such laws and the terms hereof, the Property Owner promptly shall notify the City of such conflict and shall cooperate with City and the appropriate authorities to accommodate the purposes of both this Easement and such ordinance or regulation.

9.4 Amendments and Modifications. This Easement may be amended in writing signed by the Property Owner and the City. Such amendment shall become effective upon recording the same among the land records of Maricopa County, Arizona, in the office of the County Recorder.

9.5 Recitals. The above Recitals are incorporated herein by this reference.

9.6 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Easement by the Property Owner.

9.7 Governing Law. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. Any legal proceeding arising out of this Easement shall be brought in Maricopa County.

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SAMPLE

IN WITNESS WHEREOF, the Property Owner and the City executed this Easement on the date first above written, which Easement shall be effective immediately upon such execution.

“PROPERTY OWNER”

By _____

By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____ and _____.

Notary Public

My Commission Expires:

CITY OF PHOENIX, a municipal corporation
FRANK FAIRBANKS, City Manager
By _____
Barbara Stocklin, Historic Preservation Officer

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Barbara Stocklin, Historic Preservation Officer.

Notary Public

My Commission Expires:

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"
Legal Description

SAMPLE