

CONSERVATION EASEMENT AGREEMENT

INTRODUCTION. This conservation easement agreement is made this ____ day of _____, 20__, by the City of Excelsior Springs, as Grantor of a conservation easement (hereinafter referred to as “Grantor”) and in favor of the State of Missouri acting through the State Historic Preservation Office of the Missouri Department of Natural Resources as Grantee of the conservation easement (hereinafter referred to as “Grantee”). Grantee enters this conservation easement under Missouri RSMo § 253.403 for the purpose of preserving the Hall of Waters.

I. The Subject Property. is comprised essentially of grounds, collateral, appurtenances, and improvements and is currently known as the Hall of Waters. This agreement creates a conservation easement in real estate legally described as:

A tract of land located in the Southeast Quarter of the Southwest Quarter of Section 1, Township 52, Range 30, described as follows:

Beginning at a point on the East line of Main Street in the City of Excelsior Springs which is 230 feet South of the intersection of the East line of Main Street and the South line of Broadway; thence from said point of beginning South along the East line of Main Street a distance of 165 feet; thence East and parallel with the South line of Broadway a distance of 65.4 feet to a point on the Westerly line of a concrete strip; thence North along the west line of said concrete strip a distance of 45 feet to a point that is 65.7 feet East of the East line of Main Street; thence West .7 of a foot to a point that is 65 feet East of the East line of Main Street; thence North and parallel with the East line of Main Street a distance of 120 feet; thence West parallel with the South line of Broadway a distance of 65 feet to the point of beginning; the property herein described as being designated as City Blocks 68, 69, 70 and part of 71 on the Official City Map of Excelsior Springs. ALSO a tract of land described as follows: All that part of the Southeast Quarter of the Southwest Quarter of Section 1, Township 52, Range 30 described as follows: Beginning at a point that is 65 feet East of a point that is 230 feet South along the East line of Main Street from the Southeast corner of Main and Broadway Streets in the City of Excelsior Springs; thence South 120 feet; thence East 10 feet; thence North 120 feet; thence West 10 feet to the point of beginning.

The Subject Property, the Hall of Waters, is located at 201 East Broadway, Excelsior Springs, Clay County, Missouri (hereinafter referred to as the “Property”), which is owned in fee-simple by the Grantor and is listed in the National Register of Historic Places as the “Hall of Waters, Siloam Park and Springs.”

II. Grant of Conservation Easement. In consideration of the sum of \$100,000 for terrace and retaining wall rehabilitation work, received in grant-in-aid assistance through the National Park Service, United States Department of the Interior and the Missouri Department of Natural Resources, the Grantor hereby grants to the Grantee a conservation easement in the Property for the purpose of assuring preservation of the Property.

III. Easement Required for Federal Grant. This conservation easement is granted as a condition of the eligibility of the Grantor for the financial assistance from the National Park Service of the United States Department of the Interior appropriated from the Historic Preservation Fund Program.

IV. Conditions of Easement:

- a. *Duration.* This easement is granted for a period of fifteen (15) years commencing on the date filed with the Clay County Recorder.
- b. *Documentation of condition of the Property at time of grant of this easement.* In order to make more certain the full extent of Grantor's obligations and the restrictions on the Subject Property, and in order to document the nature and condition of the Property, including significant interior elements in Spatial context, a list of character-defining materials, features, and spaces, including archaeological features (if known) is incorporated as Exhibit "A" at the end of this agreement. The Grantor has provided to the Grantee architectural drawings of the floor plans. To complement Exhibit "A", Grantee personnel have compiled a photographic record of the building as it exists, both prior and subsequent to the work performed using the NPS grant. The Grantor agrees that the nature and condition of the Property on the date of execution of this easement is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this easement in Grantee's conservation easement file for the Property.
- c. *Restrictions on activities that would affect historically significant components of the Property.* The Grantor agrees that no construction, alteration, or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Subject Property which would affect historically significant, interior spaces and features identified in Exhibit "A", either construction materials, architectural details, form, fenestration, height of Property, or adversely affect its structural soundness without prior written permission of the Grantee affirming that such written reconstruction, repair, repainting, refinishing, rehabilitation, preservation, or restoration will meet with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (hereinafter referred to as the "*Standards*").
- d. *Duty to maintain the property.* The Grantor agrees to assume the cost of the continued maintenance and repair of said property so as to preserve the architectural, historical, or archeological integrity of the same in order to protect and enhance those qualities that made the Property eligible for listing in the National Register of Historic Places.
- e. *Restrictions on activities that would affect archaeological resources.* The Grantor agrees that no ground disturbing activity shall be undertaken or permitted to be undertaken on the Subject Property which would affect historically significant archaeological resources identified in Exhibit "A" without prior written permission of the Grantee affirming that such work will meet the Secretary of the Interior's "*Standards for Archeology and Historic Preservation*".
- f. *Maintenance of recovered materials.* The Grantor agrees to ensure that any data and material recovered will be placed in a repository that will care for the data in the manner prescribed in the *Standards for Archeology and Historic Preservation* or will comply with the requirements of the Native American Graves Protection and Repatriation Act, and with 36 CFR 79 and 43 CFR 10.
- g.

Public access. The Grantor agrees to provide public access to view the grant-assisted work or property no less than 12 days a year on an equitably spaced basis. At the Grantor's option, the property may also be open at other times by appointment, in addition to the scheduled 12 days a year. Nothing in this agreement will prohibit a reasonable nondiscriminatory admission fee, comparable to fees charges at similar facilities in the area.

- h. Right to inspect.* The Grantor agrees that the Grantee, its agents and designees shall have the right to inspect the property at all reasonable times in order to ascertain whether or not the conditions of this agreement are being observed.
- i. Anti-discrimination.* The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the State of Missouri, SHPO Office.

To comply with the Americans with Disabilities Act, and with Section 504 of the Rehabilitation Act when interior public access is required at least 12 days per year and at other times by appointment, it is not required that every part of the property be made accessible to and usable by disabled persons by means of physical alterations. That is, for public access periods, videos, slide presentations, and/or other audio-visual material and devices should be used to depict otherwise inaccessible areas or features.

- j. Easement shall run with the land; conditions on conveyance.* This conservation easement shall run with the land and be binding on the Grantor, its successors, and assigns. The Grantor agrees to insert an appropriate reference to this easement agreement in any deed or other legal instrument by which it divests itself of either the fee simple title or other lesser estate in the Property, the Subject Property, or any part thereof.
- k. Casualty, Damage, or Destruction.* In the event that the Property or any part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within 14 days of the damage or destruction, such notification including what, if any, emergency work has already been completed. 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 the Grantor without the Grantee's prior written approval. The Grantee shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantor. If after reviewing the condition of the Property, the Grantee determines that the features, materials, appearance, workmanship, and environment which made the Property eligible for listing in the National Register of Historic Places has been lost or so damaged that its continued National Register listing is in question, the Grantee will notify the Keeper of the National Register and the Grantee in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the Grantee in writing of any decision to remove the Property from the National Register. If the Property is removed, the Grantee will then notify the Grantor that this agreement is null and void. If the damage or destruction that warrants the Property's removal from the National Register is caused by the gross negligence of city managers of the Grantor or future Owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the property, which will then be turned over to the U.S. Treasury.
- l. Enforcement.* The Grantee shall have the right to prevent and correct violations of the terms of this easement. If the Grantee, upon inspection of the Property, finds what appears to be a

violation, Grantee shall notify Grantor in writing of the violation. If an adequate response is not sent from Grantor to Grantee within 30 days after receipt of the written notification, it may exercise its discretion to seek injunctive relief in a court having jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical, and architectural importance of the Property, the Grantee shall give the Grantor written notice of the violation and allow thirty (30) days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court, having jurisdiction determines that a violation exists or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. Grantee may also ask a court to issue a mandatory injunction requiring the Grantor to restore the Property to a condition that would be consistent with preservation purposes of the grant from the National Park Service. In any case where a court finds that a violation has occurred, the Grantee may ask the court to require the Grantor to reimburse the Grantee and the Missouri Attorney General for all the State's expenses in stopping, preventing, and correcting the violation, except for attorney's or expert witness's fees. The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

- m. Amendments:* Grantor and Grantee may by mutual written agreement jointly amend this easement, provided the amendment shall be consistent with the preservation purpose of this easement and shall not reduce its term of duration. Any such amendment shall not be effective unless it is executed by Grantor and Grantee, and, if it affects the Keeper of the National Register, by that Keeper, refers expressly to this easement, and is filed with the Clay County Recorder.
- n. Effective date; severability.* This conservation easement shall become effective when the Grantor files it in the Office of the Recorder of Clay County, Missouri, with a copy of the recorded instrument provided to the Grantee for its file. If any part of this conservation-easement agreement is held to be illegal by a court, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced by the Grantor and Grantee, and, if the keeper of the National Register is affected, by that Keeper as if the conservation agreement does not contain the particular part held to be invalid.

GRANTOR: City of Excelsior Springs, Missouri

By: _____
(Name)
(Title)

(date of signature)

State of Missouri, Clay County, ss: On this ___ day of _____, 20___, before me the undersigned, a Notary public for said State, personally appeared *(Name)*, who stated that he is duly appointed and actively serving as the City Manager of the City of Excelsior Springs, and that he executed the foregoing conservation easement agreement as his voluntary act and as the voluntary act of the City of Excelsior Springs.

NOTARY PUBLIC
(seal)

(This language will vary depending on who the recipient/owner is.)
(

Approved as to form

City Attorney

GRANTEE: Missouri Department of Natural Resources

By: _____
Mark Templeton, Director

(date of signature)

State of Missouri, _____ County, ss: On this ___ day of _____, 2009, before me the undersigned, a Notary public for said State, personally appeared Mark Templeton, who stated that he is duly appointed and actively serving as Director of the Missouri Department of Natural Resources, and that he executed the foregoing conservation easement agreement as his voluntary act and as the voluntary act of the Missouri Department of Natural Resources.

NOTARY PUBLIC
(seal)

EXHIBIT "A" TO CONSERVATION EASEMENT AGREEMENT

Hall of Waters, Excelsior Springs, Missouri

To remain eligible for listing on the National Register of Historic Places, a property must be able to convey its significance. The following character-defining features have been identified as those that help convey the significance of the Hall of Waters (photographic documentation is attached).

Significant Interior Spaces and Features

No interior work is planned on this grant project at this time. All work on this project will occur on exterior stone retaining walls and concrete and stone steps and terraces.

Significant Exterior Spaces and Features

Exterior work for this project includes.....

Significant Archaeological Features

None known.