

City of Fayetteville Item Review Form

2014-0246

Legistar File Number

June 17, 2014

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Don Marr

Submitted By

Mayor's Office

Department

Action Required:

A Resolution approving a Lease between the University of Arkansas, the City of Fayetteville and the Walton Arts Center Council, Inc.

Does this item have a cost?  No

Cost of this request	Category or Project Budget	Program or Project Name
Account Number	Funds Used to Date	Program or Project Category
Project Number	Remaining Balance	Fund Name
Budgeted Item? <input type="checkbox"/>	Budget Adjustment Attached? <input type="checkbox"/>	

\$0.00

V20130812

Previous Ordinance or Resolution # \_\_\_\_\_  
Original Contract Number: \_\_\_\_\_



Comments:  
*[Signature]* June 3, 2014  
*[Signature]*  
Don Marr 6-3-14  
Paul A. Baker 6-3-2014

## STAFF MEMO

**TO:** City Council Members

**THRU:** Mayor Jordan *L.J.*  
Kit Williams, City Attorney *Kit*

**FROM:** Don Marr, Chief of Staff *DM*

**DATE:** May 30, 2014

**SUBJECT:** 2014-0246 Lease Renewal with the Walton Arts Center Council Inc.

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### RECOMMENDATION:

Staff recommends approval of the of the resolution to renew the lease between the University of Arkansas, the City of Fayetteville and the Walton Arts Center Council Inc.

### BACKGROUND:

See the City Attorney Memo dated May 15<sup>th</sup>, 2014 for the history and specific details of this request. The Memo is attached within this packet to this Staff Memo for the Agenda Item

### DISCUSSION:

Pulled excerpts from the City Attorney Memo of 5/15/2014:

The newly proposed Lease Agreement:

- (A) The current twenty-five year Lease Agreement of 1992 (which would expire on March 30, 2017, subject to renewal options of the Walton Arts Center) has been amended and restated and set to begin again a new 25 year term.
- (B) Requires the Walton Arts Center to begin a capital fundraising campaign to renovate and enlarge the Walton Arts Center on Dickson Street.
- (C) Removed the area of the Parking Deck from the lease to ensure the City can manage and receive parking revenue (pledged to the Parking Revenue Bond) for the parking deck (build by those bonds).
- (D) Warrants that the Walton Arts Center Council, Inc. shall at all times during the term, shall **operate, manage and maintain** the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City and the University of Arkansas may take into account the quality, type and number of performance and activities occurring at the Dickson Street facility, including the quality, type and number of Broadway Musicals & performances, other theatrical, dance and musical performances; concert performances and educational programs

**BUDGET/STAFF IMPACT:**

There is no staff or additional budgetary impact from this Lease change

**Attachments:**

City Attorney Memo May 15, 2014

Walton Arts Center Council, Inc. Memorandum May 30, 2014

New Lease Agreement between the University of Arkansas, the City of Fayetteville and the  
Walton Arts Center Council Inc.



OFFICE OF THE  
CITY ATTORNEY


DEPARTMENTAL CORRESPONDENCE



Kit Williams  
*City Attorney*  
Blake Pennington  
*Assistant City Attorney*  
Patti Mulford  
*Paralegal*

TO: **Mayor Jordan**  
**City Council**

CC: **Don Marr, Chief of Staff**  
**Paul Becker, Finance Director**

FROM: **Kit Williams, City Attorney** 

DATE: **May 15, 2014**

RE: **New Interlocal Agreement with U of A, Governance Documents for  
Walton Arts Center, and Lease**

INITIAL MEETINGS

About a year ago, representatives from the Walton Arts Center met with Mayor Jordan and requested a very significant change in how the Walton Arts Center would be governed and managed. Mayor Jordan could not agree to this initial proposal which would have removed most of the City's power and authority. However, he wanted to work with our most generous partner, the Walton Family Foundation, in an effort to preserve the Walton Arts Center's vitality, usefulness, and activity that is so important to our Entertainment District and the quality of life for Fayetteville. This goal to preserve the Walton Arts Center's viability has been our constant lodestar through a year of negotiations.

We then had a meeting with the Chancellor, the U of A Legal Counsel Scott Varady, the Chair of the Walton Arts Center Council (Greg Lee) and other members of the WAC Council including Jeff Gearhart. With its planned expansion into Bentonville to build a larger Arts Center

auditorium and its movement of the Arkansas Music Pavilion into Rogers, the Walton Arts Center, Inc. needed to change its Articles of Incorporation to broaden its allowed purposes which are currently limited to solely operating and maintaining the Walton Arts Center on Dickson Street.

Mayor Jordan then met with representatives of the Walton Family Foundation who expressed their desire and willingness to help our Walton Arts Center in Fayetteville to continue to thrive, but wished that the WAC Council and WAC Foundation would no longer be denoted as "agents" of the City or University. By law, an agent owes its principals (the City and University) a fiduciary duty of utmost good faith and loyalty. The Walton Arts Center staff and the Walton Family Foundation were concerned that the City or University might someday try to exercise our rights as principals to hinder its planned expansion out of Fayetteville into Bentonville and Rogers.

#### PRINCIPAL GOALS OF THE CITY

Mayor Jordan was willing to accommodate the desires of the Walton Family Foundation (as the Walton Arts Center's major regular donor) and the Walton Arts Center Council if we received enforceable assurances and commitments to preserve the Dickson Street Walton Arts Center in a manner similar to its use of the last few years. In other words, we believed we should receive legal commitments that once a new and larger facility was constructed in Bentonville, the Walton Arts Center on Dickson Street would not be relegated to second class status without Broadway musicals, etc.

#### NEGOTIATIONS WITH WALTON ARTS CENTER AND U OF A ATTORNEYS

I met with and worked for several months with U of A Counsel Scott Varady and Walton Arts Center, Inc.'s Counsel Marshall Ney to try to meet everyone's expectations and goals. I consulted frequently with Mayor Jordan and Chief of Staff Don Marr to ensure the proposed changes to the Articles of Incorporation of Walton Arts Center Council, Inc., the Articles of Incorporation of the Walton Arts Center Foundation, Inc., their By Laws,

the U of A and City Interlocal Cooperation Agreement, and the new Lease Agreement were acceptable and headed in the right direction.

Please keep in mind that all documents were the result of careful and thoughtful negotiations and compromises. None of the interested parties: (1) The City of Fayetteville; (2) University of Arkansas; (3) Walton Arts Center Council, Inc.; (4) Walton Arts Center Foundation, Inc. or (5) Walton Family Foundation could just dictate a final agreement. We all had to honor each party's legitimate and reasonable concerns. I can now report to you that I believe we have achieved a balanced agreement that satisfies the concerns and wishes of all parties and protects our Walton Arts Center.

### **SUMMARY OF IMPORTANT CHANGES**

#### **(1) The Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.**

(A) Removes the designation that the Council is agent of the University and City.

(B) Broadens its "Purposes" Article from only maintaining and operating the Walton Arts Center on Dickson Street to constructing and operating a new Arts facility in Bentonville, the AMP in Rogers, and in cooperation with the U of A possible venues on campus.

(C) Preserves the current level of performances at the Walton Arts Center on Dickson with the following language:

"To expand and renovate the existing Walton Arts Center in Fayetteville as currently proposed by the Walton Arts Center Council, Inc., and after the construction and opening of the performing arts venue in Bentonville, to continue to obtain funding for, operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is

met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.”

(D) Preserves the City and University’s power to appoint five members each of the nineteen member board of directors and empowers the Walton Family Foundation to appoint the other nine members rather than having these be “self-appointed” by the other board members. This is a good change since all members of the Board of Directors should then be responsible and hopefully responsive to the U of A, City, or Walton Family Foundation.

**(2) The Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.**

(A) Broadens its purposes from fundraising solely for the Walton Arts Center on Dickson Street to fundraising for the proposed Bentonville facility, Rogers AMP, etc.

(B) Authorizes the Foundation to return the initial deposit of \$1.5 million dollars of City General Funds to begin the Foundation to the City to be used to help pay for the Parking Deck, the Walton Arts Center headquarters building, the expansion project or other needs. Once this \$1.5 million is returned to the City, the Foundation no longer needs to be our agent for constitutional reasons and its agency status will be terminated.

(C) Removes the never used (and probably never usable) power of the U of A Chancellor or Fayetteville Mayor to basically veto the entire annual budget of the Foundation and Council.

**(3) Lease Agreement.**

The original twenty five year Lease Agreement of 1992 (which would expire on March 30, 2017, subject to renewal options of the Walton Arts Center) has been amended, restated and basically set to begin again upon its approval for a new 25 year term.

(A) Establishes from its new 25 year term which will not end until 2039.

(B) Requires the Walton Arts Center to begin a capital fundraising campaign to renovate and enlarge the Walton Arts Center on Dickson Street.

(C) Removes the area of the Parking Deck from the lease to ensure the City can manage and receive parking revenue (pledged to the Parking Revenue Bond) for the parking deck (built by those bonds).

(D) Warrants that the Walton Arts Center Council, Inc.

“(a)t all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performance and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.”



COOPERATION WITH U OF A  
(City Attorney's Update to May 15<sup>th</sup> Memo)

Rather than a quitclaim deed, the University is willing to supply the City a long term lease for the parking deck area for nominal consideration. This prevents some fire code issues and ensures the City's management rights for the parking deck.

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

A RESOLUTION TO APPROVE AN AMENDED AND RESTATED LEASE AGREEMENT AMONG THE UNIVERSITY OF ARKANSAS AND CITY OF FAYETTEVILLE AS LANDLORDS AND THE WALTON ARTS CENTER COUNCIL, INC. AS TENANT

**WHEREAS**, the University, City of Fayetteville and Walton Arts Center Council, Inc. agreed to a 25 year lease to be effective on April 1, 1992 for the Walton Arts Center; and

**WHEREAS**, in 2001 the Walton Arts Center Council, Inc. deeded the parcel for the Nadine Baum building to the City of Fayetteville and University of Arkansas; and

**WHEREAS**, it is in the best interests of the Citizens, Businesses and City of Fayetteville to amend and restate the Original Lease Agreement to ensure that the Walton Arts Center on Dickson Street will continue to be operated, managed and maintained “in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013;” and

**WHEREAS**, the Amended and Restated Lease Agreement together with proper amendments to the Articles of Incorporation of Walton Arts Center Council, Inc. and Walton Arts Center Foundation, Inc. should assist in the campaign to ensure completion of the Walton Arts Center enlargement and enhancement project; and

**WHEREAS**, the University of Arkansas Board of Trustees, the Walton Arts Center Council, Inc. Board of Trustees and the Walton Arts Center Foundation, Inc. Board of Trustees have approved this Amended and Restated Lease Agreement for the Walton Arts Center.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the Amended and Restated Lease Agreement attached as Exhibit 1 and authorizes Mayor Jordan to sign this Lease.

**PASSED and APPROVED** this 17<sup>th</sup> day of June 2014.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

May 30, 2014

MEMORANDUM

TO: Mayor Lioneld Jordan  
Fayetteville City Council

FROM: Walton Arts Center Council  
Greg Lee, Chair

Dear Mayor and Fayetteville City Council Members,

On May 19, 2014, the Walton Arts Center Council and the Walton Arts Center Foundation approved the adoption of amended governance documents as follows for the WAC Council and Foundation:

- (a) Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.
- (b) the Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.
- (c) the Amended and Restated Interlocal Cooperation Agreement
- (d) the Amended and Restated Bylaws of Walton Arts Center Council, Inc.
- (e) the Amended and Restated Lease between the University of Arkansas/City of Fayetteville and Walton Arts Center Council, Inc.

A summary of the effective changes of these documents is attached, as are the draft documents.

The Walton Arts Center Council further recommended that the Walton Arts Center Foundation authorize the return of the City's initial \$1.5 million investment to the WAC Foundation as an operating endowment to the City for use in the Spring Street Municipal Parking Deck. The original purpose of the funds was to provide income, through use of their earnings in the endowment, to WAC for operating expenses. The funds have been used in this manner to date. The Walton Arts Center Foundation authorized this return of funds, for reinvestment into the Spring Street Municipal Parking Deck.

As per the existing bylaws, we are requesting approval of the above changes from the City Council and the University of Arkansas Board of Trustees (the UA Trustees approved these amendments at their May 2014 meeting). We ask that the Fayetteville City Council review and approve these documents so that they may take effect.

May 30, 2014

### **Reasons for the Governance Changes:**

Several changes are being proposed to the Governance structure of Walton Arts Center (WAC) in order to clarify existing documents and ensure that WAC can continue to achieve its mandate of serving the arts needs of all residents of Northwest Arkansas. There are two key goals to the changes: 1) ensure clarity and flexibility for WAC to continue to meet growing arts and entertainment desires of the region, and 2) affirm and support the original partnership of the UA and City.

### **Summary of Document Changes**

- **The changes provide WAC and WAC Foundation with:**
  - Absolute clarity around the ability for WAC to expand its programs to other venues throughout NWA;
  - Confirmation that budget and operational oversight rests exclusively with the WAC Council;
  - Removal of the principal/agency relationship that currently exists among WAC, the City and the UA;
  - The WAC Council will continue to have broad regional representation with the acknowledgment of the significant contributions and ongoing support of the Walton Family, with the Walton Family Foundation having appointments to the WAC Council of 9 regional representatives, to serve alongside the City and UA's 5 members appointed respectively.
  - Ability for WAC Council to grow proportionally to 38 members
  - The WAC Foundation will no longer be an agent of the City, and the City will no longer have appointments to the Foundation.
  
- **In addition, the following protective provisions for the City/UA are included:**
  - The Articles of Incorporation of WAC have been amended to provide assurances regarding the quality and quantity of performances occurring at the Dickson Street facility. The Lease among WAC, the

City and the UA contains an identical covenant. Compliance with these programming assurances can be enforced directly by the City or the UA.

- The City and the UA will collectively appoint a majority of the members of the Board of WAC, with each retaining the right to appoint 5 members (or a total of 10 out of 19).
  - While the WAC Council may modify the bylaws from time to time, no changes to the bylaws may be made that are inconsistent with or undermine the protective provisions contained in the Articles of Incorporation.
  - The Foundation will return the City's original gift of \$1.5 million currently in WAC's operating endowment, and those funds will be reinvested in the parking deck project adjacent to WAC.
- **A New Lease between the City/UA/WAC**
    - WAC has maintained a Lease with the City of Fayetteville and the UA for the Dickson Street facility since 1992. That Lease is scheduled to expire in 2017.
    - In order to ensure the long-term stability and viability of the Dickson Street facility and to support the upcoming major renovation of the facility, WAC, the City, and the UA have proposed a new long-term Lease. The new lease is also needed due to the addition of the municipal parking deck being built on land currently under lease by WAC.
    - The new lease will reflect the changes in the governing documents, specifically providing assurances regarding the quality and quantity of performances occurring at the Dickson Street facility.
    - The term of the new Lease will be for an additional 25 years.

**AMENDED AND RESTATED LEASE AGREEMENT**

**BETWEEN**

**BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS FOR THE  
UNIVERSITY OF ARKANSAS, FAYETTEVILLE, AND THE CITY OF  
FAYETTEVILLE, ARKANSAS**

**“Lessor”**

**and**

**WALTON ARTS CENTER COUNCIL, INC.**

**“Lessee”**

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Exhibit C	Memorandum of Lease



## AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and among Board of Trustees of the University of Arkansas for the University of Arkansas, Fayetteville (“**University of Arkansas**”), the City of Fayetteville, Arkansas (the “**City**”), and Walton Arts Center Council, Inc., an Arkansas not-for profit corporation (the “**Walton Arts Center**”). The University of Arkansas and the City are collectively referred to in the singular tense from time to time as “**Lessor**”, and the Walton Arts Center is referred to as “**Lessee**”.

### RECITALS:

- A. The twenty five (25) year Original Lease Agreement from the City of Fayetteville and the University of Arkansas as the Lessor was effective on April 1, 1992, and leased to Lessee Walton Arts Center lands which included all of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas, as per plat on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas. The Original Lease Agreement was signed by the University of Arkansas on November 24, 1993, the Mayor of the City of Fayetteville after the Fayetteville City Council approval on January 18, 1994, and by Lessee on January 4, 1994. The parcel containing the Nadine Baum building was deeded to the City and the University in 2001 by the Walton Arts Center Council, Inc. Capitalized terms not otherwise defined in this Lease Agreement (as defined below) shall have the meanings given them in the Original Lease Agreement.
- B. The Original Lease Agreement expires on March 30, 2017, subject to certain renewal options granted to Lessee.
- C. The parties desire to amend and restate the Original Lease Agreement in its entirety so as to, among other things, extend the primary term of the Original Lease Agreement and permit Lessee to begin a fund raising campaign with the intention of renovating, refurbishing, and enlarging, and operating the Premises if successful, to remove from the leased premises that portion of Block Six upon which the City of Fayetteville is to

construct a parking deck using citizen approved bond revenues and to add the Nadine Baum building and parcel. The area to be retained by the City includes the entire parking deck site from the west side of the parking deck east to School Avenue and from the north side of the parking deck south to Spring Street except for the north liner building which replaces the Walton Arts Center Administrative Headquarters building.

- D. The Original Lease Agreement is hereby amended and restated in its entirety by this Amended and Restated Lease Agreement (“**Lease Agreement**”) and shall be effective as of the latest date set forth on the signature page.
- E. Within a reasonable period of time from the date Lessor executes this Lease Agreement, Lessee shall begin a capital fund raising campaign to cultivate, develop and solicit donors and the general public for funds to renovate, refurbish, enlarge, and operate the Premises in accordance with the renderings, documents, and drawings attached as Exhibit "B" to this Lease Agreement (the “**Lessee Improvement Work**”). While Lessee will use its best efforts with regard to the capital campaign to pay for the Lessee Improvement Work, Lessee offers no assurances that the campaign will be successful or a timeline for completion of the Lessee Improvement Work. Lessor acknowledges that Lessee may be required to complete the Lessee Improvement Work in phases or stages over several years.

In consideration of the terms and conditions contained herein, the sufficiency of which is acknowledged by Lessor and Lessee, the parties agree as follows:

1. Premises and Improvements Leased. Subject to the terms and conditions set forth in this Lease Agreement, Lessor leases and lets the Premises as referred to in C. and as more particularly described in Exhibit “A” unto Lessee who hereby accepts the Premises.

2. Term. Unless sooner terminated as set forth below, the term of this Lease Agreement (“**Term**”) shall be twenty-five (25) years, commencing as of the date Lessor and Lessee execute this Lease Agreement (the “**Lease Commencement Date**”) and shall continue through the

last day of the month at 5:00 PM CST in which the twenty-fifth (25<sup>th</sup>) anniversary of the Lease Commencement Date occurs. At the end of the original Term and subject to Lessor's right to terminate this Lease Agreement, Lessee shall have the option to extend the Term of this Lease Agreement for a period of twenty-five (25) years subject to the terms and conditions herein set forth, provided Lessee is not otherwise in default. Lessor shall have the right to terminate this Lease Agreement by providing written notice of termination to Lessee at least ninety (90) days prior to of the expiration of the original Term. If Lessor does not exercise its right terminate this Lease Agreement by providing written notice to Lessee at least 90 days prior to the expiration of the original Term, then Lessee shall have the right to extend the Term by providing written notice to the Lessor at any time prior to the expiration of the original Term.

3. Rental. As rental for the Premises, within ten (10) business days of the Lease Commencement Date, Lessee shall pay to Lessor in advance the sum of ONE DOLLAR (\$1.00) for rental of the Premises for the entire Term. As additional rental, Lessee shall pay in full on a timely basis all costs, expenses, fees, and assessments owed in connection with any Lessee Improvement Work that Lessee may commence. As further consideration for the rental for the Premises, the Walton Arts Center agrees to faithfully perform all of its Representations and Warranties of Lessee contained in Paragraph 37 of this Lease Agreement.

4. Taxes. As additional rental, Lessee shall pay, before they become delinquent, all ad valorem taxes, if any, and special or general assessments, if any, lawfully levied or assessed against the Premises, or which may become a lien against the Premises, or which become due and payable during the term hereof. Upon giving notice to Lessor, Lessee may, in good faith and in the manner provided by law, contest any such tax or assessment against the Premises; provided, all costs and expenses incident to contesting such taxes or assessments shall be paid by Lessee, and Lessee shall:

(i) if necessary to prevent any sale of the Premises or any loss or damage to Lessor, pay such tax or assessment under protest; (ii) in the event of an adjudication adverse to Lessee, promptly pay such tax or assessment; (iii) indemnify and hold Lessor harmless against any losses or damages arising from such contest; (iv) take all such other actions as may be reasonably necessary to prevent any such sale or loss; and (v) before such taxes or assessments become delinquent, deliver to Lessor proof of Lessee's timely and full payment of all such taxes and assessments. The duty of indemnification shall survive the expiration or termination of this Agreement. Additionally, nothing contained in this provision shall be a waiver of Lessor's right, at Lessor's cost, to challenge the imposition of any type or kind of taxes on the Premises.

5. Insurance. Nothing contained herein shall obligate or otherwise require Lessor to procure or maintain any insurance pertaining to the Premises. Lessee will, at its sole cost and expense, at all times, keep the Premises insured under special form policies of fire and extended coverage for its full insurable value, with vandalism, sprinkler leakage, and malicious mischief insurance, and such other additional coverages as may from time to time be designated by Lessor, including, without limitation, all-risk coverage, boiler and machinery insurance, flood insurance, earthquake, and war damage insurance added as endorsements to said insurance policy. This insurance must be maintained with a reliable insurance company or companies licensed to do business in the state of Arkansas. These policies shall also include a replacement cost coverage endorsement and must meet all coinsurance requirements of the insurer, in an amount affording coverage of not less than eighty percent (80%) of the full insurable value of the Premises. Such policy or policies shall provide that coverage is noncancelable without thirty (30) days prior written notice to Lessor.

Lessee further agrees to carry and maintain commercial general liability insurance written

as primary coverage with a reliable insurance company licensed to do business in the state of Arkansas, and acceptable to Lessor, covering occurrences that may arise on the Premises as a result of the operations thereon, in amounts not less than \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage and \$3,000,000 per occurrence of combined bodily injury and property damage. All policies required by this provision shall be jointly payable to the University of Arkansas and the City.

6. Waiver of Subrogation Rights. Lessor and Lessee each hereby waive their respective rights of subrogation against the other for any and all claims and causes of action whatsoever arising out of any injury upon, or loss or damage to, the Premises, or any part thereof, resulting from any risk or peril insured against by any of the insurance policies herein required or purchased by the Lessee. Lessor and Lessee shall each promptly notify their respective insurers of such waiver of subrogation rights.

7. Maintenance by Lessee. Lessee shall, at its sole cost, risk and expense: (i) maintain the Premises in good condition and repair, excepting therefrom only normal, reasonable wear and use; (ii) keep the Premises in a clean, safe and sanitary condition; (iii) make, or cause to be made, all necessary repairs, whether interior, exterior or structural, on the Premises; and (iv) provide for the reasonable care, landscaping and cleaning of the Premises.

8. Utilities. Lessee shall, at its sole cost and expense, provide utilities for the Premises, including without limitation all initial installation or connection fees or charges, and all monthly fees, service charges or late charges for electricity, television, cable, telephones, water, gas, sewer and garbage service, or any other expenses arising out of, or incident to Lessee's occupancy of the Premises; provided, however, Lessor shall, to the best of its ability, continue to furnish on an on-going basis those services to the Premises that it currently provides.

9. Lessee's Improvements and Modifications. Subject to the terms and conditions contained herein, Lessee shall have the right, at its sole cost, expense, and risk: (i) to modify the Premises existing on the Lease Commencement Date hereof in accordance with the Lessee Improvement Work as outlined in Exhibit B attached; and (ii) construct or install on the Premises such other structures, improvements, or fixtures as Lessee may desire in order to continue to satisfy audience and artist demands and so as to remain competitive as an arts center.

10. Surrender of Premises. At the termination under this Lease Agreement or the expiration of the Term: (i) Lessee shall surrender and deliver up to Lessor the Premises in good repair and condition, excepting therefrom only damage by fire, tornado or other casualty and normal, reasonable wear and use; and (ii) all improvements and fixtures, whether existing on the Lease Commencement Date hereof or subsequently constructed on, or affixed to, the Premises, shall be and remain the sole property of Lessor without any payment whatsoever by Lessor to Lessee or any offset in favor of Lessee against Lessor.

11. No Offsets. In the event Lessee shall have any claim whatsoever against Lessor, such claim may not be offset against the rental payments or any other sum payable to Lessor pursuant hereto.

12. Lessee's Use. Lessee shall use and occupy the Premises as an arts center for the residents of Northwest Arkansas and related ancillary support services and educational activities throughout the State of Arkansas; provided, however, certain portions of the Premises may continue to be utilized for general commercial purposes in accordance with applicable laws. At all times Lessee shall conduct its business and control its agents, employees, invitees, licensees, and all other persons entering upon the Premises, or any part thereof, under the authority or by permission of Lessee, in such a manner as is lawful and reputable. Lessee shall not permit, allow or otherwise

suffer any operations to be conducted on the Premises that would cause the suspension or cancellation of the fire and extended coverage insurance policies required under Paragraph 5. Lessee, in the use and occupancy of the Premises, and in the conduct of its business thereon, shall at all times comply with all applicable plat or zoning restrictions, deed restrictions, and all other laws, statutes, ordinances, or regulations applicable to the Premises, and Lessee shall, at its sole cost and expense, secure and maintain all necessary licenses and permits required for the conduct of its business upon the Premises. Lessor shall not permit street vendors to occupy the sidewalks immediately adjacent to the Premises or to operate thereon to the extent Lessor owns and/or possesses the right to control any such sidewalks.

13. Abatement of Lessee's Obligations. Lessee's obligations and duties pursuant to this Lease Agreement, including without limitation its obligations under this Lease Agreement, shall not be abated, terminated or diminished during any period that the Premises, or any part thereof, are untenable, except as provided in Paragraphs 14, 18 or 19; provided, however, that Lessee shall remain responsible to pay all amounts required to be paid under this Lease Agreement and that became due and owing prior to the events identified in Paragraphs 14, 18 or 19.

14. Restoration of Improvements. In the event any or all improvements to the Premises are either partially or entirely destroyed or damaged by any cause whatsoever, Lessee shall notify Lessor of such loss or damage. Thereafter, Lessee shall, at its sole cost, risk and expense, promptly commence and diligently complete, or cause to be promptly commenced and diligently completed: (i) the removal of any debris on the Premises, salvaging to the extent economically feasible any salvageable or reusable materials remaining thereon, and Lessee shall promptly alleviate any dangerous conditions existing on the Premises as a result of such damage or destruction; and (ii) the repair and restoration of the Premises, so that upon the completion of such repairs and restoration,

the Premises will (a) be suitable for Lessee's use, (b) have a commercial value at least as great as that before such loss or destruction, and (c) retain, to the extent practicable, the same appearance and character. If such loss, damage or destruction results from a casualty covered by one or more policies of casualty insurance, the proceeds of such policies shall, to the extent necessary, be paid to Lessee as reimbursement for its reasonable expenses incurred in the repair and restoration of the Premises; provided, however, prior to the payment to Lessee of the proceeds of such insurance policies, Lessee shall deliver to Lessor satisfactory evidence of the completion of such repairs and restoration, and the cost thereof, and the reasonableness of all such costs. If the proceeds from such insurance policies are insufficient to reimburse Lessee for its expenditures relating to the repair and restoration of the Premises, Lessee alone shall bear all costs of such repairs and restoration which are in excess of the proceeds of such insurance policies. In the event the proceeds of such insurance policies are greater than the sums required to repair and restore the Premises, all such remaining sums shall be the sole property of Lessee.

15. Waste - Liens. Lessee shall not allow or suffer: (i) any waste of the Premises; or (ii) permit, by reason of any act of Lessee or failure by Lessee to perform any act required herein, any liens or other encumbrances to attach to, or to exist against, the Premises.

16. Indemnification. Lessee shall indemnify, defend, save and hold harmless from and against all liabilities, claims, losses, damages, fines or causes of action (including without limitation all costs of court, investigation, or attorney's fees incurred in connection with such causes of action or claims and any appellate litigation) due to any death or personal injury to any person whomsoever or any property damage whatsoever arising out of, from, or pertaining to:

- A. Lessee's operations or the conduct of its business upon the Premises, including without limitation any condition pertaining to the Premises attributable thereto;



and

- B. Any breach violation, or nonperformance of any term, covenant, or provision under this Lease Agreement by Lessee, its employees, invitees, licensees and agents.

If Lessor is made a party to any suit or legal action for damages arising from the negligence or other actions of Lessee, its employees, invitees, licensees, or agents (including any of the causes enumerated above), Lessor shall give notice to Lessee of such suit or legal action and Lessee shall thereupon assume all burden, cost and expense incident to the defense, investigation, and settlement of such cause of action or claim, including all costs of court, investigation and attorney's fees in connection therewith, and Lessee shall promptly pay any judgment which may be obtained in such suit or legal action against the Lessor.

17. Assignment and Subletting. Except as to the premises located at 220 North West Avenue, Fayetteville, AR 72702, which currently are sublet for the operation of a "Grubb's" restaurant and as set forth in the next sentence, Lessee may not assign, sublet, mortgage or otherwise encumber its interest or estate in the Premises, or any part thereof, or its rights pursuant to this Lease Agreement, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee may, without Lessor's consent, assign or sublet all or part of its rights and interests under this Lease Agreement to a wholly-owned subsidiary or any affiliated entity; provided, however, any such assignment or subletting by Lessee, with or without the prior written consent of Lessor, shall not act or release Lessee from its obligations pursuant to this Lease Agreement, including, without limitation, its obligation to pay the rental. Notwithstanding the foregoing, Lessee shall be permitted to allow use of the Premises by art-related entities and resident companies.

18. Total Condemnation of the Premises. If, during the term under this Lease

Agreement, all or a substantial part of the Premises are condemned by an entity having the power of eminent domain, and if such condemnation will materially interfere with Lessee's use of the Premises so that the Premises cannot be made suitable for occupation by reasonable repairs or restoration, or if the Premises are sold to such condemning authority or entity under the threat of condemnation, then Lessee may terminate this Lease Agreement by giving notice thereof to Lessor; thereafter, any award of damages in connection with such condemnation proceedings, or the proceeds of any such sale made to such condemning authority, shall be and remain the sole property of Lessor as to value of any improvements and as to the Lessor with regard to the value of land or real property taken.

19. Partial Condemnation of the Premises. In the event less than a substantial portion of the Premises is taken or condemned by an entity having the power of eminent domain, or sold to such entity under the threat of condemnation, so that such condemnation or sale will not materially interfere with Lessee's use of the Premises, this Lease Agreement shall not terminate, and Lessee shall, at its sole expense, cost and risk, promptly commence and diligently complete, or cause to be promptly commenced and diligently completed, the repair and restoration of the Premises, so that upon the completion of such repairs and restoration the Premises will, to the extent practicable, be suitable for use by Lessee and retain the same appearance, character and commercial value as immediately preceding such condemnation or sale. If the estimated cost of such restoration or repairs equals or exceeds twenty per cent (20%) of the then fair market value (as defined in paragraph 20 below) of the Premises, then prior to the commencement of restoration of repairs, Lessee shall submit for Lessor's approval all drawings and specifications pertaining to repairs or restorations, and Lessee shall not commence any repairs or restorations until Lessor has approved all such drawings and specifications, contracts, contractors, performance and payment bonds (and

the respective sureties thereon) pertaining to such repairs or restoration. An award of damages in connection with such condemnation proceedings, or the proceeds of any such sale made to such condemning entity, shall be applied to reimburse Lessee for its expenses relating to the restoration and repair of the Premises; provided, Lessee alone shall bear all costs of such restoration or repairs in excess of such award pursuant to such condemnation proceedings or the proceeds of any such sale. In the event the award pursuant to such condemnation proceedings or the proceeds of such sale are in excess of the amount necessary to repair and restore the Premises, then all such awards or proceeds shall be and remain the sole property of Lessee. Such partial condemnation of the Premises shall not release Lessee from its obligation to pay any rental then owed.

20. Determining Fair Market Value. If Lessor and Lessee are unable to agree on a fair market value of the Premises, for the purpose of Paragraph 19 above, then Lessor and Lessee shall, within thirty (30) days, each appoint a qualified person to act as an appraiser, and the decision by such appraisers as to the fair market value of the Premises, shall be binding upon Lessor and Lessee (the “**Fair Market Value**”). In the event such appraisers are unable to agree upon a fair market value for purpose of Paragraph 19, then the appraisers designated by Lessor and Lessee shall choose a third duly qualified person, acceptable to both Lessor and Lessee, and the decision of the third appraiser as to the fair market value of the Premises, shall be binding upon both Lessor and Lessee. In the event the fair market value as determined by such appraisers differs from the rental during the month in which the casualty or loss occurred, then upon the determination of a fair market value for the Premises, Lessor and Lessee shall respectively make such reimbursements or payments of excess or insufficient rental as may be appropriate to the extent legally permitted for Lessor.

21. Holding Over. In the event Lessee shall hold over on the Premises, or any part

thereof, after the termination under this Lease Agreement or the expiration of the Term or any extension, unless otherwise agreed in writing such holding over shall constitute and be construed as a tenancy from month to month only; provided, the rental payments during such period of holding over shall be a sum equal to the Fair Market Value of the rental during the month immediately preceding the termination under this Lease Agreement or the expiration of the Term hereof.

22. Inspection. Lessor, acting through its authorized agents and representatives, shall have the right to enter upon the Premises at any and all reasonable times for the purpose of inspecting the general state of repair and condition of the Premises, or for any other reasonable purpose whatsoever, including, but not limited to, emergencies.

23. Default. Any or all of the following shall constitute an event of default ("Event of Default") pursuant to the terms under this Lease Agreement:

- A. Lessee's failure for any reason whatsoever to comply with the terms, covenants, conditions and agreements contained herein or to promptly discharge any and all of its obligations and duties pursuant hereto, including without limitation Lessee's failure to pay any sum herein required or failure to provide proof of payment of same;
- B. The filing of a petition in bankruptcy by or against Lessee pursuant to any section or chapter of the Bankruptcy Code, as amended, or any other similar law or statute of the United States of America or any state thereof, or entering into any agreement, plan of reorganization or composition with creditors, or any committee thereof;
- C. Lessee's becoming insolvent or making a transfer or assignment for the benefit of

creditors;

- D. The appointment of a receiver or trustee for all, or a substantial part, of Lessee's assets; or
- E. The issuance of process for execution upon or the attachment of Lessee's property upon, or interest in, the Premises.

24. Remedies. Upon the occurrence of any Event of Default, Lessee waives all statutory rights of ejectment, and Lessor shall have the option of pursuing any one or more of the following remedies without any notice or demand whatsoever:

- A. Terminate this Lease Agreement, in which event Lessee shall promptly surrender the Premises to Lessor, and, if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession of the Premises or the collection of any arrearages in rental payments, enter upon, and take possession of, the Premises and expel or remove any agent, representative or employee of Lessee or any other person who may be occupying the Premises, or any part thereof, under the authority of Lessee, without being liable for prosecution of any claim for damages therefore; Lessee agrees to pay to Lessor on demand the amount of all losses and damages which Lessor may suffer by reason of such termination, whether through an inability to relet the Premises on satisfactory terms or otherwise;
- B. Enter upon or take possession of the Premises and expel or remove any agent, representative or employee of Lessee, or any other person occupying the Premises, or any part thereof, under the authority of Lessee, without being liable for prosecution or any claim for damages therefore, and thereafter Lessor shall

make a diligent and reasonable effort to relet the Premises on commercially reasonable terms, and Lessee shall pay to Lessor, on demand, any deficiency that may arise by reason of Lessor's inability to relet the Premises for a rental equal to that provided herein, regardless of the reason for such failure; Lessor's good faith determination as to what constitutes commercially reasonable terms for reletting the Premises shall be conclusive for purposes of this paragraph; or

- C. Enter upon the Premises without being liable for prosecution or any claims for damages therefore, and do and perform whatever acts Lessee is obligated to do pursuant to the terms under this Lease Agreement. Lessee shall reimburse Lessor on demand for any expenses which Lessor may incur in thus affecting compliance with Lessee's obligations pursuant hereto, including, without limitation, all court costs and attorney's fees.

25. No Waiver. The waiver by any party hereto of any breach or violation of any provision under this Lease Agreement shall not act or be construed as a waiver of any prior or subsequent breach hereof, nor shall the pursuit of any of the foregoing remedies (as set forth in Paragraph 24) preclude the pursuit of any other remedies provided herein or applicable law, nor shall the pursuit of any remedy provided herein or by applicable law constitute a forfeiture or waiver of any payments or other sums payable to Lessor pursuant hereto, or of any damages accruing to Lessor by reason of Lessee's violation of any of the terms, conditions, and covenants contained herein.

26. Quiet Enjoyment. Lessor warrants and represents to Lessee that it has fully right and power to execute and perform this Lease Agreement and that Lessee, upon the payment of rental and the performance of the other covenants and terms contained herein, shall peaceably

and quietly have, hold, and enjoy the Premises during the full term under this Lease Agreement.

27. Further Assurances. From time to time, and at all times, Lessor and Lessee shall do all such further acts as may be reasonably required to fully perform and carry out the terms and intent under this Lease Agreement.

28. Entire Agreement. This Lease Agreement constitutes the sole and only agreement between Lessor and Lessee concerning the subject matter hereof and supersedes all prior agreements, arrangements or understandings, if any, whether written or oral, relating to the subject matter hereof.

29. Severability. In case any one or more of the provisions contained in this agreement shall for any reason whatsoever be held invalid, illegal or otherwise unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained as a part hereof.

30. Applicable Law. This Lease Agreement shall be interpreted and construed, and the respective rights of Lessor and Lessee governed, according to the laws of the State of Arkansas. Nothing contained in this Lease Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the University of Arkansas, the City or their respective trustees, officials, or employees.

31. Venue. Unless otherwise finally determined by court of competent jurisdiction, the venue of any suit, cause of action or other legal proceeding pertaining to this Lease Agreement shall be in Washington County, Arkansas, subject to the non-waiver of immunities provision set forth in Paragraph 31.

32. Amendment. This Lease Agreement may only be amended by a writing executed

by both Lessor and Lessee, and thereafter duly delivered by each respectively to the other and incorporated by reference as a part hereof.

33. Headings. The headings of the respective articles or paragraphs under this Lease Agreement are for the purpose and convenience of reference only, and are not intended to be a part of, or to affect the meaning and interpretation of, this Lease Agreement. The Recitals as the beginning of the Lease Agreement are and shall be construed in harmony with all other substantive provisions of this Lease Agreement.

34. Recorded Memorandum. Concurrently with the execution and delivery under this Lease Agreement, Lessor and Lessee shall execute, deliver and promptly file for record in the deed records of Washington County, Arkansas, a memorandum evidencing this Lease Agreement in substantially the same form as the attached Exhibit "C", to which reference is made for all purposes.

35. Binding Effect. This Lease Agreement is binding upon and shall inure to the benefit of the Lessor and Lessee and their respective successors in title and permitted assigns.

36. Notices. All notices, information, offers, payments of rental, or other communications herein required or permitted, shall be in writing and shall be properly given, made or sent when delivered personally to the below identified representative of such party addressed in such writing, or when mailed by prepaid certified or registered mail, return receipt requested, or by overnight delivery service, to such party at its respective address as follows:

If to Lessor:

The City of Fayetteville, Arkansas  
\_\_\_\_\_, Arkansas

Office of the Chancellor



425 Administration Building  
University of Arkansas  
Fayetteville, Arkansas 72701

With a copy to:

Office of the General Counsel  
421 Administration Building  
University of Arkansas  
Fayetteville, Arkansas 72701

If to Lessee:

Walton Arts Center Council, Inc.  
P. O. Box 3547  
Fayetteville, Arkansas 72702  
Attention: President and CEO

With a copy to:

Attention: John Alan Lewis  
Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
5414 Pinnacle Point Drive, Suite 500  
Rogers, Arkansas 72758  
(479) 464-5656

or to such other respective addresses either Lessor or Lessee may hereafter designate and give notice thereof to the other.

37. Representations and Warranties of Lessee. Lessee hereby covenants and warrants to Lessor that:

- A. Lessee is a not-for-profit corporation incorporated pursuant to the laws of the State of Arkansas, has duly paid all applicable franchise taxes and charter fees, and is duly authorized to do business in the State of Arkansas;
- B. The undersigned individual, acting as the duly authorized agent of Lessee, has full power and authority to execute this Lease Agreement as the act and deed of Lessee; provided, however, Lessee's taking possession of the Premises, or any part thereof, shall be conclusively deemed as Lessee's ratification under this Lease

Agreement; and Lessee has fully and completely inspected the Premises, and as of the effective date hereof the Premises are adequate and sufficient for the purposes for which they are herein leased. At all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iii) educational programs.

- C. Notwithstanding the foregoing, nothing in this Lease Agreement shall prevent Lessee from providing administrative or support services at the Premises for the benefit of other arts and entertainment venues in and around Northwest Arkansas which are owned, leased, operated or managed by Lessee.

38. Execution. This Lease Agreement was executed by Lessor and Lessee on the dates shown respectively on the acknowledgments of each, but is effective for all purposes on the effective date as set forth above.

39. Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument. Signatures transmitted electronically via PDF copy or via facsimile shall be binding and make this Lease Agreement effective.

**[SIGNATURE PAGE(S) FOLLOW]**

**“LESSOR”**

**CITY OF FAYETTEVILLE**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

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

Date: \_\_\_\_\_, 2014

**BOARD OF TRUSTEES OF THE UNIVERSITY  
OF ARKANSAS, ACTING FOR THE  
UNIVERSITY OF ARKANSAS,  
FAYETTEVILLE**

By: \_\_\_\_\_  
Donald R. Bobbitt  
President

**ATTEST:**

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 2014

**“LESSEE”**

**WALTON ARTS CENTER COUNCIL, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 2014

## EXHIBIT "A"

### DESCRIPTION OF PREMISES

#### Tract A:

All of Block Six (6), of Original Town of Fayetteville, as per Plat of Record in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas; LESS AND EXCEPT the southeast corner of said block more particularly described as follows: BEGINNING at the Southeast (SE) corner of said Block; thence along the East line of said Block N02°40'06"E a distance of 289.09 feet; thence leaving said East line N87°19'54"W a distance of 105.17 feet; thence S47°59'48"W a distance of 30.24 feet; thence S03°05'54"W a distance of 56.54 feet; thence N87°06'23"W a distance of 14.83 feet; thence S02°37'21"W a distance of 211.63 feet to the South line of said Block; thence along said South line S87°26'40"E a distance of 141.77 feet to the POINT OF BEGINNING.

In addition to the above described parcel, once the parking deck and its north liner building have been completed, the premises leased by the City of Fayetteville and the University of Arkansas to the Walton Arts Center Council, Inc. shall include the north liner building of the parking deck for use of the Walton Arts Center as its Administrative Headquarters, and the lower level as the expanded backstage area for the Walton Arts Center. Upon completion of the parking deck the City agrees to provide twenty-eight (28) parking spaces within the deck for the Walton Arts Center staff's use and another seven (7) parking spaces in the Spring Street parking lot.

#### Tract B:

A part of Block 8 of the original town (now City) of Fayetteville, Arkansas, being more particularly described as follows: Beginning at the Northeast corner of Block 8, thence North 87 degrees 50 minutes West 90.82 feet to the East railroad right of way, thence South 29 degrees 34 minutes West 215.87 feet, thence South 27 degrees 34 minutes West 43.4 feet, thence South 22 degrees 28 minutes West 62.9 feet, thence South 18 degrees 24 minutes West 42.4 feet along the East right of way, thence South 88 degrees 57 minutes East 254.70 feet, thence North 325.82 feet to the point of beginning, containing 1.34 acres, more or less.

**EXHIBIT "B"**

**PLAN OF IMPROVEMENT – LESSEE IMPROVEMENT WORK**

[TO BE PROVIDED]



This memorandum evidencing the Amended and Restated Lease Agreement shall be filed for record in the deed records of Washington County, Arkansas.

EXECUTED AND EFFECTIVE this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**“LESSOR”**

**CITY OF FAYETTEVILLE**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

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

Date: \_\_\_\_\_, 2014

**BOARD OF TRUSTEES OF THE UNIVERSITY  
OF ARKANSAS, ACTING FOR THE  
UNIVERSITY OF ARKANSAS,  
FAYETTEVILLE**

By: \_\_\_\_\_  
Donald R. Bobbitt  
President

**ATTEST:**

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 2014

**“LESSEE”**

**WALTON ARTS CENTER COUNCIL, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 2014





**ACKNOWLEDGMENT**

STATE OF ARKANSAS            )  
  )ss:  
COUNTY OF PULASKI        )

On this the \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named \_\_\_\_\_ and \_\_\_\_\_ to me personally well known, who stated they were the President and \_\_\_\_\_ of the University of Arkansas, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said entity, and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

