

## DEED OF RESERVATION OF FAÇADE EASEMENT

This Deed of Reservation of Façade Easement (“Façade Easement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the city of Boise City (the “City”).

### RECITALS:

WHEREAS, at the time of this reservation, the City is the sole owner, in fee simple, of that certain real property addressed as 1518 W. Fort Street, in Boise City, Ada County, Idaho, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, including the building and any and all improvements on the property (the “**Property**”); and

WHEREAS, the building on the Property (the “**Building**”) is an architecturally and historically significant structure that contributes to the architectural and historic integrity of Boise City, Idaho. Together, the Property and the Building are referred to as the “**Premises;**” and

WHEREAS, this reservation of façade easement by the City over the exterior of the building on the Premises, as depicted in **Exhibit B**, attached hereto and incorporated herein by this reference (the “**Façade**”), will better preserve the architectural ensemble and historic significance of the Premises; and

WHEREAS, the City desires to reserve this Façade Easement to itself from among the rights conveyed by Special Warranty Deed at the closing of the sale of the Premises for the purpose of ensuring that the architectural and historical value of the Premises will not be destroyed, altered, or impaired, without first obtaining the approval of the City, as set forth herein.

NOW, THEREFORE, subject to the terms and conditions contained herein, the City does hereby reserve unto itself, from the covenants of warranty, a Façade Easement, over that portion of the Premises depicted in **Exhibit B**, which is attached hereto and incorporated herein by this reference.

The Façade Easement shall be a covenant running with the land, in perpetuity, binding upon the purchaser of the Premises and all future owners and future purchasers of the Premises, and their respective successors and assigns (hereinafter, the “**Owners**”), forever. The City shall record this Deed of Reservation of Façade Easement in the official records of Ada County, Idaho, prior to the sale of the Premises, to be effective as a reservation upon conveyance of ownership of the

Premises.

1. RECITALS INCORPORATED. The Recitals, above, are not mere recitals; rather, they are material terms of this Façade Easement, and are hereby incorporated herein by this reference as though set forth in full.
2. DESCRIPTION. This Façade Easement, as reserved, consists of all exterior surfaces of the Building on the Property, including, without limitation, the exterior walls, roofs, skylights, eaves, and chimneys on each and every side of the Building.
3. MAINTENANCE. The Owners of the Premises, by acquiring ownership of the Premises, subject to this Façade Easement, shall assume the costs of all continued maintenance and repair of the Premises, and further agree to conduct regular inspections, maintenance, and repair in order to preserve the architectural, historical, and archaeological integrity and significance of the Building in perpetuity in order to protect the qualities that made the Premises eligible for registration in the National Register of Historic Places. All maintenance and repairs performed on the Premises shall be of high quality and performed in a workmanlike manner, using high quality materials, and shall be commenced and diligently completed in a manner that preserves the Premises as described herein.
4. SIGNS AND USE. No signs shall be posted or erected and no activity shall be conducted on the Premises that would destroy or diminish the historic value of the Premises. All necessary acts shall be performed in order to ensure that the Premises continue to contribute to the Buildings historic significance and that of Boise City under the National Historic Preservation Act of 1966.
5. LANDSCAPING. The grounds and landscaping portion of the Premises shall be maintained by the Owners in a healthy condition and in a manner consistent with the period and style exemplified by the condition of the Premises as of the date of this reservation. Vehicular parking shall be permitted in those areas currently used for vehicular parking, and adjacent to the Premises. The grounds and landscaping may be trimmed, mowed, and maintained using current technology and devices.
6. ALTERATIONS. No person, including the Owners, shall alter, change, or modify exterior surfaces or façades of the Premises, which shall remain in substantially the same shape, configuration, and design that exist at the time of this reservation, without the express written consent of the Mayor and City Council. The City Council and Mayor's consent may be conditioned, withheld, delayed, or denied, in their unfettered discretion. Further, no person or Owner shall make interior changes that would, or potentially could, alter the appearance of the

Façade or place structural stress on the Façade. The addition of any new building element onto the roof of the building, the excavation under the existing Building, or the demolition of the Building itself may be undertaken, commenced, performed, and completed only after obtaining the prior written approval of the Mayor and City Council.

Further, any proposed exterior remodel or change to the exterior of the Building, including, without limitation, repairs or exterior repainting, shall require the prior written approval of the Mayor and City Council, unless the repair or repainting shall duplicate the exact existing character, features, color, and material.

7. UTILITIES. Utility entrances needed from time to time shall be installed in a manner that will not impair the aesthetics or change the exterior appearance of the Building.

8. INSPECTION. Representatives of the City, or its successors or assigns, shall be permitted, at all reasonable times, to inspect the Premises. Inspections will normally take place from the street; however, the Owners agree that representatives of the City, or its successors or assigns, shall be permitted to enter and inspect the interior of the improvements on the Premises, specifically to include the Building, to ensure maintenance of structural soundness of the Premises. Inspection of the interior will be made at a time mutually agreed upon by the Owners and the City, and the Owners covenant not to unreasonably withhold its consent in determining a date and time for such inspection.

9. USE. The Owners of the Premises are entitled to the right and privilege of the use of the Premises for any purpose not inconsistent with this Façade Easement. Nothing herein shall be construed to grant unto the general public or any other persons, other than the City and its agents for the purpose of the inspection rights described above, the right to enter upon the Premises, including without limitation, the grounds and landscaping, which shall remain within the control of the Owners, subject only to the constraints and limitations of this Façade Easement.

10. CASUALTY LOSS. In the event that the Building is, by reason of fire, flood, earthquake, or other natural disaster of any kind whatsoever, substantially destroyed, it shall be subject to the following:

A. Partially Destroyed. If the Building is partially destroyed, to such an extent or of such nature that the appearance of the Building is altered from the Building's appearance in the photographs in Exhibit B then Owners, within a reasonable period of time, shall restore the Premises either to a condition so that the appearance is restored to that existing at the time immediately prior to such

destruction, or to any other such condition as the Owners and the City, may agree to in writing; provided, however, that if the partial destruction of the Premises is so extensive as to make repair or reconstruction impractical, taking into account the proceeds of any insurance available for reconstruction, then the Owners may proceed under Section 10(B) below.

B. **Totally Destroyed.** If the Building is totally destroyed, then this Façade Easement shall be extinguished and the Owners may thereafter erect on the Premises a building that meets all applicable zoning and land use restrictions.

Upon satisfactory completion of restoration required under Section 10(A), above, this Façade Easement shall apply to the restored appearance. If the Owners fail, after written notice, to restore the Premises within a reasonable period of time, as required under Section 10(A), the City may invoke any remedy available to it under this Façade Easement.

11. **INSURANCE.** The Owners shall maintain, at its sole expense, insurance against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage in an amount at least equal to the Premises fair market value.

12. **RELEASE.** The Owners hereby release and relieve the City of all liability with respect to the Premises, including, without limitation, both the Property and the Building. The Owners shall defend and hold harmless the City from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses that may be imposed upon or incurred by the City by reason of loss of life, personal injury, and damages to the Premises.

13. **ENFORCEMENT.** If the Owners fail to observe or violate any covenant, agreement, or provision contained herein, then the City shall, in addition to all other remedies available at law or in equity, have the right to enforce this Façade Easement, including each of its provisions, by specific performance. If the Owners fail to maintain the Premises, or any part thereof, in the same good condition and repair existing at the time of this grant, and if such failure shall not be completely cured and remedied within ninety (90) days following written notice sent by the City to the Owners, then the City shall have the right, itself or through agents or contractors, to restore, repair, or maintain the Premises, and the Owners shall, promptly upon request, reimburse the City for all sums so expended by the City.

14. **SUCCESSORS.** This Façade Easement shall be binding upon and shall inure to the benefit of the City and the Owners and the Owners respective successors and assigns. The City agrees that it will hold this Façade Easement exclusively for conservation purposes; that is, it

will not transfer this Façade Easement for money, other property, or services. The City may, however, assign or transfer its interests hereunder to the state of Idaho or any agency thereof, the United States of America or any agency thereof, or any charitable organization qualified to accept this donation; provided that, simultaneous with such assignment or transfer, the City shall assign or transfer to such entity all rights then belonging to the City under all Deeds of Façade Easements theretofore obtained with respect to any real property in the state of Idaho. Except as provided above, the City shall not assign or transfer its interests hereunder without the Owners' prior written consent, which shall not be unreasonably withheld, conditioned, delayed, or denied. Nothing herein shall be construed to limit the Owners' right to assign, sell, transfer, convey, mortgage, pledge, or otherwise hypothecate its interest in the Premises, or any part thereof, without the City's consent, so long as any such transfer or pledge shall be subject to the City's interest in this Façade Easement; provided, that upon an assignment, sale, or transfer, of the Premises, or any part of the Premises, other than for security, the obligations and duties of the Owners hereunder shall automatically transfer to Owners' successor-in-interest, and Owners shall be released from any liability hereunder.

15. NOTICE. Any notice required herein shall be in writing sent by certified mail, with return receipt requested. Owner's address is, 1518 West Fort Street, Boise Idaho 83702 and the City's address is, 150 North Capitol Boulevard, Boise, Idaho 83702. All notices shall be directed to those addresses unless one party has notified the other in writing of a change of address.

16. QUALIFIED CONSERVATION EASEMENT. It is the intent of the parties hereto that the reservation of the Façade Easement herein shall qualify as a reservation of an undivided portion of the City's interest in the Premises, such interest being a Façade Easement constituting restrictions in perpetuity on Owners' use of the Premises as herein described, so as to qualify under the provision of Section 170, et seq., of the Internal Revenue Code of 1954, as amended, and this Façade Easement shall be construed in accordance with the requirements thereof. Without limiting the present intent of the City, the City and the Owners may amend or modify the terms of the Façade Easement hereof by an amendment or supplement hereto in writing, signed by the parties and recorded in the official real property records of Ada County, Idaho, in order to carry out the intent of this Façade Easement. Any such amendment or supplement shall be effective on the effective date hereof, notwithstanding such subsequent execution, date, or recording.

TO HAVE AND TO HOLD, the aforementioned Façade Easement, with all the privileges thereof and appurtenances thereto, is reserved to the city of Boise City, its successors, and its assigns, in perpetuity, from and after the date hereof.

IN WITNESS WHEREOF, the City has executed this instrument on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
David H. Bieter, Mayor

**ATTEST**

\_\_\_\_\_  
Lynda Lowry, Ex-Officio City Clerk

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STATE OF IDAHO )

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of July, 2017, before me, \_\_\_\_\_, a Notary Public, personally appeared David H. Bieter, known or identified to me to be the Mayor, and Lynda Lowry, known or identified to me to be the Ex-Officio City Clerk, who executed the within instrument and acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Commission expires: \_\_\_\_\_

(SEAL)

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**Exhibit A**  
**Legal Description of Premises**

Lot 1 in Block 1 of Lemp Triangle Addition, as shown on the official plat thereof, filed in Book 5 of Plats at Page(s) 235, official records of Ada County, Idaho

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**Exhibit B**

[Depiction of Property at Time of Reservation]

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