AGENDA

FORT SMITH BOARD OF DIRECTORS
STUDY SESSION

FEBRUARY 8, 2011 ~ 12:00 NOON

FORT SMITH PUBLIC LIBRARY
COMMUNITY ROOM
3201 ROGERS AVENUE

1. Update on fundraising efforts for the Mallalieu Restoration Project
   ~ Per Resolution No. R-19-10, time extension to original proposal expires January 31, 2011 ~

2. Review proposed agreement with the Advertising and Promotion Commission for operation of the convention center *~ Continued from the January 25, 2011 study session ~*

3. Review proposed ordinances to levy a 1% prepared food tax and update membership of the A & P Commission

4. Discuss City Administrator authority for personnel action *~ Requested by Directors Merry and Catsavis at the February 3, 2011 regular meeting ~*

5. Review preliminary agenda for the February 15, 2011 regular meeting

Memo

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 2/3/2011

Re: 800 North 9th Street – Former Mallalieu Church

The purpose of this memo is to provide you and the Board of Directors with background information on a proposal from Monte Wilson and Scott Hathaway to purchase and renovate the above-referenced property owned by the city. The Board is scheduled to discuss the property and the proposal at its February 8th study session.

Background

The City of Fort Smith took possession of the property at 800 North 9th Street. The staff was asked to conduct an analysis of the building for the purpose of converting the building to be used as the Multi-Cultural Center. We secured the services of Architecture + in February 2000. The estimate for renovation costs was approximately $800,000. In 2007 that estimate was updated to an approximate cost of $2.5 to $3.5 million. Funds were not obtained and the building continued to deteriorate. Correspondence from Architecture + and Myers-Beatty Engineering regarding the building condition and estimated cost are enclosed.

At the December 18, 2007, regular board meeting, staff presented information and a proposal to accept bids and demolish the building. The proposal was a result of the deteriorated condition of the building and complaints about the city not maintaining its property under the Property Maintenance Code. The lowest responsible bid for the demolition was in the amount of $189,816.00. The Board elected to place the demolition on hold and seek proposals for the reuse and renovation of the building.

In January 2008, Monte Wilson and Scott Hathaway submitted a proposal to purchase, stabilize and renovate the building. Mr. Wilson and Mr. Hathaway proposed to renovate the building and utilize it as a facility to provide opportunities for youth through collaboration with local schools and universities by offering art and science programs, community mentoring, leadership development activities, and character development seminars that strengthen families. In February 2008, the Board approved resolution R-16-08 accepting their proposal with a clause stating that failure to raise the necessary funds by July 31, 2008, would result in the withdrawal of the proposal.

Mr. Wilson and Mr. Hathaway initiated a capital campaign fund but were unable to raise the necessary funds by July 31, 2008. However, they requested an extension of the deadline to raise funds, and on August 5, 2008, the Board approved resolution R-127-08 amending the time deadline to January 31, 2009.

Citing the downtown in the economy, Mr. Wilson advised the Board in 2009, that he had raised some funds but not enough to renovate the building and requested an additional extension. On March 3, 2009, the Board approved resolution R-37-09 amending the deadline to January 31, 2010. The economy continued to hinder Mr. Wilson's fund raising efforts, and at his request, on January 19, 2010, the Board approved resolution R-19-10 amending the fund-raising deadline to January 31, 2011.

I have included with this memorandum, a package of information that reflects the history of the property and Mr. Wilson's and Mr. Hathaway's proposal. Mr. Wilson will attend the Board of Directors' study session on February 8th, to update on the Board of the fund-raising efforts.

Please contact me if you have any questions.

Enc.

6B.

RESOLUTION NO. R-19-10

A RESOLUTION ACCCEPTING AN AMENDMENT TO THE PROPOSAL FOR THE PURCHASE, STABLIZATION AND RENOVATION OF THE FORMER MALLALIEU CHURCH BUILDING

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

WHEREAS, the Board of Directors approved a resolution on February 5, 2008, accepting a bid proposal from Monte Wilson and Scott Hathaway to purchase the property at 800 North 9th Street; and

WHEREAS, the proposal included a clause that the City of Fort Smith retains ownership of the building until certain events occurred including raising the necessary funds to renovate the building; and

WHEREAS, The Board of Directors has previously approved resolutions amending the time deadline in the original proposal to raise funds for the purchase, stabilization and renovation of the former Mallalieu Church building at 800 North 9th Street; and

WHEREAS, Monte Wilson and Scott Hathaway have requested a third extension of time to continue efforts to raise the necessary funds.

THEREFORE, The Board of Directors accepts the request from Monte Wilson and Scott Hathaway to amend the time deadline to January 31, 2011, to raise funds for the project.

THIS RESOLUTION APPROVED THIS 19th DAY OF JANUARY 2010.

APPROVED:

MAYOR

ATTEST:

Sherri Gard

CITY CLERK Acting

Approved as to form

Asst. City Attorney

NPR

Planning

6 B.

RESOLUTION NO. R-37-09

A RESOLUTION ACCEPTING AN AMENDMENT TO THE PROPOSAL FOR THE PURCHASE, STABLIZATION AND RENOVATION OF THE MALLALIEU CHURCH

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

WHEREAS; The Board of Directors approved a resolution on February 5, 2008, accepting a proposal from Monte Wilson and Scott Hathaway for the purchase, stabilization and renovation of the former Mallalieu Church building at 800 North 9th Street; and,

WHEREAS; the proposal included a time deadline of July 31, 2008, to raise the necessary funds; and,

WHEREAS; Monte Wilson and Scott Hathaway have requested an extension of time to continue efforts to raise the necessary funds;

THEREFORE, The Board of Directors accepts the request from Monte Wilson and Scott Hathaway to amend the time deadline in the original proposal to January 31, 2010, which will allow additional time for the fund raising efforts.

THIS RESOLUTION APPROVED THIS 3rd **DAY OF MARCH 2009.**

APPROVED:

MAYOR

ATTEST:

Cindy Rensler

CITY CLERK

Approved as to form
JSL
No publication required

4 B.

RESOLUTION NO. R-127-08

A RESOLUTION ACCEPTING AN AMENDMENT TO THE PROPOSAL FOR THE PURCHASE, STABLIZATION AND RENOVATION OF THE MALLALIEU CHURCH

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

WHEREAS; The Board of Directors approved a resolution on February 5, 2008, accepting a proposal from Monte Wilson and Scott Hathaway for the purchase, stabilization and renovation of the former Mallalieu Church building at 800 North 9th Street; and,

WHEREAS; the proposal included a time deadline of July 31, 2008, to raise the necessary funds; and,

WHEREAS; Monte Wilson and Scott Hathaway have requested an extension of time to continue efforts to raise the necessary funds;

THEREFORE, The Board of Directors accepts the request from Monte Wilson and Scott Hathaway to amend the time deadline in the original proposal to January 31, 2009, which will allow time for the execution of the fund raising campaign.

THIS RESOLUTION APPROVED THIS 5th DAY OF AUGUST 2008.

APPROVED:

MAYOR

ATTEST:

Cindy Rembler

CITY CLERK

Approved as to form
JSC
No publication required

February 19, 2009

City of Fort Smith Board of Directors
Dennis Kelly, City Administrator
Wally Bailey, Director of Development
Fort Smith, AR 72907

Re: Renovation of the Mallalieu Center
Extension

Due to the current economic recession our country and community is experiencing, we hereby petition the Board of Directors to graciously consider extending the self imposed due date of January 31, 2009 submitted to the Board of Directors on July 31, 2008 to January 31, 2010 . Granting the extension will hopefully allow time for the financial markets to begin to rebound which hopefully will increase charitable giving and allow potential contributors to meet their pledges to the project.

Our goal for 2009 will be to secure enough donations to renovate the exterior of the building to avoid further deterioration. There has been considerable progress in completing several of the accomplishments stated in the report given July 31, 2008 to the Board of Directors.

We believe the renovation of the Mallalieu Building is still a viable project and remain very optimistic that the community will commit in preserving one of Fort Smiths' historical landmarks and will continue to support revitalizing the local community.

Monte Wilson

Scott Hathaway

July 16, 2008

City of Fort Smith Board of Directors
Ray Gosack, Acting City Administrator
Wally Bailey, Director of Development
Fort Smith, AR 72907

Re: Renovation of the Mallalieu Center
Extension

We hereby petition the Board of Directors to graciously consider extending the self imposed due date of July 31, 2008 stated in the bid submitted to the Board of Directors on January 22, 2008 to January 31, 2009. Granting the extension will allow time to focus on executing the "Mallalieu Project" fund raising campaign plan.

There has been considerable progress in developing a strategic plan for a successful fund raising campaign to renovate the Mallalieu Center. Local professional services were enlisted to give in-kind gifts valued in the amount of $200,000, which allows future campaign dollars to be designated to the renovation project. Listed below are significant accomplishments that have been attained, or scheduled to be accomplished by July 31, 2008.

1. Determined the actual construction costs.
2. Established the Howard Foundation as a legal entity.
3. Filed for 501(c)(3) not-for-profit status.
4. Developed marketing logo.
5. Developed marketing brochure*.
6. Developed marketing video*.
7. Developed web site*.
8. Began discussion with local contractors.
    a. Received in-kind gift for engineering.
    b. Received in-kind gift for architectural-design.
    c. Received in-kind gift for demolition work.
    d. Received in-kind gift for site work.
9. Began the program development planning with local community school principals and community leaders.
10. Established fund raising network.

We believe the renovation of the Mallalieu Building is still a viable project and remain very optimistic that the community will commit in persevering one of Fort Smiths' historical landmarks and will continue to support revitalizing the local community.

Monte Wilson

Scott Hathaway

(*July 31, 2008)

2

RESOLUTION NO. R-16-08

A RESOLUTION ACCEPTING A PROPOSAL FOR THE PURCHASE, STABILIZATION AND RENOVATION OF THE MALLALIEU CHURCH

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

SECTION 1: The City of Fort Smith accepts, with the following conditions in Sections 2 & 3, the attached proposal submitted by Monte Wilson and Scott Hathaway for the renovation of the Mallalieu Church located at 800 North 9th Street.

SECTION 2: The City of Fort Smith will require written permission from any group, organization, or individual who previously donated funds to renovate this church before those funds are released for a marketing campaign.

SECTION 3: The City of Fort Smith must enter into an outside agency funding agreement with the proposed 501(c)(3) not for profit corporation before any public funds are committed toward this project.

THIS RESOLUTION APPROVED THIS 5TH DAY OF FEBRUARY, 2008

APPROVED:

MAYOR

ATTEST:

CITY CLERK

approved as to form

NPR

EXIHIBIT A

The City of Fort Smith will retain ownership of the building until the following events or commitments occur:

1. Bids are obtained for the renovation of the building to determine actual construction costs;

2. The Howard Foundation, a 501(c)(3) not-for–profit corporation, has received its tax exempt status;

3. The Fund Raising Campaign has been successfully completed achieving its goal to fund the project;

4. The City of Fort Smith will commit to contributing $189,816.00 to the renovation project when the Fund Raising Campaign has reached its targeted goal;

5. The City of Fort Smith will designate the funds currently in the Mallalieu Renovation Fund in the amount of $29,000 to the Capital Campaign for marketing purposes.

OTHER ITEMS:

1. A formal capital campaign plan will be developed and submitted to the City Administrator by March 31, 2008.

2. It is acknowledged by the City of Fort Smith that failure to raise the necessary funds by July 31, 2008 will result in the withdrawal of this proposal.

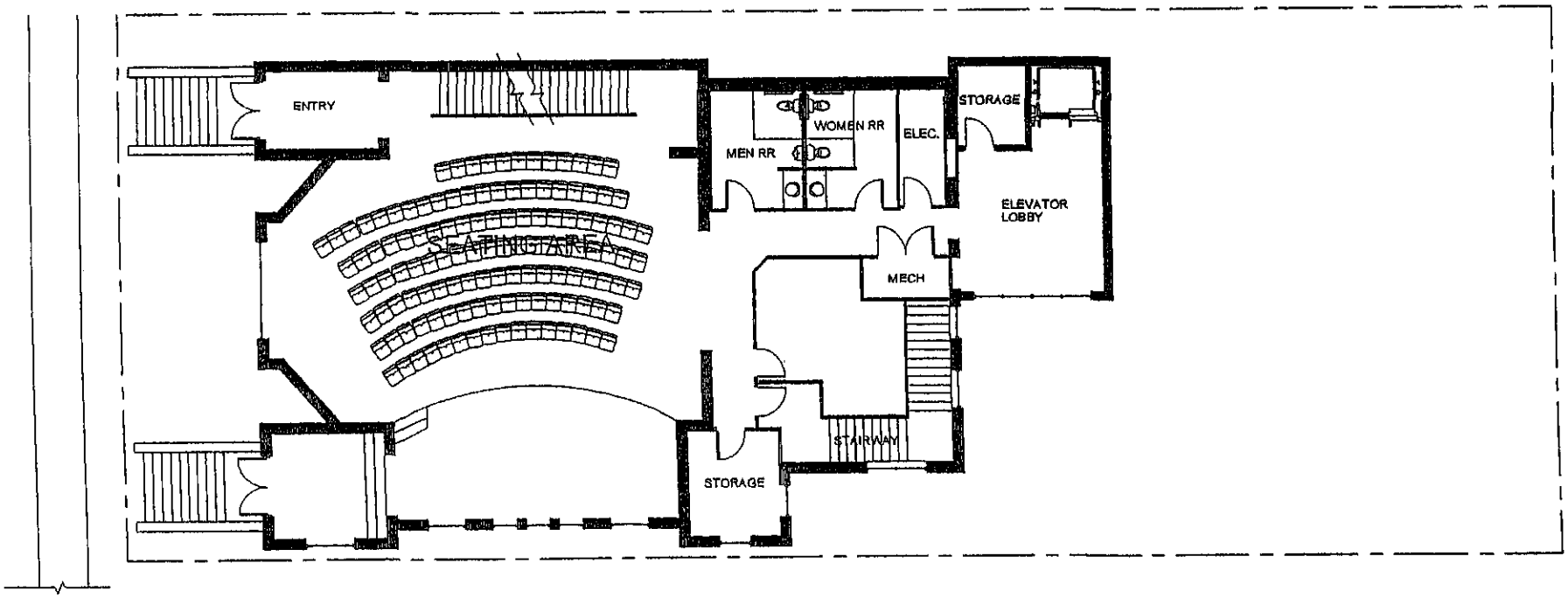
DETAILED INFORMATION ON HOW THE PROJECT WILL BE FINANCED:

The project will be financed through the following:

1. Private and corporate donations, in-kind gifts, planned giving, foundations, and philanthropists.

EXPLANATION OF THE PROPOSED USE FOR THE BUILDING:

Creating a community of youth and adults that gives opportunities to the youth to develop their talents and gifts, through collaboration with local schools, local universities, by offering project based arts and science programs, community mentoring, leadership development activities, media advocacy projects, academic counseling and advancement, character development seminars and events that strengthen the family .



Proposed Upper Level Plan
Mallalieu Church Renovation
Fort Smith, Arkansas

Mallalieu Project
Marketing Plan
February 22, 2008

The purpose of the Mallalieu Project Marketing Plan is make the community aware of the historical significance, inform the community of what the restoration impact will have on the downtown redevelopment , what the building will be use for once restored, and to the engage donor and philanthropists to give monetarily to the restoration project. The plan is as follows:

- Engage Marketing firm to assist in developing a marketing material
- Engage Production Company to create a video production
- Create a brochure to be given to potential donor and philanthropist explaining:
  - Historical Significance
  - Plan use of the Building
  - Ft. Smith Downtown Redevelopment
- Engage Ryla Teleservice for 800 number for 24/7 contact availability
- Engage Web Design Firm to design WEB site
- Engage Clear Channel for billboard and radio advertising
- Schedule Community Meeting
- Create potential donor and philanthropist list

FORM OF BID PROPOSAL

DATE : January 22, 2008

Proposal submitted by:

Name: Monte Wilson and Scott Hathaway

Address: 1908 Ramsgate Way, 7718 Camelot Circle

City, State, Zip: Fort Smith, AR72903

Telephone: 479-649-9909; 479 452-6044

E-Mail:

TO: The City of Fort Smith

In compliance with your Invitation to Bid, the undersigned hereby proposes to purchase the property at 800 North 9th Street for the following amount:

Bid Amount:
One Dollar ($1.00) ***(with conditions listed in Exhibit A).***

(Bid amount shall be shown in both written form and figures. In case of discrepancy between the written amount and the figures, the written amount shall govern.)

Stabilization and Renovation Plan Acknowledgement:

I, Scott Hathaway, Monte Wilson, acknowledge that a Stabilization and Renovation Plan with the information detailed in the Instruction to Bidders is included with my Bid Proposal.

The undersigned hereby declares that he will carry out the stabilization and renovation of 800 North 8th Street as required by the Instructions to Bidders.

The owner reserves the right to reject any or all bids and to waive formalities.

Bids shall remain valid for thirty (30) days after bid opening.

By: Scott Hathaway Monte Wilson

Address

EXIHIBIT A

The City of Fort Smith will retain ownership of the building until the following events or commitments occur:

1. Bids are obtained for the renovation of the building to determine actual construction costs;

2. The Howard Foundation, a 501(c)(3) not-for–profit corporation, has received its tax exempt status;

3. The Fund Raising Campaign has been successfully completed achieving its goal to fund the project;

4. The City of Fort Smith will commit to contributing $189,816.00 to the renovation project when the Fund Raising Campaign has reached its targeted goal;

5. The City of Fort Smith will designate the funds currently in the Mallalieu Renovation Fund in the amount of $29,000 to the Capital Campaign for marketing purposes.

OTHER ITEMS:

1. A formal capital campaign plan will be developed and submitted to the City Administrator by March 31, 2008.

2. It is acknowledged by the City of Fort Smith that failure to raise the necessary funds by July 31, 2008 will result in the withdrawal of this proposal.

PROPOSALS FOR PURCHASE, STABILIZATION and RENOVATION for MALLALIEU CHURCH,

FORT SMITH, ARKANSAS

EXISTING CONDITION:

The existing structure has suffered through two decades of neglect and shows signs of severe deterioration. The exterior load bearing masonry walls do not show as much deterioration as the interior structure but do have areas of mortar loss and signs of deterioration due to vegetation growth through the masonry.

STABILIZATION and RENOVATION PROCESS:

Mr. Bill Hathaway of Hathaway Engineering, Inc. has agreed to be part of the team of professionals that will be involved in the rehabilitation of the building. Mr. Hathaway has 40 plus years of experience in structural engineering including experience evaluating old structure and providing solutions to rehab historic structures. Some of his past experience includes the complete rehabilitation of the King Opera House in historic downtown Van Buren and several buildings in Eureka Springs. Mr. Hathaway was also asked by the City of Fort Smith to evaluate several buildings along Garrison Avenue for structural integrity following the 1996 tornado that struck Fort Smith and Van Buren.

The stabilization of the existing structure will be linked to the renovation of the building for its proposed use and will occur at the same time. It is not our desire to "phase" the construction process where the building remains unoccupied between the stabilization phase and the renovation phase. Do to the condition of the existing interior structure once work begins it will not stop until the building is completed.

Although the exact process and sequence of work has not yet been determined, it will most likely will be similar to the process as described in the letter submitted by Mr. Michael Johnson of Architecture Plus, Inc. in September of 2007: The exterior roof and interior structure will be removed and a new structure will be built inside the existing load-bearing masonry walls. The exact means and methods of the renovation and construction will be determined with the consultation with the structural engineer, the architect of record and the building contractor.

It is anticipated that, provided the necessary funds are obtained by June 30, 2008, demolition will start immediately after that date and be completed by October 1, 2008. Work would then begin immediately to renovate the building with completion being in June of 2009. All work will comply with all applicable local, state, and federal regulations.

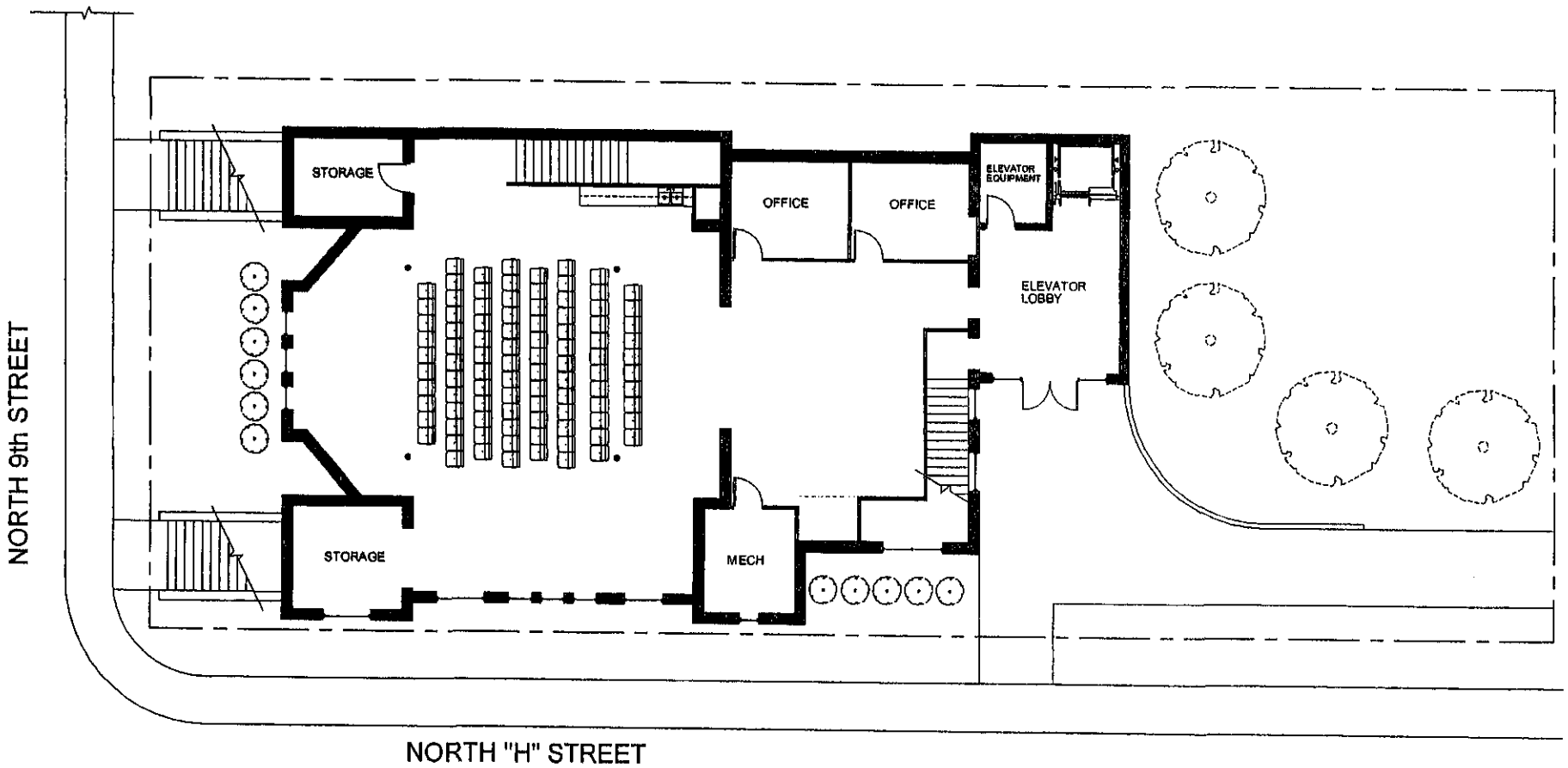
DETAILED INFORMATION ON HOW THE PROJECT WILL BE FINANCED:

The project will be financed through the following:

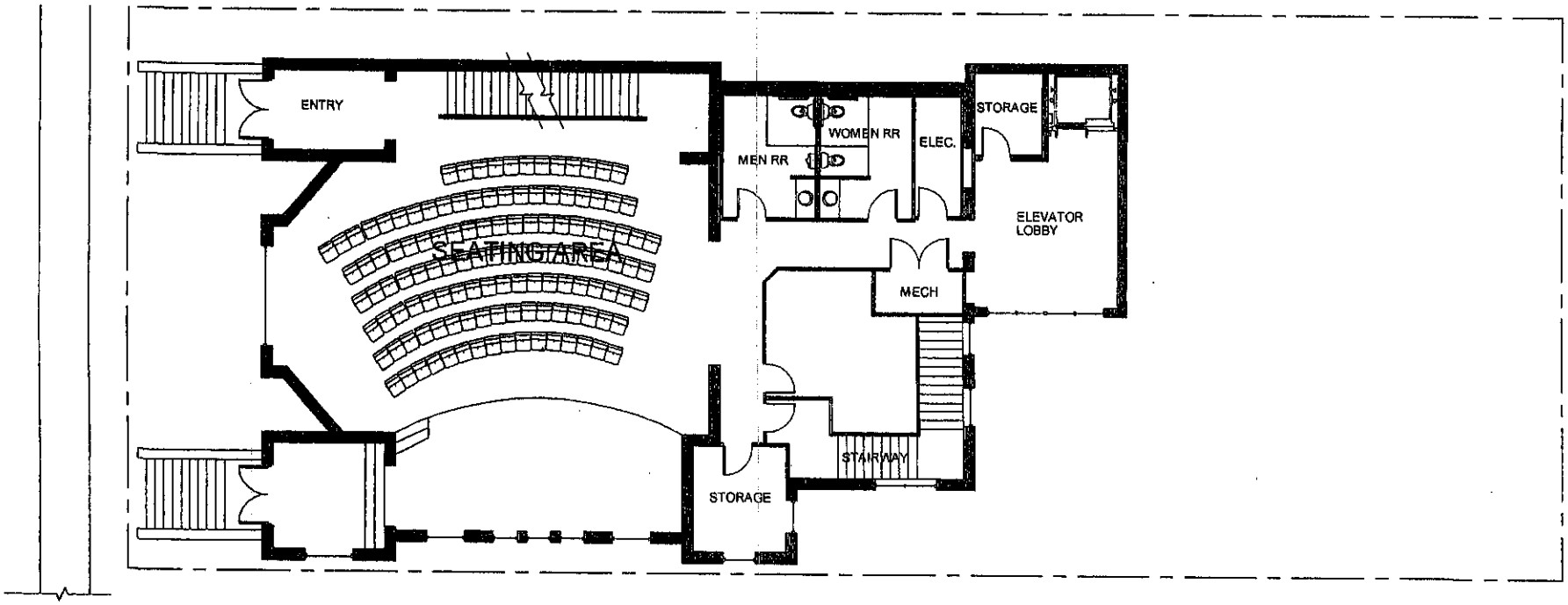
1. Private and corporate donations, in-kind gifts, planned giving, foundations, and philanthropists.

EXPLANATION OF THE PROPOSED USE FOR THE BUILDING:

Creating a community of youth and adults that gives opportunities to the youth to develop their talents and gifts, through collaboration with local schools, local universities, by offering project based arts and science programs, community mentoring, leadership development activities, media advocacy projects, academic counseling and advancement, character development seminars and events that strengthen the family.



Proposed Lower Level Plan
Mallalieu Church Renovation
Fort Smith, Arkansas



Proposed Upper Level Plan
Mallalieu Church Renovation
Fort Smith, Arkansas

4A.

RESOLUTION NO._____

A RESOLUTION ACCEPTING BID AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR THE DEMOLITION OF THE MALLALIEU UNITED METHODIST CHURCH BUILDING AT 800 NORTH 9TH STREET

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The bid of Controlled Environmental Solutions, Inc. for the demolition of the Mallalieu United Methodist Church building at 800 North 9th Street in the amount of $189,816.00 is hereby accepted.

SECTION 2: The Mayor is authorized to execute a contract with Controlled Environmental Solutions, Inc. subject to the terms set forth in Section 1 above.

THIS RESOLUTION ADOPTED THIS _____DAY OF DECEMBER 2007.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form
JSC
No publication required

MEMORANDUM

To: Randy Reed, City Administrator
Wally Bailey, Director of Development and Construction
From: Brenda Andrews, Senior Planner BA
Date: December 11, 2007
Subject: 800 North 9th Street Building Demolition Project

The subject project consists of the demolition of the former Mallalieu United Methodist Church building at 800 North 9th Street. The city acquired the building in 2001.

In September 2007, Architecture Plus, Inc., provided us with a report that concluded the building is unsafe and structurally unstable. According to Mr. Johnson, the cost to renovate the building would be in the range of $2.5 to $3.5 million. Jason Myers, a structural engineer with Myers-Beatty Engineering, also investigated the building in August 2007, and concluded that the building should be demolished because it is unsafe and an imminent danger to the surrounding property.

The building is extremely deteriorated with portions of the first floor, balcony, and roof collapsed. Based on the enclosed reports from Johnson and Myers, the demolition of the building should occur soon.

We published an advertisement for the project and received the following two bids:

Contractor	Bid Amount
Controlled Environmental Solutions, Inc.	$189,816.00
A.J. Greenwood Plumbing & Excavation	$192,000.00

Controlled Environmental Solutions, Inc. submitted the low bid in the amount of $189,816.00, which was lower than our estimate of $250,000. After reviewing the bid documents and discussing the bid with the low bidder, we recommend awarding the construction contract to Controlled Environmental Solutions, Inc. This company has a good track record with the city as you may recall that Controlled Environmental Solutions performed the demolition on the White Dairy building.

I have attached a Resolution that will authorize the Mayor to execute a contract with Controlled Environmental Solutions, Inc. Please contact me if you have any questions.

Enc.

ARCHITECTURE PLUS, INC

September 6, 2007

Wally Bailey
Director, City Planning and Zoning
623 Garrison Avenue, Room 331
Fort Smith, Arkansas 72901

Re: Renovation / Adaptive use of
Mallalieu United Methodist Church
North 9th and "H" Streets
Fort Smith, Arkansas

Dear Wally;

On August 28, 2007 you, I, Jimmy Deer and Jason Myers (structural engineer) reviewed the existing building conditions of the above referenced facility. Simply stated, the building has reached a point of being unsafe and structurally unstable.

Unless immediate actions are taken to stabilize and completely renovate the building, then it should be systematically deconstructed and / or demolished. (See attached letter from Jason Myers)

Since our first report of July 20, 2000 nothing has been done to prevent the complete deterioration of the building.

Although most of the windows and doors are "boarded-up" to prevent people from entering, the building is still fully exposed to the weather elements via large holes in the roof and gaps around the "boarded-up" windows and doors.

In 2000 it was still possible to enter the building, walk throughout most floor areas and fully examine the building. In 2007 this is no longer available as the weather elements have made portions of the roof, ceilings and walls to collapse. Such deterioration is even evident in the exterior as seen in the 2000 photos and the 2007 photos, which are attached.

If the building is to be demolished, I would suggest a deconstruction process, as the City should be trying to be environmentally friendly and there are salvageable construction materials.

If the building is renovated its cost would probably be three to four times my 2000 estimate, or approximately $2.5 to $3.5 million. The renovation would remove the roof structure, all existing interior construction, leaving the exterior masonry walls only, and then a new structural steel system would be inserted within the open walls for support of a new roof and interior wall / floor construction. Basically, a new building would be built inside of the existing exterior brick walls.

Architects • Planners • Interior Designers

MICHAEL G. JOHNSON, A.I.A. • ANTHONY S. LERARIS, A.I.A. • H. CRAIG BOONE, A.I.A.

907 South 21st • Fort Smith, AR 72901 • Phone: 479-783-8395 • Fax: 479-783-0935 • e-mail: aplus@archplusinc.net

Given the construction costs for renovation, the current state of extreme unsafe and unhealthy disrepair / deterioration of the church, I am inclined to believe that its demolition / deconstruction and subsequent construction of a new building is in the best interest of the City.

Please call me with any questions, or if I can be of further assistance.

Sincerely,
ARCHITECTURE PLUS, INC.

Michael G. Johnson / CC

Michael G. Johnson, AIA

MGJ:cc

Enclosures

Myers-Beatty Engineering, PLLC
1031 Fayetteville Rd, Van Buren, AR 72956
Ph (479) 474-4412 ◇ Fax (479) 474-4413

August 29, 2007

Wally Bailey, Director
City Planning and Zoning
623 Garrison Ave, Room 331
Fort Smith, AR 72901

Re: Mallalieu United Methodist Church

Dear Mr. Bailey,

Per your request, a site visit was made to the Mallalieu United Methodist Church at the corner of North 9th and North H in Fort Smith, Arkansas, on August 28, 2007. The purpose of the visit was to perform a visual structural evaluation of the building to aid in determining the viability and cost of renovating the structure.

According to the building's cornerstone, the church was constructed in 1921. It is comprised of an underground basement, a first floor, and a balcony in the sanctuary. The outer walls are constructed of load bearing rubble masonry and clay masonry. The floors and roof are constructed of wood framing.

The church has been vacant for approximately twenty-two years. During this period the structure has experienced severe deterioration, mostly due to water damage. Portions of the first floor, portions of the balcony, and portions of the roof have collapsed. An investigation of the interior of the entire building was not possible, due to the unsafe conditions.

The exterior of the building also showed signs of deterioration. Some of the mortar joints in the face brick have eroded, causing the bricks to become loose, some of which have fallen to the ground. There were several large holes in the roof structure, and a large amount of deflection in the ridge of the sanctuary roof.

While it is not possible to predict when or if the structure will collapse, the right set of unpredictable circumstances, i.e., rain, wind, or seismic, could cause a total collapse of the building at any time. Due to the amount of structural integrity that the building has lost, it is my opinion that the structure is unsafe and an imminent danger to the surrounding property, and therefore should be demolished.

If you have any questions or require further assistance, please call.

Sincerely,

Jason R Myers, P.E.

STATE OF ARKANSAS
REGISTERED PROFESSIONAL ENGINEER
No. 18445
JASON R MYERS
8/29/07

07098

MALLALIEU CHURCH BUILDING TIMELINE
2000-2010

May 2010	Wally Bailey sends board information memo clarifying that the church building's inclusion on the Historic Preservation Alliance of Arkansas 2010 list of Arkansas's Most Endangered Historic Places does not affect the city's control of the building.
April 2010	The church building is nominated for inclusion on the Historic Preservation Alliance of Arkansas 2010 list of Arkansas's Most Endangered Historic Places.
February 2010	KAUF Radio Station airs an interview on its Ozarks at Large program with Wally Bailey, Monte Wilson, and Brenda Andrews regarding the status and significance of the church building.
January 2010	Board of Directors approves resolution extending Wilson's and Hathaway's request for extension on fund raising efforts to January 31, 2011. Wilson states that the economy has hindered his efforts to raise funds. Board also requires Wilson and Hathaway to s submit within 60 days an updated report from structural engineer on condition of building.
March 2009	Board of Directors approves resolution extending Wilson's and Hathaway's request for extension on fund raising efforts to January 31, 2010. Wilson states that the economy has hindered his efforts to raise funds.
Feb. 2008	Board of Directors approves Resolution authorizing the acceptance of Wilson's and Hathaway's proposal. Wilson and Hathaway propose to utilize the building as a facility to provide opportunities for youth to develop their talents through collaboration with schools, local universities by offering art and science programs, community mentoring, leadership development activities, and character development seminars that strengthen family. Resolution accepts the Stabilization and Renovation Plan, which calls for a fund raising effort by Wilson and Hathaway to continue until July 31, 2008. If funds are not raised by then, it will result in withdrawal of proposal.
Jan. 22, 2008	City opens bid and receives one bid for $1.00 from Monte Wilson and Scott Hathaway.
January 2008	City advertising property as "surplus property" and invites Requests For Proposal to purchase the property. All proposals must be submitted with a Stabilization and Renovation Plan
Dec. 2007	Planning Staff present resolution to Board of Directors authorizing the acceptance of a bid of $189,816 to demolish the former church building. Board delays vote on demolition contract for 45 days to give the city time to sell the property
Sept. 2007	City hires Architecture Plus to update its 2000 Investigation Report concerning the condition of the building. Consultant advises that unless immediate actions are taken to stabilize and completely renovate the building, it should be deconstructed and/or demolished because of its unsafe condition. Structural engineer concurs that due to the amount of structural integrity that the building as lost, the structure is unsafe and an imminent danger to surrounding property and should be demolished.

2000-2005	City unsuccessful at attempts to raise money for renovation
JULY 2000	Architecture Plus, Inc. submits Investigation report to city. Report concludes that building would require complete gutting/demolition of all existing construction, except the exterior walls, interior load bearing walls, and perhaps a portion of the roof structure, and then complete reconstruction of all building systems to meet current codes and standards. The report stated that given that the building is approximately 6,400 GSF, excluding the balcony, construction costs, would range from $100 - $125 per square foot or $640,000 to $800,000 as a minimum. The report stated that given the construction cost and state of disrepair, demolition and subsequent construction of a new building was in the best interest of the city.
February 2000	City hires Architecture Plus, Inc. to conduct an Investigation Report to evaluate, make renovation recommendations and estimate approximate construction costs for architectural, structural, plumbing, mechanical, and electrical systems required for building code standards. Additionally, the study would make recommendations concerning energy consumption, handicapped accessibility, and hazardous material abatement.
January 2000	City acquires Lot 1, Block 58, Original City Addition - Property and building previously utilized as the Mallalieu Methodist Church The city proposes to raise funds and renovate the building for use as the Fort Smith Multicultural Center.

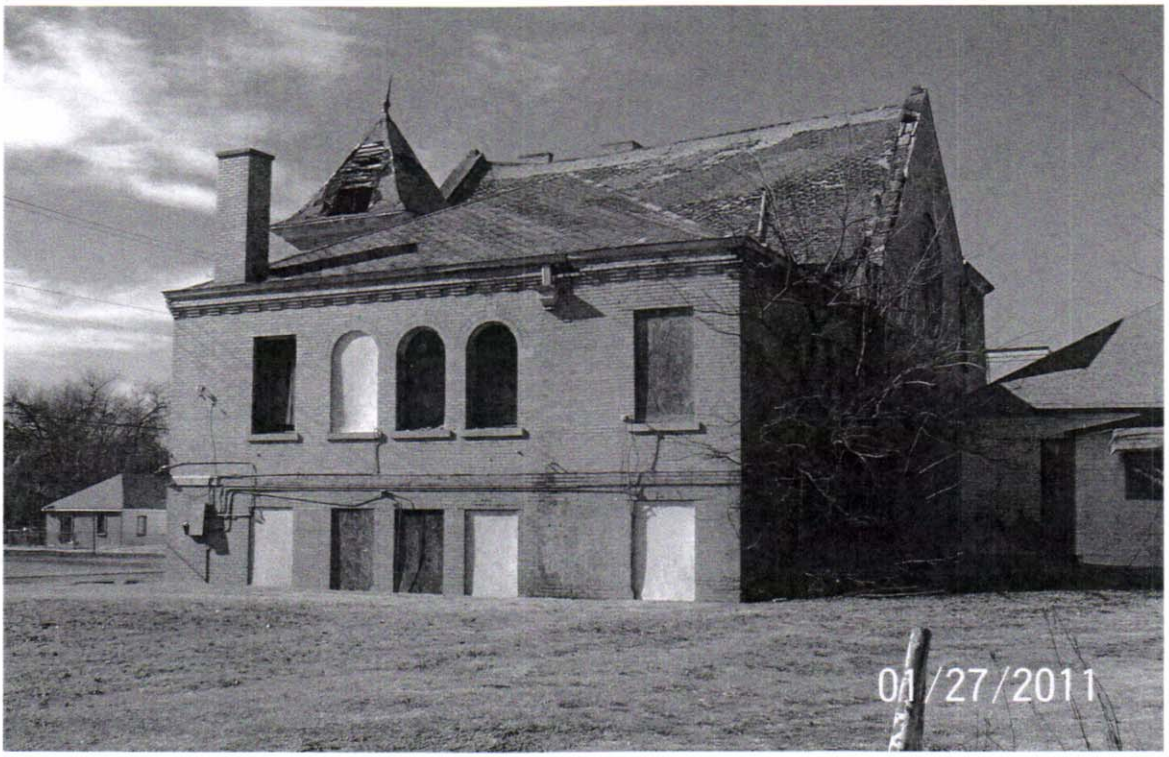
STOP
01/27/2011

01/27/2011

01/27/2011

STOP
01/27/2011

01/27/2011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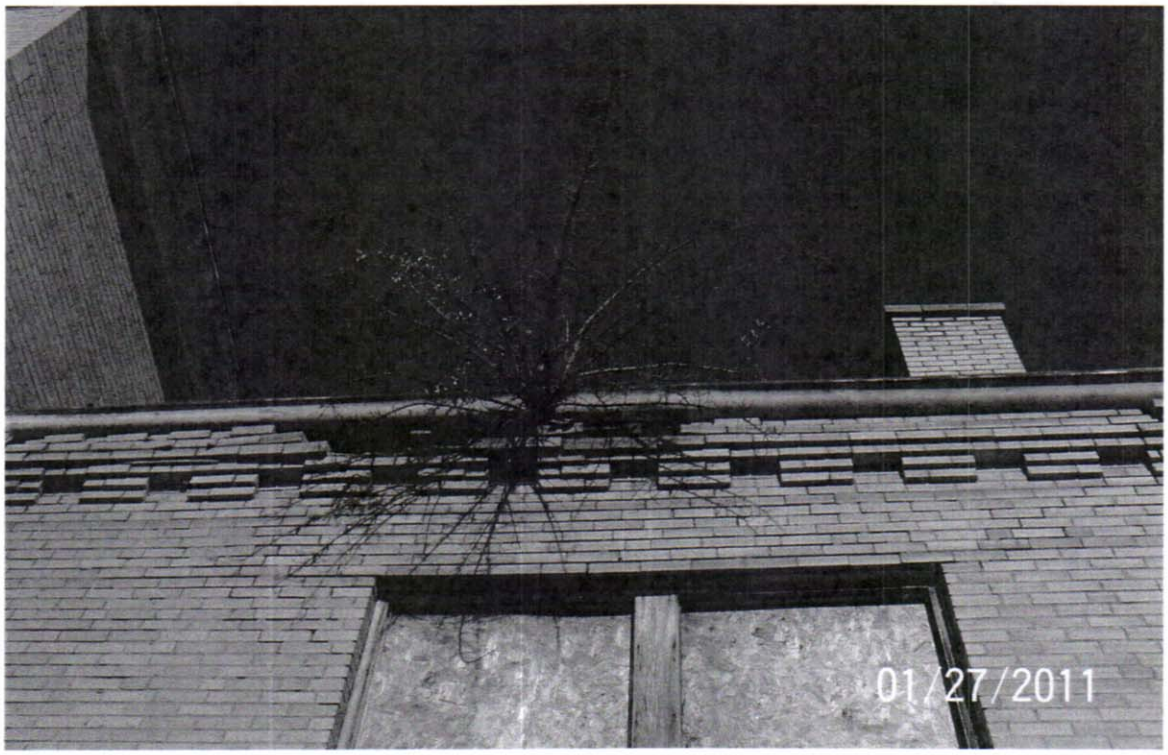
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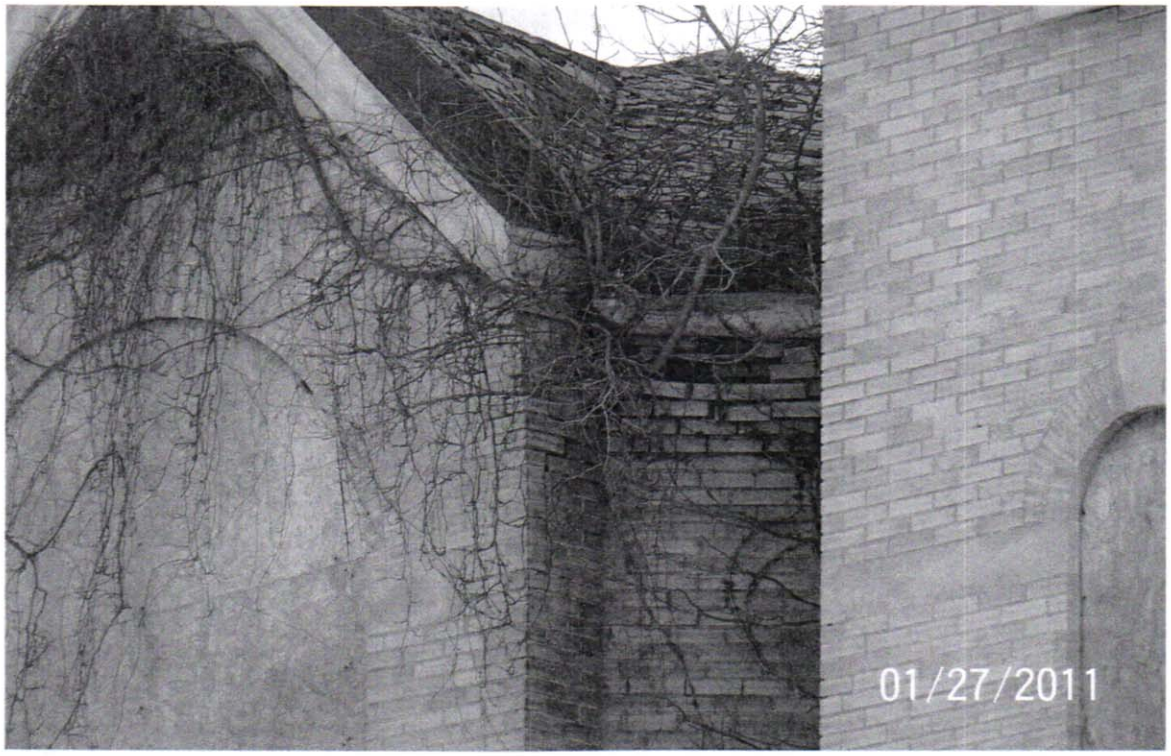
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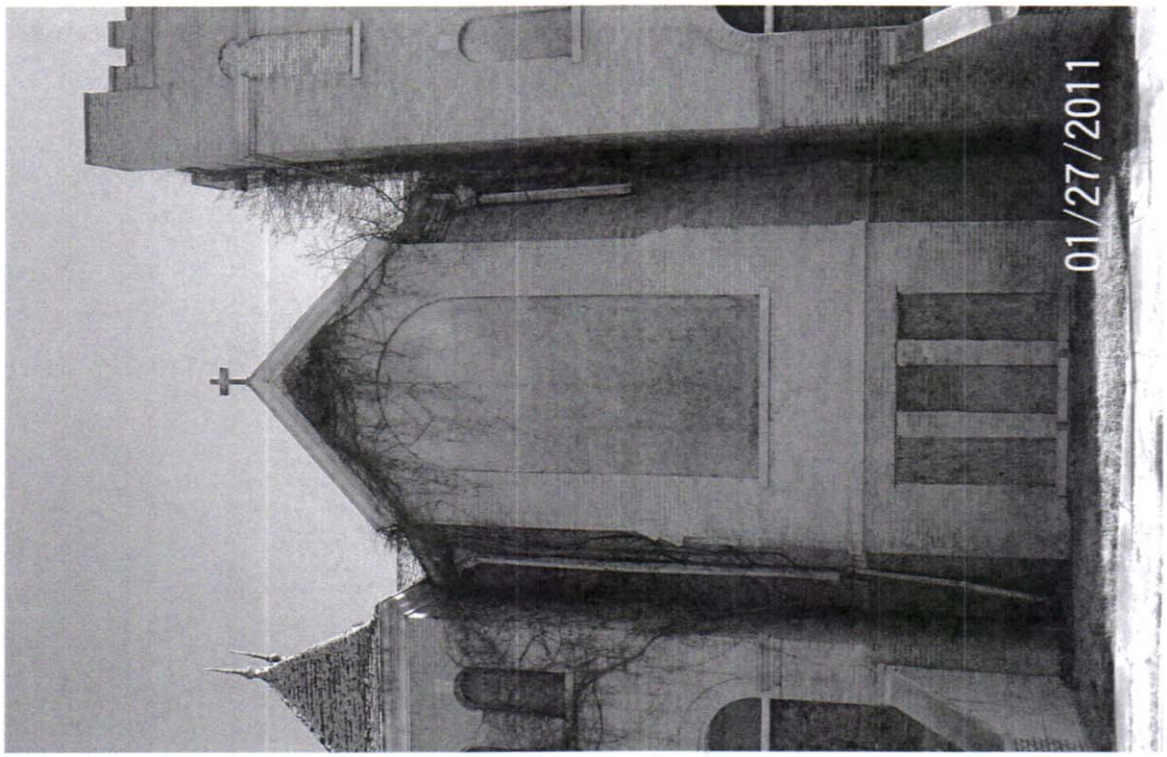
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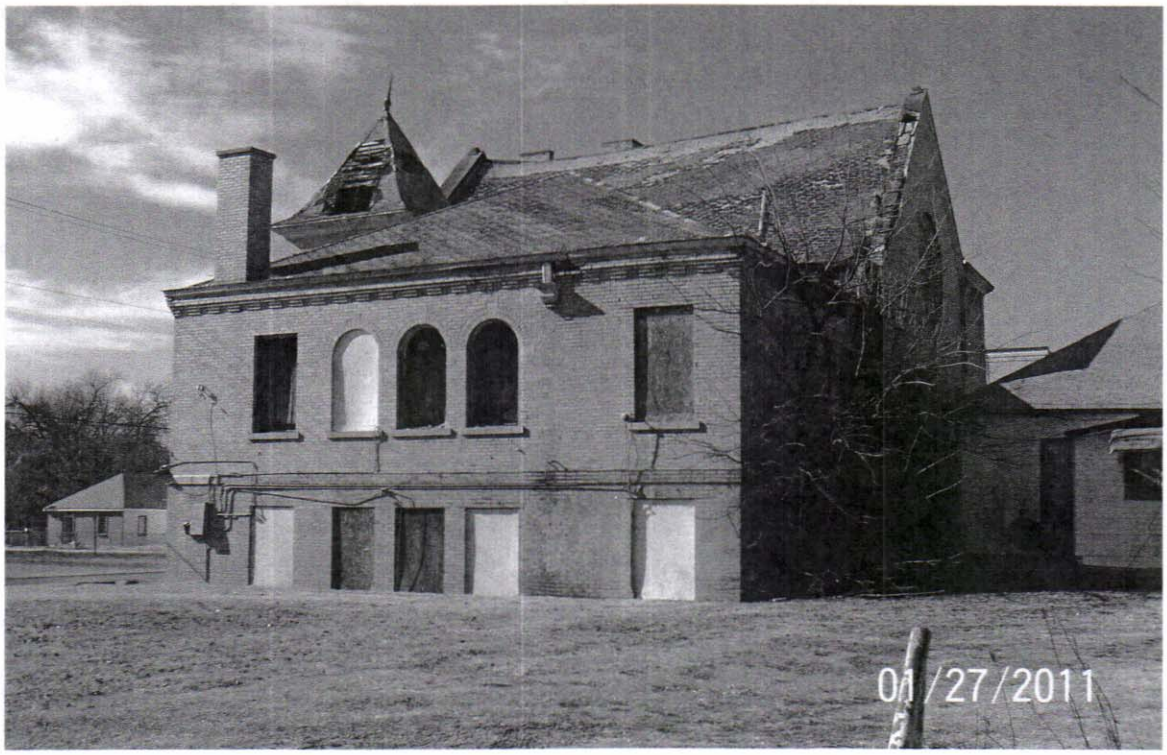
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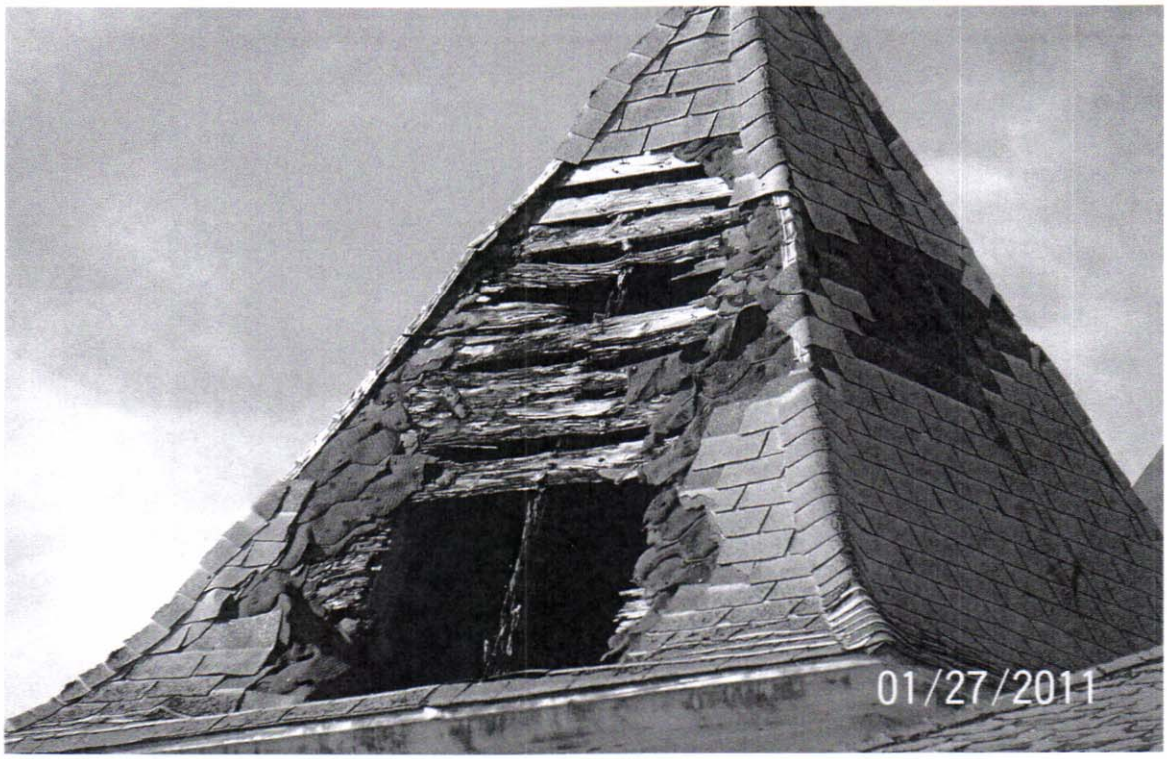
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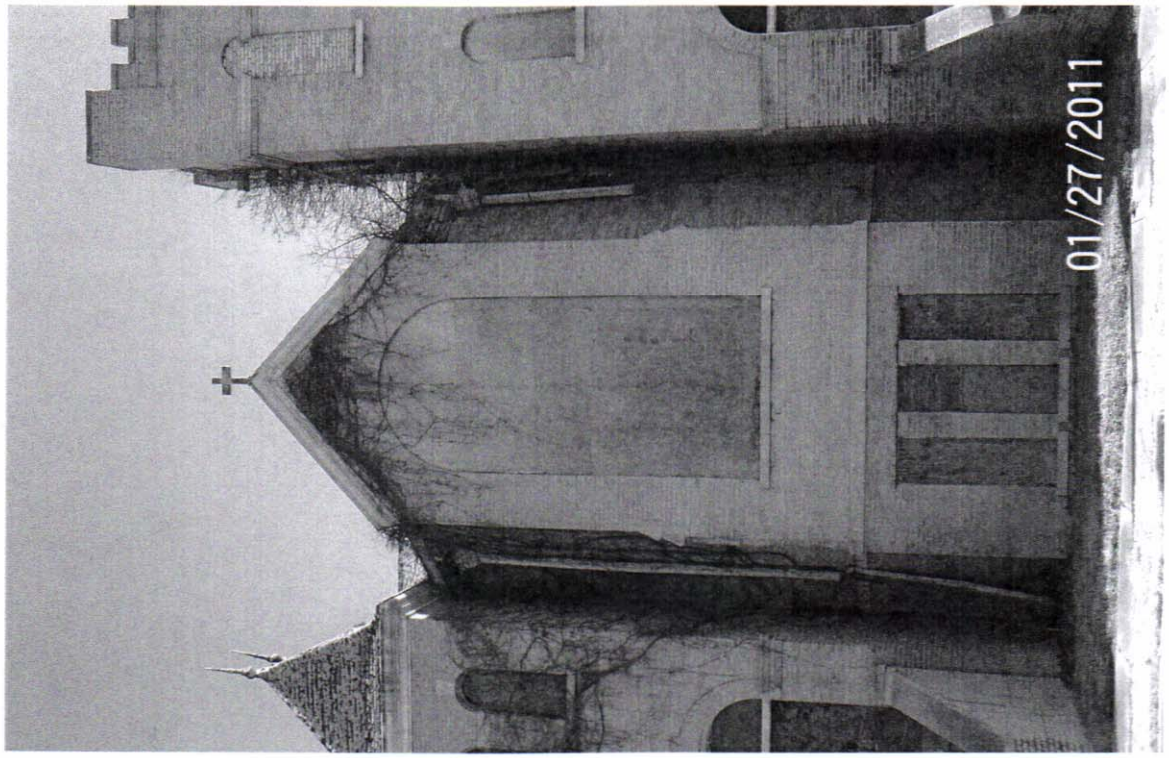
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The City of Fort Smith ARKANSAS

2 & 3

MEMORANDUM

February 3, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Convention Center

Attached are the following documents for the board's continued discussion of convention center operations:

- A revised agreement between the city and the Advertising & Promotion Commission for operation of the convention center. The agreement is now in a form recommended by city administration, A & P staff, and the city attorney. The A & P Commission will be considering approval of the agreement at its February 7th meeting.

- An ordinance enacting a 1% prepared food tax. The recommended effective date is the first day of the month that's at least 90 days after enactment of the ordinance. This time is needed for the finance dept. to notify merchants and to establish procedures for collecting the revenue. For example, if the ordinance is enacted on February 15th, the recommended effective date is June 1, 2011.

- An ordinance amending the city's municipal code regarding the composition of the A & P Commission. This ordinance is necessary to bring our local code into compliance with the requirements of state law.

- A list of Arkansas cities who have enacted a prepared food tax.

Consideration of these items will ensure the continued operation of the convention center and the significant economic impact it brings to our region.

-Ray

City A & P	Lodging Tax	Prepared Food Tax	When Enacted	Vote or Ordinance	Notes
Alma	1%	1%	1997	Vote	
Benton	1.50%	1.50%		No reply	
Bentonville A & P	2%	1%	1996	Ordinance	This tax covers hotels, meeting spaces and Food.
Brinkley	2%	2%	1993	Vote	
Cabot	1.50%	1.50%	1992	Ordinance	
Camden	3%	1%	2001	Ordinance	
Clarksville	1%	1%	1997	Ordinance	
Conway	2%	2%	2005	Ordinance	State law 26-75-601
Dumas	2%	2%	1995	Ordinance	
Eureka Springs	3%	3%	2007	Vote	Gift shop tax was removed in 2007.
Fayetteville	2%	2%	1977	Ordinance	
Fort Smith	3%	0%	1993 ****	Ordinance	**** In '93 the lodging tax was enacted by the city directors at 2%. Increased in 2001 to 3%.
Forrest City	1%	1%	1989	Ordinance	
Greenwood	0%	1%	2007	Ordinance	
Harrison	3%	1%	Hotel- 1976 Food-1987	Ordinance	
Helena/West Helena	2%	2%	1986	Ordinance	
Hope	1%	1%	1975	Ordinance	
Hot Springs	3%	3%	1965- 1%/1976-2%/1981-3% *	Ordinance	
Jacksonville	2%	2%	Hotel -2003 Food-2007	Ordinance	

Summary Statement for Arkansas A P Hotel and Food Tax History

City A & P	Lodging Tax	Prepared Food Tax	When Enacted	Vote or Ordinance	Notes
Little Rock	2%	2%	Hotel- 1% in 1970; 1978 up to 2%; Food 2% 2004 **	Ordinance	** The passage of the lodging and prepared food taxes (both together) in the years indicated was by city ordinance in Little Rock. There was a public vote in 1986 due to the refinancing of bonds to dedicate the tax for the construction of the Statehouse Convention Center. As in Hot Springs, the tax itself was not challenged, only how the funds would be utilized. Public vote is required when bonds are to be sold.
Lonoke	2%	2%	2006	Vote	
Mena	4%	1%	2003	Ordinance	
North Little Rock	3%	3%	Hotel-1975 Food- 1979	Ordinance	
Ozark	1%	1%	1991	Ordinance	
Pine Bluff	3%	2%	1980***	Vote & Ordinance	*** January '79 a 1% tax on both lodging and prepared food together was approved by a vote of the citizens. In January '82 an ordinance was passed on both the lodging and prepared food tax to increase both from 1% to 2% each. In July of '93 the city council enacted an ordinance that raised the hotel tax to 3%.
Sherwood	2%	2%	1990	Vote	
Texarkana	3%	1%	1970	Ordinance	Ordinance H-123
Van Buren	1%	1%	1989	Ordinance	
West Memphis	2%	2%	1977	Ordinance	

LEASE AGREEMENT

City of Fort Smith, Arkansas

Landlord

and

Fort Smith Advertising and Promotion Commission

Tenant

MW DRAFT
2/2/11

LEASE AGREEMENT

LANDLORD: **City of Fort Smith, Arkansas**

TENANT: **Fort Smith Advertising and Promotion Commission**

PREMISES: Fort Smith Convention Center
55 South 7th Street, Fort Smith, Arkansas

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LEASE AGREEMENT

This **Lease Agreement** (hereinafter sometimes referred to as the "*Lease*") is made and entered into as of _____, 2011 (the "*Commencement Date*"), by and between **City of Fort Smith, Arkansas**, a city of the first class located in Sebastian County, Arkansas (hereinafter sometimes referred to as the "*Landlord*" or the "*City*") and **Fort Smith Advertising and Promotion Commission**, a commission of the City of Fort Smith (hereinafter sometimes referred to as the "*Tenant*" or the "*Commission*").

W I T N E S S E T H:

For valuable consideration, the receipt and sufficiency of which each party acknowledges, Landlord and Tenant, intending to be legally bound, hereby agree with each other as follows:

ARTICLE I
DEFINITIONS AND FUNDAMENTAL PROVISIONS

The following terms shall have the meanings set forth below when used in this Lease, except as may otherwise be specifically provided. The Rent shall be as set forth below subject to adjustment as provided in the Section cross referenced therewith.

1.1. Addresses.

Landlord: City of Fort Smith, Arkansas
Attn: _____
_____
Fort Smith, Arkansas 72901

Tenant: Fort Smith Advertising and Promotion Commission
Attn: Mr. Claude Legris, Executive Director
2 North B Street,
Fort Smith, Arkansas 72901

or such other address or addresses as a party may designate by written notice to the other party.

1.2. Permitted Use. The Premises shall be used for the following purposes and for no other purpose whatsoever: operation of a multi-purpose civic center for meetings and conventions, exhibitions, entertainment events and related uses, including without limitation the serving of food and drink, including alcoholic beverages.

1.3. Premises. The lands situated in the City of Fort Smith, Sebastian County, Arkansas more particularly described on Exhibit A attached hereto (the "*Lands*"), all buildings, structures and other improvements now or at any time hereafter erected and installed on the Lands (the "*Improvements*"), and all easements, rights of way and other appurtenances belonging or related to the Lands or Improvements (the Lands and Improvements are collectively referred to herein as the "*Facility*"). All furniture, fixtures, machinery and equipment used in the

operation of the Facility presently located in or associated with the Facility (the "*Equipment*"). The Facility and the Equipment are collectively referred to as the "*Premises*".

1.4. Rent. From and after the Commencement Date, Tenant shall pay to Landlord as rent hereunder the sum of One Dollar ($1.00) per year. All Rents shall be payable in advance beginning on the Commencement Date and on each anniversary thereof during the Primary Term.

1.5. Term. Ten (10) years (the "*Term*" or "*Primary Term*"), to begin on the Commencement Date, subject to earlier termination as hereinafter provided. This Lease shall expire at midnight on the tenth (10th) anniversary of the Commencement Date (hereinafter sometimes referred to as the "*Expiration Date*").

ARTICLE II
DEMISED PREMISES

2.1. Demise of Premises. Landlord hereby leases to Tenant for the Term and Permitted Use specified herein and Tenant rents from Landlord the Premises, subject to the terms and conditions herein contained, and subject to all encumbrances, easements, restrictions, zoning laws, and governmental or other regulations affecting the Premises.

ARTICLE III
RENT AND OTHER CHARGES

3.1. Payment of Rent. During the Term, Tenant covenants and agrees to pay to Landlord at the address set forth in Section 1.1 above, without demand, deduction or setoff, except as specifically provided elsewhere in the Lease, all Rent and other charges as defined in Section 1.5.

3.2. Utilities. The utilities for the Premises are separately metered. Tenant shall pay for, and be solely responsible for all utilities required, used or consumed in the Premises, including, but not limited to water, sanitary sewer service, garbage collection, gas, telephone, electricity, or any similar service (herein sometimes collectively referred to as the "*Utility Services*").

3.3. Real Estate Taxes, Personal Property Taxes and Rent Tax. Landlord and Tenant hereby acknowledge that the Premises are currently shown as "Exempt" on the books of the Sebastian County Assessor and that no real estate, personal property or other ad valorem taxes are assessed or paid on the Premises. In the event the Premises cease to be deemed exempt from ad valorem taxes and those taxes are levied against the Premises, Tenant shall be responsible for the payment of such taxes and assessments and Landlord shall cooperate with Tenant in any efforts to cease the levy and collection of those taxes.

3.4. Insurance. Tenant, at its sole cost and expense, shall maintain fire and extended coverage insurance on the Premises with a limit no less than the full insurable value of the Improvements including any leasehold improvements constructed by Tenant. Landlord shall be named as an additional insured party under the insurance policy. Tenant shall provide insurance

coverage for the contents, furniture, fixtures and equipment from whatever source as Tenant may elect.

ARTICLE IV
USE OF PREMISES

4.1. Tenant's Use. Tenant shall use the Premises solely for the Permitted Use specified in Section 1.3. Tenant will at all times operate the Premises as a convention center within the requirements of the Advertising and Promotion Commission Act, Ark. Code Ann. §§ 26-75-601 through 606 so as to permit the use of revenues received from any tax levied under such Act for the benefit of the Premises.

4.2. Legal Operation of Premises. Tenant shall not use or suffer or permit the Premises, or any part thereof, to be used for any purpose or use in violation of the Lease or applicable law. Tenant shall have the right to contest any alleged violation of law provided that the interest of Landlord in the Premises is not at unreasonable risk as the result of such contest or from any adverse judgment in Landlord's reasonable discretion.

4.3. Alterations to Facility. Tenant shall have the right from time to time during the Term to make non-structural additions, alterations and changes in or to the Improvements at its sole cost and expense. Tenant may make structural modifications to the Improvements and construct additional improvements only with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall submit to Landlord plans and specifications for any structural modifications or additional improvements. All work by Tenant on the Facility shall be performed in a workmanlike manner with high quality materials and shall be prosecuted diligently to completion. All such permanent alterations shall remain upon and become a part of the Facility and shall become Landlord's property upon the termination of this Lease. Tenant shall have no obligation to remove any such modifications or improvements or restore the Facility to its original condition at the expiration of the Term.

4.4. Liens. Tenant will not create or permit to be created or to remain, and will discharge (or bond over, within sixty (60) days following notice of the filing thereof), as provided below), any lien (including, but not limited to, the liens of mechanics, laborers or materialmen for work or materials alleged to be done or furnished in connection with the Premises), encumbrance or other charge upon the Premises or any part thereof, except for any such liens attributable to the acts or omissions of Landlord. If Tenant fails to discharge or bond over any such liens, encumbrances or charges as may be placed upon the Premises, Landlord may, but shall not be obligated to, remove any such lien, whereupon Tenant shall reimburse Landlord upon written demand for all sums so expended by Landlord, including attorney's fees in connection therewith, and interest thereon from the date of Landlord's payment, until reimbursement at the rate of four (4%) percent over the then Prime Rate as published daily under the heading "Money Rates" in The Wall Street Journal, unless such rate be usurious as applied to Tenant, in which case the highest permitted legal rate shall apply (the "*Interest Rate*"). Tenant will pay, protect and indemnify Landlord promptly upon demand therefor, from and against all liabilities, losses, claims, damages, costs and expenses, including reasonable attorney's fees, incurred by Landlord by reason of the filing of any lien and/or the removal of the same.

ARTICLE V
REPAIRS AND MAINTENANCE

5.1. Maintenance and Repair Obligations of Tenant. Tenant shall, at Tenant's expense, at all times maintain the Premises, including the roof, foundation, exterior walls of the Facility, gutters and water spouts, utility services extending to the service connections within the Facility and all interior wiring, plumbing, pipes, conduits and other utilities and sprinkler fixtures, all interior non-structural portions of the Facility (specifically including the windows and doors of the Facility), the HVAC systems serving the Facility, and all the Equipment in good order and repair. In the event Tenant fails to perform any of its obligations as required hereunder within thirty (30) days after receipt of written notice, Landlord may, but shall not be required to, perform and satisfy same with Tenant hereby agreeing to reimburse Landlord, as additional rent, for the cost thereof promptly upon written demand, together with interest thereon at the Interest Rate from the date of payment by Landlord to the date of reimbursement. Notwithstanding the above, Tenant may in its reasonable discretion determine that some or all of the Equipment cannot be repaired or is no longer useful due to ordinary wear and tear or obsolescence. In such event Tenant may dispose of such Equipment and, at its sole cost and expense, replace the disposed Equipment with Equipment of equal utility and benefit for the Facility's operation. All such replacement Equipment shall become the property of Landlord and subject to this Lease. Tenant hereby assumes all contracts between Landlord and third parties existing on the Commencement Date for the maintenance and upkeep of the Premises. The assumption shall be effective as of the Commencement Date. Subject to the terms thereof, Tenant shall have no obligation to renew or extend any such maintenance contracts. A list of the maintenance contracts assumed by Tenant is set forth on Exhibit B attached hereto.

5.2. Inspection of the Premises. Tenant may obtain, at its sole cost and expense, an inspection of the Premises covering, without limitation, any or all electrical, mechanical, HVAC, plumbing and fire protection systems, roof, structural components and condition of the Equipment. The inspections shall be conducted by one or more consultants engaged by Tenant at its sole discretion. The inspectors shall provide a report of their findings, which may include an estimate of the cost to return any deficient systems or Equipment to operation in accordance with applicable manufacturer's specifications and an opinion on systems or Equipment that will require material expense for maintenance or replacement during the Primary Term of this Lease. After receipt of the inspection reports, Tenant may provide written notice to Landlord (a "*Deficiency Notice*") concerning deficient systems, structural components or Equipment the cost of which to repair or replace will be material. Any Deficiency Notice shall be delivered to Landlord on or before sixty (60) days after the Commencement Date. Landlord and Tenant shall thereafter negotiate in good faith to reach agreement on the responsibility for the cost and expense of repair, maintenance or replacement of the items set out in the Deficiency Notice. If Landlord and Tenant have not reached agreement on such matters within thirty (30) days after Tenant's delivery of the Deficiency Notice (the "*Negotiation Period*"), then Tenant shall have the right, in its sole discretion, to terminate the Lease. Any such termination shall be effected by written notice to Landlord on or before five (5) Business days after the expiration of the Negotiation Period. Tenant shall have thirty (30) days after delivery of such termination notice to vacate the Premises and thereafter neither party shall have any further obligation under the Lease.

ARTICLE VI
INSURANCE AND INDEMNIFICATION

6.1. Tenant Insurance. Tenant shall maintain at its sole expense during the Term commercial general liability insurance covering the Premises and the adjoining streets, sidewalks and passageways in an amount not less than $1,000,000.00 for injury or death to any one person and $2,000,000.00 for injury and/or death to any number of persons in any one accident and property damage insurance in an amount not less than $500,000.00 in companies licensed and in good standing in the State of Arkansas. Tenant will cause such insurance policies to name Landlord and its agents as additional insureds and to be written so as to provide that the insurer waives all right of recovery by way of subrogation against Landlord in connection with any loss or damage covered by the policy. In addition, Tenant shall keep in force worker's compensation or similar insurance to the extent required by law, which coverage may be provided through an arrangement with Landlord or, if separate, shall provide benefits substantially similar to the coverage provided by Landlord to its employees. Tenant shall deliver certificates of such insurance to Landlord upon written request. Should Tenant fail to effect and maintain the insurance called for herein, Landlord may, at its sole option after ten (10) business days prior written notice to Tenant and Tenant's failure to procure same and provide proof thereof to Landlord within said ten (10) business days, procure said insurance and pay the requisite premiums, in which event, Tenant shall pay all sums so expended to Landlord, as additional rent following invoice, together with interest thereon at the Interest Rate from the date of Landlord's payment until reimbursement. Each insurer under the policies required hereunder shall agree by endorsement on the policy issued by it or by independent instrument furnished to Landlord that it will give Landlord ten (10) days prior written notice before the policy or policies in question shall be altered or canceled.

6.2. Indemnification. Tenant hereby agrees to indemnify and hold Landlord wholly harmless from any and all claims, damages, liabilities or expenses (including, without limitation, reasonable attorney's fees and the costs of defending any action) arising out of (i) Tenant's use of the Premises, (ii) any and all claims by third parties arising out of or due to the acts or omissions of Tenant, its agents, contractors, employees or licensees after the expiration of any notice and cure period, (iii) the negligence or willful acts or omissions of Tenant, its agents, contractors, employees or licensees, regardless of whether or where such negligence, acts or omissions occurred or (iv) the injury to, or death of, any persons or damage to, or destruction of any property occurring in the Premises. Tenant further releases Landlord from liability for any damages sustained by Tenant, or any other person claiming by, through or under Tenant, due to the Premises or any part thereof, or any appurtenances thereto, becoming out of repair, or due to the happening of any accident, including, but not limited to, any damage caused by water, snow, windstorm, tornado, gas, steam, electrical wiring, sprinkler system, plumbing, heating and air conditioning apparatus. Landlord shall not be liable for any damage to, or loss of, Tenant's personal property, inventory, fixtures or improvements from any cause whatsoever, unless caused by the negligence or willful misconduct of Landlord or its agents, contractors, employees or licensees and then only to the extent not covered by insurance to be obtained by Tenant in accordance with this Article. The foregoing indemnity obligation of Tenant shall include reasonable attorney's fees, investigation costs, and all other reasonable costs and expenses incurred by Landlord and shall survive the termination of this Lease.

6.3. Subrogation. Landlord and Tenant each waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, to the Premises or its contents arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is required to be carried pursuant to the Lease (to the extent of receipt of proceeds pursuant to such policies of insurance). The insurance policies obtained by Tenant pursuant to this Lease shall contain endorsements waiving any right of subrogation which the insurer may otherwise have against the non-insuring party. The foregoing release and the foregoing requirement for waivers of subrogation shall be operative only so long as the same shall neither preclude the obtaining of such insurance nor diminish, reduce or impair the liability of any insurer.

ARTICLE VII
DAMAGE TO PREMISES AND CONDEMNATION

7.1. Fire, Explosion or Other Casualty. If the Premises is damaged by fire, tornado or other casualty covered by the insurance policies maintained hereunder, and such damage cannot be fully rebuilt or repaired within ninety (90) days after the date of the casualty, then Tenant shall have the right to terminate this Lease upon written notice to Landlord and this Lease shall terminate upon the date set forth in such notice and neither party shall have any further obligations hereunder except that any obligation to indemnify the other for pre-termination events shall survive. If Tenant elects not to terminate this Lease or the damage may be repaired in less than the ninety days, then the Premises shall be promptly repaired and restored by Tenant to not less than substantially the same condition in which it was immediately preceding the casualty, but Tenant shall not be obligated to spend in excess of any insurance proceeds actually received by Tenant as a result of such damage or casualty. Landlord shall release any interest in the insurance proceeds to fund such work. If Tenant elects to terminate this Lease, Tenant shall assign to Landlord all rights to insurance proceeds related to the Premises.

7.2. Condemnation. In the event that the Premises, or any part thereof, shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, then the Lease shall, at the sole option of Tenant, forthwith cease and terminate. If Tenant does not elect to terminate this Lease following any such condemnation, Tenant shall, as soon as reasonably practicable following such condemnation, restore the Premises to an integrated whole, but Tenant shall not be obligated to spend in excess of any condemnation award actually received by Tenant as a result of such condemnation and receipt of any compensation awarded for any taking. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of Tenant, and Landlord shall have no claim thereto, the same being hereby expressly waived by Landlord, provided however that if this Lease is terminated by Tenant as a result of any condemnation, Landlord shall be entitled to claim from the condemning authority, such compensation as may be awarded or recoverable by Landlord on account of any and all damage to Landlord's interest in the Premises, or for any other damages compensable separately to Landlord

ARTICLE VIII
ASSIGNMENT AND SUBLETTING

8.1. Assignment and Subletting. Tenant shall not have the right to assign this Lease, sublease the entirety of the Premises, or pledge or hypothecate its interest in the Premises or Lease without Landlord's prior written consent. Any assignment, unauthorized sublease, pledge or hypothecation executed without Landlord's consent shall be void. Tenant may sublease without consent (i) all or any part of the Premises in the ordinary course of business of the Premises and (ii) portions of the Premises to one or more third party providers of convention and event related services, including without limitation, event promoters, caterers, and event ticket sales and distribution companies.

ARTICLE IX
SUBORDINATION AND ATTORNMENT

9.1. Attornment. Tenant shall attorn and be bound to any of Landlord's successors under all the terms, covenants and conditions of this Lease for the balance of the remaining Term provided such successor recognizes this Lease and Tenant's rights thereunder.

9.2. Estoppel Certificate. Within thirty (30) days after request therefor by Landlord, or upon a request associated with any sale, assignment or hypothecation of the Premises by Landlord, Tenant hereby agrees to deliver an estoppel certificate to Landlord or any proposed mortgagee or purchaser of the Premises certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the Lease is in full force and effect as modified), that there are no defenses or setoffs thereto (or stating those claimed by Tenant), the dates to which rent and other charges hereunder have been paid and such other matters as Tenant may be required to provide Landlord pursuant to the Lease.

9.3. Tenant's Lender Requirements. Landlord does, if requested, likewise agree to execute estoppel letters containing the information described in Section 9.2 above and other reasonable instruments for the benefit of Tenant's lender(s), if any, within thirty (30) days of written request therefor. No such instrument shall function as a material modification of this Lease or the waiver of any material right on the part of Landlord or impose any new material obligation on Landlord. Landlord may refuse to execute any estoppels letter that includes terms prohibited by the preceding sentence.

ARTICLE X
DEFAULT, REMEDIES AND BANKRUPTCY

10.1. Default of Tenant and Remedies of Landlord. In the event of default by Tenant hereunder, Landlord may at its option invoke all of the remedies set forth in this Article X or otherwise available (in law or equity) to Landlord under the laws of the United States or the State of Arkansas. In the event Tenant shall not commence and proceed diligently to effectuate any actions required by Landlord and which Tenant is obligated to effect under the terms of the Lease, as specified in any notice given Tenant hereunder provided said notice period is at least equivalent to that set forth in this Lease, Landlord may at its sole discretion do such things as are specified in said notice, and Tenant hereby grants to Landlord access to the Premises if same is

required by Landlord in furtherance thereof. Landlord shall have no liability to Tenant for any loss or damage whatsoever (except for the negligence or willful act of Landlord, its agents or employees) resulting from such entry or such action by Landlord, and Tenant hereby agrees to pay as Rent, within ten (10) days after written demand, any reasonable expenses incurred or paid by Landlord in taking such action. Each of the following shall be deemed a default by Tenant and a breach of this Lease (each, a "*default*"). In the event that Tenant: (i) fails to pay all or any portion of any sum due from Tenant hereunder for Rent within ten (10) days after written notice that same is due; (ii) fails to reimburse Landlord for sums advanced by Landlord on Tenant's behalf hereunder or pursuant to any exhibit hereto within ten (10) business days following written notice to Tenant that such payment is overdue; (iii) fails to immediately cease all conduct prohibited hereby within thirty (30) days after receipt of written notice by Tenant; (iv) fails to take such actions within thirty (30) days after written notice from Landlord as are required by Landlord to remedy Tenant's failure to perform any of the terms, covenants, and conditions hereof; (v) is adjudged as bankrupt or insolvent or files any debtor proceeding or if Tenant shall take or have taken against Tenant any petition of bankruptcy which is not vacated within ninety (90) days, or if Tenant shall take action or have action taken against Tenant for the appointment of a receiver for all or a portion of Tenant's assets which is not vacated within ninety (90) days, or shall make an assignment for the benefit of creditors or if in any other manner Tenant's interest hereunder shall pass to another by operation of law (it being understood that any or all of such occurrences shall be deemed a default on account of bankruptcy for the purposes hereof and that such default on account of bankruptcy shall apply to and include any guarantor of this Lease); (vi) commits waste to the Premises or is otherwise in default hereunder, and such default shall not have been cured within thirty (30) days following written notice from Landlord (it being agreed that in the event such default shall not be curable by the payment of money and shall be of such a nature as to reasonably require more than thirty (30) days to cure, then Tenant shall not be deemed in default provided Tenant commences the cure of such default within said thirty (30) day period and thereafter continuously prosecutes said cure to completion within ninety (90) days), then and in such event, Landlord may at its option and upon ten (10) days notice to Tenant, reenter and resume possession of the Premises. Notwithstanding such reentry with legal process by Landlord, and except for the negligence of Landlord, Tenant hereby releases Landlord from and against any and all loss or damage which Tenant may incur by reason of the termination of this Lease and/or Tenant's right to possession hereunder pursuant to the terms of this Lease or as a matter of law.

10.2. Remedies Cumulative. All rights and remedies of either party herein created or remedies otherwise existing at law or equity are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as the exercising party shall deem desirable. The failure of Landlord to insist upon strict performance by Tenant of any of the covenants, conditions, and agreements of this Lease shall not be deemed a waiver of any of said rights and remedies concerning any subsequent or continuing breach or default by the other of any of the covenants, conditions, or agreements of this Lease. No surrender of the Premises shall be affected by Landlord's acceptance of Rent or by any other means whatsoever unless the same be evidenced by Landlord's written acceptance of such as a surrender.

10.3. Remedies of Tenant. Landlord agrees that with respect to any default by Landlord hereunder, Tenant may invoke all rights and remedies available at law or equity to Tenant under the laws of the United States or the State of Arkansas.

ARTICLE XI
SURRENDER OF PREMISES

11.1. Surrender of Premises, Holding Over and Abandonment of Tenant's Trade Fixtures. Tenant, upon expiration or termination of this Lease, either by lapse of time or otherwise, agrees peaceably to surrender to Landlord the Premises, including the alterations, additions, improvements, changes, fixtures and Equipment, in broom-clean condition and in good repair, ordinary use, wear, damage by fire or other casualty excepted. Tenant agrees to remove Tenant's office furniture, computers and electronics, and office equipment upon such expiration or termination and to repair all damage to the Premises caused by or resulting from such removal. Tenant's failure to remove all or part of Tenant's personal property and restore the Premises within thirty (30) days after such expiration or termination shall be deemed an abandonment to Landlord of such property and, if Landlord elects to remove all or any part of said personal property, such removal, including the cost of repairing any damage to the Premises caused by or resulting from such removal, shall be paid by Tenant.

ARTICLE XII
ACCESS TO PREMISES

12.1. Access to Premises. Tenant agrees that Landlord, its agents, employees, or servants or any person authorized by Landlord may enter the Premises during normal business hours to inspect the condition of same and to make such repairs to the Premises as Landlord may elect to make in accordance with the terms and provisions of this Lease (Landlord agreeing to repair any damage to the Premises occasioned by such entry and to provide two (2) days' written notice to Tenant of its intent to make repairs to the Premises, except in the case of an emergency where no such prior notice shall be required). Nothing in this Article XII, however, shall be deemed or construed to impose upon Landlord any obligation or liability whatsoever for care, supervision, repair, improvement, addition, change, or alteration of the Premises.

ARTICLE XIII
MISCELLANEOUS

13.1. Successors and Assigns. All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply, and inure to the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

13.2. Entire Agreement. This Lease and any Exhibits attached hereto constitute the sole and exclusive agreement between the parties with respect to the Premises. No amendments, modifications of or supplements of this Lease shall be effective unless in writing and executed by Landlord and Tenant.

13.3. Late Charges. If Tenant shall fail to make any payment of Rent within ten (10) days after notice that the same is past due, such amount shall bear interest at the Interest Rate, and Tenant shall pay a late fee equal to five percent (5%) of the amount past due, it being

understood that said amounts shall constitute liquidated damages and shall be for the purpose of reimbursing Landlord for additional costs and expenses which Landlord presently expects to incur in connection with the handling and processing of late Rent payments. The payment of the above listed amount is in addition to any other remedy provided in this Lease.

13.4. Time is of the Essence. The time of the performance of all of the covenants, conditions, and agreements of this Lease is of the essence of this Lease.

13.5. Recording of this Lease. A short form or memorandum of this Lease may be recorded by Tenant upon review and approval and execution of the same by Landlord.

13.6. Relationship of Parties. Nothing herein shall be construed so as to constitute a joint venture or partnership between Landlord and Tenant.

13.7. No Presumption Against Drafter. Landlord and Tenant understand, agree, and acknowledge that: (i) this Lease has been freely negotiated by both parties; and (ii) that, in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

13.8. Force Majeure. In the event that either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act required under this Lease to be performed by the party and such delay or hindrance is due to strikes, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered, then performance of such work, service, or other act shall be excused for the period of such delay and the period for the performance of such work, service, or other act shall be extended for a period equivalent to the period of such delay. In no event shall such delay constitute a termination or extension of this Lease. The provisions of this Section shall not operate to excuse Tenant from the prompt payment of Rent as due under any provision hereof.

13.9. Governing Law. This Lease shall be construed under the laws of the State of Arkansas.

13.10. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

13.11. Interpretation. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto.

13.12. Survival of Obligations. The provisions of this Lease with respect to any obligation of either party to pay any sum in order to perform any act required by this Lease after

the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

13.13. Headings, Captions and References. The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires. All Exhibits attached to this Lease are by this reference incorporated herein.

13.14. Consents and Approvals. Whenever any provision of this Lease requires approval or determination by a party, the party shall promptly exercise its judgment and promptly communicate its decision to the other party.

13.15. Hazardous Materials. Tenant shall not cause or permit any Hazardous Material (as defined herein) to be brought, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees except for Hazardous Material used by Tenant, its agents, employees, contractors or invitees in connection with activities permitted by this Lease and in accordance with applicable law. Tenant hereby indemnifies Landlord from and against any breach by Tenant of the obligations stated in the preceding sentence, and agrees to defend and hold Landlord harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material in the Premises caused or permitted by Tenant results in any contamination of the Premises Center, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the conditions existing prior to the introduction of such Hazardous Material to the Premises; provided that the Landlord's approval of such actions, and the contractors to be used by Tenant in connection therewith, shall first be obtained.

As used herein, the term "*Hazardous Material*" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under the law of the jurisdiction where the property is located, or (ii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 47 U.S.C. § 6901 *et seq*. (42 U.S.C. § 6903), or (iv) defined as a "hazardous substance" pursuant to

Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq*. (42 U.S.C. § 9601).

As used herein, the term "*Laws*" means any applicable federal, state, or local laws, ordinances, or regulation relating to any Hazardous Material affecting the Town Center, including, without limitation, the laws, ordinances, and regulations referred to in Section 13.10 above.

Landlord and its employees, representatives and agents shall have access to the Premises during reasonable hours and upon reasonable notice to Tenant in order to conduct periodic environmental inspections and tests of Hazardous Material contamination of the Premises, provided that Landlord and its employees, representatives and agents shall use all reasonable efforts to not interfere with Tenant's business in the Premises in exercise of such rights.

13.16. Existing Reservations and Bookings. Tenant shall assume and honor the existing reservations and bookings for use of the Facility set forth on Exhibit C attached hereto.

13.17. Counterparts. This Lease may be executed in one or more counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Lease.

13.18. Notice. Any notice permitted or required to be delivered under this Lease may be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it will be deemed to have been delivered and received three business days after a copy of the notice has been deposited in the United States mail, postage prepaid, with the address set forth in Section 1.1 above, or if to Tenant, at the Premises. If delivery is made by express delivery service, it will be deemed to have been delivered and received one business days after a copy of the notice has been deposited with an "overnight" or "same - day" delivery service, properly addressed. A party's address for notice may be changed from time to time by notice in writing to the other party. A true copy of any notice given under this Lease shall also be transmitted by email or facsimile machine, but the recipient's failure to receive the notice transmitted in that manner shall not invalidate the notice.

13.19. Annual Report. On or before [June 1] of each calendar year, Tenant shall provide Landlord with a report of the financial condition of the Premises, a budget for the upcoming fiscal year, significant events hosted, and other material information concerning the operation of the Premises

13.20. Repeal of Restaurant Tax. Tenant shall have the right to terminate this Lease in the event the [Restaurant Tax] levied by Landlord by ordinance enacted _____ and used by Tenant for the operation of the Premises is repealed or modified in any manner resulting in a reduction of the proceeds of such tax. Tenant shall give written notice to Landlord of such termination on or before ninety days after the effective date of the repeal or modification and state the effective date of the termination, which shall be not sooner than thirty (30) days after the date of the notice.

IN WITNESS WHEREOF this Lease has been executed under seal as of the day and year first above written.

LANDLORD:

City of Fort Smith, Arkansas
a city of the first class

By: _____

Print Name: _____

Title: _____

TENANT:

Fort Smith Advertising and Promotion Commission

By: _____

Print Name: _____

Title: _____

DRAFT

EXHIBIT A

PROPERTY DESCRIPTION

[[CONFIRM DESCRIPTION]]

All of Blocks 522 and 533 and part of abandoned Garland Street, City of Fort Smith, Sebastian County, Arkansas

EXHIBIT B

ASSUMED MAINTENANCE CONTRACTS

EXHIBIT C

ASSUMED RESERVATIONS AND BOOKING AGREEMENTS

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE LEVY OF A TAX ON THE GROSS RECEIPTS OR GROSS PROCEEDS RECEIVED BY RESTAURANTS, CAFES, CATERING CAFETERIAS, DELICATESSENS, DRIVE-IN RESTAURANTS, CARRY-OUT RESTAURANTS, CONCESSION STANDS, CONVENIENCE STORES, AND GROCERY STORE-RESTAURANTS FROM THE SALE OF PREPARED FOOD AND BEVERAGES FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION; TO DECLARE AN EMERGENCY AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas that:

Section 1: As authorized by Act 185 of the 1965 Acts of Arkansas, as amended, specifically that portion of the Act codified at A.C.A. § 26-75-602(c)(2) (Supp. 2009), there is hereby levied a tax of one percent (1%) upon the gross receipts or gross proceeds received by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, and grocery store-restaurants or establishments of any kind or nature from the sale of prepared food and beverages for on-premises or off-premises consumption, said tax to be effective _____.

(1) Prepared food and beverages, as used in this ordinance, shall have the same meaning as Prepared Food as defined and described by Emergency Rule 2007-3, in its entirety, promulgated by the Arkansas Department of Finance and Administration on May 11, 2007 (effective July 1, 2007). (2) The tax levied by this subdivision of this Section shall not apply to gross receipts or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3).

Section 2: All taxes, interest, penalties, and costs derived from the one percent (1%) tax

levied by Section 1 of this Ordinance shall be deposited in the Fort Smith Advertising and Promotion Fund for purposes permitted by Act 185 of the 1965 Acts of Arkansas, as amended.

Section 3: This Ordinance and the tax levied herein are subject to referendum in the manner prescribed in Amendment 7 to the Arkansas Constitution.

Section 4: If any provision of this Ordinance or the application thereof to any person, entity, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 5: The codifier of the Fort Smith Code of Ordinances is instructed to codify Sections 1 and 2 within Chapter 13, Article V, of the Fort Smith Code of Ordinances.

Section 6: It has been found, and it is hereby declared, that the ability to use and spend the funds credited to the City Advertising and Promotion Fund in accordance with the purposes prescribed herein is necessary to continue the development of the City and for the welfare of the inhabitants thereof. The immediate effectiveness of this Ordinance, therefore, is necessary for the preservation of the public peace, health and safety, and an emergency is declared to exist so that this Ordinance shall be in effect from and after _____, 2011.

This Ordinance adopted this ____ day of _____, 2011.

APPROVED:

_____

Mayor

ATTEST:

_____

City Clerk

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 13-123 OF THE FORT SMITH CODE OF ORDINANCES TO PROVIDE FOR THE APPOINTMENT OF THE MEMBERS OF THE FORT SMITH ADVERTISING AND PROMOTION COMMISSION

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

Section 1. Section 13-123 of the Fort Smith Code of Ordinances is hereby amended to read as follows:

(a) To administer and oversee the use of the Advertising and Promotion Fund, a Fort Smith Advertising and Promotion Commission is established and shall, pursuant to Ark. Code Ann. § 26-75-605, be composed of seven (7) members as follows:

(1) Four (4) members of the Commission shall be owners or managers of businesses in the tourism industry, and the owner or manager shall reside in Fort Smith or the owner or manager may reside outside Fort Smith but within Sebastian County. At least three (3) members of these four (4) members shall be owners of managers of hotels, motels, or restaurants and all of them shall serve for staggered terms of four (4) years.

(2) Two (2) members of the Commission shall be members of the governing body of the City of Fort Smith and selected by the governing body and shall serve at the will of the governing body.

(3) One (1) member of the Commission shall be from the public at large who shall reside within Fort Smith or in Sebastian County and shall serve for a term of four (4) years.

DRAFT

(b) Whether resulting from expiration of a regular term or otherwise, and pursuant to Ark. Code Ann. § 26-75-605(d), a vacancy on the Commission in any of the four (4) tourism industry positions provided for in subdivision (a) (1) or in the at large position provided for in subdivision (a)(3) shall be filled by appointment made by the remaining members of the commission, with the approval of the governing body of the City of Fort Smith.

Section 2. Emergency Clause. In order to more fully conform the City's ordinances regarding the Advertise and Promotion Commission to current State Law and in order to better provide for the ability to use and spend funds credited to the City Advertising and Promotion Fund and thus preserve the public peace, health and safety, an emergency is declared to exist and this Ordinance shall be in full force and effect immediately upon adoption.

This Ordinance adopted this _____ day of February, 2011.

APPROVED:

ATTEST:

_____
Mayor

_____
City Clerk

DRAFT

The City of Fort Smith ARKANSAS

4

MEMORANDUM

February 4, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Employment of Department Heads

The Fort Smith municipal code (copy attached) currently requires that the appointment and removal of department heads, the city clerk, the internal auditor, and the city attorney be approved by the board of directors. Directors Merry and Catsavis asked that this policy be considered at the February 8th study session. Their intent is to discuss the possibility of giving the city administrator the authority to appoint and remove department heads. This change would place more accountability for the organization's performance with the city administrator.

If the administrator were given such authority, the removal of department heads would be reviewed with the human resources director (as is the case with all other employee dismissal actions) and possibly the city attorney. My practice would also include advising the board of such an action that I was considering before taking the action.

The board may find it desirable to retain hire and fire authority for the city clerk, the internal auditor, and the city attorney. These positions either report directly to the board (the internal auditor) or provide advice and assistance directly to the board (city clerk and city attorney).

If the board is desirous of changing the policy, the staff will prepare the necessary ordinance.

Ray

Attachment

Sec. 2-43. Director approval procedure of city administrator personnel action.

Except as otherwise provided in this article, the city administrator shall obtain the approval of the board of directors prior to the employment or discharge of exempt personnel of the city who are heads of departments, city clerk, internal auditor, and the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code as follows:

(1) The city administrator shall notify all members of the board of directors either orally or in writing of the proposed action, the reasons therefor, and all relevant and pertinent facts bearing upon the decision of either employment or discharge. After notification from the city administrator, there shall be scheduled an executive session at the next regular or special meeting of the board of directors to discuss approval, denial or modification of the city administrator's proposed action.

(2) Following the board's action, the city administrator shall then notify in person or by telephone the individual subject to the approved action and may confirm the action in writing to the individual.

(3) Where reasonable and feasible, employees of the city shall be first given an opportunity to resign at the request of the city administrator and the board of directors prior to notice of discharge.

(4) No director nor the mayor shall communicate the exempt personnel action proposed by the city administrator, except through the city administrator as herein provided.

AGENDA *~ Summary*

FORT SMITH BOARD OF DIRECTORS
STUDY SESSION

FEBRUARY 8, 2011 ~ 12:00 NOON

FORT SMITH PUBLIC LIBRARY
COMMUNITY ROOM
3201 ROGERS AVENUE

1. Update on fundraising efforts for the Mallalieu Restoration Project
   ~ Per Resolution No. R-19-10, time extension to original proposal expires January 31, 2011 ~
   Resolution placed on the February 15, 2011 regular meeting to grant a 90-day extension of the existing agreement with Mr. Monte Wilson and Scott Hathaway. Such is to allow them to refocus fundraising efforts and present a new plan to purchase, stabilize and renovate the structure.

2. Review proposed agreement with the Advertising and Promotion Commission for operation of the convention center *~ Continued from the January 25, 2011 study session ~*
   Resolution placed on the February 15, 2011 regular meeting

3. Review proposed ordinances to levy a 1% prepared food tax and update membership of the A & P Commission
   1. A majority of the Board opted to refer the matter of a 1% prepared food tax to a special election and requested staff initiate the process to ensure the election is held in approximately 90 days.

   2. Ordinance placed on the February 15, 2011 regular meeting agenda to amend the Fort Smith Municipal Code regarding membership of the Advertising and Promotion Commission.

4. Discuss City Administrator authority for personnel action *~ Requested by Directors Merry and Catsavis at the February 3, 2011 regular meeting ~*
   No action taken

5. Review preliminary agenda for the February 15, 2011 regular meeting