

# AGENDA

**PRESCOTT CITY COUNCIL  
SPECIAL VOTING MEETING  
TUESDAY, DECEMBER 11, 2012  
10:00 A.M.**

**Council Chambers  
201 South Cortez Street  
Prescott, Arizona 86303  
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its **Special Voting Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending this meeting through the use of a technological device.

◆ **CALL TO ORDER**

◆ **PLEDGE OF ALLEGIANCE:** Councilman Carlow

◆ **ROLL CALL:**

MAYOR AND CITY COUNCIL

Mayor Kuykendall  
Councilman Arnold  
Councilman Blair  
Councilman Carlow

Councilman Kuknyo  
Councilman Lamerson  
Councilman Scamardo

**I. REGULAR AGENDA**

A. [Adoption of Ordinance No. 4844-1243 authorizing sale of City-owned property at 117 East Gurley Street commonly referred to as the Elks Opera House portion of the Elks Building.](#)

***RECOMMENDED ACTION: MOVE to adopt Ordinance No. 4844-1243 with the emergency clause.***

**III. ADJOURNMENT**

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on \_\_\_\_\_ at \_\_\_\_\_ m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

\_\_\_\_\_  
Lynn Mulhall, MMC, City Clerk

## COUNCIL AGENDA MEMO – Special Meeting of December 11, 2012

**DEPARTMENT:** City Manager

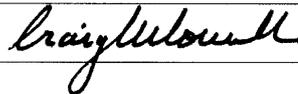
**AGENDA ITEM:** Adoption of Ordinance No. 4844-1243 authorizing sale of City-owned property at 117 East Gurley Street commonly referred to as the Elks Opera House portion of the Elks Building

**Approved By:**

**Date:**

**Finance Director:** Mark Woodfill

**City Manager:** Craig McConnell



12-6-12

### Item Summary

This ordinance, enacted with the emergency clause to take effect immediately, will approve sale of the City's property interest (the Elks Opera House) located within the Elks Building at 117 East Gurley Street in downtown Prescott, to the Elks' Theatre & Performing Arts Center, Inc., an Arizona Non-Profit Corporation. The purchase price is \$1,300,000.00; the City will credit to the Buyer at closing the amount of \$300,000.00 for urgently needed work to be commenced as soon as permits are obtained to repair, stabilize deterioration, and renovate the building exterior. Close of escrow is to occur on or before December 21, 2012, with net proceeds to the City in the amount of \$1,000,000.00, which will be deposited to the Capital Reserve of the General Fund.

### Background

Originally opened February 20, 1905, the historic theatre (Elks Opera House) is listed in the National Register of Historic Places along with the Elks Building, of which it is a portion. The National Register Listing was added in 1978. Significant restoration and construction work was completed during the years 2004 and 2007, as well as a major restoration encompassing the foyer, lobbies, house, concession area, lounges, balcony, stage and marquee which was completed on July 20, 2010.

The Elks Opera House Foundation, organized in 2002 as an Arizona non-profit corporation, was instrumental in restoration of the theatre. In concert with completion of building renovation and code compliance work by the City of Prescott at a total cost in excess of \$1.8 million including the purchase price of its real property interest, the Foundation, through donations from benefactors, invested \$1.75 million in returning the house to the 1905 appearance. Today the principal role of the Foundation is that of an independent producer, investing in varied productions to ensure that the Opera House continues into a future reflecting the brilliance of its past.

Approximately equal halves of the total floor area of the Elks Building, located at 117 East Gurley Street, are owned by the City (the theatre and marquee) and the Elks' Theatre & Performing Arts Center, Inc., an Arizona Non-Profit Corporation (the storefronts and upper spaces currently occupied by the Murphy Schmitt law offices). The Elks' Theatre & Performing Arts Center, Inc., an Arizona Non-Profit Corporation ("the Elks' Center"), is seeking to purchase the City's portion of the building.

**Agenda Item:** Adoption of Ordinance No. 4844-1243 authorizing sale of City-owned property at 117 East Gurley Street commonly referred to as the Elks Opera House portion of the Elks Building

### **Sale of the Property - Objectives and Process**

As expressed in the Request for Proposals, the City's intent regarding sale of its property interest in the Elks Building was to convey it to a qualified party with the mission, focus, and financial and managerial means, to assure that the Elks Opera House continues to function perpetually as a facility for performing arts and related uses and purposes:

- Maintain the historic quality and integrity of the Elks Theatre, a haven for theatre and culture in Prescott for more than one hundred years; ensure continuation of the historic uses and purposes and community benefits of the theatre, including a regular schedule of events keeping the Elks Theatre active and vibrant.
- Reinforce and promote mutually beneficial relationships among the Elks Theatre, downtown businesses, and local government, by serving as an economic generator.
- Sale of the property for an equitable and reasonable current market value that encompasses and acknowledges the grant funds, philanthropic donations, prior City expenditures, public and private efforts in the restoration and reconstruction of the Elks Theatre, and the perpetuation of the public use and enjoyment of it.
- Create a privately funded and operated community facility which will augment continued theatre operations with other performing arts programs.
- Consider all benefits resulting from the proposal including future funding capability and commitment of resources to sustain the Elks Theatre as a premiere arts facility and performance venue for the benefit of the public, including but not limited to, future financial obligations for operation, maintenance, and planned enhancements, and expansion of current uses and benefits which would be valuable considerations to the public.

In accordance with the procedures set forth in Article VIII Section 12 of the City Charter, the City published a "Notice of Intent to Sell and Request for Proposals for Purchase of Real and Other Property; Elks Theater," in response to which one proposal was received on June 29, 2012, from The Elks' Center. Negotiations followed in subsequent months, and have now been successfully concluded.

### **Valuation**

While no valuation or minimum cash requirement was specified by the RFP, the document disclosed expenditures of public monies totaling \$1.8 million, including over \$1.38 million by the City of Prescott, and the investment of an additional \$1.75 million from private contributions to the Elks Opera House Foundation. The City's goals regarding these amounts in selling the property were to: (1) recover the City's investment of \$1.38 million,

**Agenda Item:** Adoption of Ordinance No. 4844-1243 authorizing sale of City-owned property at 117 East Gurley Street commonly referred to as the Elks Opera House portion of the Elks Building

primarily for its real property interest; and (2) convey the facility to a qualified successor as described in the RFP, preserving the Elks Opera House, and in turn protecting the \$1.75 million invested in it by the private sector.

The City commissioned an appraisal of its interest within and as a non-freestanding portion of this unique property, which valued that interest at \$2.78 million on a fee simple basis, effectively identifying a "replacement cost" figure for insurance purposes. A substantial reduction from this figure (50% or more), considering the restriction as to use sought (continued operation and maintenance of the historic theatre as a community performing arts venue), was applied to determine a more realistic market value (\$1.39 million) for initiation of negotiations.

It has been commented that a second type of appraisal might have been prepared, using the "income" approach. However, the Elks Opera House has run operating deficits of (\$101,423) and (\$108,107) in the last two complete fiscal years, and is on track to end the current fiscal year at or above this level (\$64,935 deficit for the 5-month period from July 1, 2012, to December 6, 2012). These render use of the income approach problematic.

Further complicating valuation is how to quantify and apply, for appraisal purposes, the benefits received by the community from a performing arts venue. Suffice it to say that if the City's investment is returned, and the private restoration investment is safeguarded through conveyance of the theatre to a non-profit corporation whose sole focus is consistent with the City's intent expressed in the RFP, and which has the means to purchase, further renovate, and endow the unified property to assure that the intent is realized, including perpetual operation and maintenance, arguably, the price in the attached purchase agreement represents fair, or better, compensation for a unique property defying conventional methods of appraisal.

**Schedule**

Council consideration of ordinance for sale	December 11, 2012
Opening of escrow	December 12, 2012
Elks' Center presentation to the Preservation Commission (Elks Building exterior rehabilitation)	December 14, 2012
Closing of escrow	December 21, 2012

**Attachment** - Ordinance No. 4844-1243 with exhibits including the Real Estate Purchase Agreement (Elks Theatre)

**Recommended Action:** **MOVE** to adopt Ordinance No. 4844-1243 with the emergency clause.

## ORDINANCE NO. 4844-1243

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE SALE OF CITY OWNED PROPERTY LOCATED IN THE CITY OF PRESCOTT GENERALLY DESCRIBED AS 117 EAST GURLEY STREET, AND CONSISTING OF IMPROVED REAL PROPERTY COMMONLY REFERRED TO AS THE ELKS OPERA HOUSE PORTION OF THE ELKS BUILDING, AND AUTHORIZING THE MAYOR AND STAFF TO EXECUTE ALL NECESSARY SALE AND CONVEYANCE DOCUMENTS; AND DECLARING AN EMERGENCY.**

### **RECITALS:**

WHEREAS, the City of Prescott is the owner of certain real property, improvements, fixtures and associated equipment commonly known as the Elks Opera House (referred to interchangeably throughout this Ordinance and the Purchase Agreement as the "Elks Theatre"), located in the City of Prescott and generally described as an improved parcel of property constituting a portion of 117 East Gurley Street and legally described in the attached Purchase Agreement (Exhibit "1"), which property has been duly advertised for sale pursuant to the City of Prescott Charter and is determined to be of better economic and cultural value to the citizens of Prescott by having a non-profit owner of the property specializing in the continued restoration of the Elks Theatre and operation and maintenance of a community based cultural and performing arts center, thereby avoiding City maintenance and operation expenses of the property; and

WHEREAS, Article I, Section 3 of the Prescott City Charter empowers the City of Prescott to acquire property and sell property as its interests may require; and

WHEREAS, the requirements of Article VIII, Section 12 of the Prescott City Charter have been complied with; and

WHEREAS, the request for proposals to sell the Elks Opera House has been responded to by one proposal only, made by the Elks' Theatre & Performing Arts Center, Inc., an Arizona Non-Profit Corporation, who desires to purchase the above described property for the price of \$1.3 million, which sum has been reviewed by city staff and determined to be a fair market price for said property; and

WHEREAS, the Elks Opera House is a historically significant theatre in downtown Prescott, Arizona; and

WHEREAS, Buyer was established in 2011 for the primary purpose of restoring, operating and preserving the entire Elks Building, which includes the Elks Opera House as a unified performing arts center; and

WHEREAS, the Buyer has already procured the office and commercial portions of the Elks Building and plans on providing cultural and performing arts events and instruction in said portion of the building; and

ORDINANCE NO. 4844-1243

WHEREAS, the main financial Donor to the Buyer has established a successful record for developing other performing and fine arts centers; and

WHEREAS, Buyer is an Arizona non-profit corporation dedicated to the continuation of the restoration of the historic Elks Building and the operation of a community based cultural and performing arts center and is subject to all of the rules and regulations of the United States Internal Revenue Service applicable to the operation of non-profit entities; and

WHEREAS, the Buyer intends to work with all community groups, non-profits, and the public, and to consider all proposals for productions and other activities at the Elks Theatre; and

WHEREAS, the Buyer recognizes the significant contribution of time, effort and money that has been made to the Elks Opera House by community groups and the public; and

WHEREAS, the City has been operating the Elks Opera House at a financial loss since it began operations and the Buyer is willing to accept and fund losses as may be necessary to operate the Elks Opera House; and

WHEREAS, Buyer is willing to assume the cost of future historic renovation and maintenance of the Elks Opera House and all of the Elks Building; and

WHEREAS, the Buyer is willing to accept the Property in an "as is" condition, except as otherwise provided in the Purchase Agreement; and

WHEREAS, the Seller and Buyer acknowledge that the exterior of the Elks Building requires restoration to stabilize the exterior brick, installation of new windows, painting and other exterior restoration efforts to restore the building to its original appearance, and as such, the City, in order to encourage the Buyer's stabilization and restoration of the historic Elks Building, agrees to contribute \$300,000.00 for such work; and

WHEREAS, the aforementioned \$300,000.00 contribution from the City for the restoration and stabilization work will be deducted in escrow from the overall purchase price, leaving a net proceed from the sale of \$1,000,000.00 to the City; and

WHEREAS, a significant economic benefit to the Prescott, Arizona community will result from completing this transaction, inclusive of the purchase price, job retention and creation, revenue generation and the stimulation of additional development; and

WHEREAS, the citizens of Prescott and the general public will benefit from the provision of community wide benefits, including but not limited to theatre events, having a unified performing arts center in the downtown area and increased tourism.

**ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT, the real property described in the attached Exhibit "1" is not needed for public use and that the Council has determined its sale is in the public interest and will benefit the public.

SECTION 2. THAT, the proposal of the Elks' Theatre & Performing Arts Center, Inc., an Arizona Non-Profit Corporation, in the amount of \$1.3 million to purchase the Property described in Exhibit "1", pursuant to the terms and conditions recited herein, and as set forth in the Purchase Agreement, is acceptable.

SECTION 3. THAT, the Mayor and Staff are hereby authorized to execute any and all documents necessary to transfer title, upon payment of the full purchase price listed above.

SECTION 4. THAT, the immediate operation of the provisions of this ordinance are necessary for the immediate preservation of the public peace, health and safety, and that an EMERGENCY is hereby declared to exist; and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

PASSED, APPROVED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
LYNN MULHALL  
City Clerk

\_\_\_\_\_  
City Attorney

# EXHIBIT 1

**REAL ESTATE PURCHASE AGREEMENT  
(Elks Theatre)**

THIS REAL ESTATE PURCHASE AGREEMENT (“Agreement”) is made and entered into by and between the City of Prescott, an Arizona municipal corporation, (“Seller”) and Elks’ Theatre & Performing Arts Center, Inc., an Arizona Non-Profit Corporation (“Buyer”).

**RECITALS**

Seller owns the real property, improvements, fixtures and associated equipment known as the Elks Theatre, which is a portion of the Elks Building located at 117 E. Gurley Street, Prescott, Arizona, as more fully described herein, and

Buyer was established in 2011 for the primary purpose of restoring, operating and preserving the entire Elks Building, which includes the Elks Theatre, as a unified performing arts center, and

The Elks Theatre is a historically significant theatre in downtown Prescott, Arizona, and

The Donor has established a successful record for developing other performing and fine arts centers, and

Buyer is an Arizona non-profit corporation dedicated to the continuation of the restoration of the historic Elks Building and the operation of a community based cultural and performing arts center, and

Seller desires to sell and Buyer desires to purchase such real property, improvements, fixtures and associated equipment in accordance with the terms and conditions specified herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants set-forth in this Agreement, the parties hereby agree as follows:

1. DESCRIPTION OF PROPERTY.

The real property, improvements, fixtures and associated equipment that is the subject of this transaction is known as the Elks Theatre located at 117 E. Gurley Street, Prescott, Arizona (the “Property”). The real property is more fully described in **Exhibit “A”** attached hereto. In addition, the Seller will convey an easement to Buyer for any pre-existing encroachments of the Elks Building into Seller’s right of way, as described in **Exhibit “A”**.

2. AGREEMENT TO SELL AND PURCHASE.

Subject to the terms of this Agreement, Seller hereby agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions herein set forth, the Property (including the Fixtures and Improvements as identified herein), together with all privileges, rights-of-way, easements, licenses, access and continuation of municipal water service, and other rights and benefits appurtenant to or used in connection with the beneficial use and enjoyment of the Property.

3. PURCHASE PRICE.

In recognition of the following:

- a. the Buyer's willingness and obligation to accept and fund losses as may be necessary to operate the Elks Theatre,
- b. the cost of future historic renovation and maintenance of the Elks Theatre and all of the Elks Building,
- c. the willingness of Buyer to accept the Property in an "as is" condition, except as otherwise provided herein, and
- d. the significant economic benefit to the Prescott, Arizona community that will result from completing this transaction,

the purchase price for the Property is agreed to be \$1,300,000 in cash.

4. CONTRIBUTION OF SELLER TO COST OF RENOVATION AND RESTORATION OF THE EXTERIOR OF THE ELKS THEATRE.

The parties acknowledge that the exterior of the Property requires restoration to stabilize the exterior brick, installation of new windows, painting, and other exterior restoration efforts to restore the building to its original appearance. Seller, in order to encourage Buyer's stabilization and restoration of the historic Elks Theatre Building, agrees to contribute \$300,000 to said restoration and stabilization work, which contribution shall be a deduction in escrow from the Purchase Price set forth herein.

5. BUYER'S MISSION.

The Buyer recognizes the significant contribution of time, effort, and money that has been made to the Elks Theatre by community groups and the public. Buyer intends to work with all community groups, non-profits, and the public, and Buyer will consider all proposals for productions and other activities at the Elks Theatre. Buyer recognizes that the Property is a historic structure located within a historic district. Buyer intends to respect the important historic nature of the Property.

Buyer acknowledges that its mission is to use the Elks Theatre primarily as a center for the performing arts and related uses. The Elks Theatre may also be used for non-performing arts

uses that compliment, enhance, or benefit the primary performing arts purpose of the Elks Theatre, including but not limited to conventions, seminars, weddings, and various types of rentals and other uses that financially benefit the Theatre.

However, nothing in this Agreement shall be construed as creating third-party-beneficiary rights. No deed restrictions whatsoever are intended by the parties.

6. EASEMENTS AND PERMITS

The Parties recognize that after the Close of Escrow, easements and permits from Seller in addition to those described in **Exhibit "A"** onto Seller's adjacent Rights-of-Way, may be necessary to complete the historical renovations and maintenance of the Property. Both Parties agree to cooperate with each other to execute and complete such easements, permits, and other agreements.

Both Parties agree to identify easements as set forth in **Exhibit "A"**, parcel 3 and any additional easements, needed after Close of Escrow, by a survey plat to be recorded in the official records of Yavapai County Recorder's Office.

Buyer agrees to maintain, in good condition, at Buyer's expense, all easements conveyed or to be conveyed to Buyer from Seller.

7. FIXTURES AND IMPROVEMENTS.

Except as expressly provided for herein, the parties agree that this sale and purchase includes all fixtures and improvements located on and in the Elks Theatre located on the Property, including but not limited to the heating and cooling systems, the electrical distribution system, lighting fixtures, floor coverings, window coverings, any security and fire detection systems and all personal property located therein which is a part of the building and including but not limited to those items listed on the Bill of Sale attached hereto as **Exhibit "B"** ("Fixtures and Improvements"). Seller will not remove any such Fixtures or Improvements and Seller warrants that all such Fixtures and Improvements are unencumbered and that Seller has good title and the right to transfer title thereto.

This transaction does not include those items specifically listed on: (a) **Exhibit "C"** (the office equipment, computers, printers, filing cabinets, telephones and miscellaneous office items that are owned and used by City staff in the operation and management of the Elks Theatre), and (b) **Exhibit "D"** (a small inventory of personal business property that belongs to the Elks Opera House Foundation ("Foundation")).

8. SURVEY OF THE PROPERTY.

Buyer may, at Buyer's option, cause the exterior boundaries of the Property to be surveyed by a registered land surveyor. The surveyor shall determine whether there should be any revision of the legal description of the Property. Buyer shall pay for the cost of the survey.

The information and survey plat prepared by the surveyor shall be provided to both Seller and Buyer promptly upon completion thereof.

9. STRUCTURAL SURVEY OF THE PROPERTY.

Buyer may, at Buyer's option, have the building located on the Property surveyed by an architect and/or structural engineer to determine its structural soundness. The cost thereof shall be paid by Buyer.

10. PHASE I ENVIRONMENTAL SURVEY.

Buyer may, at Buyer's option, have the Property examined with respect to a Phase I Environmental Survey. The cost thereof shall be paid by Buyer. Buyer may at Buyer's option and expense, have additional environmental surveys performed.

11. TERMITE INSPECTION.

Buyer may, at Buyer's option, have the building inspected by a termite and pest inspector, and a report prepared with respect thereto. The cost of such termite inspection and report shall be paid by Buyer.

12. ESCROW AGENT; OPENING AND CLOSING DATES.

The Escrow Agent for this transaction shall be Empire West Title Agency, located at 600 West Gurley Street, Suite 100, Prescott, Arizona 86305. The Escrow Officer shall be Marti Lichlyter.

"Opening of Escrow" shall occur on December 12, 2012, at Empire West Title Agency at the address listed above. Subject to the satisfaction of all contingencies as set forth herein, the closing of this transaction (the "Closing" or the "Close of Escrow") shall take place at the office of the Escrow Officer on or before December 21, 2012 ( the "Scheduled Closing Date"). There shall be no extensions of the Closing Date. In the event this transaction does not close on the Closing Date, this Agreement will automatically terminate.

13. EXAMINATION PERIOD.

(A) Buyer shall have a period commencing on the date of Opening of Escrow and ending at 5:00 p.m. on the Eighth (8<sup>th</sup>) day after the Opening of Escrow (the "Examination Period")--during which to make its examination and investigation of the Property, and this Agreement is subject to and conditioned upon Buyer's approval of same in Buyer's sole and absolute discretion. Buyer's activities during the Examination Period shall include, without limitation, investigation of all aspects of the Property that Buyer deems advisable to confirm that the Property is suitable for Buyer's intended use.

(B) Within the examination period after the Opening of Escrow, Seller shall assist in and cooperate with Buyer obtaining information and documents and any real property information possessed by Seller to assist Buyer in obtaining and procuring, at Buyers' sole cost, a survey of the Property (the "Survey") prepared by an Arizona licensed civil engineer. The Survey shall be certified to Buyer, Seller and Escrow Officer and shall meet the minimum ALTA/ASCM standards for issuance by Escrow Officer of a standard coverage owner's policy of title insurance. The Survey shall contain a legal description of the Property. In addition, Seller agrees to reasonably cooperate with Buyer during the Examination Period and to furnish Buyer such other documents, instruments and information in Seller's possession concerning the Property or its operation as Buyer may, from time to time, reasonably request.

(C) Following the Opening of Escrow, Buyer, its agents and employees may enter upon the Property at any time for the purpose of conducting any and all tests, investigations, inspections, studies, and surveys which Buyer in its discretion may deem advisable. If Buyer desires an environmental report or any other reports of any kind with respect to the Property, Buyer shall obtain such reports at its expense during the Examination Period. Buyer hereby agrees to indemnify Seller and the Property and holds Seller and the Property free and harmless from any and all loss or liability resulting from the activities of Buyer, its agents and employees upon the Property, and from any and all mechanics', material man's and other liens resulting from such conduct of Buyer, its agents and employees upon the Property. The foregoing indemnification shall survive the termination of this Agreement.

(D) At any time prior to the expiration of the Examination Period, if Buyer determines, for any reason whatsoever, that it does not desire to complete the transaction contemplated herein, Buyer may terminate this Agreement by so notifying Seller and Escrow Agent in writing. Notwithstanding anything to the contrary contained in this Agreement, it is agreed that in the event that either Buyer or Seller wishes to cancel this Agreement as may be provided herein during the examination period, they shall be required to provide written notice of their intent to cancel this Agreement which notice shall be provided to the other party and to Escrow Agent, not later than One (1) day prior to the closing date specified herein.

#### 14. TITLE REVIEW PERIOD.

(A) Escrow Officer is hereby instructed to deliver to Buyer and Seller, as soon as practicable after the Opening of Escrow, a title commitment for an ALTA standard coverage Owner's Title Insurance Policy (the "Title Report"), together with full, complete and legible copies of all instruments of record referred to therein. Buyer shall pay the premium for the standard portion of the Title Insurance Policy, and Buyer shall pay all costs for any extended coverage and/or endorsements in excess of the cost of a standard coverage policy, if so desired by Buyer.

(B) Buyer shall have eight (8) days after the opening of escrow to give written notice of objection to any matter shown on the Title Report or the Survey. In the event an amended Title Report is issued or an amended Survey is prepared, Buyer shall have one (1) day from

Buyers' receipt of the amended Title Report or Survey within which to give written notice of objection to any matter shown on the amended Title Report or amended Survey. Seller will, within one (1) day after timely notification of any objection, advise Buyer in writing whether or not Seller will attempt to eliminate or cure any matter to which Buyer has objected. In the event that Seller advises Buyer that Seller will not attempt to eliminate or cure the matter to which Buyer has objected, Buyer, may exercise its options in writing within one (1) day after receipt of Seller's notice, may elect to (i) waive the objection; or (ii) terminate this Agreement and the escrow. If Buyer fails to give written notice of its election within the time period provided, Buyer will be deemed to have waived the objection. If Seller advises Buyer that Seller will attempt to eliminate any matter to which Buyer has objected, Seller shall use its best efforts to cure such matters on or before the Scheduled Closing Date, provided, however, Seller shall have no liability to Buyer for failure to cure such matters, and in the event such matters are not cured on or before the Scheduled Closing Date, Buyer shall at its option have the right to either (i) terminate this Agreement, or (ii) waive its objections to such matters.

(C) If Buyer fails to give written notice of any objection to the Title Report or the Survey within the time provided above, Buyer will be deemed to have approved all matters shown on the Title Report and the Survey, and the Property shall be conveyed to the Buyer subject to all such matters. All matters shown on the Title Report and the Survey, except those to which Buyer timely objects, are hereinafter referred to as "Permitted Title Exceptions".

(D) Notwithstanding anything to the contrary in the preceding subparagraphs, Seller shall be obligated to remove any financial liens and monetary obligations without the necessity of Buyers' objecting to said matters. If any monetary liens or encumbrances have not been removed on or before the Scheduled Closing Date, the Buyer may cancel the Agreement and obtain refund of the escrow deposit.

#### 15. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller represents, warrants and covenants to Buyer those matters set forth below, with the understanding that Buyer shall rely upon said representations, warranties and covenants.

(A) Seller acknowledges that there is an underground storage tank that is located within the City of Prescott's right of way in the alley adjacent to the Property. Seller confirms that the underground storage tank has been abandoned and closed in compliance with all applicable environmental laws and regulations. The underground storage tank is not contained within the Property. The Seller retains ownership of this tank and as such, if for any reason, the tank must be cleaned, purged, repaired, or removed the Seller shall bear all costs and risks associated with, and related to, the underground storage tank and environmental remediation related to said tank.

Seller agrees to indemnify, defend and hold Buyer and its shareholders, directors, officers, employees, successors, and assigns harmless from and against any and all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorney's fees and disbursements, of any nature whatsoever (whether statutory, in tort, contract, equitable relief,

injunctive relief, or otherwise), that may be suffered or incurred by Buyer now or at any time in the future regarding the underground storage tank (including without limitation any such harm resulting from the presence, the use, the removal, or the remediation resulting from the underground storage tank), or which Buyer may suffer or incur now or at any time in the future as a result of Seller's and/or Sellers's employees' negligent or intentionally wrongful acts, errors, or omissions regarding the underground storage tank.

(B) Seller acknowledges that the Seller has an Arizona Series 5 Liquor License on the Property, which allows for the service of alcoholic beverages. Seller acknowledges that it allows service of alcoholic beverages in conjunction with theatrical and other bookings of the Elks Theatre located within the Property. Said bookings are itemized as attached in **Exhibit "E"**.

Seller agrees to indemnify, defend and hold Buyer and its shareholders, directors, officers, employees, successors, and assigns harmless from and against any and all claims, demands, liabilities, losses, damages, costs and expenses, including reasonable attorney's fees and disbursements, of any nature whatsoever (whether statutory, in tort, contract, equitable relief, injunctive relief, or otherwise), that may be suffered or incurred by Buyer now or at any time in the future regarding the sale of alcoholic beverages at Seller's theatrical and other bookings at the Elks Theatre located within the Property, as shown on **Exhibit "E"** (including without limitation any such harm resulting from the presence, the use, the distribution, or the sale of any alcohol), or which Buyer may suffer or incur now or at any time in the future as a result of Seller's and/or Sellers's employees' negligent or intentionally wrongful acts, errors, or omissions.

(C) Seller and all persons acting for and on behalf of Seller have the full power, capacity and authority to enter into and deliver this Agreement, to perform all obligations of Seller hereunder, to complete and close this transaction in accordance with this Agreement and to sign, deliver and perform any documents and instruments in connection herewith on behalf of Seller.

(D) Seller is not aware of any liens, encumbrances, claims of liens or encumbrances, or any possible defects, or claims of defects to the title to the Property which do not appear in the Title Report, and Seller shall protect Buyer against or remove as a lien or encumbrance any such matter arising prior to the Closing except those caused by Buyer.

(E) The Property is not subject to any written or oral agreement which grants to any person or entity other than the Buyer an option, right of first refusal or other right to acquire any interest in the Property.

(F) Seller has no knowledge of any pending, threatened or contemplated action of eminent domain or any other public or quasi-public taking of all or any portion of the Property.

(G) Seller has not authorized any work on the Property which could result in any mechanics' liens, claims of lien or other claims against the Property, and all bills for work done or material supplied to the Property have been or will be paid prior to the Closing. Seller shall

indemnify, defend, protect and hold Buyer harmless from any unrecorded mechanics', surveyors' or engineers' liens, claims of lien or other claims against the Property occurring or arising for work or services performed at Seller's request to or for the Property prior to the Closing, except for work performed by or on behalf of Buyer.

(H) To Seller's knowledge, there are not any adverse claims of adjoining property owners against the Property; there are no adverse parties in possession of the Property or any part thereof; and there are no encroachments by Seller on the Property or by others in the Property, except as disclosed in the Title Report.

(I) To Seller's knowledge, the Property has not been used by Seller or any of Seller's predecessors in title, nor by anyone else, to generate, store oil, handle, discharge or dispose of hazardous or toxic wastes or substances. Seller is not aware of any proceeding or inquiry by any governmental authority with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from or to other property.

#### 16. BUYER'S REPRESENTATIONS AND WARRANTIES.

Buyer represents, warrants and covenants to Seller those matters set forth below, with the understanding that Seller shall rely upon said representations, warranties and covenants.

(A) Buyer is a non-profit corporation duly organized and validly existing and in good standing under the laws of the State of Arizona.

(B) Buyer has full power and authority to enter into this Agreement.

(C) This Agreement is a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject as to the enforceability to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium and other similar laws.

#### 17. SELLER'S CONDITIONS PRECEDENT TO CLOSING.

The obligations of Seller under this Agreement are subject to satisfaction of all of the conditions set forth herein. Buyer may waive any or all of such conditions in whole or in part, but any such waiver shall be effective only if made in writing. After the Closing, any condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by Seller of any of its rights or remedies if Buyer defaults in the performance of any covenant or agreement to be performed by Buyer under this Agreement or if Buyer breaches any representation or warranty made by Buyer herein. If any condition set forth in this Section is not fully satisfied or waived in writing by Seller, this Agreement shall terminate, but without releasing Buyer from liability if Buyer defaults in the performance of any covenant or agreement to be performed by Buyer under this Agreement, or if Buyer breaches any such representation or warranty made by Buyer before such termination. The Seller's additional conditions are:

(A) On the Closing Date, Buyer shall not be in default in the performance of any covenant or agreement to be performed by Buyer under this Agreement.

(B) On the Closing Date, all representations and warranties made by Buyer herein shall be true and correct as made on and as of the Closing Date.

18. BUYER'S CONDITIONS PRECEDENT TO CLOSING.

The obligations of Buyer under this Agreement are subject to satisfaction of all of the conditions set forth herein. Seller may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing. After the Closing, any condition that has not been satisfied shall be treated as having been waived in writing. No such waiver shall constitute a waiver by Buyer of any of its rights or remedies if Seller defaults in the performance of any covenant or agreement to be performed by Seller under this Agreement or if Seller breaches any representation or warranty made by Seller herein. If any condition set forth in this Section is not fully satisfied or waived in writing by Buyer, this Agreement shall terminate, but without releasing Seller from liability if Seller defaults in the performance of any covenant or agreement to be performed by Seller under this Agreement, or if Seller breaches any such representation or warranty made by Seller before such termination. The Buyer's additional conditions are:

(A) On or prior to the Closing Date, Buyer shall have approved the survey of the Property, if any, performed by the surveyor as provided for herein.

(B) On or prior to the Closing Date, Buyer shall approve the commitment for title insurance issued as provided for herein.

(C) On or prior to the Closing Date, Buyer shall have approved the structural soundness of the building based upon the examination of the Property performed by the architect and/or structural engineer as provided for herein.

(D) On or prior to the Closing Date, Buyer shall have approved all environmental surveys performed as provided for herein.

(E) On or prior to the Closing Date, Buyer shall have approved any termite and pest inspection report as provided for herein.

(F) On or prior to the Closing Date, Buyer shall have inspected and approved the condition of the Elks Theatre.

(G) On the Closing Date, Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement.

(H) On the Closing Date, all representations and warranties made by Seller herein shall be true and correct as if made on and as of the Closing Date.

(I) On or prior to the Closing Date, Seller shall have completed the repairs to the winch identified herein.

(J) On the Closing Date, the Title Company shall be irrevocably committed to issue an American Land Title Association Standard Owner's Policy of Title Insurance, with liability equal to the total purchase price for the Property, insuring Buyer that fee title to the Property is vested in the Buyer, subject only to the Permitted Exceptions.

19. CONVEYANCE OF THE PROPERTY.

Seller shall convey to Buyer good and marketable fee title to the Property, by a duly executed and acknowledged warranty deed ("Warranty Deed"), free and clear of all liens, encumbrances, leases, easement, restrictions, rights, covenants and conditions, except for: (i) those matters set forth on Schedule "B" of the Commitment furnished to Buyer as provided for herein, (ii) matters shown by a correct survey of the Property, if any, and (iii) any other matters created, permitted or approved by Buyer.

20. CLOSING MATTERS.

(A) On or before the Scheduled Closing Date, Seller shall deposit with Escrow Agent, for delivery to Buyer at the Closing, the following items, which shall be in form satisfactory to Buyer and be duly executed and acknowledged (where applicable): (i) a Warranty Deed conveying fee simple title to the Property to Buyer, subject only to the Permitted Title Exceptions; (ii) an Affidavit of Real Property Value; (iii) an affidavit of Seller's non-foreign status, as required herein; and (iv) such other documents as may be required by Escrow Agent.

(B) On or before the Scheduled Closing Date, Buyer shall deposit with Escrow Agent, for delivery to Seller at the Closing the sum of One Million Dollars (\$1,000,000) in cash or certified funds.

(C) All real property taxes and assessments, if any, shall be prorated as of the Closing Date on the latest information available to the Escrow Agent. All Escrow fees and all other closing costs shall be charged to and paid for by the Buyer.

21. CLOSING

Seller and Buyer shall cause the following to occur at the Closing on the Closing Date:

(A) The Warranty Deed for the Property, duly executed and acknowledged by Seller, shall be recorded in the office of the County Recorder of Yavapai County, Arizona.

(B) An Affidavit of Property Value, as required by A.R.S. § 11-1133, duly executed and acknowledged by Seller and Buyer, shall be filed in the office of the County Recorder of Yavapai County, Arizona.

(C) Seller shall execute and deliver to Buyer a Certificate of Non-Foreign Status, pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

(D) Buyer shall deposit the Purchase Price into escrow.

(E) The Title Company shall issue the title insurance policy described in Section 5.

22. POSSESSION.

Possession of the Property and risk of loss will be transferred to Buyer at the Close of Escrow.

23. CLOSING COSTS.

Buyer shall pay the premium for the title insurance policy described herein and the escrow fee charged by the Escrow Agent. If Buyer elects to obtain an extended coverage title insurance policy from the Title Company, in lieu of a standard owner's policy, Buyer shall have the right to do so. All other closing costs shall be paid by Buyer. Any taxes or other assessments, if any, shall be prorated as of Close of Escrow. Any such taxes or other assessments incurred to the date of Close of Escrow shall be charged to Seller. Any such taxes or assessments incurred after the Close of Escrow shall be charged to Buyer.

24. BUYER'S OBLIGATIONS AFTER CLOSING.

Following the Closing Date, Buyer agrees as follows:

(A) Buyer shall assume all operational costs and liabilities for the Elks Theatre, except for the ongoing contracts identified herein.

(B) Buyer will comply with all applicable City codes and be guided by the applicable historical guidelines that are consistent with maintaining the historical appearance of the Elks Theatre.

(C) Buyer will allow all current bookings for the Elks Theatre to take place as planned, a complete list of which is attached hereto as **Exhibit "E"**. However, the Seller shall be responsible for completing its obligations for all currently scheduled productions in **Exhibit "E"**, including providing at its expense all necessary equipment and staff for those productions. Buyer will allow the Elks Theatre to be used for these productions as scheduled and cooperate with Seller as reasonably necessary to complete said productions. In return, the Seller will pay Buyer an amount equal to 25% of the compensation it receives under each booking contract, as rent for the Theatre, within 10 days after receipt by Seller of said compensation for each production. Several bookings for the Elks Theatre made by Seller are for the public benefit and may have no compensation payable to Seller. The Seller will identify those public benefit bookings to Buyer. Upon signature of Buyer to this Agreement, Buyer accepts said public

benefit bookings. Seller shall re-imburse to Buyer any out of pocket costs incurred by Buyer for utilities or similar expenses by reason of those productions, if Buyer requests re-imbursement in writing, within thirty (30) days of event.

Upon close of escrow, Buyer shall notify all producers that Seller has contracted with for productions as set forth in **Exhibit "E"**, that the property has been sold to Buyer, that Buyer will honor the prior scheduled productions, but that at the time of the particular production there may be ongoing restoration construction.

In addition, Seller shall maintain liability insurance, to properly cover the scheduled productions in an amount not less than two million dollars (\$2,000,000), with Buyer as a named additional insured, until all scheduled productions as set forth in **Exhibit "E"** are concluded. Seller shall provide a copy of said insurance policy to Buyer.

(D) Buyer recognizes that the Seller previously received a grant from the Arizona Heritage Fund which has obligations continuing until May 23, 2016. A copy of that grant is attached hereto as **Exhibit "F"**. Buyer agrees to comply fully with those grant obligations.

25. CONDEMNATION.

If any condemnation or eminent domain proceedings are commenced with respect to the Property, or any part thereof, prior to the Closing, Seller shall promptly give Buyer written notice thereof, and Buyer shall have the option, to be exercised within one (1) day after receipt of such notice, to (i) close the purchase of the Property on the Scheduled Closing Date subject to such proceedings, whereupon any award paid or to be paid in connection therewith shall be paid to or assigned to Buyer by Seller at the Closing, or (ii) terminate this Agreement and receive a return of any monies deposited into escrow, whereupon the rights and obligations of the parties to this Agreement shall cease and terminate, except for rights and obligations which by the express terms of this Agreement survive its termination.

26. BROKERS' COMMISSIONS.

Neither party shall have an obligation for any broker commission and neither party has retained a broker.

27. NOTICES.

All notices, requests and other communications hereunder shall be given in writing and either (i) personally served on the party to whom it is given, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as Federal Express or Airborne, or (iv) sent by facsimile to the number set forth below, as long as such facsimile transmission is confirmed as received by the transmission equipment, and is followed the next business day by another permissible means of notice hereunder, addressed as follows:

If to Seller:

City Manager  
City of Prescott  
201 S. Cortez Street  
Prescott, AZ 86303  
Phone (928) 777-1248

With a copy to:

Prescott City Attorney's Office  
221 S. Cortez  
Prescott, AZ 86303  
Phone (928) 777-1325

If to Buyer:

Elks' Theatre & Performing Arts Center  
c/o Lynn van der Heyden  
318 Rimrock Circle  
Prescott, Arizona 86303

With a copy to:

Robert S. Pecharich, Esq.  
Boyle, Pecharich, Cline, Whittington & Stallings, PLLC  
125 N. Granite Street  
Prescott, AZ 86303  
Phone: (928) 445-0122

If to Escrow Agent:

Marti Lichlyter, Escrow Officer  
Empire West Title Agency  
600 West Gurley Street, Suite 100  
Prescott, Arizona 86305  
(928) 778-5044

All notices shall be deemed given when delivered or, if mailed as provided above, on the second day after the day of mailing, and if sent by overnight courier, on the next day after the date of deposit with the courier, and if sent by facsimile, upon machine confirmation of receipt. Any party may change his address for the receipt of notices at any time by giving written notice thereof to the other parties in accordance with the terms of this section. The inability to deliver notice because of a changed address of which no notice was given, or rejection or other refusal to

accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

28. SELLER'S REMEDIES.

Provided Seller is not in default hereunder, in the event the escrow hereunder fails to close because of a breach by the Buyer, Seller shall not be entitled to specifically enforce this Agreement. In that event, Seller's only remedy shall be to terminate this Agreement. In the event of a breach by Buyer, Buyer shall pay any escrow fees incurred.

29. BUYER'S REMEDIES.

Provided Buyer is not in default hereunder, in the event the escrow hereunder fails to close because of a breach by the Seller, Buyer shall not be entitled to specifically enforce this Agreement. In that event, Buyer's only remedy shall be to terminate this Agreement. In the event of a breach by Seller, Seller shall pay any escrow fees incurred.

30. TERMINATION WITHOUT BREACH.

In the event that a termination of this Agreement occurs without a breach by either party, and except as otherwise provided for herein, the escrow provided for herein shall be immediately canceled.

31. RIGHT TO CURE.

The breach by either party of any representation or warranty under this Agreement or such party's failure to perform any covenant, condition or obligation hereunder shall constitute a default hereunder, and the non-breaching party may exercise its remedies, including termination of this Agreement, only if such breach or nonperformance continues more than five (5) business days following the date of notice by the other party specifying such breach or nonperformance.

32. AFFIDAVIT OF NON-FOREIGN STATUS; IRS FORM 1099B.

Seller shall deliver or cause to be delivered to Escrow Agent at the Close of Escrow an affidavit executed by Seller under penalty of perjury setting forth Seller's taxpayer identification number and stating that Seller is not a foreign person, in accordance with Internal Revenue Code Section 1445(b)(2). Seller shall also execute and deliver to Escrow Agent at the Close of Escrow a copy of IRS Form 1099B for filing by Escrow Agent with the Internal Revenue Service (the "IRS"). Escrow Agent, as the party responsible for closing the transaction contemplated hereby within the meaning of Section 6045(e) (2) (A) of the Internal Revenue Code of 1986, as amended (the "code"), is instructed to file all necessary information reports, returns and statements (collectively the "reports") regarding the transaction required by the Code, including, but not limited to, the reports required pursuant to Section 6045 of the Code.

33. CLOSING PROTECTION LETTER.

If Escrow Agent acts as an agent for an underwriter and does not issue policies of title insurance, Escrow Agent agrees that, as a condition to acting as the escrow agent for this transaction, it shall cause its underwriter (the "title insurer") to issue to Seller and Buyer, within twenty (20) days after the Opening of Escrow, an escrow and closing protection letter, insured escrow and closing service, or statement of service responsibility in written form satisfactory to both Seller and Buyer.

34. MISCELLANEOUS.

(A) This Agreement and the exhibits attached hereto or to be attached hereto, embody the entire agreement between the parties in connection with this transaction, and there are no oral agreements existing between the parties relating to this transaction that are not expressly set forth herein and covered hereby; this Agreement may not be modified except in a writing signed by all parties.

(B) Time is of the essence of this Agreement.

(C) In the event either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the sole remedies shall be as specified herein.

(D) The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

(E) This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement.

(F) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest and assigns; provided, however, that no assignment of this Agreement shall in any way relieve the assignor of its obligations hereunder. Buyer may assign its rights pursuant to this Agreement by giving written notice of such assignment to Seller and the Escrow Agent.

(G) This Agreement shall be construed and interpreted under, governed and enforced according to the laws of the State of Arizona.

(H) Cancellation in the Event of Conflict. The parties hereby note that either party hereto may cancel this agreement in the event of a conflict of interest as defined by A.R.S. § 38-511, the provisions of which are incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last date set forth below their respective signatures.

**SELLER:**

CITY OF PRESCOTT

By \_\_\_\_\_  
Marlin D. Kuykendall  
Its: Mayor

**BUYER:**

ELKS' THEATRE &  
PERFORMING ARTS CENTER

By \_\_\_\_\_  
Andrea Smith  
Its: President

Attest: \_\_\_\_\_  
Lynn Mulhall  
City Clerk

Approved as to form:

By \_\_\_\_\_  
City Attorney

NMG PurchaseAgree 12.5.12  
RSP:ElksThreater:Purchase

AGREEMENT AND CONSENT BY ESCROW AGENT

The undersigned, Empire West Title Agency, hereby agrees to (i) accept the foregoing Real Estate Purchase Agreement as instructions to the undersigned, (ii) act as Escrow Agent under said Agreement in consideration of its fees normally charged in such transactions, and (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

EMPIRE WEST TITLE AGENCY

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

Its: \_\_\_\_\_

**EXHIBIT "A"**

**PARCEL 1:**

All that portion of the West two-thirds of Lots 2, 4, 6, 8 and 10, Block 15, CITY OF PRESCOTT, according to the plat of record in Book 4 of Maps, Page 22, records of Yavapai County, Arizona, described as follows:

**BEGINNING** at the Northwest corner of said Lot 2, Block 15; thence Easterly 100 feet along the Northerly boundary of said Lot 2;  
Thence Southerly, parallel with the Westerly boundary of Lots 2, 4, and 6 of said Block 15, a distance of 64.44 feet, more or less, to the centerline of a load bearing wall and to the **TRUE POINT OF BEGINNING**;  
Thence continuing Southerly, parallel with the Westerly boundary of Lots 6, 8 and 10 of said Block 15, a distance of 60.56 feet to a point on the Southerly boundary of said Lot 10;  
Thence Westerly 100 feet, along said Southerly boundary, to the Southwest corner of said lot 10;  
Thence Northerly along the Westerly boundary of Lots 10, 8 and 6, a distance of 60.56 feet to said load bearing wall center line;  
Thence Easterly 100 feet along said center line to the **TRUE POINT OF BEGINNING**.

**TOGETHER** with easements, and rights incident thereto, as set forth in that certain instrument recorded November 4, 1982 in Book 1495 of Official Records, page 920, records of Yavapai County, Arizona.

**EXCEPT** title to any mine of gold, silver, cinnabar or copper or to any valid claim or possession held under the existing laws of Congress, as set forth in Patent from United States of America.

**PARCEL 1A:**

**ENTRY WAY EASEMENT**

All that portion of Block 15, CITY OF PRESCOTT, according to the plat of record in Book 4 of Maps, Page 22, records of Yavapai County, Arizona, described as follows:

**BEGINNING** at the Northeast corner of said Block 15, being also the point of intersection of the center lines of Gurley Street and Marina Street;  
Thence Westerly along the center line of said Gurley Street, being also the North line of said Block 15, distant 150.67 feet, more or less;  
Thence Southerly at right angle to said centerline, distant 50.0 feet, more or less, to the inner face of the East wall of the entrance way of that certain building known locally as the Elks Building being the **TRUE POINT OF BEGINNING** of this description;  
Thence, continuing Southerly along the face of said wall, distant 3.9 feet, more or less to an angle point; thence, Easterly at a right angle along the face of a wall, distant 3.0 feet, more or less to an angle point; Thence Southerly at a right angle, along the face of a wall, distant 10.1 feet, more or less to an angle point; thence, Easterly at a right angle, along the face of a wall, distant 1.1 feet, more or less to an angle point; Thence, Southerly at a right angle, along the face of a wall, distant 26.6 feet, more or less; to an angle point; thence, Westerly, at a right angle, along the face of a wall, and the end of the entrance way, distant 21.1 feet;  
Thence, Northerly, at a right angle, along the face of a wall, distant 26.6 feet, more or less, to an angle point; thence, Easterly, at a right angle, along the face of a wall, distant 1.1 feet, more or less,

to an angle point.

**PARCEL 1B:**

**LOBBY EASEMENT:**

That portion of the rectangle of the approximate size of 100 feet by 23.33 feet which is situated within the office building lying Northerly of the party wall and Southerly of the face of the wall referred to in the above entry way easement as "the end of the entry way" together with the Easterly and Westerly extensions of the face of said wall, which presently serves the Theater and is accessible either from the Theater or from the North-South alley abutting the Elks building on the West.

**PARCEL 2:**

All that portion of the West two-thirds of Lots 2,4,6,8 and 10, Block 15, of the Original Townsite of Prescott as recorded in Book 4 of Maps and Plats, Page 22, on file in the office of the Yavapai County Recorder, Yavapai County, Arizona, commonly known as the Foyer, Lower Lobby and Upper Lobby, including the Mens and Womens Restrooms, more particularly described as follows;

Commencing at the Centerline intersection of Marina and Union Streets, point being the southeast corner of said Block 15;

**THENCE, North 00°1 0'31" East (assumed basis of bearing), 353.41 feet to the Centerline intersection of Marina and Gurley Streets, point being the northeast corner of said Block 15;**

**THENCE, South 72°42'42" West, 157.81 feet to the northeast corner of the Foyer of the Elks Theater and the POINT OF BEGINNING;**

**THENCE, South 00°50'32" East, 6.55 feet;**

**THENCE, North 89°09'28" East, 3.63 feet;**

**THENCE, South, 10.90 feet;**

**THENCE, East, 0.40 feet;**

**THENCE, South, 28.30 feet to a point on a tangent curve concave to the Northeast having a radius of 8.47 feet and a center point which bears East;**

**THENCE, continuing along said curve through a central angle of 81°08'23", and an arc length of 11.99 feet;**

**THENCE, North, 4.30 feet;**

**THENCE, East, 16.00 feet;**

**THENCE, South, 4.40 feet;**

**THENCE, East, 19.85 feet;**

**THENCE, South, 11.80 feet;**

**THENCE, North 89°46'10" West, 96.92 feet;**

**THENCE, North, 10.85 feet;**

**THENCE, East, 20.98 feet;**

**THENCE, North, 11.63 feet;**

**THENCE, East, 11.87 feet;**

**THENCE, North, 25.70 feet;**

**THENCE, East, 0.55 feet;**

**THENCE, North, 10.90 feet;**

**THENCE, North 89°45'01" East, 3.55 feet;**

**THENCE, North 00°14'59" West, 6.58 feet to the northwest corner of the Foyer;**

**THENCE, South 89°33'56" East, 12.85 feet to the POINT OF BEGINNING.**

Limits of this area are to be considered horizontally to the Center of any and all

**common walls, and vertically to the Bottom of the Upper Floor.**

**PARCEL 3:**

**An easement from Seller to Buyer for any encroachment of the fire escape of the Elks Building located at 117 E. Gurley Street, Prescott, Arizona onto the City of Prescott's right of way to the West; for any encroachment of the Elks Building onto City of Prescott's right of way of Gurley Street to the North consisting of: building corner, ramp, bottom of steps, corner of stone foundation, bottom of stone theater steps, stone foundation, and for airspace encroachment of existing Theater Marquee; and for any encroachments onto City of Prescott's right of way to alley to the west consisting of stone foundation and building line; for any other pre-existing encroachments of the historic Elks Building onto the City of Prescott's right of ways (together with Buyer's right and obligation to maintain and repair said pre-existing encroachments).**

**EXHIBIT "D"**

**BILL OF SALE FOR PERSONAL PROPERTY ITEMS  
INCLUDED IN THIS TRANSACTION**

**BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City of Prescott, an Arizona municipal corporation, ("Seller"), with its principal place of business located at 117 E. Gurley Street, Prescott, Arizona hereby sells, transfers and assigns to The Blks' Theatre and Performing Arts Center, Inc., an Arizona Non-Profit Corporation ("Buyer"), with its principal place of business located at 105 S. Cortez St., Prescott, Arizona 86303, all right, title and interest it has to the following described property:

See Exhibit "1" Attached Hereto

Seller warrants that it is the owner of the above-described property, warrants good and marketable title to it, and warrants that the property is unencumbered as of the date of this contract.

Executed at Prescott, Arizona, this \_\_\_ day of \_\_\_\_\_, 2012.

Seller: City of Prescott

By \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT "B-1"

ELKS OPERA HOUSE ASSET INVENTORY

Bar Assets

Quantity	Item Description
1	Hoshizaki Ice Machine + Bin 1000 for Machine, 800 for Bin
1	Front Load Industrial Dish Washer
1	Top-Load Refrigerator
1	Double Door Front Load Refrigerator
1	Cash Register
1	Coffee Machine (rented from Shamrock Foods)
1	Popcorn Machine
156	Libbey 222 Vina Wine Glasses 13 cases @ 30 each
1	full-size refrigerator (green room)
1	1/4 size refrigerator (green room)
2	Microwave
1	Warming Rack (stage)
1	Half size glass front refrigerator (stage)

EXHIBIT "B-1"

ELKS OPERA HOUSE ASSET INVENTORY

Furniture Assets

Quantity	Item Description
23	Opera Box chairs - 300each
146	Gold Chavari Chairs - 125each
10	Black half circle trash cans - 200each
30	Black Performance Chairs - 75each
4	Mity-Lite 1.5 x 4 - Rectangle Tables - 210each
6	Mity-Lite 3 x 6 - Rectangle Tables - 210each
3	Mity-Lite 3 x 8 - Rectangle Tables - 225each
1	3x4 - Rectangle Table
4	Mity-Lite 3 x 6 - Serpentine tables -330each
10	Mity-Lite 6ft rounds - 380each
10	Mity-Lite 6ft halves - 280each
1	Genie AWP-25s Lift
2	podium
1	large work desk (green room)
1	work desk (green room)
6	Tableside Champagne racks 75each
1	Green orchestra pipe & drape
3	Marlet Mats 40x10 - 1200each
5	bar stools wood - 20 each

EXHIBIT "B-1"

ELKS OPERA HOUSE ASSET INVENTORY

Light Assets

Quantity	Item Description
16	ETC Source 4 750 (2 in Storage) 350 each
36	Parnel Source 4 (8 in storage) 280 each
6	Roboscan Pro 918 Martin (2 in storage not working) 2300 each
1	Bubble machine
2	Lycian Midget 1206 Tri-pod Spotlights 1500each
10	Apollo MXR Color Scroller - 350 each
1	Apollo MXR Color Scroller powerbox
1	Arena Hazer2
2	Roboscan Effect machine fire&Ice - 250each
19	Scoop lights (7 Storage) 250 each
15	Clamp Muslo Stand Lights - 25 each
4	Round Clamp lamps - 20 each
10	showbiz quartzline halogen lamp 575w -15each
9	showbiz quartzline halogen lamp 500w -15each
22	showbiz quartzline halogen lamp 750w - 15each
12	showbiz quartzline halogen lamp 1000w - 20each
20	Parnell Source 4 lens kit - 25each
12	Par 64 Lens kit - 25each
1	Hitachi CPX444 Projector
1	ETC Element Light board
1	InFocus IN5344 Projector

EXHIBIT "B-1"

ELKS OPERA HOUSE ASSET INVENTORY

Sound Assets

Quantity	Item Description
1	Crest HP-Eight 40-frame mixing console
1	Lexicon MPX 200 Digital Reverb
1	Tascam CD-OU1 Professional CD Player
2	Marentz CDR632 CD player/recorder \$500 each - In storage
4	Shure Beta 58A dynamic microphones (compression) 150 each
4	Shure SM58 dynamic microphones 100 each
2	Shure SLX/24 Beta 58 - 200 each
4	lapel wireless Microphones - 300 each
5	Countryman EC6 Headworn wireless Microphones - 300 each
1	LC 1100 DB Active direct box
5	EV SxA100+ 12" two way monitors - 600 each
1	EV Netmax Digital Matrix Controller
3	EV CP2200 (2X 1200W into 2 ohms) (Monitor 1,2,3)-1200 each
2	EV TG5 (2X 1900 W continuous into 4 ohms) Top/Bottom L+R 4000 each
1	EV TG7 (microprocessor, 2X 1900 W continuous into 4 ohms) Top/Bottom L+R
3	EV CP1800 (2X 1200W into 2 ohms)-1000 each - 2 spare - 1000 each
1	EV CP4000 - spare
1	Ashly Protea 4 channel 24bit Graphic Equalizer
1	Ashly Protea 4.85 Amplifier
1	Ashly TRA 2150 Amplifier
1	Numerk IDJ2 Mixing Console for iPod
1	Sony BluRay Disc Player
2	Toshiba DVD Player - 150 each
9	25 ft microphone cables - 25 each
0	50 ft microphone cables - 50 each
1	100 ft microphone cable
1	Keyboard Stand
4	Upright mic stands- 30 each
9	Boom mic stands - 50 each
9	Monitor Speaker Cables - 15ft - 75 each
1	6' Howard (Kawal) Grand Piano (Walnut Finish) USED
1	Upright Piano Baldwin Hamilton
3	Vizio Flat Screen TV - 32 Inch - 300 each
2	20 Inch LCD Monitors - 150 each
4	Quacom headsets 250 each
12	shure six4 wireless distribution consoles-500 each
2	shure UA870 directional antenna amplifier - 250 each

**EXHIBIT "C"**

**SELLER'S PERSONAL PROPERTY ITEMS  
NOT INCLUDED IN THIS TRANSACTION**

**SELLER'S PERSONAL PROPERTY ITEMS  
NOT INCLUDED IN THIS TRANSACTION**

**All office equipment including but not limited to:**

**Computers**

**Printers**

**Filing cabinets, Telephones**

**Miscellaneous office items which are used by City staff in the operation and management of the Elks' Theater.**

**(The City will leave in place cable, fiber optic, and telephone systems. City will disconnect all personal property items from these systems upon completion of its contractual obligations for event bookings which occur after the closing, as described in **Exhibit "E"**.)**

**EXHIBIT "D"**

**LIST OF ELKS' OPERA HOUSE FOUNDATION  
PERSONAL PROPERTY**

## ELKS OPERA HOUSE FOUNDATION INVENTORY

1. Armoire
2. 2 framed ceiling tiles
3. Glassware
  - a. A. 3 coffee mugs
  - b. 2 boxes of 72 plus 29 shot glasses
  - c. 5 boxes of 48 plus 29 stemless wine glasses
  - d. 4 boxes of 48 plus 13 stemmed wine glasses
4. 4 "Elk in the Attic" books
5. 15 "Elks Opera House" books
6. 8 packages of note cards
7. 9 restoration DVD's
8. 4 flashlights
9. 6 pillows
10. 4 floral arrangements
11. 1 brass coat rack
12. 1 heavy metal easel
13. 1 silver colored upholstered couch
14. 3 boxes assorted Christmas ornaments
15. 1 - 5' pine tree
16. 3 - 2' pine tree
17. 1 wooden tray
18. 1 dry easel (red)
19. 1 Victorian gold edged mirror (Wynen)
20. Miscellaneous brochures
21. Stairway table & wall mirror
22. Hallway table
23. 2 Filing cabinets
24. Antique cash register at concessions
25. Antique desk in 2<sup>nd</sup> lobby
26. Fancy gold easel
27. Grand Canyon Painting Bonnie Casey
28. Items in display case belonging to John Wright BPOE 333 Gavel, book, membership card, Elks pin, plaque
29. 1 Billy Joel Painting
30. 1 "honor board" on easel

**EXHIBIT "E"**

**LIST OF CURRENT CONTRACT BOOKINGS**



## *Elks Opera House Events Scheduled Through & Including 12/31/13*

Only contracted events are included.

Event Title	Producer/Renter	Date(s)
Miracle on 34 <sup>th</sup> Street (Prescott Center for the Arts)	Prescott Center for the Arts	11/30 - 12/2 12/5 & 12/6 12/8 & 12/9
Acker Night	City of Prescott	12/7
Blue Christmas	Lonely Street Prod.	12/16
Wedding	N/A	12/29
New Year's Eve	EOH Foundation	12/31
A Salute Bobby Darin	Lonely Street Prod.	1/13 (2013)
Prescott Opry	GAC	1/17
Yesterday Once More - Karen Carpenter	TAD Mgmt.	1/19
Salute to the Blues Brothers	Lonely Street Prod.	1/27
The Platters	TAD Mgmt.	2/5
Piano Pumpin'Rock n Roll Revue	Lonely Street Prod.	2/9
Prescott Opry	GAC	2/14
Abba Fab	TAD Mgmt.	2/16
Doo Wop Divas	Lonely Street Prod.	2/24
Complete Doors Experience	TAD Mgmt.	3/1
Sons of the Pioneers	Susan Holden	3/2
Last Stop Bakersfield - West Coast Country	Lonely Street Prod.	3/10
Prescott Opry	GAC	3/14

Suzy Bogguss	Patty Wagon Ent.	3/15
Big Band Theory - Buble & Sinatra	TAD Mgmt.	3/16
Best of Dean Martin	Lonely Street Prod.	3/24
The Piano Man	TAD Mgmt.	4/6
Prescott Opry	GAC	4/11
Bella Donna	TAD Mgmt	4/13
Epic Rides - Whiskey Offroad	Epic Rides	4/26- 27
EOHF - Opera	EOH Foundation	5/12
Acorn Montessori Graduation	N/A	5/14
YMCA Dance Recital	YMCA	5/30 - 6/1
EOHF - Opera	EOH Foundation	6/9
EOHF - Opera	EOH Foundation	7/14
EOHF - Sock Hop	EOH Foundation	7/20
EOHF - Elk in the Attic	EOH Foundation	7/25-28
EOHF - Opera	EOH Foundation	8/11
Folk Music Festival	Sharlot Hall	10/4

**EXHIBIT "T"**  
**HERITAGE GRANT RESTRICTIONS**

When recorded, mail to:  
Arizona State Parks  
1900 W. Washington  
Phoenix, Arizona 85007

**PRESERVATION AND CONSERVATION EASEMENT DEED**  
(Use when Grant Participant Owns Property to be Improved by Grant)

Grant Project Title: Elks Opera House-2<sup>nd</sup> Lobby Restoration  
Grant Project #: 640551

THIS PRESERVATION AND CONSERVATION EASEMENT DEED, made this 28<sup>th</sup> day of March, 2006 ("Effective Date") by and between The City of Prescott (Participant) and the Arizona State Parks Board (Board).

WHEREAS, Participant is owner in fee simple of certain real property located in Yavapai County, Arizona, more particularly described in Exhibit A (the "Property");

WHEREAS, the Board is authorized to accept preservation and conservation easements to protect property significant in national and Arizona history and culture under Arizona Revised Statutes §§ 41-511.03, 41-511.05, and 33-271 through 33-276;

WHEREAS, because of its architectural, historic, archaeological and/or cultural values and significance, the Property was listed in the Arizona Register on the National Register of Historic Places on \_\_\_\_\_;

WHEREAS, Participant and the Board recognize the architectural, historic, archaeological and/or cultural values and significance of the Property, and have the common purpose of conserving and preserving those values and significance;

WHEREAS, the grant of a preservation and conservation easement on the Property by Participant to the Board will assist in preserving and maintaining the Property and its architectural, historic, archaeological, and/or cultural features for the benefit of the people of the State of Arizona and the United States of America;

WHEREAS, to that end, Participant desires to grant, and the Board desires to accept a preservation and conservation easement on the Property (the "Easement") for the period of 10 years starting on the effective date (the "Term of Public Use") which shall run with the land and be binding upon Participant's successors and assigns.

THEREFORE, in consideration of the sum of \$16,000 that Participant received as grant assistance through the Board from the Arizona State Parks Heritage Fund to be used to improve the Property, Participant does voluntarily grant and convey to the Board the Easement for the Term of Public Use.

**I. PURPOSE**

The purpose of the Easement is to assure that the architectural, historic, archaeological and/or cultural features of the Property will be retained and maintained for the Term of Public Use, to prevent any use or change of the Property that will significantly impair or interfere with

the Property's architectural, historic, and/or cultural values and significance, and to provide public access.

## II. PARTICIPANT'S COVENANTS

### During the Term of Public Use:

A. The Participant agrees to assume the cost of the continued maintenance and repair of the Property and to preserve and/or enhance the architectural, historic, and/or cultural features of the Property that made it eligible for listing in the Arizona Register or the National Register of Historic Places.

B. The Participant agrees that no visual or structural alterations will be made on the property during the term of this Basement without prior written permission of the Board.

C. The Participant agrees that the Board, and their agents or designees, shall have the right to inspect the Property at all reasonable times in order to ascertain whether or not the conditions of this Basement are being observed.

D. The Participant agrees that when the Property is not clearly visible from a public right-of-way or includes interior work funded with Arizona Heritage Fund grants, the property will be open to the public for the purpose of viewing the grant-funded work no less than 12 days a year and at other times by appointment. The Participant may charge a reasonable, non-discriminatory admission fee, comparable to fees charged at similar facilities in the area. Notice of the time and dates when the facility will be open must be published in newspapers of general circulation in the community in which the Property is located at least once per year. Participant must keep documentation of the notice publications, which will be available for inspection by the Board or their agents or designees during the Term of Public Use.

E. In the event that Participant breaches any of the terms of this Basement, Participant agrees to reimburse the Board the amount of the grant plus all fees and expenses incurred in connection with the enforcement of the Basement, including but not limited to court costs, expert and attorney's fees, and interest.

F. Participant agrees to indemnify, release and hold harmless the Board, its employees, officers, agents and assignees from any costs, claims, damages, reimbursements, or payments related to this Basement. Participant additionally agrees that the Board, its employees, officers, agents and assignees have no obligation for maintaining, repairing, or administering the Property or the Basement.

G. Participant agrees to provide timely notice to the Board of the sale or transfer of the property, and to provide the new owner or occupant with a copy of this Basement.

H. Participant hereby acknowledges that Participant has read and understands the Participant Agreement and its attachments, which are attached as Exhibit "A."

IN WITNESS WHEREOF, the Participant and the Board have executed this Basement which shall become effective immediately upon signature by both parties.

**PARTICIPANT**

*Rowle P. Simmons*  
Signature

Rowle P. Simmons  
Print Name

Mayor  
Title

5/9/06  
Date

**ARIZONA STATE PARKS BOARD**

*Jay C. Zemann*  
Signature

JAY C. ZEMANN  
Print Name

Asst. Director  
Title

5/23/06  
Date

**ACKNOWLEDGMENT BY PARTICIPANT**

State of Arizona  
County of Yavapai

The foregoing instrument was acknowledged before me this 9th day of May, 2006 by

Rowle P. Simmons  
Participant

*Elizabeth A. Burke*  
Notary Public



**ACKNOWLEDGMENT BY BOARD**

State of Arizona  
County of Maricopa

The foregoing instrument was acknowledged before me this 23rd day of May, 2006 by

JAY ZEMANN  
Arizona State Parks Board

*Wanda Strong*  
Notary Public

