

RESOLUTION _____

**A RESOLUTION TO CONSENT TO THE ASSIGNMENT OF A CERTAIN
LEASE AGREEMENT, AS AMENDED, FOR THE BENEFIT OF
OAKLAND & FRATERNAL HISTORIC CEMETERY PARK; TO
AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE A THIRD
AMENDMENT TO LEASE AGREEMENT; AND FOR OTHER
PURPOSES.**

WHEREAS, on June 11, 1959, the City and East 26th Street Development Corporation (“Original Lessee”) entered into a certain Lease Agreement (“Original Lease Agreement”) for the benefit of the Oakland & Fraternal Historic Cemetery Park, which Original Lease was recorded with the Pulaski County Circuit Clerk’s Office at Book 1,029, Pages 238 through 244, and had an expiration date of December 11, 1974; and

WHEREAS, by Amendment to Lease Agreement dated January 27, 1977 (the “First Amendment”), the City and the Original Lessee amended the Original Lease Agreement by agreeing to honor a Sub-Lease contraction executed February 23, 1962, with a sublessee, Worthen Bank and Trust Company, and consented to the assignment by the Original Lessee of its rights in the Original Lease Agreement, as amended, to S. Sherman, Ruby S McCaskill and Sam Strauss, Jr., as Trustee for Steven Strauss, Sam Strauss, III, and Susan Strauss (“First Assignees”); and

WHEREAS, by Assignment of Lease dated January 20, 1977 (“First Assignment”), recorded with the Pulaski County Clerk’s Office at Book 1,740, Pages 667 through 672, the Original Lessee assigned the Original Lease Agreement, as amended, to First Assignees; and

WHEREAS, by Assignment of Lease dated July 25, 1983 (“Second Assignment”), recorded September 15, 1983, as Instrument No. 83-47637, Ruby S. McCaskill assigned to Lee S. Thalheimer and Bruce Thalheimer all her undivided interest as a lessee in the Original Lease Agreement, as amended; and

WHEREAS, the First Amendment was modified to change the name of one of the First Assignees from S. Sherman to Sherman Realty Co., Inc. by initialing and recorded same as Instrument No. 83-47637 (the “Modified First Assignment”); and

WHEREAS, by an Amendment and Renewal of Lease Agreement last executed on October 11, 2001 (the “Second Amendment”), recorded with the Pulaski County Clerk’s Office on October 22, 2001, as Instrument No. 2001082279, the City, as lessor, and Lessee East Roosevelt Road Shopping Center, LLC, as the assignee of the Original Lease Agreement, as amended, extended the term of the Original Lease

1 Agreement, as amended, for an additional thirty (30) years; to make certain improvements to the
2 buildings thereon, namely a Kroger Store and a Family Dollar Store; to obtain additional rent for the
3 benefit of Oakland & Fraternal Historic Cemetery Park; and other matters set forth therein.

4 **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY**
5 **OF LITTLE ROCK, ARKANSAS:**

6 **Section 1.** The Little Rock City Board of Directors hereby consents to the assignment of the
7 Original Lease Agreement, as amended, by East Roosevelt Road Shopping Center, LLC, to Assignee
8 LMS Properties, LLC.

9 **Section 2.** The Board of Directors hereby authorizes the Mayor and City Clerk to execute the Third
10 Amendment to Lease Agreement attached to this resolution as Exhibit A to memorialize this consent to
11 assignment of the Original Lease Agreement, as amended.

12 **Section 3. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or
13 word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or
14 adjudication shall not affect the remaining portions of the resolution which shall remain in full force and
15 effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the
16 resolution.

17 **Section 4. Repealer.** All laws, ordinances, resolutions, or parts of the same, that are inconsistent
18 with the provisions of this resolution, are hereby repealed to the extent of such inconsistency.

19 **PASSED: October 20, 2015**

20 **ATTEST:**

APPROVED:

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22 _____
23 **Susan Langley, City Clerk**

_____ **Mark Stodola, Mayor**

24 **APPROVED AS TO LEGAL FORM:**

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26 _____
27 **Tom Carpenter, City Attorney**

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1 Exhibit "A"

2 THIRD AMENDMENT TO LEASE AGREEMENT

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4 **THIS THIRD AMENDMENT TO LEASE AGREEMENT** ("Third Amendment") is made and
5 entered into by and between the City of Little Rock (hereinafter "Lessor" or "City") whose address is 500
6 West Markham Street, Little Rock, Arkansas, East Roosevelt Road Shopping Center, LLC, an Arkansas
7 limited liability company (hereinafter "Lessee"), and the LMS Properties, LLC (hereinafter "Assignee"),
8 whose address is 111 Center Street, Suite 1510, Little Rock, Arkansas, 72201.

9 **W I T N E S S E T H:**

10 **WHEREAS**, on June 11, 1959, the City and East 26th Street Development Corporation ("Original
11 Lessee") entered into a certain Lease Agreement ("Original Lease Agreement") for the benefit of the
12 Oakland & Fraternal Historic Cemetery Park, which Original Lease was recorded with the Pulaski County
13 Circuit Clerk's Office at Book 1029 at pages 238 through 244 and had an expiration date of December 11,
14 1974; and

15 **WHEREAS**, by Amendment to Lease Agreement dated January 27, 1977 (the "First Amendment"),
16 the City and the Original Lessee amended the Original Lease Agreement by agreeing to honor a Sub-
17 Lease contraction executed February 23, 1962 with a sublessee, Worthen Bank and Trust Company, and
18 consented to the assignment by the Original Lessee of its rights in the Original Lease Agreement, as
19 amended, to S. Sherman, Ruby S McCaskill and Sam Strauss, Jr, as Trustee for Steven Strauss, Sam
20 Strauss, III and Susan Strauss ("First Assignees"); and

21 **WHEREAS**, by Assignment of Lease dated January 20, 1977 ("First Assignment"), recorded with
22 the Pulaski County Clerk's Office at Book 1740 Page 667 through Page 672, the Original Lessee assigned
23 the Original Lease Agreement, as amended, to First Assignees; and

24 **WHEREAS**, by Assignment of Lease dated July 25, 1983 ("Second Assignment"), recorded
25 September 15, 1983, as Instrument Number 83-47637, Ruby S. McCaskill assigned to Lee S. Thalheimer
26 and Bruce Thalheimer all her undivided interest as a lessee in the Original Lease Agreement, as amended;
27 and

28 **WHEREAS**, the First Amendment was modified to change the name of one of the First Assignees
29 from S. Sherman to Sherman Realty Co., Inc. by initialing and recorded same as Instrument Number 83-
30 47637 (the "Modified First Assignment"); and

31 **WHEREAS**, by an Amendment and Renewal of Lease Agreement last executed on October 11, 2001
32 (the "Second Amendment"), recorded with the Pulaski County Clerk's Office on October 22, 2001 as
33 Instrument Number 2001082279, the City, as lessor, and Lessee, as the assignee of the Original Lease
34 Agreement, as amended, extended the term of the Original Lease Agreement, as amended, for an

1 additional 30 years; to make certain improvements to the buildings thereon, namely a Kroger Store and a
2 Family Dollar Store; to obtain additional rent for the benefit of Oakland Fraternal Cemetery; and other
3 matters set forth therein; and

4 **WHEREAS**, on _____, the City of Little Rock Board of Directors adopted Resolution
5 No. _____ to authorize consent to the assignment of the Original Lease Agreement, as amended, by
6 Lessee to Assignee; and

7 **WHEREAS**, the City Board of Directors also authorized the Mayor and City Clerk to execute this
8 Third Amendment to Lease Agreement to, *inter alia*, memorialize the consent to the assignment by
9 Lessee to Assignee.

10 **WHEREAS**, the City and Lessee desire to enter into this Third Amendment to Lease Agreement as
11 set forth below.

12 **NOW, THEREFORE, INCONSIDERATION OF THE PREMISES TO BE DEMISED, THE**
13 **INTENTIONS OF THE PARTIES, AND OTHER COVENANTS, CONDITIONS, WARRANTIES**
14 **AND AGREEMENTS HEREINAFTER SET FORTH, IT IS HEREBY AGREED AS FOLLOWS:**

15 **1. CONSENT TO ASSIGNMENT AND AMENDMENT AND RENEWAL OF**
16 **ORIGINAL LEASE AGREEMENT, AS AMENDED.** The City, as lessor, hereby consents
17 to an assignment by Lessee to Assignee of all of Lessee's rights pursuant to the Original
18 Lease Agreement, as amended, and Assignee agrees to assume all liabilities and obligations
19 of Lessee arising pursuant to the Original Lease Agreement, as amended, after the date of the
20 assignment of the Original Lease Agreement, as amended, to Assignee. Upon the assignment
21 to and assumption of the Original Lease Agreement, as amended, by Assignee, the Lessor
22 hereby releases East Roosevelt Shopping Center, L.L.C. from any obligations under the
23 Original Lease Agreement, as amended, occurring after the effective date of such assignment
24 and assumption.

25 **2. SERVICE OF NOTICE.** Upon the assignment of the Original Lease Agreement, as
26 amended, to Assignee, the Assignee agrees to give to the City the Assignee's address for
27 written notice given pursuant to the Original Lease Agreement, as amended.

28 **3. DUPLICATE ORIGINALS, COPIES.** This Third Amendment shall be executed in
29 duplicate originals. Any copy of this Amendment shall be deemed admissible as an original
30 and shall be deemed authentic for any other use.

31 **4. EFFECTIVE DATE.** This Third Amendment shall become effective when signed
32 by all parties hereto and the closing of the transfer of the Lessee's interest in the Original
33 Lease, as amended, from Lessee to Assignee.

34 **5. AUTHORITY.** The officials who executed this Third Amendment hereby represent

1 and warrant that they have full and complete authority to act on behalf of the City and the
2 Lessee, respectively, and that by their signature below, the terms and provisions hereof,
3 constitute valid and enforceable obligations of each party.

4 **6. ASSIGNMENT / SUBLEASE / MORTGAGE.** The Original Lease, as amended,
5 is further hereby amended by adding the following provision:

6 “The Lessee shall not assign or otherwise transfer this Lease, as amended,
7 without the prior written consent of the Lessor, which consent shall not to be
8 unreasonably withheld, conditioned or delayed by Lessor, provided, however, that
9 Lessee shall have the right, without the consent of the Lessor, (i) to sublease all or
10 part of the leased premises during the term of this Lease, subject to the restrictions set
11 forth in Section 7 below; and (ii) to grant a mortgage in Lessee's interest in the Lease
12 to secure Lessee's indebtedness. A consent of Lessor to one assignment shall not be
13 deemed to be a consent to any subsequent assignment by any other person. Consent
14 by Lessor may be given by the City Manager for the City without further
15 authorization or approval by the Board of Directors of the Lessor.”

16 **7. RESTRICTIONS ON SUBLEASES.** The Original Lease, as amended, is further
17 hereby amended by adding the following provisions:

18 No sublease from Lessee to a sublessee shall allow the subtenant use of its
19 premises for any of the following:

- 20 (a) Any unlawful purpose or in any way which would constitute a legal
21 nuisance to an adjoining occupant;
- 22 (b) a discotheque, dance hall, or night club;
- 23 (c) a massage parlor;
- 24 (d) a funeral parlor;
- 25 (e) a bingo parlor;
- 26 (f) any use which emits a strong, unusual, offensive or obnoxious odor,
27 fumes, dust or vapors, or any strong, unusual or offensive sound which
28 can be heard outside the premises, except that any usual paging system
29 may be allowed;
- 30 (g) any assembling, manufacturing, distilling, refining, smelting,
31 agricultural, or mining operation;
- 32 (h) any mobile home park, trailer court, labor camp, junk yard, recycling
33 facility, or stock yard;
- 34 (i) any dry cleaners performing onsite cleaning services;

- 1 (j) any automobile, truck, trailer or recreational vehicles storage, display or
- 2 body shop repair operation;
- 3 (k) any living quarters, sleeping apartments, or lodging rooms;
- 4 (l) any veterinary hospital or animal raising facilities (except this provision
- 5 shall not prohibit pet shops and shall not prohibit the provision of
- 6 veterinary services in connection with pet shops or pet supplies
- 7 business);
- 8 (m) any establishment selling or exhibiting materials or devices which have
- 9 been adjudicated to be pornographic by any court, and any adult
- 10 bookstore, adult video store, or adult movie theater;
- 11 (n) any establishment which sells sex toys;
- 12 (o) any bar or tavern; provided, however, a bar within a restaurant shall be
- 13 permitted;
- 14 (p) any pool or billiard hall, gun range, shooting gallery, or amusement or
- 15 video arcade; and
- 16 (q) any use which creates fire, explosives, or other hazards.

17 **8. ESTOPPEL CERTIFICATES.** The Original Lease, as amended, is further hereby
18 amended by adding the following provision:

19 That within thirty (30) days after written request of the Lessee, Lessor will from
20 time to time issue to the Lessee, to a prospective sublessee or to any mortgagee of
21 either such party, an estoppel certificate stating: (i) whether to the best knowledge of
22 the Lessor, any default exists under the Original Lease, as amended, and, if there are
23 known defaults, specifying the nature thereof; (ii) whether to Lessor's knowledge, the
24 Original Lease, as amended, has been assigned, modified, or amended in any way (or
25 if it has, then stating the nature thereof); and (iii) that to Lessor's knowledge the
26 Original Lease, as amended, is, as of that date, in full force and effect. Such
27 certificate may be executed by the City Manager on behalf of Lessor without further
28 authorization or approval by the Board of Directors of the Lessor.

29 **9. PRIOR LEASE AND AMENDMENT TO PRIOR LEASE.** On the effective date,
30 all other terms of the Original Lease Agreement, as amended by First Amendment and
31 Second Amendment, shall remain in full force and effect, except as amended by this Third
32 Amendment and currently there are no defaults.

33 **IN WITNESS WHEREOF,** the parties have set their hands and seals.

1 **CITY OF LITTLE ROCK**

2 **By:** _____
3 **Mark Stodola, Mayor**

5 **Date:** _____

7 **ATTEST:**

9 _____
10 **Susan Langley, City Clerk**

14 **APPROVED AS TO LEGAL FORM:**

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17 **Thomas M. Carpenter, City Attorney**

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LMS PROPERTIES, LLC

By: _____
, Manager

Date: _____

East Roosevelt Road Shopping Center, LLC

By: _____

Date: _____

1 ACKNOWLEDGMENT

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3 STATE OF ARKANSAS)
4) ss.
5 COUNTY OF PULASKI)
6

7 On this day personally appeared before me the undersigned, a Notary Public within and for the
8 County and State aforesaid, duly qualified and acting, the within named Mark Stodola and Susan
9 Langley, to me well known as the Mayor and City Clerk, respectively, of the City of Little Rock,
10 Arkansas, and state that they had executed the foregoing Third Amendment to Lease Agreement
11 pursuant to the provisions of Resolution No. _____ for the consideration and purposes therein
12 mentioned and set forth.

13 WITNESS my hand and official seal this ____ day of _____, 2015.
14

15 _____
16 Notary Public

17 My Commission expires:
18

19 _____
20 (Notarial Seal)
21

22 ACKNOWLEDGMENT

23
24 STATE OF ARKANSAS)
25) ss.
26 COUNTY OF PULASKI)
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28 On this day personally appeared before me the undersigned, a Notary Public within and for the County
29 and State aforesaid, duly qualified and acting, the within named _____, to me well known as the
30 _____ of LMS Properties, LLC, and state that he had executed the foregoing Third Amendment
31 to Lease Agreement for the consideration and purposes therein mentioned and set forth.

32 WITNESS my hand and official seal this ____ day of _____, 2015.
33

34 _____
35 Notary Public

36 My Commission expires:
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38 _____
39 (Notarial Seal)
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ACKNOWLEDGMENT

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STATE OF ARKANSAS)
) **ss.**
COUNTY OF PULASKI)

On this day personally appeared before me the undersigned, a Notary Public within and for the County and State aforesaid, duly qualified and acting, the within named _____, to me well known as the _____ of East Roosevelt Road Shopping Center, LLC, and state that he had executed the foregoing Third Amendment to Lease Agreement for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and official seal this ____ day of _____, 2015.

Notary Public

My Commission expires

(Notarial Seal)

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