HISTORIC PRESERVATION
EXTERIOR REHABILITATION PROGRAM AGREEMENT

THIS EXTERIOR REHABILITATION PROGRAM AGREEMENT (the "Program Agreement") is made as of the _____ day of _____, 2016 by and between the City of Scottsdale, a municipal corporation organized and existing under the laws of the State of Arizona (the "City") and _____, and _____ (the "Property Owner"), whose principal address is _____, Scottsdale, Arizona 85___.

RECITALS

A. The City has determined that it wishes to make available for the purpose of purchasing conservation easements from the owners of certain property designated on the Scottsdale Historic Register (the "SHR") who agree to maintain such property in accordance with agreed upon specifications (the "Program").

B. The Property Owner, who is the owner of property described hereto on Exhibit “A” (the Property) on which there exists a residential structure (the "Structure"), which Property is located at _____, Scottsdale, Arizona, which is or will be listed on the SHR, submitted an application under the Program to sell a conservation easement on the exterior surfaces or facades of the Structure to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants contained herein, the City and the Property Owner hereby agrees as follows:

1. Purchase Price. The Property Owner hereby offers to sell, and the City agrees to purchase, a Conservation Easement in the form attached hereto as Exhibit “B” for the amount of $_____, (the “Purchase Price”) provided that the Property Owner enters into and complies with the terms and conditions of this Program Agreement.

2. Scope of Work. The Property Owner agrees to carry out or cause to be carried out the exterior rehabilitation work (the "Scope of Work") on the Structure as set forth in Exhibit “C” attached hereto and incorporated herein by this reference.

3. Agreement, Acknowledgment and Representation by Property Owner. The Property Owner hereby agrees with, and acknowledges and represents to, the City that:

3.1. Review of Documents. The Property Owner (a) has read this Program Agreement, including all Exhibits hereto, (b) fully understands the terms and conditions of this Agreements set forth herein, and (c) agrees to be bound by those terms and conditions.

3.2. Failure to Comply. Any failure by the Property Owner to comply with the terms and conditions of the Purchase may terminate the Property Owner's right to be paid the Purchase Price.

3.3. No Liability. The City shall be in no manner liable to the Property Owner for any and all monies expended by the Property Owner in connection with the Program, whether or not the Property Owner is actually paid the Purchase Price.

4. Commencement of Work. The Property Owner shall commence, or cause to be commenced, the construction of improvements and other repairs of the Structure as set forth in the Scope

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of Work within ninety (90) days of the date of this Program Agreement. For the purposes of this Agreement, Commencement is defined as the date of issuance of a Certificate of No Effect or Appropriateness as set forth herein ("Commencement of Work").

5. Conditions Precedent to Disbursement of Purchase Price. Subject to Sections 6 and 8 hereof, the Purchase Price shall be disbursed to the Property Owner upon satisfaction of the following conditions precedent:

5.1. Conservation Easement. The City, or its designee, shall receive a duly acknowledged irrevocable Conservation Easement executed by the Property Owner. The City shall hold the Easement until the work described in the Scope of Work has been satisfactorily completed. After completion, the City shall record the Easement in the Maricopa County Recorder's Office. The Easement will (a) provide the City with an enforceable easement consistent with Arizona's Uniform Conservation Act, A.R.S. § 33-271 through 276, inclusive, as and if amended, (b) impose various limitations and obligations upon the Property Owner to preserve the historical, architectural and archaeological aspects of the Structure, and (c) otherwise be in such form and with such content as required by the City in its sole discretion.

5.2. Title Report. The City, or its designee, shall have received a current title report (the "Title Report") issued by a title insurance company acceptable to the City, or its designee, in its sole discretion, which reflects that the Property Owner holds fee simple title to the Property, and is otherwise in such form and with such content as the City, or its designee, shall reasonably require.

5.3. Liens or Encumbrances. The City, or its designee, shall have received complete copies of any and all documents evidencing any and all liens or encumbrances against the Property reflected on the Title Report.

5.4. Confirmation of Persons With Interest In Property. The City, or its designee, shall have received written confirmation, in recordable form, from the holder of any lien, encumbrance, or other property interest (the "Holder"), which confirmation shall permit the conveyance of the Easement, shall acknowledge that the Easement shall run with the Property, and shall contain such other terms as the City may reasonably require.

5.5. Insurance Certificate. The City, or its designee, shall have received a certificate of insurance that certifies that the subject Structure is insured as required by the Easement and is otherwise in such form and with such content as the City, or its designee, may reasonably require.

5.6. Historic Property Designation. The Property and the Structure shall have been zoned "HP" and listed on the SHR.

5.7. Certificate of Appropriateness or No Effect. The City, or its designee, shall have received a certificate of appropriateness or no effect issued by the Historic Preservation Office of the City stating that the Project is compatible with the historic character of the subject property and, therefore: (a) may be completed as specified in the certificate; (b) any building permits or other construction code permits needed to do the work in the specified certificate may be issued by the City's Building Safety Branch; and (c) any other permits required by other City ordinances, such as grading and drainage, may be issued.

5.8. Building Permit. If required by the nature of the exterior rehabilitation of the Structure as determined by the City in its sole discretion, the City, or its designee, shall have received a copy of the building permit issued by the City for the Project which is in such form and with such content as the City, or its designee, may reasonably require.

5.9. Other Documents or Requirements. The City, or its designee, shall have received such other and further documents or other information as may be required by the City, or its designee, in its sole discretion.

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5.10. Completion Deadline. The Project shall have been satisfactorily completed in accordance with the City's program guidelines and design standards, as determined by the City or its designee, on or before one (1) year after the Commencement of Work, unless an extension is granted by the City (the “Completion Deadline”).

6. Disbursement. The City will pay the Property Owner the Purchase Price after the City’s inspection of the Property establishes that the Scope of Work has been satisfactorily completed and the Property Owner has performed all other obligations under this Program Agreement.

7. Non-Compliance of and Right to Cure. In the event the Property Owner completes the Project on or before the Completion Deadline but the City determines that the Project or a portion thereof has not been completed in accordance with the City's program guidelines and design standards the Property Owner shall have the following right to cure (provided the Property Owner shall have satisfied all conditions precedent set forth in Section 5, except 5.10).

7.1. Improvements Unacceptable. In the event the City or its designee does not approve all repairs and improvements completed in connection with the Project, the City or its designee shall notify the Property Owner in writing ("City Notice I") of the reasons the Project in whole or in part is unacceptable. In the event a portion of the Project, which is, as determined in the sole discretion of the City or its designee, sufficient to justify payment of a portion of the Purchase Price, is approved, the City Notice I will advise the Property Owner as to the portion of the Purchase Price to which the Property Owner is currently entitled.

7.2. Cure Period. Upon receipt of the City's Notice I, the Property Owner shall have up to fifteen (15) days to notify the City or its designee in writing that the Property Owner intends to cure the defects detailed in City Notice I, and in such case, the Property Owner shall have sixty (60) days from the date the Property Owner received the City Notice I to cure such defects (the "Cure Period").

7.3. Failure to Cure. In the event the Property Owner fails to respond to City Notice I within fifteen (15) days or otherwise notifies the City that the Property Owner does not elect to cure the defects, the City shall disburse to the Property Owner that portion of the Purchase Price, if any, approved in City Notice I and the Property Owner's right to receive any other monies under the Program shall terminate.

7.4. Cure Effected. In the event the Property Owner elects to cure the defects, the City, or its designee, shall inspect the subject repairs and improvements within fifteen (15) days after the lapse of the Cure Period. If those repairs and improvements have been satisfactorily completed in the sole discretion of the City or its designee, the City will pay the Purchase Price to the Property Owner within thirty (30) days of approving the work performed. In the event the City, or its designee, in its sole discretion shall determine that the repairs and improvements have not been completed as required by the City Notice I, the City shall notify the Property Owner in writing ("City Notice II") which describes the reason the repairs and improvements, in whole or in part, were unacceptable. In the event a portion of the subject repairs and improvements have been approved which is sufficient, as determined in the sole discretion of the City or its designee, to justify a partial payment of the Purchase Price, the City or its designee will notify the Property Owner of such partial payment in City Notice II and will pay that portion of the Purchase Price to the Property Owner within thirty (30) days of the date of City Notice II. The Property Owner shall not have any right to any portion of the Purchase Price that is not approved for disbursement. The determination of the City or its designee as to whether the defects described in the City Notice I have been cured shall be final.

8. Termination of the Award. In the event the Property Owner fails to satisfy the conditions precedent set forth in Section 5 hereof (including satisfactorily curing any defect in the Project in accordance with Subsection 7.4 hereof) within one (1) year following the Commencement of Work as defined in Section 4, the Property Owner's right to be paid the Purchase Price or any portion thereof shall automatically terminate.

9. Non-Transferable. The rights granted to the Property Owner herein are non-transferable and may not be transferred or assigned. Any attempted transfer or assignment shall automatically be deemed to be null and void.

10. Notices. All notices required or permitted under this Program Agreement and the Easement shall be deemed given upon personal delivery by hand to the authorized representatives of either the Property Owner or the City or three (3) days after being sent by certified mail, return receipt requested, postage prepaid, addressed to the respective party at its address below:

If to the City: City of Scottsdale
Steve Venker, Historic Preservation Officer
Development Services Department
7447 East Indian School Road
Scottsdale, AZ 85251

If to the Property Owner: _____

Each party may change its or his/her address as set forth herein by notice to such effect directed to the other party.

11. Miscellaneous.

11.1. Amendments and Supplements. This Program Agreement may not be amended, modified or supplemented in any manner except by a written agreement executed by both the City and the Property Owner.

11.2. Severability. In the event any provision of this Program Agreement is deemed to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provisions shall not affect the remainder thereof.

11.3. Standard of Approval. Where within this Program Agreement the approval of the City or its designee is required or permitted, the City or its designee may grant or withhold its approval or its consent in its sole, absolute and uncontrolled discretion.

11.4. Waiver. The waiver by the City, or its designee, of any failure by the Property Owner to comply with any of the terms and conditions of this Program Agreement must be in writing and in any event shall not be deemed to be a waiver of any subsequent failure of the Property Owner to comply with the terms or conditions of this Program Agreement.

11.5. Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Program Agreement by the parties hereto.

11.6. Governing Law. This Program Agreement, its construction, validity and effect, shall be governed and construed by and in accordance with the laws of the State of Arizona.

11.7. Cancellation. This Program Agreement is subject to cancellation pursuant to A.R.S. § 38-511, as and if amended.

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IN WITNESS WHEREOF, the Property Owner and the City have executed this Program Agreement on the date first above written.

CITY OF SCOTTSDALE,
an Arizona municipal corporation,

By:_____
Steve Venker,
Historic Preservation Officer

"PROPERTY OWNER"

By:_____

By:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this____day of _____,
2016 by_____.

_____
Notary Public

My Commission Expires:

_____

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WHEN RECORDED RETURN TO:
City of Scottsdale
One Stop Shop/Records

7447 E. Indian School Road, Suite 100
Scottsdale, AZ 85251

EXEMPT UNDER A.R.S. 11-1134 (A) (2)

EXHIBIT "A"

Legal Description

EXHIBIT "C"

The following items establish the Scope of Work to be accomplished under this Agreement. These same items pertain to the Certificate of No Effect/Appropriateness issued by the Historic Preservation Office for all work performed under this program. It is the responsibility of the property owner or the contractor to obtain any Building Permits that may be required for the Scope of Work items by the Development Services Department. Building permit fees must be paid by the property owner.

SCOPE OF WORK

Scottsdale, Arizona

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