

THIS DEED OF SCENIC, OPEN SPACE, AND ARCHITECTURAL FACADE EASEMENT, made this 8th day of December, 1978, by and between STAN P. DOYLE and CHARLES S HOLMES of 1414 South Galveston, Tulsa, Oklahoma, Grantors and parties of the first part, and the OKLAHOMA HISTORICAL SOCIETY and CITY OF TULSA, as Co-Grantees and parties of the second part.

WITNESSETH:

WHEREAS, the OKLAHOMA HISTORIAL SOCIETY is a non-profit corporation chartered by the State of Oklahoma to facilitate public participation in the preservation of sites, buildings, and objects significant in American and Oklahoma history and culture; and

WHEREAS, the CITY OF TULSA is an incorporated municipality within the State of Oklahoma to protect its citizens, inhabitants, and their property.

WHEREAS, the Grantees are authorized to accept easements to protect property significant in American and Oklahoma history and culture; and

WHEREAS, the McBirney Mansion and grounds, on which the buildings and premises are located, has been placed on the National Register of Historic Places maintained by the Department of the Interior;

WHEREAS, the Childers Heights Historic District, in which the premises are located, has been nominated as a Category II Landmark for designation by the Joint Committee on Landmarks of the National Capital;

WHEREAS, the Grantors are the owners in fee simple of improved real property, consisting of a house and various lots, located at 1414 South Galveston, Tulsa, Oklahoma, in the Childers Heights Historic District, which property is hereinafter sometimes referred to as the McBirney Mansion (hereinafter "the premises"), and is more particularly described below:

All of Block Twelve (12), except Lots One (1) and Twenty One (21) and the North 20 feet of Lots Two (2) and Twenty (20) of said Block of the Resub-division of Blocks 4, 5 & 12 of CHILDERS HEIGHTS ADDITION, and Blocks 1, 9, 10 & 14 of NORVALL PARK ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

WHEREAS, the McBirney Mansion is the last of the Childers Heights Mansions to still remain standing and is the sole reminder of the past splendor of this Tulsa area.

WHEREAS, the McBirney Mansion is significant in American and Oklahoma history and culture in that it is the site of which Indians and early settlers, including Washington Irving in his travels of the West, watered their stock and forded the Arkansas River, and constitutes an important element in the architectural ensemble of the Childers Heights Historic District as a landmark of importance which contributes significantly to the cultural heritage and visual beauty of Tulsa, Oklahoma, and should be preserved if possible;

WHEREAS, the grant of a scenic, open space, and architectural facade easement by Grantors to Grantees on the premises will assist in preserving and maintain the premises and the architectural

ensemble of the Childers Heights Historic District;

WHEREAS, to this end, Grantors desire to grant to Grantee, and Grantees desire to accept, a scenic, open space and architectural facade easement on the premises;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged,, STAN P. DOYLE and CHARLES S. HOLMES, to hereby grant as a charitable gift and convey unto the OKLAHOMA HISTORICAL SOCIETY AND CITY OF TULSA, as Co-Grantees, an easement in gross in perpetuity (which easement in gross in perpetuity is more particularly described below) in and to that certain real property and the exterior surfaces of improvements located thereon known as premises of the McBirney Mansion, all owned by the Grantors, and more particularly described as:

All of Block Twelve (12), except Lots One (1) and Twenty One and the North 20 feet of Lots Two (2) and Twenty (20) of said Block of the Resub-division of Blocks 4, 5 & 12 of CHILDERS HEIGHTS ADDITION, an Blocks 1, 9, 10 & 14 of NORVALL PARK ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The easement granted herein, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon said premises of the Grantors, and to that end Grantors covenant on behalf of themselves, their successors and assigns, with Grantees, their successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land,

to do (and refrain from doing) upon the premises each of the following stipulations, which contribute to the public purpose in that they aid significantly in preservation of the historic site in question and of the Childers Heights Historic District in which the site is located:

I. The exterior surfaces of improvements (including, without limitation, the exterior walls, roofs and chimneys) on the subject premises are those depicted in the photographs attached hereto and is incorporated herein as Exhibits A(1) through A(5), being essentially those exterior surfaces of improvements on the aforesaid premises which are visible from Fourteenth Street, Galveston and Houston Avenues in Tulsa, Oklahoma, but in the event of uncertainty the exterior surfaces of improvements visible in the photographs in Exhibits A(1) through A(5) shall control. The location of buildings, driveways and parking are as depicted in the engineering survey attached hereto as Exhibit B. Without the express written permission of the Grantees, their successors or assigns, signed by a duly authorized representative thereof, no construction, alterations, or remodeling or any other thing shall be undertaken or permitted to be undertaken on the subject premises which would affect either the exterior surfaces herein described, or increase the height, or alter the exterior facade (including, without limitation, exterior walls, roofs and chimneys) or the appearance of the buildings located thereon, insofar as they are depicted in the photographs attached hereto and incorporated herein

as Exhibits A(1) through A(5), and the engineering survey attached as as Exhibit B, or which would adversely affect the structural soundness of the premises; provided, however, that the reconstruction, repair, repainting, weather proofing or refinishing of presently existing parts or elements of the lot and improvements subject to this scenic, open space and architectural facade easement, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted, provided that such reconstruction, repair, repainting, weather proofing or refinishing is performed in a manner which would not materially alter the appearance of those elements of the lot or buildings subject to this scenic, open space, and architectural facade easement as they are as of this date; except, however, that nothing in this easement shall prevent the Grantors from maintaining in place or replacing the existing installation of driveways, parking areas, air-conditioning devises, thermal windows, storm windows and doors, and television antennas. In all events, the Grantors, in materially altering the exterior of the buildings on the premises, agree to obtain the prior written consent, signed by a duly authorized representative for the Grantees, their successors or assigns, prior to commencing any material alterations to the exterior of the buildings or material alteration of the grounds. Grantors may restore to its original condition and appearance the exterior trim, woodwork, and balustrade to the extent that the original condition and appearance can be determined. Grantors

agree at all times to maintain the lot and structure herein described, and the exterior appearance (including, without limitation, the exterior walls, roofs and chimneys of the buildings located hereon) in a good and sound state of repair, subject to the casualty loss provisions in (4) below.

II. The property shall be used only for professional office or residential purposes, and no commercial or industrial activities shall be carried on on the property.

III. The property shall not be subdivided, nor shall it ever be devised or conveyed except as a unit.

IV. No extension of the existing structure or erection of additional structures shall be permitted, except that in the event of damage resulting from casualty loss to an extent rendering repair or reconstruction of the existing improvements impracticable, erection of a new professional office or residential structure shall be permitted.

V. No utility transmission lines, except those required for the existing structure or its improvement may be created on the said land.

VI. No dumping of ashes, sawdust, bark, trash, rubbish or any other unsightly or offensive materials which are visible from public roads or streets shall be permitted on the property.

VII. No topographical changes, including but not limited to excavation and the cutting of trees greater than eight inches in diameter (except when dead or dangerously decayed) shall occur upon

the property. Replacement of existing trees as required to maintain the existing topography may occur.

VIII. Grantors hereby agree that representatives of Grantees, their successors or assigns, shall be permitted at reasonable time to inspect the property. Inspections will normally take place from the street; however, Grantors agree that representatives of Grantees, their successors or assigns, shall be permitted to enter and inspect the interior of the improvements on the premises to insure maintenance of structural soundness; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually. Inspection of the Interior will be made at a time mutually agreed upon by Grantors and Grantees, their successors or assigns, Grantors covenanting not to withhold unreasonably their consent in determining a date and time for inspection of the interior. Representatives from each grantee shall be present at any and all inspections whether they be interior, exterior or both.

IX. In the event of a violation of any covenant or restriction herein, the Grantees, their successors or assigns, may, following a seventy-two (72) hour notice to the Grantors, institute a suite to enjoin by ex parte, temporary, and/or permanent injunction, such violation and to require the restoration of the premises to their prior conditions, or, in the alternative, representative of the Grantees, their successors or assigns, may enter upon the premises, correct any such violation, and hold

Grantors, their successors and assigns, responsible for the cost thereof. The Grantors agree that such costs shall constitute a lien against the property herein described, and Grantees shall have the right to foreclose said lien and sell all or part of said premises for the purposes of collecting said costs. The Grantees, their successors or assigns, shall also have available all legal and equitable remedies to enforce Grantors' obligations hereunder, and, in the event Grantors are found to have violated any of their obligations, Grantors shall reimburse the Grantees, their successors or assigns, for any costs or expenses incurred in connection therewith, including court costs and attorney fees.

X(A). The Grantors agree that these restrictions will be incorporated by reference into any subsequent deed or other legal instrument by which they divest themselves of either the fee simple title to or their possessory interest in the premises or any kind thereof.

X(B). Grantors, their successors or assigns, will do and perform at their cost all acts necessary to prompt recording of this Deed of Scenic, Open Space and Architectural Facade Easement among the land records of the office of the County Clerk of Tulsa County, Oklahoma.

XI. The Grantors, for themselves, their heirs and assigns, agree that they or the Grantees, their successors or assigns, may provide and maintain two (2) professional office signs not more than three feet in height and not exceeding nine square feet in

area which may be located at the Galveston and Houston driveway entrances to the property. In addition, one sign not exceeding eight feet in area setting forth the history of the McBirney residence may be located at the Galveston driveway entrance.

TO HAVE AND TO HOLD UNTO THE OKLAHOMA HISTORICAL SOCIETY AND CITY OF TULSA, forever. The covenants agreed to and the restrictions imposed, as aforesaid, shall not only be binding upon the Grantors, but also upon their successors and assigns, and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the above described land and shall survive any termination of Grantors' or Grantees' existence.

All rights reserved herein to Grantees shall run for the benefit of and may be exercised by its successors or assigns, or by its designee duly authorized in a deed of appointment executed by its duly authorized officer.

IN WITNESS WHEREOF, said Grantors have executed, sealed, and delivered this Deed for Scenic, Open Space and Architectural Facade Easement; and said Co-Grantees, THE OKLAHOMA HISTORICAL SOCIETY, has caused this presents to be accepted, and signed in its corporate _____ name _____ by

_____, and attested by

_____ its Secretary, and

its corporate seal to be hereunto affixed, and does hereby

constitute and appoint _____,
its true and lawful attorney-in-fact for it and in its name to
acknowledge and accept and deliver these presents as its act and
deed, and the City of Tulsa has caused these presents to be
accepted by its City Commission and signed by _____,
and attested by _____, its City Auditor.

OKLAHOMA HISTORICAL SOCIETY

ATTEST:

CITY OF TULSA