R-21- 168

**RESOLUTION NO. _____**

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT TO REHABILITATE PROPERTY FOR CERTAIN REAL PROPERTY LOCATED AT 5124 ALPHA STREET IN THE CITY OF NORTH LITTLE ROCK; AND FOR OTHER PURPOSES.**

WHEREAS, pursuant to Resolution No. 10093 (adopted by the City Council on August 23, 2021) certain residential property located at 5124 Alpha Street and owned by Wilbur Coleman Jr. was condemned; and

WHEREAS, Henry Coleman, co-owner of 5124 Alpha Street, has agreed to enter into a rehabilitation agreement which includes a construction plan for the property (see Agreement to Rehabilitate Property attached hereto as Exhibit A); and

WHEREAS, it has been the policy of the City of North Little Rock ("the City") to require an escrow payment equal to the costs of demolition from the property owner to cover demolition and other costs incurred by the City in the event the requirements of the rehabilitation agreement are not met; and

WHEREAS, it is the belief of Mr. Coleman that the property, through rehabilitation, can become a viable contributor to the City's economy and will improve the overall aesthetic appearance of the area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into an Agreement to Rehabilitate Property (substantially similar to Exhibit A) with Henry Coleman to rehabilitate certain property located at 5124 Alpha Street, more particularly described as follows:

> THE EAST 40 FEET OF WEST 80 FEET OF NORTH 156 FEET OF BLOCK 165 IN THE RICH ACRES SUBDIVISION OF LOT 5 OF MATILDA A. MILLER'S SUBDIVISION OF A PART OF SECTION 32, TOWNSHIP 2 NORTH, RANGE 11 WEST, NOW IN THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
>
> BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF FIRST STREET, WHICH IS 40 FEET FROM THE NORTHWEST CORNER OF SAID BLOCK 165; RUN THENCE SOUTHWESTERLY PARALLEL WITH WATER STREET 156 FEET TO A STAKE SET; THENCE SOUTHEASTERLY PARALLEL WITH FIRST STREET 40 FEET TO A STAKE SET; THENCE NORTHEASTERLY PARALLEL WITH WATER STREET 156 FEET TO A

STAKE SET ON THE SOUTHWESTERLY LINE OF FIRST STREET; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF FIRST STREET 40 FEET TO THE POINT OF BEGINNING. (PARCEL NO. 23N0670012100)

SECTION 2: That an escrow in the amount of $4,042.00, or an equivalent bond issued by a local financial institution, shall be tendered to the City of North Little Rock by Henry Coleman, representing the estimated costs to raze the nuisance structures on the property in the event of default on the Agreement herein.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

Terry C. Hartwick

Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 9:35 A.M. _____ P.M.
By A. Fields
DATE 11-2-21
**Diane Whitbey, City Clerk and Collector**
**North Little Rock, Arkansas**
RECEIVED BY S. Usser

EXHIBIT
A

# AGREEMENT TO REHABILITATE PROPERTY

On this ___ day of _____, 2021, the City of North Little Rock (hereinafter the "City") and Henry Coleman (hereinafter "Owner") enter into this Agreement to Rehabilitate Property (hereinafter the "Agreement") regarding real property located at the address commonly known as 5124 Alpha Street, North Little Rock, Arkansas (hereinafter the "Subject Property") subject to the terms and conditions stated herein.

## RECITALS

**WHEREAS**, the North Little Rock City Council considers the buildings, houses and other structures located at or on the Subject Property to constitute a public nuisance and declares that said structures must be repaired in strict accordance with this Agreement or completely razed or removed within the timeframe provided in this Agreement in order to abate the nuisance; and

**WHEREAS**, the Owner has appeared before the City claiming to hold legal ownership of the Subject Property as well as all rights in the property necessary to construct, repair, or raze any and all structures on the property without further approval of any third party; and

**WHEREAS**, the Owner desires to cause repairs to the nuisance structures on the Subject Property, in lieu of razing or removing such structures, so that the structures will cease to be a nuisance and will otherwise conform to all requirements of the current Arkansas Fire Prevention Code and the North Little Rock Property Maintenance Code (hereinafter "Applicable Safety Regulations"); and

**WHEREAS**, the Owner has presented a feasible financial/construction plan (attached hereto as Exhibit A) to repair the nuisance structures on the Subject Property according to a strict timeline, and the willingness to immediately cooperate in the removal or razing of such structures should timely repair prove to be impossible, impractical or otherwise fail to occur; and

**WHEREAS**, the City has relied on representations by the Owner to forego the immediate razing of the nuisance structures and demands adequate assurances on the part of the Owner that the nuisance structures shall be repaired to become fully compliant with the law.

**NOW, THEREFORE,** for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Agreement Contingent on City Council Approval**. This Agreement is contingent upon the approval or adoption of this Agreement by Resolution of the North Little Rock City Council (hereinafter the "City Council"). It shall not be presented to City Council for approval until signed by the Owner. All dates in this Agreement shall run from the date that the City Council approves this Agreement which shall be referred to herein as the "Effective Date."

2. **Escrow**. Within five (5) business days after the Effective Date, the Owner shall deliver to the North Little Rock Director of Code Enforcement, a cashier's check, or the equivalent, in the

amount of $4,042.00 ("Escrow"), such amount not exceeding a good faith estimate of the cost to raze the nuisance structures on the Subject Property, to be held by the City to assure performance by the Owner. Upon the Owner's timely and proper completion of all obligations under this Agreement, the City shall return the Escrow to the Owner, less any unpaid obligations owed to the City by the Owner which relate to the Subject Property, including without limitation: unpaid fees, administrative penalties, fines, and court costs. If the Owner fails to timely or properly complete any obligation under this Agreement, the City may liquidate the Escrow to offset any and all costs attributable to the razing and removal of nuisance structures, or other abatement, on the Subject Property ("Cost of Abatement"). If the Escrow exceeds the Cost of Abatement, all excess funds shall be returned to the Owner, less any unpaid obligations owed to the City by the Owner which relate to the Subject Property, including without limitation: unpaid fees, administrative penalties, fines, and court costs. If the Escrow is insufficient to pay for the Cost of Abatement, the Owner shall remain personally liable for the deficiency in addition to any other remedy for recovery which may be available to the City.

3. **Issuance of Building Permit**. Upon the Effective Date of this Agreement and request of the Owner, the City shall issue the Owner a building permit authorizing work on the Subject Property which shall be subject to the same costs, inspections, and approvals of all other building permits issued by the City. Neither the Building Permit, nor this Agreement, nor any provision found within either the Building Permit or this Agreement shall be deemed to waive any requirement to fully comply with Applicable Safety Regulations. The Owner is hereby advised that the Applicable Safety Regulations are available for inspection at the Office of the North Little Rock City Clerk. If the Owner appeals this Agreement as provided in paragraph 11, the Building Permit shall immediately be suspended pending judicial review.

4. **Mandatory Time Benchmarks**. Due to the determination that the Subject Property constitutes a continuing nuisance, the owner is required to proceed expeditiously and continuously with repairs and construction that will abate the nuisance and otherwise cause the Subject Property to conform with the Applicable Regulations. The mandatory time benchmarks that are described below indicate the *minimum* level of performance required by the Owner to abate the nuisance. Any failure to meet any benchmark will result in the immediate razing of the nuisance structure without further notice or hearing. The Owner agrees to complete repair and construction as stated below:

a. **Sealing the Structure**. Within forty-five (45) days of the Effective Date of this Agreement, the Owner shall have sufficiently proceeded with construction so that the structure is sealed from the elements and unauthorized traffic. For purposes of this Agreement, "sealed from the elements and unauthorized traffic" means that: (1) all walls have been properly raised and covered with material that prevents outside access to the interior of the structure and complies with the Applicable Regulations; (2) all windows are installed or window openings are covered; (3) all exterior doors are installed and comply with the Applicable Regulations; and (4) the roof is completely installed with shingles or other material that complies with the Applicable Regulations as a final roof covering. If the Owner fails to meet this deadline, the City is authorized to immediately liquidate the Escrow and raze the Subject Property.

b. **Rough-In**. Within ninety (90) days of the Effective Date of this Agreement, the Owner shall have sufficiently proceeded with construction to pass Rough-In inspection. For purposes of this Agreement, "Rough-In" means that all equipment, fixtures, or materials of any type which support any structural, mechanical, plumbing, gas or electrical system or service that is located, or to be located, within the walls, beneath the floor, or above the ceiling has been properly installed in accordance with the Applicable Regulations. This deadline shall be extended one (1) day for each day after the Owner has submitted a written request for a Rough-In inspection and the date the inspection actually occurs. This deadline may also be extended by up to ten (10) days if the Building Inspector, in his sole discretion, determines that the Owner has made reasonable efforts to meet this deadline and failed inspection due to a minor discrepancy. If the Owner fails to meet this deadline after all permitted extensions have expired, the City is authorized to immediately liquidate the Escrow and raze the Subject Property.

c. **Exterior Covering and Windows**. Within one hundred thirty-five (135) days of the Effective Date of this Agreement, the Owner shall have caused to be installed all exterior covering and windows in accordance with the Applicable Regulations. If the Owner fails to meet this deadline, the City is authorized to immediately liquidate the Escrow and raze the Subject Property.

d. **Certificate of Occupancy**. Within one hundred eighty (180) days of the Effective Date of this Agreement, the structure must qualify for a certificate of occupancy. This deadline shall be extended one (1) day for each day after the Owner has submitted a written request for a final inspection and the date the final inspection actually occurs. This deadline may also be extended by up to ten (10) days if the Building Inspector, in his sole discretion, determines that the Owner has made reasonable efforts to meet this deadline and failed inspection due to a minor discrepancy. If the Owner meets this deadline, the City shall return Escrow funds in accordance with Section 2 and, if necessary, City Council shall pass a resolution declaring that the Subject Property is no longer a nuisance (thus "un-condemning" the Subject Property). If the Owner fails to meet this deadline after all permitted extensions have expired, the City is authorized to immediately liquidate the Escrow and raze the Subject Property.

5. **Adverse Weather Delays**. The Owner may claim additional time to meet the deadlines described in paragraph 4 based upon any continuous period of delay due to adverse weather. Such claim shall be: (a) in written form; (b) submitted to the Building Inspector within five (5) days of the end of the period of adverse weather claimed; (c) supported by data substantiating that weather conditions were abnormal for the period of time; and (d) supported by evidence substantiating that the weather conditions had an adverse effect on the scheduled construction or repair of the nuisance structures on the Subject Property. For purposes of this Agreement, weather conditions may be considered abnormal for a period of time when the precipitation is twenty percent (20%) greater than a ten (10) year historic average for the same period of time during previous years or when a catastrophic weather or environmental event has occurred, such as a tornado, earthquake, or 100 year flood. The Building Inspector shall render initial determinations on claims for adverse weather delays which may be appealed in accordance with Article 19 of the North Little Rock Zoning Ordinance.

6. **Delays for Appeals**. The Owner may claim additional time to meet the deadlines described in paragraph 4 based upon any continuous period of delay due to administrative or quasi-judicial

appeal. Such claim shall be: (a) in written form; (b) submitted to the Building Inspector within five (5) days of the end of the period of appeal claimed; (c) supported by evidence substantiating that the appeal had an adverse effect on the scheduled construction or repair of the nuisance structures on the Subject Property. The Building Inspector shall render initial determinations on claims for appeal delays which may be appealed in accordance with Article 19 of the North Little Rock Zoning Ordinance.

7. **Time is of the Essence**. All times, deadlines, benchmarks, and permitted extensions indicated herein form a material basis of this agreement and may only be waived in writing signed by both parties. Any failure to timely enforce a deadline or benchmark shall not be construed to waive that, or any other, deadline or benchmark.

8. **Term and Termination**. This Agreement shall be effective from and after the Effective Date and continue in force until one of the following events occurs:

a. The City has issued the Owner a certificate of occupancy for the Subject Property and all Escrow funds to which the Owner is entitled have been returned to the Owner by the City; *or*

b. The Subject Property has been razed and all debris has been removed, *and*

(1) Any excess Escrow funds to which the Owner is entitled have been returned to the Owner by the City; *or*

(2) If the Cost of Abatement incurred by the City exceeds the Escrow, the Owner has paid the City the difference between the Cost of Abatement and the Escrow.

9. **Waiver**. By executing this Agreement, the Owner hereby enters his appearance before the City Council in relation to all administrative or quasi-judicial proceedings pertaining to the Subject Property waiving all form, content and method of service of all notices and proceedings concerning the Subject Property which have been, are now, or will be before the City Council prior to or during the duration of this Agreement. The Owner acknowledges and knowingly accepts responsibility to be vigilant and aware of all City actions regarding the Subject Property throughout the duration of this Agreement which are publicly available at the following City offices: Code Enforcement, Community Planning, the Fire Department, and the City Clerk.

10. **Hold Harmless**. The Owner affirmatively states that he or she is the true owner of the Subject Property and all structures on the Subject Property where the work is to be performed, or that he or she acts with properly delegated authority from such true owner. The Owner agrees to indemnify, defend, and hold harmless the City from all claims by any person or entity claiming to be the true owner of the property and asserting any claim based in any part upon the same subject as this Agreement.

11. **Conditional Approval and Appeal**. The approval of this Agreement by the City Council of North Little Rock constitutes a quasi-judicial determination to grant conditional approval and partial relief to the owner of a public nuisance. The Owner acknowledges that by entering this Agreement, certain facts and findings are established relating to the nature of the Subject Property

as a public nuisance and that those facts and findings may be detrimental to the Owner. If the Owner contests any fact or finding established by this Agreement, or all of them, the Owner is authorized by law to appeal this Agreement to a court of law in accordance with the Arkansas rules governing appeals from District Courts.

12. **Merger**. This document represents the entire agreement between the parties and incorporates all prior discussions and agreements. This document is *not* an agreement with any other governmental entity or waiver of any applicable federal, state, or county regulation.

13. **Severability**. The sections, subsections, sentences and words within this Agreement are declared to be severable and if any sections, subsections, sentences or words found herein are declared to be invalid or unconstitutional, the remainder of the Agreement shall be unaffected.

14. **Worker Certification**. The Owner hereby warrants that all persons performing work on the Subject Property shall be licensed and permitted as required by law.

15. **Transfer of Subject Property**. The Owner shall not cause or allow the Subject Property to be transferred through act or omission without prior notice to the City.

16. **Binding Agreement**. This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assignees.

17. **Enforcement of Debt**. The Owner shall be and remain liable for any amounts due the City under this Agreement as well as all legal and court fees related to the collection of the same.

18. **Authority**. The parties executing this Agreement below represent and warrant that they have the full and complete legal authority to act on behalf of the City and Owner and that the provisions herein constitute valid, enforceable obligations of each.

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed on the date indicated.

**CITY OF NORTH LITTLE ROCK**

By: _____
Terry Hartwick, Mayor

Date: _____

ATTEST:

_____
Diane Whitbey, City Clerk

**OWNER:**

_____
Printed Name:

Date: _____

WITNESS:

_____

EXHIBIT

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# PROJECT SPEC SHEET

PROJECT TITLE [illegible]

PROJECT MANAGER [illegible]

Coleman Property Managment

10/13/2021

| | PROJECT ROOM | | |
|---|---|---|---|
| 1 | Living Room | SCOPE OF WORK | Repair all holes in the drywall wall and paint. Replace window on left side of room. |
| | | LABOR/MATERIAL | Drywall and Paint |
| | | COST | $500.00 |
| 2 | Hallway | SCOPE OF WORK | [illegible] |
| | | LABOR/MATERIAL | Drywall and Paint |
| | | COST | [illegible] |
| 3 | Bathroom | SCOPE OF WORK | [illegible] |
| | | LABOR/MATERIAL | [illegible] |
| | | COST | [illegible] |
| 4 | Kitchen | SCOPE OF WORK | Repair hole in low wall beside sink window. Replace rotted joist and subfloor and install lamin flooring. Paint entire Kitchen including cabinets and replace cabinet hardware. Repair plumbing lines, sink drain to alleviate leak. |
| | | LABOR/MATERIAL | Drywall, Per Paint, minor plumbing material, subflooring, Vinyl plank flooring |
| | | COST | $700.00 |
| 5 | Front Bedroom | SCOPE OF WORK | Repair all holes in the drywall, paint walls and trim. Replace interior door. Replace 2 windows |
| | | LABOR/MATERIAL | Drywall, paint, interior door, windows |
| | | COST | $225.00 |
| 6 | Rear Bedroom | SCOPE OF WORK | Repair all holes in the drywall, paint walls and trim. Replace interior door |
| | | LABOR/MATERIAL | Drywall, paint, interior door |
| | | Cost | $275.00 |