

SPONSOR: Fain/Elliott

## ORDINANCE NO. 31-10

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A NON-DISTURBANCE AND ESTOPPEL AGREEMENT IN REGARDS TO THE RENOVATIONS BEING UNDERTAKEN BY THE SOUTHERN HILLS ARTS COUNCIL, AND DECLARING AN EMERGENCY.

WHEREAS, the Southern Hills Arts Council is in the process of making renovations to the Markay Building located on Main Street in the City of Jackson, Ohio; and

WHEREAS, the Southern Hills Arts Council leases the Markay Building from the City of Jackson to provide a community cultural arts center; and

WHEREAS, in order to provide funding for the continued renovations of the Markay Building it is necessary for the City of Jackson to pledge it will not stop progress on the renovation of the Markay Building.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

**Section One.** The Mayor and/or his designated representative is authorized to enter into a Non-Disturbance and Estoppel Agreement as a part of the Agreement between the Ohio Cultural Facilities Commission and the Southern Hills Arts Council. A copy of the Non-Disturbance and Estoppel Agreement is attached hereto as Exhibit "A".

**Section Two.** This Ordinance is hereby is hereby declared to be an emergency Ordinance necessary for the immediate preservation of the public peace, health, or safety of the City of Jackson, and for the further reason that it is necessary to enter into this Non-Disturbance and Estoppel Agreement as soon as possible in order that the renovations may continue in a timely manner and in order that the Southern Hills Arts Council meet its deadlines in obtaining funding for the renovations. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

**Section Three.** In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four. It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 4/26/10

[Signature]  
**PRESIDENT OF COUNCIL**

[Signature]  
**CLERK OF COUNCIL**

Approved:

Date: 4/26/10

[Signature]  
**MAYOR**

Exhibit "A"



and

4. WHEREAS, the Commission, the Project Sponsor and the Fee Simple Owner desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the following agreement

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

Southern Hills Arts Council <art@shacmarkay.com>  
<no subject>  
April 16, 2010 11:03:14 AM EDT  
Barb Summers <bsummers@jcbipaper.com>  
1 Attachment, 359 KB

FROM: Southern Hills Arts Council

FR: 110. 17402966355

Jan. 10 2010 12:46PM P2

Section 1. So long as the Facility Lease Agreement is in full force and effect and the Project Sponsor shall not be in default under any provision of the Facility Lease Agreement or this Agreement, and no event has occurred which has continued to exist for a period of time (after notice, if any, required by the Facility Lease Agreement) as would entitle the Fee Simple Owner to terminate the Facility Lease Agreement or would cause without further action by the Fee Simple Owner, the termination of the Facility Lease Agreement or would entitle the Fee Simple Owner to dispossess the Project Sponsor thereunder:

- (a) The Commission's Use Interest shall not be terminated or disturbed by any steps or proceedings taken by the Fee Simple Owner in the exercise of any of its rights under the Facility Lease Agreement.
- (b) The Commission's Use Interest shall not be terminated or affected by said exercise of any remedy provided for in the Facility Lease Agreement, and the Fee Simple Owner hereby covenants that any sale by it of the Property shall be made subject to the Commission's Use Interest and the rights of the Commission under the Cooperative Use Agreement.

Section 2. The Project Sponsor and/or the Fee Simple Owner agree to give prompt written notice to the Commission of any default by either the Project Sponsor or the Fee Simple Owner under the Facility Lease Agreement which would entitle The Project Sponsor or the Fee Simple Owner to cancel the Facility Lease Agreement or abate the rent payable thereunder, and both parties agree that notwithstanding any provision of Facility Lease Agreement, no notice of cancellation or termination thereof shall be effective unless the Commission has received notice of the aforesaid and the defaulting party has failed, within 30 days of the date of receipt thereof, to cure such default, or if the default cannot be cured within 30 days, has failed to commence and to pursue diligently to cure the default which gave rise to such right of cancellation or termination.

Section 3. The Project Sponsor agrees to certify in writing to the Commission, upon request, whether or not any default on the part of the Fee Simple Owner exists under the Facility Lease Agreement and the nature of any such default. The Project Sponsor states that as of this date there is no default that, whether currently or with the passage of time, would permit the Project Sponsor to terminate or cancel the Facility Lease Agreement and that the Facility Lease Agreement is in full force and effect, without modification, a

and that the Facility Lease Agreement is in full force and effect, without modification, a copy of said Facility Lease Agreement being attached hereto as Exhibit B. The Project Sponsor further states as follows:

- (a) The Project Sponsor is the tenant under the Facility Lease Agreement for space in the above-referenced Property. The monthly base rent presently is \$ 1.00 per month (USD).
- (b) The Project Sponsor has accepted possession of the Premises pursuant to the Facility Lease Agreement. The Facility Lease Agreement term commenced on January 19, 2005. The termination date of the

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April 16, 2010 11:04:19 AM EDT  
Barb Summers <bsummers@jcbipaper.com>  
1 Attachment, 330 KB

FROM : Southern Hills Arts Council      FILE NO. : 17403666355      DATE : 10/13/2010 13:50PM      PAGE :

parties and there are no other agreements concerning the Property, and the Fee Simple Owner is not entitled to receive any concession or benefit (rental or otherwise) or other similar compensation in connection with renting the Property other than as set forth in the Facility Lease Agreement.

- (d) The Facility Lease Agreement is valid and in full force and effect, and, to the best of the Fee Simple Owner's knowledge, no party thereto, their successors or assigns is presently in default thereunder. The Fee Simple Owner has no defense, set-off or counterclaim against the Project Sponsor arising out of the Facility Lease Agreement or in any way relating thereto, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Facility Lease Agreement.
- (e) To the best of its knowledge, the Fee Simple Owner has good and marketable title to the Property, there are no easements or restrictions on the Property, and no agreement with the Fee Simple Owner's lender(s), if any, or any other party, that will interfere with the rights or obligations between the Project Sponsor and the Commission as provided in the Cooperative Use Agreement.

Section 5. The Commission, the Project Sponsor and the Fee Simple Owner acknowledge and agree that for purposes of the Cooperative Use Agreement, tenant is defined as the "Project Sponsor", and the Project Sponsor shall be solely responsible for the obligations and liabilities under the Cooperative Use Agreement. The Fee Simple Owner shall have no obligation to fulfill the obligations of the Project Sponsor under the Cooperative Use Agreement and the Fee Simple Owner shall not be liable for any action or inaction of the Project Sponsor under such agreement.

Section 6. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements between the parties hereto shall specifically be binding upon any purchaser of the Property at foreclosure or otherwise.



Section 7. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 8. The parties hereto warrant and represent that: (a) they have all requisite power and authority to enter into, deliver and perform this Agreement; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of each of the parties hereto, if any is so required; and (c) this Agreement has been duly executed and delivered by the parties and constitutes their valid and legally binding obligation, enforceable against them in accordance with its terms.

Southern Hills Arts Council <art@shacmarkay.com>

<no subject>

April 16, 2010 11:04:59 AM EDT

Barb Summers <bsummers@jcbipaper.com>

1 Attachment, 290 KB

FROM :Southern Hills Arts Council

FAK NO. :7402956355

Jan. 13 2010 12:58PM P5

Section 9. All notices, statements and other communications to be given under the terms of this agreement shall be in writing and delivered by hand against written receipt or sent by certified or registered mail, return receipt requested, postage prepaid and addressed as provided in the first paragraph of this Agreement, or at such other address as from time to time designated by the party receiving the notice.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the day and year first above written.

Signed and delivered as to the Project Sponsor in the presence of:

Jennifer Jacobs  
Witness  
Jennifer Jacobs  
Printed Name Econ. Dev. Director

William R. Sheward Jr.  
Witness  
WILLIAM R. SHEWARD, JR.  
Printed Name

PROJECT SPONSOR:

Southern Hills Arts Council  
[Insert Project Sponsor Name]

By: Barbara Summers  
BARBARA SUMMERS  
Printed Name

Title: EXECUTIVE DIRECTOR

STATE OF OHIO  
COUNTY OF Jackson

The foregoing instrument was acknowledged before me the 12th day of Jan, 2010, by Barbara Summers, the Executive Director of Southern Hills Arts Council, on its behalf.



Robin B. Russell  
Notary Public -  
N.C. Expires: 8-7-2010

Signed and delivered as  
to the Fee Simple Owner in the presence of:

FEE SIMPLE OWNER:

City of Jackson

Southern Hills Arts Council <art@shacmarkay.com>  
<no subject>  
April 16, 2010 11:05:54 AM EDT  
Barb Summers <bsummers@jcbipaper.com>  
1 Attachment, 199 KB

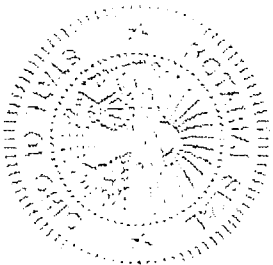
[Insert Fee Simple Owner Name]

Jennifer Jacobs  
Witness  
Jennifer JACOBS  
Printed Name Econ. Dev. Director  
William R. Sheward Jr.  
Witness  
William R. SHEWARD JR.  
Printed Name

By: Randy R. Heath  
Randy R. Heath  
Printed Name  
Title: Mayor

STATE OF OHIO  
COUNTY OF Jackson

The foregoing instrument was acknowledged before me the 12th day of Jan.  
2010, by Randy R. Heath, the Mayor  
of the City of Jackson, Ohio, on its behalf.



Robin R. Russell  
Notary Public -  
N.C. Expires: 8-7-2010



Southern Hills Arts Council <art@shacmarkay.com>

<no subject>

April 16, 2010 11:06:28 AM EDT

Barb Summers <bsummers@jcbipaper.com>

1 Attachment, 213 KB

Signed and delivered as to the  
Commission in the presence of:

STATE OF OHIO, by and through the  
OHIO CULTURAL FACILITIES  
COMMISSION

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Kathleen M. Fox, Executive Director

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

STATE OF OHIO  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by Kathleen M. Fox, the Executive Director of the Ohio Cultural Facilities  
Commission, on its behalf.

\_\_\_\_\_  
Notary Public

Approved as to form:

Richard Cordray, Ohio Attorney General  
On attached approval form dated: \_\_\_\_\_