

DONATION AGREEMENT

THIS DONATION AGREEMENT (this “*Agreement*”) is made and entered into effective as of the ____ day of _____, 2017 (the “*Effective Date*”), by and between City of Joplin, Missouri, a Missouri municipal corporation, (“*Donor*”) and the Missouri Southern Foundation, a Missouri not-for-profit corporation (“*Donee*”).

RECITALS

- A. Donor is a municipal corporation in Jasper County, Missouri.
- B. Donor owns certain real property located in the City of Joplin, County of Jasper, State of Missouri, which real property is more particularly described on Exhibit A, attached hereto and incorporated herein, together with any and all hereditaments and appurtenances thereunto belonging (collectively, the “*Property*”), on which sits the former Joplin Public Library and a parking lot and related improvements.
- C. Donee has approached Donor with a proposal to redevelop the Property and utilize it as an additional campus to conduct classes and educational activities associated with Missouri Southern State University.
- D. Donor desires to donate the Property to Donee, and Donee desires to accept donation of the Property, subject to terms, covenants and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Donor and Donee hereby agree as follows:

ARTICLE 1. DONATION OF THE PROPERTY

1.1 Donation of the Property. Upon the terms, covenants and conditions herein set forth, Donor agrees to donate to Donee the Property and all improvements located thereon, and Donee agrees to accept the donation of the Property from Donor.

1.2 Condition of Property.

1.2.1 *Property Information.* Donor shall provide to Donee, within five (5) business days following the execution of this Agreement, copies of Donor’s records related to the property and an environmental and geotechnical report with respect to the Property, if any are available. Donor’s delivery of such documents shall not be deemed or construed as a representation or warranty with respect to the contents thereof, and Donor expressly disclaims any such representations or warranties with respect to the accuracy of such reports.

1.2.2 *Donee's Inspection Rights.* From the Effective Date and for a period of sixty (60) days thereafter (the "***Inspection Period***"), Donee shall be provided with access to the Property and shall be permitted to inspect and examine the Property upon reasonable advance notice to Donor, subject in all cases to the provisions of this Section 1.2.2 and the indemnification provisions described in Section 1.2.3 of this Agreement. Donor shall be entitled to have a representative present at all times while Donee or its representatives are physically on the Property. It is understood and agreed that Donee shall be responsible to perform such inspections and other examinations of the Property as Donee deems necessary or desirable (including, without limitation, any tests, studies, investigations, inspections and other examinations of physical and environmental conditions of the Property). All tests, studies, investigations, inspections and other examinations by Donee of the Property shall be conducted in a non-invasive manner. Donor expressly consents to Donee obtaining a Phase I Environmental Site Assessment with respect to the Property. Donee shall restore the Property to its original conditions promptly after completing each such test, study, investigation, inspection and other examination. Donee's foregoing agreement shall survive any termination of this Agreement and shall survive Closing and the delivery of the Warranty Deed at Closing.

1.2.3 *Donee's Termination Right.* Donee, in Donee's sole discretion, may terminate this Agreement for any reason whatsoever by delivering written notice thereof to Donor and the Title Company on or before the expiration of the Inspection Period, in which event, the provisions of this Section 1.2.3 shall govern. If Donee shall fail to provide Donor and Escrow Agent with written notice of termination on or before the expiration of the Inspection Period, then Donee shall be deemed to have affirmatively and expressly approved and accepted the Property and all conditions, elements and matters pertinent thereto, including, without limitation, soil conditions, zoning, drainage, flood control, water, sewage, electricity, gas and other utility connections, economic feasibility, construction suitability, submittals, any survey or any other matter which was or could have been inspected or examined by Donee, and Donee and Donor shall proceed to Closing, subject to the provisions set forth herein.

1.2.3 **"AS IS" DONATION.** DONEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY DOCUMENTS DELIVERED TO DONEE BY DONOR AT CLOSING, DONOR HAS NOT MADE, AND SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES REGARDING ANY ASPECT OF THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE VALUE, NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY ACTIVITY OR USE WHICH DONEE OR ANY TENANT MAY CONDUCT THEREON, (D) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE

PROPERTY, OR (G) COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS. ADDITIONALLY, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED BY DONOR TO DONEE AT CLOSING, NO PERSON ACTING ON BEHALF OF DONOR IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF DONEE ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT REGARDING THE PROPERTY OR THE DONATION CONTEMPLATED HEREIN. DONEE ACKNOWLEDGES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, DONEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY DONOR. DONEE FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE DONATION OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" BASIS WITH ALL FAULTS. DONEE ASSUMES THE RISK THAT ADVERSE PAST, PRESENT OR FUTURE PHYSICAL CHARACTERISTICS AND CONDITIONS OF THE PROPERTY MAY NOT HAVE BEEN REVEALED BY DONOR'S DISCLOSURES OR DONEE'S INSPECTIONS OR INVESTIGATIONS OF THE PROPERTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.

1.3 Title Commitment/Review Period.

1.3.1. Within twenty (20) days of the Effective Date, Donor shall cause the Title Company, at Donee's expense, to issue and deliver to Donee a commitment to insure the Property in the amount of the Title Policy (as defined in Section 2.3.1 hereof, as further described in Section 1.3.3 hereof) (the "***Title Commitment***"). The Title Company shall provide Donee with copies of all recorded documents shown as exceptions to title on the Title Commitment (the "***Exception Documents***"). Within ten (10) days following the receipt by Donee of the Title Commitment and copies of all Exception Documents (the "***Title Review Period***"), Donee shall notify Donor, in writing ("***Donee's Title Notice***") as to which items, if any, disclosed in the Title Commitment are not acceptable to Donee. Within five (5) business days following Donor's receipt of Donee's Title Notice, Donor shall notify Donee, in writing ("***Donor's Title Notice***") that, with respect to each matter objected to in Donee's Title Notice (A) it shall take such actions as may be reasonably necessary to eliminate such matter as an exception in the Title Commitment; or (B) that it shall not take any action to cure Donee's objection to such matter. Except to the extent that Donor's Title Notice expressly states that Donor will take an action with respect to a matter identified in Donee's Title Notice (or if Donor fails to deliver Donor's Title Notice within such five (5) business day period) then Donor shall be deemed to have elected clause (B) of this Section 1.3.1.

1.3.2. Title Contingency. In the event Donee fails to deliver Donee's Title Notice, then Donee shall be deemed to have waived all title objections to matters shown in the Title Commitment. If Donee has timely delivered Donee's Title Notice and Donor elects not to correct such objections, or is deemed to have elected not to correct such objections as provided in clause (B) of Section 1.3.1 hereof, Donee may either waive the objection and proceed to Closing, or Donee may terminate this Agreement and neither Donor nor Donee shall have any further liability or obligation under this Agreement. If Donee fails to terminate this Agreement on or before the Closing Date, then Donee shall be deemed to have waived all of its title objections (except with respect to those specific matters objected to in Donee's Title Notice which are agreed to be eliminated in Donor's Title Notice (the "***Rejected Exceptions***").

1.3.3. Title Policy. Each item and matter revealed by the Title Commitment (other than the Rejected Exceptions) shall be deemed a "***Permitted Exception***" under this Agreement. Notwithstanding the foregoing, Donee expressly agrees to accept the Property, and acknowledges and agrees that at Closing the Property shall be subject to, and the term "Permitted Exception" shall therefore include, conditions, covenants and terms contained in this Agreement which remain in effect following the Donee's construction, re-construction, renovation and rehabilitation of the improvements located on the Property and use of the Property as an education and teaching facility by Missouri Southern State University (collectively, the "***Covenants***"). At Closing, the Title Policy (as further defined in Section 2.3.1) shall be as described in the Title Commitment (but free of each Rejected Exception), except as expressly provided in this Agreement. If Donor fails to eliminate or satisfy, on or before the Closing Date, any Rejected Exception, Donee shall have the sole option of either terminating this Agreement for failure to satisfy a condition to Donee's obligation to close under this Agreement, in which case, this Agreement, and the rights and obligations of Donor and Donee hereunder shall terminate, and this Agreement shall be of no further force or effect. Upon Closing, Donee shall be deemed to have waived all objections to the items and matters reflected on the Title Policy and each such item and matter shall thereafter be deemed a "Permitted Exception."

1.4 Reserved.

1.5 Reversionary Interest. Donee agrees that if Donee fails to complete the rehabilitation of the real estate described in this Agreement and commence operations on or before the sixth (6th) anniversary of the execution of this Agreement, then upon written notice by Donor to Donee electing to exercise its rights pursuant to this Section 1.5, title to the Property shall revert back to Donor and said reversionary interest shall not be subject to any reservations, conveyances, easements, options, leaseholds or other matters affecting such portion of the Property which were made or created after the date of this Agreement. In the event Donee does complete construction of the above-described improvements on the Property and commences operation thereof within such time period, then upon Donee's request, Donor agrees to execute an instrument, in recordable form reasonably acceptable to Donor and Donee, acknowledging the satisfaction of said condition and the termination of Donor's reversionary interest in the Property. Nothing herein shall preclude Donee from, for any reason whatsoever, in its

discretion, conveying the Property back to Donor prior to the sixth (6th) anniversary date of this Agreement.

1.6 Operation of the Property. Upon execution of this Agreement, and delivery of the Warranty Deed by Donor, Donee agree to undertake the maintenance, upkeep and utilities on the Property at Donee's sole expense, until such time the Donee's re-construction of the Property is complete, or until such time that the City may exercise its reversionary rights under Section 1.5.

1.7 Casualty Insurance. Upon execution of this Agreement, and until Donee completes construction its improvements at the Property, Donee shall procure and maintain, at Donee's expense, special form ("all risk") property insurance, in an amount not less than \$1,800,000.00, covering the Premises (including all improvements) and the Building in which the Premises is located (collectively, the "Property Insurance"). Donor shall be named as loss payee on the Property Insurance with respect to proceeds attributable to damage to the Premises and the Building, for the first \$1,800,000.00 of coverage. Donee shall be entitled to all insurance proceeds over and above that amount. Upon completion of the improvements by Donee, the obligation to carry Casualty Insurance for the benefit of Donor shall terminate.

ARTICLE 2. CLOSING DATE AND CLOSING

2.1 Closing. The consummation of the donation contemplated by this Agreement shall occur (the "**Closing**") at the offices of the City of Joplin, Joplin, Missouri, or at such other place as the parties may mutually agree, on or before March 16, 2018 (the "**Closing Date**").

2.2 Obligations at Closing.

2.2.1 *Donor's Deliveries.* At Closing, Donor shall execute, acknowledge (where necessary) and deliver to Donee, as appropriate, the following: (a) the Deed, subject to easements, conditions and restrictions of record, including but not limited to the Permitted Exceptions; (b) such other documents and instruments as may be required to give effect to this Agreement or as may be reasonably requested by Donee in connection with the performance of Donor's obligations hereunder; and (c) possession of the Property.

2.2.2 *Donee's Deliveries.* Donee shall execute, acknowledge (where necessary) and deliver to Donor, such documents and instruments as may be reasonably required to give effect to this Agreement or as may be reasonably requested by the Donor to evidence Donee's acceptance of the Property being conveyed at such Closing subject to the Permitted Exceptions and the performance of Donee's obligations hereunder. Donee shall be responsible for filing a certificate of value in respect of the Property being conveyed at such Closing with the office of the assessor for the county in which the Property is located.

2.3 Conditions to Closing.

2.3.1 *Donor Conditions.* Donor's obligation to convey the Property to Donee at the Closing shall be expressly conditioned upon and subject to the following: (a) Donee having obtained or obtaining (i) from a title company licensed to do business in the state of Missouri (the "***Title Company***"), a commitment in favor of Donee for an owner's policy of title insurance with respect to the Property, and (ii) at Closing, an owner's policy of title insurance with respect to the Property and stating an insured amount of at least \$1,800,000.00 (the "***Title Policy***"); and (b) Donee delivering all of the items required pursuant to Section 2.2.2 above.

2.3.2 *Donee Conditions.* Donee's obligation to close shall be expressly conditioned upon and subject to the following: (a) Donee having received or receiving the Title Policy (as further described in Section 1.3.3 hereof) in form and substance reasonably satisfactory to Donee, provided that inclusion of the Permitted Exceptions as exceptions to the coverage set forth therein may not constitute a failure of this condition; and (b) Donor delivering all of the items required pursuant to Section 2.2.1 above.

ARTICLE 3.

CLOSING COSTS AND ADJUSTMENTS

3.1 Closing Costs of Donor. At Closing, Donor shall pay the filing fees regarding the release of any deeds of trust or other security documents relating to any existing loans being released on the Property.

3.2 Closing Costs of Donee. At Closing, Donee shall pay the charges and costs of obtaining the Title Policy, the recording and filing fees regarding the Deed and any other necessary documents, and any other fees and closing costs relating to the Closing (including the cost of any escrow or closing fees charged by the Title Company, if one is used).

3.3 Separate Expenses of Parties. Each party hereto shall be responsible for the payment of its respective attorneys' fees and all other costs and expenses of any kind or nature incurred by such party in connection with this Agreement, the Closing or the Property.

ARTICLE 4.

REPRESENTATIONS, COVENANTS AND WARRANTIES

4.1 Donor's Representation, Covenants and Warranties. Donor represents, warrants and covenants to Donee as follows, which representation and warranties shall be considered made as of the date hereof and as of the Closing Date:

4.1.1 *Donor's Authority.* Donor is a municipal corporation organized and existing under the laws of the State of Missouri and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Donor is fully authorized by all requisite authority; and no other consents by any other party are required for Donor to execute and deliver this Agreement and such other documents.

4.1.2 *Authority of Signatories; No Breach of Other Agreements.* The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Donor and the signatories of Donor hereto. To the actual knowledge of Donor, the performance by Donor of its obligations under the terms of this Agreement do not conflict in any material or adverse way with or result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Donor is bound, and, to the actual knowledge of Donor, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Donor is subject.

4.1.3 *All Required Action Taken.* All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by Donor and its representatives and agents.

4.2 Donee's Representations, Covenants and Warranties. Donee represents, warrants and covenants to Donor as follows, which representations and warranties shall survive Closing hereunder for the period provided below and shall inure to the benefit of Donor, its successors and assigns and shall be considered made as of the date hereof and as of the Closing Date:

4.2.1 *Donee's Authority.* Donee is a Missouri not-for-profit corporation organized under the law of the State of Missouri, and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Donee is fully authorized by all requisite authority; and no other consents by any other party are required for Donee to execute and deliver this Agreement and such other documents.

4.2.2 *Authority of Signatories; No Breach of Other Agreements.* The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Donee and the signatories of Donee hereto. To the actual knowledge of Donee, the performance by Donee of its obligations under the terms of this Agreement do not conflict in any material or adverse way with our result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Donee is bound, and, to the actual knowledge of Donee, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Donee is subject.

4.2.3 *All Required Action Taken.* All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by Donee and its representatives and agents.

ARTICLE 5. RELEASE OF CLAIMS

5.1 Release of Claims. Donee hereby covenants and agrees to release and not to sue Donor, its officers, directors, attorneys, agents and employees (the ***“Released Parties”***) as a result of any and all claims regarding the condition of the Property, including any and all claims and causes of action existing as of the date of Donor’s delivery of the Deed for the Property to Donee and any claims and causes of action thereafter created or enacted, whether at common law or by federal, state, county or municipal law or ordinance, including without limitation, any claims and causes of action relating to the presence in, on, under or near the Property, of any Hazardous Material (as defined below) or arising under any Environmental Laws. The provisions of this paragraph shall survive Closing and conveyance of the Property.

5.2 Definitions. The term ***“Hazardous Material”*** means any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (as defined below) as a “hazardous substance,” “hazardous material,” “hazardous waste,” “extremely hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, including any items defined as “Hazardous Materials” in 49 CFR 171.8, and any petroleum, polychlorinated biphenyls (PCBs), asbestos, radon, natural gas, natural gas liquids, liquefied Natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and any other material of similar genre. The term ***“Environmental Laws”*** means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of governmental authorities relating to the environment, or to any Hazardous Material or to any activity involving Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 6901 et seq., as amended (CERCLA), the Resource Conservation and Liability Act, as amended 42 U.S.C. 6901 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j, as all of the foregoing may be amended from time to time.

ARTICLE 6. NOTICE

6.1 Notice. Any notice or election required or permitted to be given or served by any party hereto upon any other will be deemed sufficiently given when delivered in person, or when deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, to such party at the respective addresses given below, or sent by telecopy to the fax numbers set forth below, provided that a confirming copy of the telecopy is promptly sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses given below and a copy of any notice or election given to either party shall be promptly delivered to the attorneys for such party at the addresses given below:

If to Donor: City of Joplin
Attention: Peter C. Edwards
City Attorney
602 S. Main
Joplin, Missouri 64801

If to Donee: Missouri Southern Foundation
Attention: J. Bradford Hodson
3950 E. Newman Road
Joplin, Missouri 64801

With a copy to: Spencer Fane LLP
Attention: S. Shawn Whitney
2144 E. Republic Road, Suite B300
Springfield, Missouri 65804

6.2 Effective Date; Change of Address. Each such notice or communication shall be deemed to have been delivered to the party to which addressed on the date the same is hand-delivered, if mailed when deposited in the United States Postal system, sent by registered or certified mail, return receipt requested, postage prepaid, as the case may be, properly addressed in the manner above provided, and shall be deemed to have been received by the party to which addressed, in the case of hand delivery, on the day it is delivered, or in the case of United States Mail, on the date of deposit in the United States Postal system. Any party may change its address for notice by delivering written notice of said change to the other party, in the manner above provided.

ARTICLE 7. GENERAL PROVISIONS

7.1 Remedies. In the event of any breach or default by Donee hereunder, Donor shall be entitled to pursue any and all rights and remedies allowed at law or in equity. In the event of a breach or default of this Agreement by Donor occurring prior to Closing and resulting in a failure to close, Donee's sole and exclusive remedy shall be to terminate this Agreement, provided that Donee shall not exercise such remedy unless Donor has first been given written notice of the breach or default hereunder and it remains uncured following such notice for a period of thirty (30) days.

7.2 Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understanding or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

7.3 Duties for Performance. If the date for the performance of any act hereunder falls on a Saturday, Sunday or legal holiday, then the time for performance of such act shall be deemed extended to the next business day.

7.4 Survival. Except as otherwise expressly provided herein, the representations, warranties, covenants and agreements set forth in this Agreement shall survive (and shall be enforceable after) the Closing, and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7.5 Captions. The headings or captions of the articles, sections or paragraphs appearing in this Agreement are for convenience of reference only, are not a part of this Agreement and are not to be considered in the interpreting this Agreement.

7.6 Binding Effect. The Agreement shall become effective and shall be binding on the parties only after it has been signed by both Donee and Donor. This Agreement and all covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The restrictions, covenants and easements set forth in the Deed shall burden and run with Property.

7.7 Controlling Law. This Agreement has been made and entered into under the laws of the State of Missouri, and said laws shall control the interpretation hereof.

7.8 Time of the Essence. Time is of the essence in the performance of this Agreement.

7.9 Counterparts. This Agreement may be executed in one or more counterparts which together shall constitute one and the same Agreement and shall be binding on the parties.

7.10 Assignment. Donee may assign its interest in this Agreement prior to the Closing to a single purpose entity ("SPE") whose purpose shall be the construction and development of the real estate. The terms, covenants and conditions contained in this Agreement shall run with the land. Donee agrees that it will guarantee performance of the SPE and any and all of Donee's obligations it assigns to the SPE under this Agreement.

7.11 Participation. Each of the parties has had the opportunity to participate in the negotiation and preparation of this Agreement, and expressly acknowledges such participation, and agrees that no rule construing contractual language against the party which drafted such language shall be applicable in connection with this Agreement.

7.12 Expense of Parties. In the event of litigation between the parties arising under or in connection with this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and expenses from the non-prevailing party. Except as otherwise specifically provided in this Agreement, each party hereto will pay and bear its own expenses and fees in connection with this Agreement and the donation contemplated hereby.

7.13 Effective Date. As used herein, the term “***Effective Date***” shall mean and refer to the date upon which this Agreement is executed by the last party to sign, as indicated by the dates set forth below opposite the signatures of Donee and Donor.

7.14 Exhibits. Any reference herein to any exhibit, addendum or attachment refers to the applicable exhibit, addendum or attachment attached to this Agreement, and all such exhibits, addenda or attachments shall constitute a part of this Agreement and are expressly incorporated herein by reference and made a part hereof.

7.15 Conflicts. In the event of a conflict between any provision of this Agreement and any provision of the Deed, the latter provision shall control to the extent of the conflict.

[Remainder of page intentionally left blank; signatures on succeeding page]

IN WITNESS WHEREOF, the parties have executed this Donation Agreement as of the dates set for below.

DONOR:

**CITY OF JOPLIN, MISSOURI,
a Missouri municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

DONEE:

**MISSOURI SOUTHERN
FOUNDATION
a Missouri not-for-profit corporation**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
to
Donation Agreement

Legal Description of Property

“All of Lots Numbered 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46, all in the Original Town of Murphysburg, now a part of the City of Joplin, Jasper County, Missouri.”

Also Known As: 300 S. Main St., Joplin, Missouri 64801

EXHIBIT B
to
Donation Agreement

Deed

The space above this line is for Recorder's use only

GENERAL WARRANTY DEED

THIS DEED, made and entered into this _____ day of _____, 2017, by and between **City of Joplin, Missouri, a Missouri Municipal Corporation**, party of the First Part, hereinafter, "Grantor", and **Missouri Southern Foundation**, party of the Second Part, hereinafter "Grantee". Mailing address of said first named grantee: 3950 E. Newman Road Joplin, Missouri 64801.

WITNESSETH, that the said party of the First Part, for and in consideration of Ten Dollars and other good and valuable consideration, paid by the said party of the Second Part, the receipt of which is hereby acknowledged, does by these presents **GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM**, unto the said party of the Second part, and to the heirs, successors and assigns of such party, the following described real estate, situated in the County of Jasper, State of Missouri, to-wit:

"All of Lots Numbered 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46, all in the Original Town of Murphysburg, now a part of the City of Joplin, Jasper County, Missouri."

Also Known As: 300 S. Main St., Joplin, Missouri 64801

EXCEPTING THEREFROM AND SUBJECT TO the following restrictions and rights which Grantor hereby reserves to itself, its successors and assigns:

1. Grantee agrees that if Grantee fails to complete the re-construction and rehabilitation of the real estate described in this Agreement and begin classes for Missouri Southern State University, on or before the sixth (6th) anniversary of the execution of this Agreement, then upon written notice by Grantor to Grantee electing to exercise its rights

pursuant to this Section 1.5, title to the Property shall revert back to Grantor and said reversionary interest shall not be subject to any reservations, conveyances, easements, options, leaseholds or other matters affecting such portion of the Property which were made or created after the date of this Agreement. In the event Grantee does complete construction of the above described improvements on the Property and commences operation thereof within such time period, then upon Grantee's request, Grantor agrees to execute an instrument, in recordable form reasonably acceptable to Grantor and Grantee, acknowledging the satisfaction of said condition and the termination of Grantor's reversionary interest in the Property.

2. Grantor's remedies for enforcement of Grantee's covenants and Grantor's rights set forth in Sections 1 and 2 above shall include but not be limited to any and all equitable remedies which may be appropriate, including injunctive relief and specific performance, and Grantor shall be entitled to receive from Grantee its attorney's fees and other costs incurred as a result of such enforcement action.

TO HAVE AND TO HOLD, the described premises, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining, unto the party of the second part and unto the heirs, successors and assigns forever, the party of the First Part hereby covenanting that it is lawfully seized of an indefeasible estate in fee in the premises herein conveyed, that it has good right to convey the same, that the premises are free and clear from any mortgage and encumbrance done or suffered by it or those under whom it claims except as set forth herein; that party of the first part will warrant and defend the title of the premises unto the party of the second part and unto the heirs, successors and assigns forever, against the lawful claims and demands of all persons, except as set forth herein. **IN WITNESS WHEREOF**, the said party of the First Part has or have hereunto set its hand the day and year first above written.

City of Joplin, Missouri

By: Samuel Anselm, City Manager

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

On this ____ day of _____, 2017, before me personally appeared Samuel Anselm, personally known to me, who being by me duly sworn did say that he is the City Manager of the City of Joplin, Missouri, a Missouri Municipal Corporation, and that said instrument was signed on behalf of said Corporation by authority of its City Council and said Samuel Anselm acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal in the city or county and State aforesaid, on the day and year above written.

Notary Public

My Commission Expires: