

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
12th Division**

**SUSAN TERRY BORNÉ, ELIZABETH TERRY FOTI,
MARY CATHERINE DRENNAN, LEONARD JOHN
DRENNAN III, MARGARET YATSEVITCH AND
MICHAEL YATSEVITCH, as and on behalf of
the Heirs of ADOLPHINE FLETCHER TERRY
and MARY FLETCHER DRENNAN**

PLAINTIFFS

Vs.

Case No: 60CV-21-6690

**CITY OF LITTLE ROCK, ARKANSAS and the
ARKANSAS MUSEUM OF FINE ARTS F/K/A
THE ARKANSAS ARTS CENTER, and the
ARKANSAS MUSEUM OF FINE ARTS
FOUNDATION, A/K/A
ARKANSAS ARTS CENTER FOUNDATION**

DEFENDANTS

FIRST AMENDED COMPLAINT

Come the Plaintiffs, Susan Terry Borné, Elizabeth Terry Foti, Mary Catherine Drennan, Leonard John Drennan III, Margaret Yatsevitch and Michael Yatsevitch, as and on behalf of the heirs of Adolphine Fletcher Terry and Mary Fletcher Drennan, both deceased, and for their cause of action against the Defendants, City of Little Rock, Arkansas, the Arkansas Museum of Fine Arts, formerly known as the Arkansas Arts Center, and the Arkansas Museum of Fine Arts Foundation, formerly known as the Arkansas Arts Center Foundation, state:

Parties

1. The Plaintiff, Susan Terry Borné, is an adult citizen and resident of the City of Little Rock, Pulaski County, Arkansas. She is a granddaughter of Adolphine Fletcher Terry, deceased.

2. The Plaintiff, Elizabeth Terry Foti, is an adult citizen and resident of the City of Little Rock, Pulaski County, Arkansas. She is also a granddaughter of Adolphine Fletcher Terry, deceased.

3. The Plaintiff, Mary Catherine Drennan, is an adult citizen and resident of Lutherville, Maryland. She is a granddaughter of Mary Fletcher Drennan, deceased.

4. The Plaintiff, Leonard John Drennan III, is an adult citizen and resident of Westminster, Maryland. He is a grandson of Mary Fletcher Drennan, deceased.

5. The Plaintiff, Margaret Yatsevitch, is an adult citizen and resident of Cornish, New Hampshire. She is a granddaughter of Mary Fletcher Drennan, deceased.

6. The Plaintiff, Michael Yatsevitch, is an adult citizen and resident of Cornish, New Hampshire. He is a grandson of Mary Fletcher Drennan, deceased.

7. The Plaintiffs are acting on behalf of themselves and also as representatives of the known surviving heirs of Adolphine Fletcher Terry, deceased, and Mary Fletcher Drennan, deceased, whose names and last known addresses are contained in the list attached to this Amended Complaint as **Exhibit No. 1**. All of such persons have been notified of the filing of this Amended Complaint.

8. The Defendant, City of Little Rock, Arkansas, is a municipal corporation organized and existing under the laws of the State of Arkansas, with its principal location in Pulaski County, Arkansas.

9. The Defendant, Arkansas Museum of Fine Arts (“the Museum”) is an institution originally created as the Museum of Fine Arts by the City of Little Rock, Arkansas, under Ordinance No. 11,111, and subsequently renamed the Arkansas Arts Center by Little Rock Ordinance Section 22-161 (1961 Code). The Arkansas Arts Center recently changed its name to the Arkansas Museum of Fine Arts, and is the successor entity to the Arkansas Arts Center. The Museum is

currently temporarily located at 2510 Cantrell Road, Little Rock, Arkansas, but its permanent location is at 501 East Ninth Street, Little Rock, Arkansas 72202.¹

10. The Arkansas Museum of Fine Arts Foundation (“the Foundation”) is a not-for-profit corporation that, according to the records of the Arkansas Secretary of State, was originally organized and existing under the laws of the State of Arkansas in 1972. The Arkansas Museum of Fine Arts Foundation also has the fictitious names of the Arkansas Art Museum, the Arkansas Arts Center and the Arkansas Museum of Art. It was formerly known as and is successor to the Arkansas Arts Center Foundation. The Foundation is currently temporarily located at 2510 Cantrell Road, Little Rock, Arkansas, but its permanent location is at 501 East Ninth Street, Little Rock, Arkansas 72202.² The registered agent for service of the Foundation is Laine Harber, whose registered address is 501 E. 9th Street, Little Rock, AR 72202.

¹ Unless otherwise specified, references to “the Museum” in this Complaint shall include its predecessor, the Arkansas Arts Center.

² Unless otherwise specified, references to “the Foundation” herein shall include the Arkansas Museum of Fine Arts Foundation and its predecessor, the Arkansas Arts Center Foundation.

Jurisdiction and Venue

11. This Court has jurisdiction of the parties and subject matter of this case pursuant to Amendment 80 of the Constitution of Arkansas and Ark. Code Ann. §16-13-201(a).

12. Venue is proper in this Court pursuant to Ark. Code Ann. §16-60-101 because several of the Plaintiffs reside in Pulaski County, the Defendants are located in Pulaski County, and the real and personal property that are the subjects of this case are located in the City of Little Rock, Pulaski County, Arkansas.

Facts

13. The property that is the subject of this case is Block Sixty-One (61) of the Original City of Little Rock, Arkansas, including all improvements located on said real property (unless the house located on the property is referred to separately as “the House”, the house and real property shall be collectively referred to herein as “the Property”).

14. On or about February 23, 1839, Albert Pike, a New Englander who had settled in Arkansas and become a leading lawyer and a major political figure in the State, purchased the Property from Chester Ashley, also a prominent lawyer and later a U.S. Senator, for the sum of \$1,500.00. The Property, located in what is

now the historic Quapaw Quarter of Little Rock, was at that time, on the “outskirts” of the City.

15. In the following year, Pike caused to be constructed on the Property a two-story brick mansion. Located in a park-like setting on a city block of land, it is today widely-recognized as one of the most significant and impressive landmarks in the State of Arkansas; an excellent architectural example of the Greek Revival period; and was one of, if not the most, outstanding residences of its day.

16. The mansion has housed three of the most significant families in Arkansas history: those of the aforementioned Albert Pike, who became a General in the Confederate Army, established a national reputation as an attorney, and was one of the founders of the national Masonic fraternal organization; the family of Captain John Gould Fletcher, a member of the Capitol Guards during the Civil War and a successful cotton broker, a president of the German National Bank and the Arkansas Banking Association, a mayor of Little Rock and sheriff of Pulaski County, and his children, Adolphine Fletcher Terry, John G. Fletcher, Jr., and Mary Fletcher Drennan, all of whom played significant roles in the history of Arkansas; and the family of David D. Terry, a United States Congressman from Arkansas.

17. Following the Civil War, Albert Pike did not return to Arkansas, and in 1871, Pike conveyed the Property to his daughter, Miss Lillian Pike. She leased the Property to the Arkansas Female College. In 1886, Lillian Pike deeded the Property to Miss Lou Krause.

18. In 1889, Captain John Gould Fletcher and his wife, Adolphine Krause Fletcher, sister of Miss Lou Krause, purchased the Property from Miss Krause. John Gould Fletcher died intestate in 1906, and was survived by his wife and their three children: Adolphine Fletcher, John Gould Fletcher, Jr., and Mary Fletcher. Adolphine Krause Fletcher died three years later, and the children inherited the Property.

19. John Gould Fletcher, Jr., became a renowned poet, receiving the Pulitzer Prize for Poetry in 1939, the first Southern poet to receive that award. He also published a history of the State of Arkansas in 1947, and was inducted into the National Institute of Arts and Letters. During the years he lived in Europe, he conveyed his interest in the Property to his sisters, Adolphine Fletcher Terry and Mary Fletcher Drennan, in equal shares. Later in his life, he returned to Arkansas and married Charlie May Simon, also an award-winning Arkansas writer and they lived at Johnswood, their home on the outskirts of Little Rock.

20. Adolphine Fletcher enrolled in Vassar College in New York state when she was 15, and graduated from that school in 1902, when few women had college degrees. She returned to Little Rock “ready to change the world, and she kept trying until her dying day to do it,” according to a friend, Judge Edwin Dunaway.

21. In 1910, Adolphine Fletcher married David D. Terry, a lawyer who began his political career as a member of the Arkansas General Assembly, and then served nine years in the United States Congress, where he was instrumental in establishing the present-day Arkansas River Navigation System. Today, one of the navigation dams on the River bears his name. He was also heavily involved in various civic endeavors, particularly in the Little Rock Boy’s Club.

22. Adolphine Fletcher Terry and her family resided on the Property for most of her life. She spent that life promoting causes to improve schools and libraries, the juvenile court system, affordable housing, women’s rights, and fighting racism; and she used the House as a center for conducting those activities.

23. During the Little Rock school desegregation crisis in the fall of 1957, resulting in the closure of the Little Rock high schools, Mrs. Terry organized the Women’s Emergency Committee to Open Our Schools, and hosted in the House meetings of women who opposed Governor Orville Faubus’ segregationist

positions, were instrumental in the recall of three segregationist members of the Little Rock School Board, and the reopening of the Little Rock schools. The names of the women who participated in those meetings are etched in the windows of the solarium which is adjacent to the room in the House in which the meetings occurred. **(See Exhibit 18)** While the vast majority of those women are now deceased, their children and grandchildren still proudly point to their ancestors' names on those windows.

24. That Adolphine Fletcher Terry, the daughter of a Confederate Captain, used a house built by a man who became a Confederate General to promote the cause of racial integration was not lost on many observers nationally as well as locally. In 1961, Adolphine was selected as one of the 100 most distinguished graduates of Vassar College on the occasion of its 100th anniversary. She was also selected by the national newspaper, USA Today, as one of the 100 outstanding women of the 20th Century, and she was named as one of Arkansas' 15 Most Significant Figures by the Arkansas Historical Association in 2000. In 1990, the Central Arkansas Library System dedicated its seventh branch library as the Adolphine Fletcher Terry Library in west Little Rock.

25. Mary Fletcher, the youngest daughter of John Gould Fletcher, was active in the suffrage movement in Arkansas, and was elected president of the Political Equality League in 1911. Her suffrage organization was less strident than others. Mary Fletcher maintained the decorum of a southern lady, stating “In the South, women do not find it necessary to fight for what we want.”

26. Mary Fletcher married a United States military officer, Leonard H. Drennan, in 1919, and moved to Washington, D.C. She had two children, Leonard H. Drennan, Jr. and Frances Drennan. The Drennans purchased Verdant Valley Farm in Maryland, which she operated until her death in 1982.

27. In addition to the historic significance of the House’s occupants, the Property is listed on the National Register of Historic Places; is a U.S. Historic District Contributing Property; and unfortunately, is on the Preserve Arkansas Most Endangered Places List for 2021 for the reasons set forth herein.

28. On or about the 19th day of August, 1964, the said Adolphine Fletcher Terry and Mary Fletcher Drennan executed a Deed (“the Deed”) granting and transferring the Property to the City of Little Rock for the use and benefit of the Arkansas Arts Center and its successors (now the Museum), subject to the reservation of a life estate in favor of both Adolphine Fletcher Terry and Mary

Fletcher Drennan, and also subject to the conditions set forth in the Deed. The Deed was filed for record on December 23, 1964, and the Deed is recorded in Book 901 at pages at pages 257-264 of the Records of Pulaski County, Arkansas. A copy of the Deed is attached hereto as **Exhibit No. 2**.

29. The purposes and conditions of the conveyance were contained in Paragraphs numbered 1 through 5 of the Deed, which provide in relevant part:

1. The Grantee shall, as nearly as possible, keep and maintain the said lands in their present condition, preserving, as far as possible, the trees thereon, and maintaining the home-place thereon in its present general architectural form;
2. Grantee shall use the said property exclusively for the advancement of the cultural, artistic, or educational interests of the community. This use may include, among other purposes, the display of the lands and the buildings to the public with or without the payment of a fee therefor. If a fee is charged, however, then the proceeds therefrom shall be used first to keep and maintain the said property and then for the further uses and purposes herein expressed. The uses of the lands and buildings may also include the holding of meetings and use of office space related to the cultural, artistic, or educational life of the community.
3. [The provisions of Condition No. 3 relate to the possible taking of the land, or a portion thereof, by eminent domain proceedings, and are not relevant to this proceeding.]

4. If the Grantee shall fail to comply with these conditions or uses, and in particular with the first condition above enumerated, ... then title to the said lands shall revert in an undivided one-half interest to the heirs of Adolphine Fletcher Terry and in an undivided one-half interest to the heirs of Mary Fletcher Drennan.
5. Failure by the reversioners, or by any of them, to take affirmative action to terminate the title of the Grantee upon any default hereunder shall not be construed as a waiver by the reversioners to take affirmative action to terminate the title of Grantee upon any further default hereunder.

30. On or about September 14, 1964, the Board of Trustees of the Arkansas Arts Center, at a regular monthly meeting of said Board on said date, adopted a Resolution stating in part:

BE IT RESOLVED, that the Board of Directors of the Arkansas Arts Center, ... being informed of the provisions of the Deed and the purposes and intent of the conveyance, does hereby advise the members of the Board of Directors of the City of Little Rock that it deems the contemplated gift to be not only a gracious and generous creation of a memorial to preserve for Little Rock and Arkansas a unique and invaluable historic site, but a dedication to the future cultural, artistic and educational progress of our community, and it therefore recommends to the said Board that it accept delivery of the Deed forthwith.

The said Resolution was filed for record and appears in Book 901 at page 265 of the Records of Pulaski County, Arkansas. A copy of such Resolution is attached to this Amended Complaint as **Exhibit No. 3**.

31. The Deed was accepted by the City of Little Rock by Resolution No. 3,218 of the Board of Directors of the City of Little Rock dated October 5, 1964, with a “deep sense of appreciation and gratitude for their gift.” Resolution No. 3,218 is recorded in Book 901 at pages 266 to 274 of the Records of Pulaski County, Arkansas, and a copy thereof is attached hereto as **Exhibit No. 4**.

32. The keys to the Property were thereafter delivered to the City and to the Museum on June 8, 1977. That event was memorialized by a News Release issued on the same date by the Arkansas Arts Center, stating that the Center planned to use the Property as a Center for the Decorative Arts, and as weaving and quilt-making studios, with the Carriage House on the Property to be used as a gallery for regional artists and craftsmen. It projected that renovation of the Property for such purposes would require 12 to 15 months. A copy of the News Release of June 8, 1977 is attached to this Amended Complaint as **Exhibit No. 5**.

33. The Arkansas Arts Center Foundation (now the Arkansas Museum of Fine Arts Foundation) was organized on November 22, 1972, for the primary purposes

of assisting the Museum in the attainment of its goals, and supporting the operations of the Museum. The Foundation is the entity that owns property acquired by or donated to or for the use of the Museum, and solicits, holds, controls and expends funds and endowments contributed by members of the public, corporations, governmental agencies and other entities for the use and benefit of the Museum and its successors.

34. The Museum and the Foundation were unable to raise sufficient funds to renovate the Property as needed for operation of a Decorative Arts Museum on the schedule stated in the News Release of June 8, 1977. It was not until November 3, 1981 that the renovation of the exterior of the House was completed, and four years later, March 25, 1985, when interior renovations were completed and the Decorative Arts Museum was opened.

35. In August 1984, the Museum Board decided to create an Endowment to provide permanent funding for the Decorative Arts Museum. The Foundation and persons interested in the use of the Property in accordance with the conditions set forth in the Deed, commenced a fund-raising program to fund the endowment for the maintenance and operation of the House and Property.

36. The purpose of the fund-raising program was to create an endowment fund, the income from which would be used for the operations of the House, including salaries for a full-time curator and support staff; rental and shipping fees for temporary exhibits to be shown in the House; acquisitions for a permanent art collection; workshop and lecture expenses; payment of utilities, and for maintenance of the Property.

37. In 1984, a trust established under the Last Will and Testament of former Governor Winthrop Rockefeller (the Winthrop Rockefeller Trust) contributed the sum of One Million Dollars (\$1,000,000.00) as a 2 for 1 matching grant to the Foundation specifically for the use and benefit of the Property.

38. On October 3, 1984, the Arkansas Arts Center issued a News Release announcing that:

The Arkansas Arts Center Foundation has received a matching grant of up to \$1,000,000 from the Winthrop Rockefeller Charitable Trust for endowment, which will provide operating revenue for the Arts Center's Decorative Arts Museum, which is due to open at the historic Pike-Fletcher-Terry House next spring. ... The grant is a 2 for 1 matching grant, meaning the Rockefeller Charitable Trust will provide two dollars for every dollar the Arts Center and Foundation raises in Endowment for the Decorative Arts Museum.

A copy of the News Release issued by the Arkansas Arts Center is attached to this Amended Complaint as **Exhibit No. 6**.

39. Following the News Release described above, the Museum and Foundation solicited contributions to the Endowment Fund. The Winthrop Rockefeller Charitable Trust provided 2 for 1 matching funds. On October 1, 1984, Mr. Marion Burton, a Co-Trustee of the Winthrop Rockefeller Charitable Trust, wrote a letter of that date to Mr. Robert Shults, an attorney of Little Rock, Arkansas, who was counsel for the Museum and its Foundation, stating in relevant part:

On behalf of the Trustees, I am delighted to inform you that they have approved a matching grant to the Arkansas Arts Center Foundation on the following terms: the Trust will match on a two-for-one basis, and up to an aggregate Trust payment of \$1 million, contributions made to the Foundation on or after July 1, 1984 and before January 1, 1986, for the purpose of endowing the operation of the Pike-Fletcher-Terry House.

A copy of Mr. Burton's letter of October 1, 1984 is attached to this Amended Complaint as **Exhibit No. 7**.

40. A form for Donations and pledges to the Endowment was prepared by the Foundation and provided to prospective donors. The form contained a heading of The Arkansas Arts Center – Decorative Arts Museum (Pike-Fletcher-Terry House), with the following text:

I pledge my support to the Arkansas Arts Center Foundation in the amount of \$_____ to provide a permanent endowment for the Decorative Arts Museum.

A complete donation/pledge form used by the Museum and the Foundation is attached to this Amended Complaint (with individual donor information redacted) as **Exhibit No. 8**.

41. Other significant contributions were made by members of the public and organizations, and an endowment in the approximate total amount of One Million, Six Hundred Twenty-One Thousand, Five Hundred Forty-One and 55/100 Dollars (\$1,621,541.55) (“the Endowment”) was ultimately pledged and paid to the Foundation specifically for the use and benefit of the Property. See **Exhibit No. 9** (AAC Foundation – Decorative Arts Museum Fund Drive thru 1/27/86 summary).

42. On February 18, 1985, Charles C. Owen, an attorney of Little Rock, Arkansas, acting on behalf of and as attorney for the Foundation, submitted a letter of that date to the Assistant Commissioner of the U.S. Internal Revenue Service regarding the treatment for tax purposes of the 2-for-1 matching grant of \$1,000,000 by the Winthrop Rockefeller Charitable Trust to the Foundation for endowment of the Property. The letter describes the historical significance of the

Property, the gift of the Property to the City for the use and benefit of the Museum, and the proposed use of the Property, stating in relevant part:

The AACF [Arkansas Arts Center Foundation] desires to create an endowment fund the income from which will be used for the daily operations of the House, ... and utilities and maintenance. The Trustees of the Winthrop Rockefeller Charitable Trust have approved a two-for-one matching grant of endowment funds up to \$1,000,000. Accordingly, a potential endowment fund of \$1,500,000 may be raised. (Letter, p. 5)

...

Although the AACF has accumulated an endowment fund for purposes of supporting the Arts Center, that endowment cannot support both the operations of the Arts Center and the House. Thus, to be able to carry out the purposes of the House, an additional endowment fund is necessary. (Letter, p. 7)

Thus, it is clear that the Endowment fund for the Property is separate and distinct from any other endowment that existed for the benefit of the Arkansas Arts Center/Museum. The Owen Letter dated February 18, 1985 is attached to this Amended Complaint as **Exhibit No. 10**.

43. On July 22, 1985, Mr. Marion Burton, a Co-Trustee of the Winthrop Rockefeller Charitable Trust, wrote a letter to Mr. Townsend Wolfe of the Arkansas Arts Center Foundation, enclosing a check from the Trust “in the amount of \$803,500.80 to the Arkansas Arts Center Foundation for the Pike-Fletcher-Terry House,” as a payment on account of the Trust’s matching grant of up to

\$1,000,000.00. The letter bears the following notation: “Agreed to: Arkansas Arts Center Foundation, By; James T. Dyke, President. Date: July 22, 1985.” A copy of Mr. Burton’s Letter of July 22, 1985, is attached to this Amended Complaint as **Exhibit No. 11.**

44. On July 30, 1985, Mr. Townsend Wolfe, Secretary of the Arkansas Arts Center Foundation, wrote a letter to the Trustees of the Winthrop Rockefeller Charitable Trust, expressing on behalf of the Board of Trustees of the Arkansas Arts Center, the Board of Directors of The Arkansas Arts Center Foundation, the public, and himself, “our gratitude for the Winthrop Rockefeller Trust check in the amount of \$803,500.80 received July 22, 1985, as matching funds (2 for 1) for the \$401,750.40 raised for the Arkansas Arts Center Decorative Arts Museum (Pike-Fletcher-Terry House) as of April 12, 1985.” (A copy of Mr. Wolfe’s letter of July 30, 1985 is attached to this Amended Complaint as **Exhibit No. 12**)

45. Further, on December 19, 1985, Mr. Marion Burton, a Co-Trustee of the Winthrop Rockefeller Trust, wrote a letter to Mr. Townsend Wolfe of the Arkansas Arts Center Foundation, enclosing a check from the Trust “in the amount of \$172,032.68 to the Arkansas Arts Center Foundation for the Pike-Fletcher-Terry House,” as a payment on account of the Trust’s matching grant of up to

\$1,000,000.00. The letter bears the following notation: “Agreed to: Arkansas Arts Center Foundation, By: Townsend Wolfe, 12-20-85.” A copy of Mr. Burton’s Letter of Dec. 19, 1985, is attached to this Amended Complaint as **Exhibit No. 13**.

46. The 1986-1987 Annual Report of the Arkansas Arts Center, prepared after the expiration of the Rockefeller Trust 2-for-1 matching grant, showed that the “Total in Decorative Arts Museum Endowment Drive” was \$1,672,851.88.” See **Exhibit No. 14** to this Amended Complaint.

47. In addition, on June 30, 1988, Mr. Marion Burton, a Co-Trustee of the Winthrop Rockefeller Charitable Trust, wrote a letter to Mr. Townsend Wolfe of Arkansas Arts Center Foundation, enclosing a check from the Trust “in the amount of \$416,981.32 to the Arkansas Arts Center Foundation for the Pike-Fletcher-Terry House,” as a payment on account of the Trust’s matching grant of up to \$1,000,000.00. Receipt of the letter was acknowledged on July 1, 1988 by the Arkansas Arts Center Foundation, By: Townsend Wolfe. A copy of Mr. Burton’s Letter of June 30, 1988, is attached to this Amended Complaint as **Exhibit No. 15**

48. On March 17, 2003, Ms. Ellen A. Plummer, then-Executive Director of the Arkansas Arts Center, wrote a letter to Mr. Robert Shults, an attorney of Little Rock, Arkansas regarding the Endowment for the Pike-Fletcher-Terry Property, as

distinguished from the general Arkansas Arts Center separate endowment. Ms.

Plummer's letter reads in relevant part:

I am grateful for your willingness to help me understand the history of the relationship of the Arkansas Arts Center and the Terry Mansion.

You will be relieved to know, I hope, that after our meeting, I made better sense of the 1988 document you shared concerning the contributions to the AAC Foundation Endowment. The first entry that confused me is, of course, the \$2.25 million Rockefeller gift of 1976 that first established the endowment in general. At first I thought you to mean that all the contributions listed on that page, including that one, were for the house. *I understand now that only the entries from the 1980s, totaling some \$1.8 million, were for the Terry House, the amount that I understood to be there all along.* (Italics added)

I do appreciate the point that this document makes; that there is a long-standing, deep commitment to the Arts Center in general and the Terry House in particular on the part of the Rockefeller family, the Terry family and indeed the community as a whole. Our intent is to honor that heritage.

A copy of Mrs. Plummer's letter of March 17, 2003 is attached to this

Amended Complaint as **Exhibit No. 16**.

49. The Endowment funds entrusted to the Foundation for the maintenance and operation of the House and Property were "restricted" funds in that they were dedicated solely and exclusively for the operations and maintenance of the House

and Property, and not for the Arkansas Arts Center's general operations or for other uses by the Center or the Foundation.

50. The Foundation received the Endowment funds as a fiduciary trustee, and as such was and is responsible for the prudent investment, management and use of the funds for their intended purposes. Under applicable law and accounting principles relating to expenditure of Endowment funds, and in view of donations of money and services to the Pike-Fletcher-Terry Property from sources other than the Endowment (*e.g.*, donations by the State of Arkansas, the City of Little Rock, and other sources), the Endowment for the Property should be in existence with a significant balance. The Arkansas Arts Center/Museum Foundation should be required to account for the investment, expenditure, and use of the Endowment funds.

51. Since the closing of the Decorative Arts Museum in the Property in 2003, representatives of the Terry and Drennan Families, to whom the Property would revert in the event of breach of the covenants, terms and conditions contained in the Deed have inquired of the Museum and the Foundation regarding their plans for use of the Property. The Museum and Foundation leadership have consistently

reassured the families that they value the Property and that it was instrumental in the Museum's planning and projects.

52. On June 24, 2021, representatives of the Terry-Drennan Family met with representatives of the Museum and the Foundation regarding the future use of the Property by the Museum. They were told by Mr. Warren Stephens, Chairman of the Foundation's Board of Directors, that he had, several months earlier, directed the Foundation's attorney to draft a letter to the City of Little Rock stating that the Foundation no longer had an interest in the Property, and would relinquish it. At the request of the Mayor of the City of Little Rock, who stated that verbal notice was sufficient, the letter was not sent. That information had not theretofore been conveyed to any person in or representing the Terry-Drennan Family.

53. Mr. Stephens further confirmed to the representatives of the Terry-Drennan Family that the Foundation would not invest any more money into the Property, other than payment of utilities at the house until June 30, 2022, the end of the Foundation's fiscal year.

54. Instead, Mr. Stephens stated that the Foundation Board has a fiduciary duty to preserve the funds raised in the capital campaign in which the Foundation is currently engaged, ignoring the fact that The Foundation also has a fiduciary duty

to preserve the Endowment Fund that was raised for the Pike-Fletcher-Terry Property.

Count 1
Breach of Contract

55.Plaintiffs restate and incorporate herein all of the allegations contained in the foregoing paragraphs.

56.The Defendants have failed to conduct sufficient maintenance and repairs on and to the Property, and have allowed the Property to fall into disrepair. Attached to this Amended Complaint as **Exhibits 17 through 24**, are photographs of portions of the exterior of the Property showing the rapidly deteriorating condition of the House and a carriage house on the Property.

57.In September 2017, an assessment of the condition of the Terry-Drennan House was made by Mr. Tommy Jameson, an architect of Little Rock, Arkansas, at the request of the Museum. Mr. Jameson estimated that costs in the amount of \$877,026.00 would be required to bring the Property to good condition. The 9/2017 Jameson Estimate is attached to this Amended Complaint as **Exhibit No. 25**. On information and belief, the work contemplated by the 9/2017 Jameson Estimate was not performed.

58. In June 2021, an assessment of the condition of the House was again made by Mr. Tommy Jameson, this time at the request of the City of Little Rock. Mr. Jameson estimated that costs in the amount of \$1,130,863.00 would be required to bring the Property to good condition. The 6/2021 Jameson Estimate is attached to this Amended Complaint as **Exhibit No. 26**. On information and belief, the work contemplated by the 6/2021 Jameson Estimate was not performed.

59. In April 2020, two proposals and cost estimates were prepared at the request of the Museum by Nabholz Construction Services for conducting work on the Property, including removal or trimming of a number of trees, and replacing or repairing the roof of the House and a gazebo.

60. The first estimate (Proposal 23-5268-20) dated April 1, 2020, was for removal or trimming of various large trees on the Property (one of which was a large oak tree hanging over the roof of the House), and was for the amount of \$5,890.00. The second estimate (Proposal 23-5269-20) dated April 1, 2020, was for removal and replacement of felt, shingles, copper valley metal and flashing and other materials for the roof of the House and a gazebo on the Property, and was in the amount of \$28,433.88. The Proposals are attached to this Amended Complaint at **Exhibits 27 and 28**.

61. On information and belief, the work contemplated by both of the above described Proposals was not performed. Subsequent to the dates of those Proposals, the oak tree hanging over the roof of the House struck the southwest chimney of the House, causing it to break into two sections, as shown in **Exhibit No. 29**. The City of Little Rock has recently made repairs to the chimney to prevent it from falling onto and through the roof of the House.

62. The Property has, through non-use and neglect, been subjected to extensive deterioration, which will accelerate with time and further neglect, and which will ultimately destroy the usefulness of the House as a place for the advancement of the cultural, artistic, or educational interests of the community, as contemplated by the conditions imposed upon the Deed from Mrs. Terry and Mrs. Drennan to the City of Little Rock.

63. The Defendants, and each of them, having accepted the Property subject to the terms and conditions of the Deed from Adolphine Fletcher Terry and Mary Fletcher Drennan, and being fully cognizant and aware of such terms and conditions, are bound thereby.

64. The Museum and the Foundation, at any time after discontinuing use of the Property, when the Property could have been restored for lower costs, could have

informed the City of Little Rock and the Plaintiffs that the Museum and Foundation no longer had any feasible plans for use for the Property. Instead, the Museum and Foundation retained the Property without using it and without expending funds necessary for its maintenance.

65. Since use of the Property was discontinued by the Museum, heirs of Adolphine Fletcher Terry or Mary Fletcher Drennan (“the Heirs”) have repeatedly inquired of the Museum and the Foundation regarding their intentions regarding future use of the Property and the condition of the House. The Heirs always received assurances that the Museum and the Foundation considered the Property to be important and useful to the Museum and the Foundation.

66. It was not until June 25, 2021, that representatives of the Museum and/or the Foundation advised heirs of Adolphine Fletcher Terry and Mary Fletcher Drennan that the Museum and Foundation had no further interest in or use for the Property, and would not invest any money in maintaining the Property.

67. The Defendants, and each of them, have failed and refused to comply with the provisions and conditions contained in the Deed dated September 19, 1964, to:

- (i) keep and maintain the said lands in their present condition, preserving, as far as possible, the trees thereon, and maintaining the home-place thereon in its present general architectural form; and
- (ii) use the said Property exclusively for the advancement of the cultural, artistic, or educational interests of the community.

68. As a result of the failure and refusal of the Defendants, and each of them, to perform, comply with and observe their obligations under the terms and conditions of the Deed, title to the Property shall revert in an undivided one-half interest to the heirs of Adolphine Fletcher Terry and in an undivided one-half interest to the heirs of Mary Fletcher Drennan, in accordance with the terms of the Deed.

69. As a further result of the failure of the Defendants, and each of them, to perform, comply with and observe their obligations under the terms and conditions of the Deed regarding the maintenance of the Property, a judgment should be granted against the Defendants, jointly and severally, in an amount that will be required to restore the Property to a good and sound condition in which it can be used for the advancement of the cultural, artistic, or educational interests of the community.

Count 2.
Accounting for Endowment

70.Plaintiffs restate and incorporate herein all of the allegations contained in the foregoing paragraphs.

71.An Endowment of approximately \$1.8 million was created and provided to the Foundation specifically for the use and benefit of the Property following the gift of that Property by Adolphine Fletcher Terry and Mary Fletcher Drennan to the City of Little Rock for the use and benefit of the Museum.

72.Donations to that Endowment were “restricted” in that they could only be used for the purposes of the donation – the operation and maintenance of the Property – and not for general operations of the Museum.

73.The Foundation is successor in interest to the Arkansas Arts Center Foundation, and is subject to the same obligations and liabilities of the Arkansas Arts Center and the Arkansas Arts Center Foundation relative to the Property, including the fiduciary obligations imposed on those entities relative to maintenance and use of the Property, and the investment, management and expenditure of the Endowment for the exclusive use and benefit of the Property.

74. The Museum and Foundation Defendants should be ordered and directed to account to the Court and Plaintiffs for all funds received by the Museum and Foundation, or any of them, donated by any person or entity at any time to the Endowment for the use and benefit of the Property or to any other fund or name for the same purpose.

75. In the event that the Court should find, as a result of such accounting or from other relevant evidence, that the Defendants expended any part of the Endowment, or expended other funds or property donated to the Museum or Foundation for the use and benefit of the Property (whether included in the Endowment or not), for purposes other than the use and maintenance of the Property, the Court should award Judgment in favor of the Plaintiffs of and from the Defendants in the amount so expended on such other purposes.

76. In the event that the Court should find, as a result of such accounting or from other relevant evidence, that the Defendants are holding any funds or other property donated to the Endowment, the Court should order and direct such Defendant to pay over and deliver such funds to the Plaintiffs, or as directed by Plaintiffs.

Count 3.
Rental and Other Income

77.The Deed from Mrs. Terry and Mrs. Drennan to the City of Little Rock for the benefit of the Arkansas Arts Center contained a condition, quoted in Paragraph 29, above, stating that the Grantee, or its successors, could display the lands and the buildings to the public with or without the payment of a fee, but if a fee is charged, the proceeds “shall be used first to keep and maintain the said property and then for further uses and purposes herein expressed.”

78.During its use of the Property, the Museum has, for various events, displays, exhibits and other uses, charged the sponsors of such events and uses, or members of the public attending them, fees or rentals for such uses. Such charges were not used by the Museum for the maintenance of the Property as required by the provisions of the Deed, but were used by the Museum and the Foundation for operating expenses or other purposes not related to the Property.

79.The Defendants should be required to account for all use charges, fees and rentals, and the expenditure of such funds by them, and the Defendants be required

to pay into the Endowment Fund for the Property all such income that was expended in violation of the restriction and condition contained in the Deed.

Count 4.
Attorney Fees

80. The Deed between Adolphine Fletcher Terry and Mary Fletcher Drennan, and the City of Little Rock for the use and benefit of the Museum constituted a contract within the terms and scope of Arkansas Code Ann. §16-22-308, which provides that the Court may award a reasonable attorney fee to the prevailing party in matters involving breach of contract.

81. In addition, Ark. Code Ann. §28-73-1004 provides for an award of attorney's fees and expenses in cases involving the administration of a trust. The Endowment held and administered by the Museum and Foundation Defendants constitutes a trust, and the provisions of Ark. Code Ann. §28-73-1004 are applicable to the management of the Endowment and other funds donated to the Foundation for the use and benefit of the Property.

82. In the event that the Court renders judgment in favor of the Plaintiffs of and from the City of Little Rock, Arkansas, the Museum and/or the Foundation or any of them, Plaintiffs should be awarded reasonable attorney fees as a result of the breach of the conditions of the said Deed, for breach of the terms of the Endowment, and all costs of this action.

WHEREFORE, the Plaintiffs, Susan Terry Borne, Elizabeth Terry Foti, Catherine Drennan, John Drennan, Margaret Yatsevitch and Michael Yatsevitch, as and on behalf of all the heirs of Adolphine Fletcher Terry and Mary Fletcher Drennan, both deceased, pray that they be granted the following relief:

- (1) Enter Judgement in favor of the Plaintiffs and against the Defendants determining that, as a result of the failure of the Defendants, and each of them, to perform, comply with and observe their obligations under the terms and conditions of the Deed, title to the Property shall revert in an undivided one-half interest to the heirs of Adolphine Fletcher Terry and in an undivided one-half interest to the heirs of Mary Fletcher Drennan, in accordance with the terms of the Deed.
- (2) Enter Judgement in favor of the Plaintiffs of and from the Defendants in an amount that will be required to restore the Property to a good and sound

condition in which it could be used for the advancement of the cultural, artistic, or educational interests of the community.

- (3) Order and direct the Defendants, Museum and Foundation, to account to the Court and Plaintiffs for all funds received by them, or any of them, donated to the Terry-Drennan House Endowment by any person or entity for the use and benefit of the Property or to any other name for the same purpose, and for all sums expended by and currently held by the Defendants, or any of them, from such donations.
- (4) Award Judgment in favor of the Plaintiffs against any Defendants who, from such accounting, are found to have expended any funds or other property donated to the Endowment for any purposes other than the use and maintenance of the Property, in the amount so expended on such other purposes; together with reasonable interest and investment return from the date of any improper expenditures to the date of Judgment and final payment thereof.
- (5) Order and direct the Defendants Museum and Foundation to account to the Court and Plaintiffs for all funds received by them, or either of them, paid to them by any persons or organizations as use charges, fees and rentals, and to

account for the expenditure of such funds by the Defendants, and the Defendants be required to pay into the Endowment Fund for the Property all such income that was expended in violation of the restriction and condition contained in the Deed relative to such income.

(6) Order any Defendants who, from such accounting are found to currently hold any funds or other property donated to the Terry-Drennan House endowment to deliver such funds to the Plaintiffs.

(7) Award Judgement to the Plaintiffs for reasonable attorney fees of and from the Defendants, and each of them, as a result of the breach of the conditions of the said Deed by the Defendants, and for any misuse or misapplication of funds from the House Endowment; and for all costs of this action.

Respectfully submitted,

RICHARD MAYS LAW FIRM PLLC

/s/ Richard H. Mays

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CERTIFICATE OF SERVICE

I, Richard H. Mays, hereby certify that, on the date set forth below, I filed the foregoing First Amended Complaint with the Clerk of the Court via the E-flex filing system, which shall send notification of the filing to all parties of record and their counsel.

Dated: November 11, 2021.

/s/ Richard H. Mays
Richard H. Mays