

1 **ORDINANCE NO. _____**

2

3 **AN ORDINANCE TO GRANT A FRANCHISE TO OCCUPY PUBLIC**
4 **RIGHTS-OF-WAY; TO LOCATE PUBLIC SCULPTURE AND OTHER**
5 **WORKS OF ART WITHIN SUCH RIGHTS-OF-WAY AND PROVIDE FOR**
6 **ACCESS TO AND MAINTENANCE AND UPKEEP OF SAID PUBLIC**
7 **SCULPTURES AND ART WORKS AND THE PUBLIC RIGHTS-OF-WAY**
8 **AND OTHER IMPROVEMENTS LOCATED THEREIN; TO SET FORTH**
9 **THE TERMS AND CONDITIONS FOR THE USE OF SUCH RIGHTS-OF-**
10 **WAY; AND FOR OTHER PURPOSES.**

11

12 **WHEREAS**, Deltic Timber Corporation (“Deltic”) has, commencing in 1989, maintained and
13 improved the medians and shoulders of certain public rights-of-way generally referred to as Chenal
14 Parkway, Rahling Road and Chenonceau Boulevard, all as more particularly described in Exhibit A
15 attached hereto and made a part hereof (the “Public Right-of-Way”); and,

16 **WHEREAS**, Deltic and the “Sculpture at the River Market, Inc.” (the “Foundation”) desire to enter
17 into certain agreements with the City of Little Rock, Arkansas (the “City”) for the purpose of locating one
18 (1) or more pieces of public sculpture and art in or near the Public Right-of-Way and jointly desire to obtain
19 from the City permission to locate such public sculptures, as appropriate, within the designated Public
20 Right-of-Way, and to access the Sculpture Sites, as defined herein, as necessary and appropriate, through,
21 across or over the Public Right-of-Way for the purpose of maintaining, protecting and securing the
22 sculptures located therein; and,

23 **WHEREAS**, it is important to set forth and confirm with the City the terms and conditions for use of
24 the Public Right-of-Way pursuant to a Franchise Agreement by and among the City, Deltic and the
25 Foundation, all as more particularly set forth hereinafter;

26 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY**
27 **OF LITTLE ROCK, ARKANSAS, AS FOLLOWS:**

28 **Section 1. Authority to Execute Franchise.** In consideration of Deltic’s agreements to maintain the
29 Public Right-of-Way and the Foundation’s agreement to donate the public sculptures and works of art to
30 the City, the Mayor, City Manager and City Clerk are authorized to take all steps necessary to execute a
31 Franchise Agreement in substantially the form set forth within this Ordinance, as approved by the City
32 Attorney, with Deltic and the Foundation, as their interests appear herein, to allow access to and from the
33 Public Right-of-Way for the purposes of locating therein certain Sculpture Sites, as more particularly

1 defined in Exhibit B attached hereto and made a part hereof; to erect, install, construct and place one or
2 more pieces of public sculpture for the benefit of the Public, and to further provide for continuing
3 maintenance, upkeep, and security for the Sculpture Sites, the Sculptures, and landscaping located in the
4 Public Right-of-Way, generally.

5 **Section 2. Definitions.** For the purposes of the Agreement set forth and as provided in this Ordinance,
6 the following words and phrases shall have the meaning given herein. When not inconsistent in the within
7 context, words used in the present tense include the future tense and words in the single number include the
8 plural number. The word “shall” is always mandatory, and not merely directory.

9 (a) “City” – means the City of Little Rock, Arkansas.

10 (b) “Deltic” – means Deltic Timber Corporation, a corporation organized pursuant to the laws of
11 the State of Delaware.

12 (c) “Facilities” – means any and all foundations, earthwork, structures, utilities, lights, or other
13 improvements constructed or installed at a Sculpture Site in connection with placing and
14 servicing one or more Sculptures.

15 (d) “Foundation” – means the Sculpture at the River Market, Inc., a non-profit corporation
16 organized pursuant to the laws of the State of Arkansas.

17 (e) “Grantee” – means Deltic and the Foundation, jointly and as their interests may appear, in this
18 Ordinance and in the Agreement incorporated herein. References to Grantee shall also
19 include, as appropriate, any and all successors and assigns.

20 (f) “Public Right-of-Way” – means all of that public right-of-way more particularly set forth and
21 defined in Exhibit “A” attached hereto and made a part hereof, and shall include the area on,
22 below, or above the present and future streets, alleys, avenues, roads, highways, parkways or
23 boulevards dedicated or required as right-of-way.

24 (g) “Sculpture” – means those particular pieces of art as may be defined under the terms of the
25 Agreement whether now in existence or to be added pursuant to future amendments to the
26 Agreement.

27 (h) “Sculpture Sites” – mean those specific sites identified in Exhibit “B” to this Agreement or
28 which may be identified in the future pursuant to amendments to this Agreement.

29 **Section 3. Basic Grant of Franchise.**

30 (a) There is hereby granted an exclusive license to construct, maintain, install, erect and locate the
31 Sculptures, as more particularly defined in the Agreement or subsequent amendments to the Agreement,
32 along, across, upon, over or under any Public Right-of-Way, as defined herein, for the purpose of enhancing
33 the quality of life and public enjoyment of art by citizens, inhabitants, visitors to the City and other travelers
34 on the Public Right-of-Way, and to provide for the ongoing maintenance, upkeep, mowing, planting, tree

1 and plant installation and removal, Sculpture Site construction and development, and all other actions
2 necessary and appropriate to the fulfillment of the purposes of this ordinance and this Agreement, for the
3 term of this Agreement, subject to the terms and conditions of this Agreement.

4 (b) The grant of this Agreement by the City shall not convey title, equitable or legal, in the Public
5 Right-of-Way, and shall give only the right to occupy, access, cross and otherwise use the Public Right-of-
6 Way, for the purposes and for the periods stated in this Agreement. This Agreement does not:

7 (1) grant the right to use other property or improvements owned or controlled by the City or a
8 third party, without the consent of such party;

9 (2) grant the authority to construct, maintain or operate any improvement or related
10 appurtenance on property owned by the City outside of the Public Right-of-Way,
11 specifically including, but not limited to park land property, City Hall property, and
12 appellate court facility property; or

13 (3) excuse Grantee from attaining appropriate access or access agreements before locating
14 Sculpture, Sculpture Sites, or Sculpture and Sculpture Sites in the Public Right-of-Way
15 owned or controlled by the City and not covered by this Agreement.

16 (c) As a condition of this grant, Grantee is required to obtain any necessary permit, license,
17 certification, grant, registration or any other authorization required by an appropriate governmental entity
18 other than the City. Grantee shall also comply with all applicable laws, statutes and/or City regulations
19 including, but not limited to, those relating to the construction and use of the Public Right-of-Way
20 encompassed by this Ordinance and the Agreement;

21 (d) The authority granted herein includes the continuing maintenance, upkeep, mowing, planting,
22 pruning, tree and plant installation and removal and other actions necessary to the ongoing maintenance of
23 the entire Public Right-of-Way, by Deltic.

24 **Section 4. Use of Public Right-of-Way.**

25 (a) Grantee shall have the right to construct, maintain, operate and secure its Facilities along, across,
26 upon, over and under the Public Right-of-Way. Such Facilities shall also be constructed and maintained as
27 not to obstruct or hinder the usual travel or public safety on any public ways or obstruct the legal use by
28 other third parties.

29 (b) Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the reasonable
30 public health, safety and welfare requirements and regulations of the City. Grantee shall be subject to all
31 applicable laws and statutes, and/or rules, regulations, policies, resolutions, and ordinances adopted by the
32 City, relating to the construction and use of the Public Right-of-Way except as provided in this Agreement.

33 (c) Further, Grantee shall comply with the following:

1 (1) Grantee's use of the Public Right-of-Way shall in all matters be subordinate to the City's
2 use or occupation of the Public Right-of-Way. Without limitation of its rights, the City
3 expressly reserves the right to exercise its governmental powers now and hereafter vested
4 or granted in the City. Grantee shall coordinate the installation of its Facilities in the Public
5 Right-of-Way in a manner which minimizes adverse impact on public improvements, as
6 reasonably determined by the City. Where installation is not otherwise regulated, the
7 Facilities shall be placed with adequate clearance from such public improvements so as not
8 to impact or be impacted by such public improvement as defined in the City's Engineering
9 Design Standards and Construction Specifications.

10 (2) All earth, materials, sidewalks, paving, crossings, utilities, public improvements, or
11 improvements of any kind located within the Public Right-of-Way damaged or removed
12 by Grantee in its activities under this Agreement shall be fully repaired or replaced
13 promptly by Grantee without cost to the City to the reasonable satisfaction of the City;
14 however, when such activity is a joint project of utilities or Grantee, the expenses thereof
15 shall be prorated among the participants, and to the reasonable satisfaction of the City in
16 accordance with the ordinances and regulations of the City pertaining thereto. Nothing in
17 this Ordinance or the Agreement shall require Grantee to repair or replace any materials,
18 trees, flowers, shrubs, landscaping or structures that interfere with Grantee's access to any
19 of its Facilities located in the Public Right-of-Way or an adjacent utility easement. Any
20 excavation, back filling, repair and restoration, and all other work performed in the Public
21 Right-of-Way shall be done in conformance with the City's Engineering Design Standards
22 and Construction Specifications, as promulgated by the City Engineer. The City Engineer
23 has the authority to inspect the repair or replacement of the damage, and if necessary, to
24 require Grantee to do the additional necessary work. At the time of any inspection, the
25 City Engineer may order the immediate cessation of any work, which poses a serious threat
26 to the life, health, safety, or wellbeing of the public. Notice of the unsatisfactory restoration
27 and the deficiencies found will be provided to Grantee and a reasonable time not to exceed
28 30 days will be provided to allow for the deficiencies to be corrected.

29 (3) Except in the event of an emergency, as reasonably determined by Grantee, Grantee shall
30 comply with all laws, rules, regulations, policies, resolutions, or ordinances now or
31 hereinafter adopted or promulgated by the City relating to any construction, reconstruction,
32 repair, or relocation of Facilities which would require any street closure which reduces
33 traffic flow. Notwithstanding the foregoing exception, all work, including emergency

1 work performed in the traveled way or which in any way impacts vehicular or pedestrian
2 traffic, shall be properly signed, barricaded, and otherwise protected.

3 (4) Grantee shall maintain and file with the City updated maps, in such form as may be required
4 by the City Engineer, providing the location and sufficient detail of all existing and new
5 Facilities in the Public Right-of-way, and such other related information as may be
6 reasonably required by the City Engineer of all users of the Public Rights-of-Way. Such
7 maps shall be updated and kept current with the City.

8 (5) Grantee shall be responsible for its costs that are directly associated with its installation,
9 maintenance, repair, operation, use, and replacement of its Facilities within the Public
10 Right-of-Way. Grantee shall be responsible for its own costs incurred removing or relocat-
11 ing its Facilities when required by the City due to City requirements relating to mainte-
12 nance and use of the Public Right-of-Way for government purposes.

13 (6) Grantee shall take adequate measures to protect and defend its Facilities in the Public
14 Right-of-Way from harm or damage. If Grantee fails to accurately locate Facilities when
15 requested, it shall have no claim for costs or damages against the City.

16 (7) At a minimum, and without limitation, Grantee shall comply with all building and zoning
17 codes currently or hereafter in force in the City.

18 (8) Grantee shall comply with all technical and zoning standards governing construction, re-
19 construction, installation, operation, testing, use, maintenance, and dismantling of the Fa-
20 cilities in the Public Right-of-Way, as required by present and future Federal, State, and
21 City laws and regulations.

22 **Section 5. *Indemnity and Hold Harmless Requirements.***

23 (a) The City shall rely upon local government immunity for any negligence actions that may arise as a
24 result of this franchise; if, and only if, local government immunity is deemed not to be available by a court
25 of last resort, then the following provisions shall apply.

26 (b) Grantee shall indemnify, defend and hold harmless (the “Indemnifying Party”), the City, its
27 directors, officers, employees, representatives and members, partners, trustees and affiliates (collectively,
28 the “Indemnified Party”) from and against any and all costs, liabilities, losses and expenses (including, but
29 not limited to, reasonable attorneys’ fees) resulting from any claim, demand, suit, action, judgment, loss or
30 proceeding brought against the Indemnified Party for:

- 31 (1) Personal injury and death;
32 (2) Damage to any personal or real property; or
33 (3) Any unauthorized use of the Facilities of the Indemnified Party.

1 If the Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be
2 apportioned comparatively in accordance with the laws of the State of Arkansas without, however, waiving
3 any governmental immunity available to the City under State law and without waiving any defenses of the
4 parties under State or Federal law.

5 (c) During any construction phase, Grantee shall have in place commercial, general liability and
6 automobile liability insurance in amounts acceptable to the City.

7 **Section 6. *Reservation of Rights.*** In entering into the Agreement, neither the City's nor Grantee's
8 present or future legal rights, positions, claims, assertions or arguments before any administrative agency
9 or court of law are in any way prejudiced or waived. By entering into this Agreement, neither the City nor
10 Grantee waive any rights, but instead expressly reserve any and all rights, remedies and arguments the City
11 or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the
12 legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

13 **Section 7. *Failure to Enforce.*** The failure by either the City or the Grantee to insist in any one or
14 more incidences upon the strict performance of any one or more of the terms or provisions of this Agreement
15 shall not be construed as a waiver or relinquishment for the future of any term or provision, and the same
16 shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by
17 the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and
18 the Grantee.

19 **Section 8. *Term and Termination.***

20 (a) This Agreement shall be effective for an initial term of fifty (50) years from the effective date of
21 this Agreement. Thereafter, the Agreement will renew for additional ten (10)-year terms, unless either
22 party notifies the other party of its intent to terminate or renegotiate the Agreement at least 180 days before
23 the termination of the then current term. The additional term shall be deemed a continuation of this
24 Agreement and not as a new franchise or amendment.

25 (b) Upon written request of either the City or the Grantee, this Agreement shall be renegotiated at any
26 time in accordance with the requirements of State law upon any of the following events: changes in Federal,
27 State or local laws, regulations or orders that materially affect any rights or obligations of either the City or
28 the Grantee.

29 (c) In any event the parties are actively negotiating in good faith a new agreement or an amendment to
30 this Agreement on the termination date of this Agreement, the parties by written mutual agreement may
31 extend the termination date of this Agreement to allow for further negotiations. Such extension period shall
32 be deemed a continuation of this Agreement and not as a new franchise license or amendment.

33 (d) Notwithstanding any other provision of this Agreement, neither the City nor the Grantee shall have
34 the right to terminate this Agreement for the purpose of removing any piece of Sculpture from within the

1 designated Public Right-of-Way and relocating it to a location outside of the designated Public Right-of-
2 Way, provided, however, by mutual agreement, the parties hereto may relocate any Sculpture to another
3 mutually agreed upon Sculpture Site within the designated Public Right-of-Way, subject to compliance
4 with all other terms and conditions of this Agreement.

5 **Section 9. Point of Contact and Notices.** Grantee shall at all times maintain with the City a local
6 point of contact who shall be available at all times to act on behalf of the Grantee in event of an emergency.
7 Grantee shall provide the City with said local contact's name, address, telephone number, fax number and
8 email address. Emergency notice of Grantee to the City may be made by telephone to the City Clerk or the
9 Public Works Department Director. All other notices between and among the parties shall be in writing
10 and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return
11 receipt requested or facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested,
12 shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless
13 otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business
14 Day" for purposes of this section shall mean Monday through Friday, City and/or Grantee-observed
15 holidays excepted.

16 To the City: Office of the City Manager
17 500 West Markham Street, 2nd Floor
18 Little Rock, Arkansas 72201
19 Phone: (501) 371-4510
20

21 To Grantee: Deltic Timber Corporation
22 ATTN: President and Chief Executive Officer
23 210 East Elm Street
24 El Dorado, Arkansas 71731
25 Phone: (870) 881-9400
26

27 With copy to: Sculpture at the River Market, Inc.
28 ATTN: Director
29 5409 Hawthorne Road
30 Little Rock, Arkansas 72207
31 Phone: (501) 539-0913

32 **Section 10. Transfer and Assignment.** This Franchise is granted solely to the Grantee and shall not
33 be transferred or assigned without the prior written approval of the City which shall be in accordance with
34 applicable law; provided that such transfer and assignment may occur without written consent of the City
35 to a wholly owned parent or subsidiary of Deltic Timber Corporation, between wholly owned subsidiaries
36 of Deltic Timber Corporation, or to an entity acquiring all or substantially all of Deltic's assets.

37 **Section 11. Acceptance of Terms.** Grantee shall have sixty (60) days after the final passage and
38 approval of this ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and
39 conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized

1 by law to administer oaths; and when so accepted, this ordinance and acceptance shall constitute a contract
2 between the City and Grantee subject to the provisions of the laws of the State of Arkansas, and such
3 contract shall be deemed effective on the date Grantee files acceptance with the City.

4 **Section 12. Force Majeure.** Each and every provision hereof shall be reasonably subject to acts of
5 God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

6 **Section 13. Severability.** In the event any section, subsection, subdivision, paragraph or subparagraph,
7 item, sentence, clause, phrase or word of this ordinance is declared or judged to be invalid or
8 unconstitutional, such a declaration or adjudication shall not affect the remaining provisions of this
9 Ordinance, as if such invalid or unconstitutional provision were not originally a part of this ordinance.

10 **Section 14. Repealer.** All ordinances, resolutions, bylaws and other matters inconsistent with this
11 ordinance are hereby repealed to the extent of such inconsistency.

12 **PASSED: March 15, 2016.**

13 **ATTEST:**

APPROVED:

14

15 _____
16 **Susan Langley, City Clerk**

_____ **Mark Stodola, Mayor**

17 **APPROVED AS TO LEGAL FORM:**

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19 _____
20 **Thomas M. Carpenter, City Attorney**

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1 **THIS FRANCHISE** is entered into as of the _____ day of _____, 2016.

2 **GRANTEE:**

3 **DELTIC TIMBER CORPORATION**

4
5 **By:**_____

6 **Title:**_____

7
8 **SCULPTURE AT THE RIVERMARKET, INC.**

9
10 **By:**_____

11 **Title:**_____

12
13 **CITY OF LITTLE ROCK, ARKANSAS**

14
15 **By:**_____

16 **Mark Stodola, Mayor**

17
18 **ATTEST:**

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20 _____
21 **Susan Langley, City Clerk**

22 **APPROVED AS TO LEGAL FORM:**

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25 **Thomas M. Carpenter, City Attorney**

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ACKNOWLEDGMENT

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STATE OF ARKANSAS

COUNTY OF PULASKI

On this ____ day of _____, 2016, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Ray C. Dillon, who stated that he is the President and CEO of Deltic Timber Corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

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ACKNOWLEDGMENT

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STATE OF ARKANSAS

COUNTY OF PULASKI

On this ____ day of _____, 2016, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____, who stated that he/she is the _____ of Sculpture at the Rivermarket, Inc., and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

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