

**City of Fayetteville Staff Review Form**

**2019-0299**

**Legistar File ID**

**6/4/2019**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

John J. Scott

5/10/2019

PARKS & RECREATION (520)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Vacate a tree preservation located behind Raisin Cane's parcel 765-07564-000 and create two new tree preservation easements on parcel 765-16157-000 and 765-15229-000.

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>No</u>	Current Budget      \$                      -
	Funds Obligated      \$                      -
	Current Balance <b>\$</b> -
<b>Does item have a cost?</b> <u>No</u>	Item Cost
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment
	Remaining Budget <b>\$</b> -

V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**TO:** Mayor Lioneld Jordan and City Council

**THRU:** Connie Edmonston, Parks and Recreation Director  
Garner Stoll, Development Services Director  
Ted Jack, Parks Planning Superintendent

**FROM:** John Scott, Urban Forester

**DATE:** May 10, 2019

**SUBJECT:** **Vacation request of Tree Preservation Easement.** Vacate a tree preservation located behind Raisin Cane's parcel 765-07564-000 and create two new tree preservation easements on parcel 765-16157-000 and 765-15229-000.

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**RECOMMENDATION:**

Staff is recommending in support of the vacation of this tree preservation easement on parcel 765-07564-000 in conjunction with dedication of two new tree preservation easements on parcels 765-16157-000 and 765-15229-000 as replacements. The proposed tree preservation easements are located on the west side of the city adjacent to Harmony Point Park (Exhibit B) and on the east side of the City (Exhibit C) adjacent to another tree preservation easement. The two new tree preservation easements are nearly twice the size of the existing tree preservation easement.

If the tree preservation easement is vacated on parcel 765-07564-000, the parcel will revert back to current zoning, Residential Multi Family 24, and be subject to all City of Fayetteville Unified Development Code rules and reviews, including a 20% tree preservation for RMF 24 zoning.

**BACKGROUND:**

The tree preservation easement on parcel number 765-07564-000 was dedicated as part of the development of JD China restaurant, LSD 00-36 when it was built in 2001. The trees were placed in a tree preservation easement to meet the development requirements on the 1.76-acre lot to build the restaurant.

The restaurant closed and Raising Cane's proposed to purchase and split the lot.

In 2016, a lot split LSP 16-5311 was submitted and approved. The lot split created an isolated tree preservation lot of .67 acres. The remaining 1.09 acres was sold to Raising Cane's to develop a new restaurant. The resulting split created a lot that was almost entirely covered in a tree preservation area to meet the requirements of their previous project, LSD 00-36, JD China.

The applicant wishes to vacate the tree preservation easement to facilitate selling the property. According to UDC code, 167.04 L.2. "The geographic extent and location of tree preservation

easements, once recorded, may only be modified, or abolished with the express approval of City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest in the City of Fayetteville."

Planning and Urban Forestry staff have received several inquiries about this property from perspective buyers and informed the perspective buyers of the tree preservation easement.

**DISCUSSION:**

After the lot split (LSP 16-5311) that created two separate parcels, the existing tree preservation easement became an isolated and an unbuildable lot in a valuable commercial area. Since this lot split, Urban Forestry staff and Planning staff are mindful of lot splits that involve tree preservation easements, and would like to avoid any similar situations in the future.

Staff has visited all three properties and determined that the two proposed tree preservation easements offer more environmental services to the City than the existing location.

The 0.2 acres (Exhibit B) that is proposed as a new tree preservation easement is located on Owl Creek and adjacent to an existing park. This location offers additional ecosystem services to the City by helping with flood control, bank erosion, water filtration, and wildlife habitat in a continuous forest location. Owl Creek is part of the Illinois Watershed.

The 0.8 acres (Exhibit C) that is proposed as a new tree preservation easement is in an industrial area with an adjacent neighborhood. The property runs behind Fire Station #3, CR Crawford Construction and Promo Life. There is a drainage area running through the site that drains directly into the West Fork of the White River which is part of the Beaver Lake Watershed. This parcel is adjacent to an existing tree preservation easement (0.34 acres) that was dedicated as part of the project to build the new Promo Life facility. With the additional proposed tree preservation easement, a larger portion of this drainage area would remain wooded and offer water filtration, stormwater control, and a continuous wooded area in a sensitive drainage area located in an industrial area. Exhibit E is the sales agreement to purchase this lot if this vacation request is approved.

The current tree preservation easement is in a commercial district and surrounded by rental housing units and fast food restaurants. The current location does offer some eco system services such as air cleaning, and wildlife habitat. However, it is not directly associated with a creek or drainage area and is not possible to have a continuous wooded area. The site currently collects debris and is a site for illegal trash deposits. Some of the canopy has been removed and red clay has been deposited on the site as well.

Tree canopy for each site

- 16,552.8 sq. ft. of tree canopy at current easement 765-07564-000 (Exhibit- A)
- 8,712 sq. ft. of tree canopy at proposed easement 765-16157-000 (Exhibit- B)
- 28,707.8 sq. ft. of tree canopy at proposed easement 765-15229-000 (Exhibit- C)
- New tree canopy from vacation 37,419 sq. ft. Difference + 20,897 sq. ft./~0.5 acres

Staff believes that two proposed easements offer more eco system services in sensitive areas and creates continuous canopy. More tree canopy is protected with the new proposed easement than the current tree preservation easement. Continuous protected tree canopy in drainage areas offers more benefits to the City, its citizens and wildlife than the current tree preservation easement.

**BUDGET/STAFF IMPACT:**

There is not a budget impact for this request.

**Attachments:**

**Exhibit – A** Location of the tree preservation easement to be vacated 0.67 acres

**Exhibit – B** Location of a new proposed tree preservation easement 0.2 acres

**Exhibit – C** Location of a new proposed tree preservation easement 0.8 acres

**Exhibit – D** Easement Vacation Request

**Exhibit – E** Parcel sales 765-15229-000 Sales agreement

# Fayetteville, AR

**Exhibit A**- Existing Tree Preservation Easement requested to be vacated.

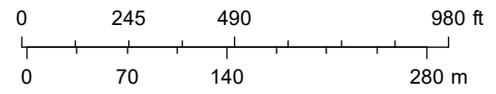
Site is 0.67 acres (29,1985 Sq. Ft.) and 16,552 sq. ft. of tree canopy



4/23/2019 9:26:53 AM

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- |                        |                          |                        |
|------------------------|--------------------------|------------------------|
| <b>Survey Monument</b> | Error                    | Conservation Easement  |
| Section Corner         | GPS Point                | Landscape Easement     |
| 1/4 Corner             | Ref                      | Trail Easement         |
| QQ Corner              | General Utility Easement | Tree Preservation Area |
| City Ref               | Access Easement          | Water/Sewer Easement   |
| Corner By GPS          | Avigation Easement       | Other Easement         |
| Destroyed              | Drainage Easement        |                        |



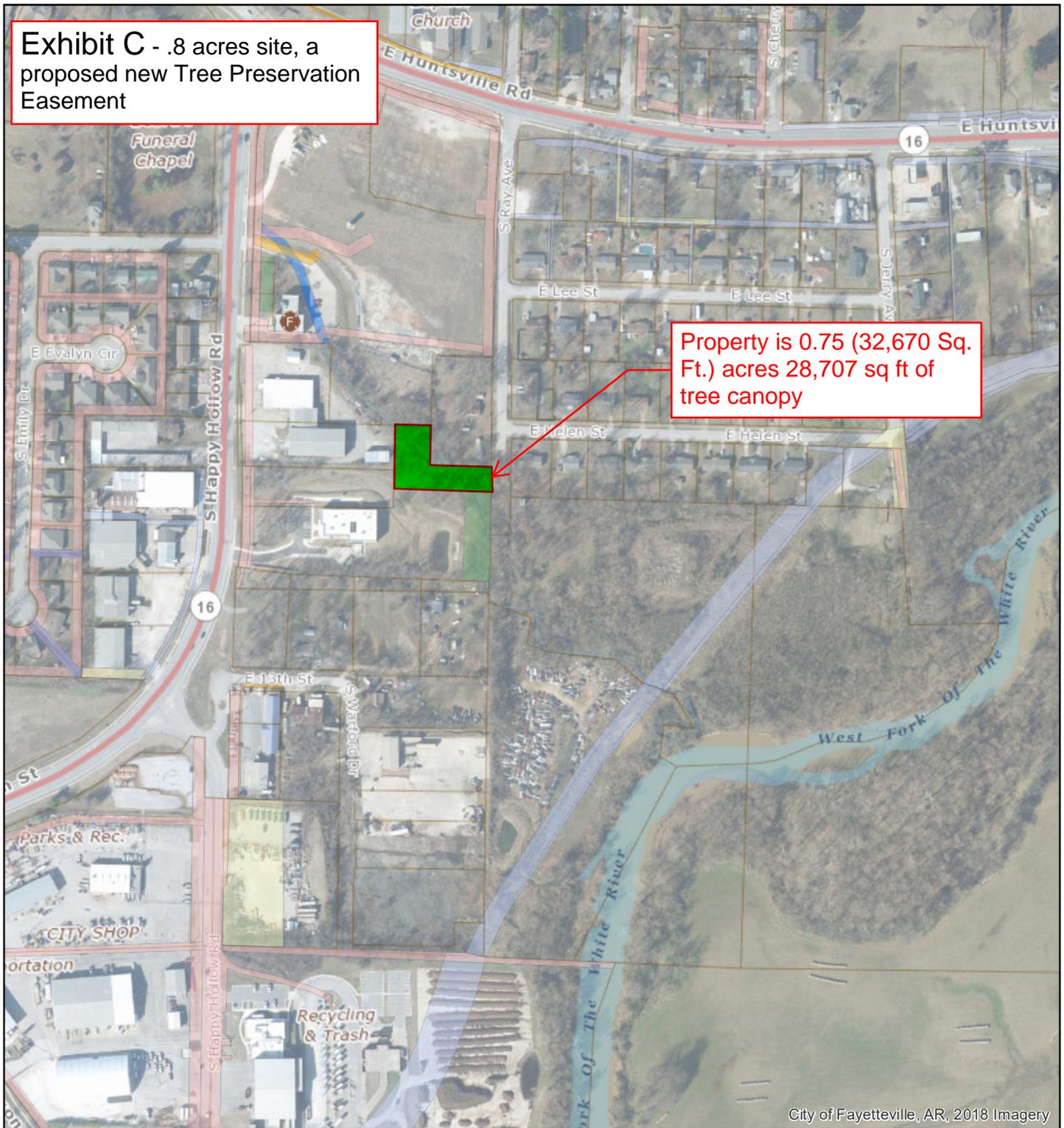
The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user, and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.



# Fayetteville, AR

**Exhibit C - .8 acres site, a proposed new Tree Preservation Easement**

**Property is 0.75 (32,670 Sq. Ft.) acres 28,707 sq ft of tree canopy**

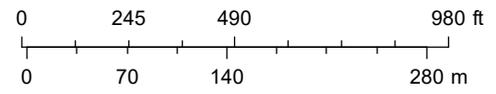


City of Fayetteville, AR, 2018 Imagery

4/23/2019 9:24:58 AM

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<b>Survey Monument</b>	Error	Conservation Easement
Section Corner	GPS Point	Landscape Easement
1/4 Corner	Ref	Trail Easement
QQ Corner	General Utility Easement	Tree Preservation Area
City Ref	Access Easement	Water/Sewer Easement
Corner By GPS	Avigation Easement	Other Easement
Destroyed	Drainage Easement	



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5/1/2019

Mr. John Scott  
City of Fayetteville – Urban Forestry  
1455 S. Happy Hollow Road  
Fayetteville, AR 72701

Subject: Parcel #765-07564-000 Tree Easement

Mr. Scott,

I would like to formally request vacation of the .7-acre tree easement currently located on Washington County Parcel #765-07564-000. In return to for the vacation of this easement I will provide Parcels 765-16157-000 (.2- acre) and 765-15229-000 (.8-acre) to be covered by tree easements in their entirety. I currently own 765-16157-000 and have an agreement to purchase 765-16157-000 contingent upon the approval of this proposal. Let me know should you have any questions or concerns.

Sincerely,



Yuta Chang  
3153 N. Elizabeth  
Fayetteville, AR 72703

**REAL ESTATE CONTRACT**

THIS CONTRACT made and entered into on the date and year hereinafter written by and between YUTA CHANG, or his nominee, hereinafter collectively referred to as "Buyer", and ELIZABETH WATSON

\_\_\_\_\_ hereinafter collectively referred to as "Seller".

**WITNESSETH:**

That for and in consideration of the parties mutual promises, covenants and the conditions contained herein, the parties agree as follows, to-wit:

1. **REAL PROPERTY:** Seller agrees to sell, and Buyer agrees to buy, subject to the terms and conditions set forth herein, the following described real property and all improvements thereon, situated in the City of Fayetteville, County of WASHINGTON, and State of ARKANSAS, described as follows:

Parcel # 765-15229-000

23-16-30 Fayetteville outlots DT W 1/2 E 1/2 NW .75 A.

Further described as: PART OF THE EAST 1/2 OF THE NW 1/4 OF SECTION 23, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE 5 PM - MORE PARTICULARLY: BEGINNING eleven Hundred two (1102) FEET 5 INCHES NORTH A.

2. **PURCHASE PRICE:** Buyer agrees to pay for the Property, and the Seller agrees to accept therefore, a purchase price equal to \$ \$10,000 (the "Purchase Price"). The parties acknowledge and agree that Seller reserves the right, in its sole discretion, to allocate the Purchase Price between separate real estate parcels, if any, in the manner it deems necessary, and Buyer agrees to cooperate in any such allocation.

3. **EARNEST MONEY:** Upon Seller's acceptance of this offer, Buyer will deposit \$ 0 with N/A ("Title Company"), as earnest money (the "Earnest Money"), which shall apply to the Purchase Price at Closing (as defined below). If the title requirements are not fulfilled or if the contingencies set forth herein are not met prior to the end of the Inspection Period, then the Earnest Money shall be promptly refunded to Buyer.

4. **PAYMENT AND TERMS OF PURCHASE:** The purchase price as set forth in the foregoing paragraph shall be paid by Buyer to Sellers as follows:

4.1. to be paid in cash or its equivalent upon the closing of this transaction.

4.2. Buyer shall have a period of 20 days from the full execution of this Real Estate Contract within which inspect the Property ("Inspection Period"). At any time during the Inspection Period Buyer may terminate this Real Estate Contract, at its sole and absolute discretion, and be returned the full amount of Earnest Money.

5. **UTILITIES:** During the Inspection period, Buyer shall in its sole and absolute discretion determine whether utility service to the Property is acceptable. If during the Inspection Period, Buyer determines that the utility service to the Property is unacceptable for any reason, Buyer may terminate this Real Estate Contract.

6. **CONVEYANCE:** Unless otherwise specified in writing signed by both parties, conveyance shall be made to Buyer, or as directed by Buyer, by General Warranty Deed, in fee simple absolute, except it shall be subject to recorded instruments and easements if any, which do not materially affect the value of the Property. Seller shall pay the costs of preparing any deeds for conveyance of Property.

7. **TITLE REQUIREMENTS:** Within thirty (30) days of the execution of this Agreement, Seller shall cause to be issued and delivered to Buyer, at Seller's expense, an ALTA owner's policy and mortgagee's policy of title insurance (the "Title Policy") respecting the subject Property and showing only the following exceptions:

7.1. Roadways, easements, and restrictive covenants of record, and minor encroachments reflected by an accurate survey, if any, that do not materially affect the value of the Property, and the restrictions mentioned above.

7.2. Any mortgage of record; provided, however, Seller shall deliver at or before closing a full and complete release of such mortgage;

7.3. Any documentary stamps or taxes which are required by the State of Arkansas for this transaction shall be paid for by the Seller.

Seller shall furnish an updated abstract of title if required for issuance of title insurance commitment.

8. **EXAMINATION OF TITLE COMMITMENT:** Buyer shall have thirty (30) days from the receipt of said title commitment in which to have same examined by an attorney, and to notify Seller in writing of Buyer's title objections ("Title Objections") if the examining attorney should make any reasonable requirements to perfect such merchantable title in said lands as set forth above, any matters to which Buyer does not object shall be deemed to be "Permitted Exceptions."

Seller shall have 60 days in which to cure the Title Objections. Seller shall bear the cost of curing any Title Objections; provided, however, the Seller shall not in any event be required to expend more than \$2,500.00 to cure the Title Objections. Seller agrees to notify Buyer of any Title Objections which Seller determines it is unable or unwilling to cure. In the event, all Title Objections are not cleared by the end of the 60 day cure period, Buyer may agree: (i) to waive any such uncured Title Objections and agree to close the transaction without a reduction in the Purchase Price and accept such title as Seller is able to convey; or (ii) to terminate this Contract by notifying Seller and the Title Company, in which event the Earnest Money shall be returned to Buyer and thereafter Seller and Buyer shall have no further rights or obligations hereunder.

9. **ENVIRONMENTAL**: Seller hereby represents that it has no knowledge of any contaminants on the above described lands or improvements which would be in violation of any governmental regulations or constitute hazardous materials. Buyer shall have the right any time prior to closing to have said lands and improvements inspected for environmental purposes by a qualified inspector and if any violations are found, the Buyer shall have the right to declare this Contract null, void, and of no effect.

10. **PRORATIONS**: Taxes and special assessments that have accrued or are due on or before closing shall be paid by Seller. Insurance, general taxes, special assessments, rental payments and interest on any assumed loan shall be prorated as of closing unless otherwise specified herein.

11. **REAL ESTATE COMMISSIONS/DISCLOSURE**: Buyer has disclosed to Seller that Buyer is a licensed real estate broker with Lindsey & Associates, Inc. Lindsey & Associates, Inc.

12. **CLOSING**: The closing date is designated by the parties to occur within thirty (30) days of Buyer receiving final approval of its intended use and proposed site plans from the necessary municipalities and governmental agencies which may have authority over the Property (more specifically described as final PUD amendment and revision showing Buyer's site plan as an approved use for the subject property) but in no event will closing occur sooner than thirty (30) days after the expiration of the Inspection Period. If the Closing does not occur within thirty (30) days of the expiration of the Inspection Period (subject to permitted extension thereof) and the Closing Date is not extended pursuant to either this Contract or the written agreement of the parties, then either party shall have the right to terminate this Contract by five (5) days written notice to the other, in which case this Contract shall terminate on the date identified in such notice, and the Earnest Money shall be disposed of as otherwise provided in this Contract. The Closing shall take place at the office of the Title Company unless another place of closing is mutually agreed upon in writing by the Buyer and Seller. At closing, the Buyer and Seller shall pay the customary charges and fees normally attributable to the Buyer and Seller.

13. **POSSESSION**: Possession of the Property shall be delivered to Buyer upon closing. It is agreed by the parties that Seller shall be and is deemed the owner of said Property until Buyer takes possession upon closing.

14. **RISK OF LOSS**: Risk of loss or damage to the Property by fire or other casualty occurring prior to the time Seller delivers an executed and acknowledged deed to Buyer is expressly assumed by Seller. Seller expressly acknowledges that risk of loss is upon Seller until such time as a valid Warranty Deed is executed and delivered to Buyer at closing.

15. **DEFAULT IN PERFORMANCE**: Should either Buyer or Seller default in the performance of the respective obligations of each under this Contract, through no fault of the other party, then the non-breaching party shall be entitled to seek damages or other relief as is permitted by the laws of the State of Arkansas, as well as recovery of reasonable attorney fees and related expenses resulting from any such breach.

16. **MERGER CLAUSE**: This Contract, along with such written documents specifically referenced herein, when executed by both Seller and Buyer, shall contain the entire understanding and agreement between the Buyer and Seller with respect to the matters referred to herein and shall supersede all prior or contemporaneous agreement, representations, discussions and understandings with respect to such matters, and no oral representation or statement shall be considered a part hereof. The parties agree that the following documents are incorporated herein by reference, as if spelled out word or word: (1) Exhibit A.

17. **WAIVER**: Failure of either party hereto to exercise any options herein contained upon breach by the other shall not constitute a waiver of that party's right to exercise such options upon further breach.

18. **TIME OF ESSENCE**: It is agreed that time is the essence of this Contract.

19. **COUNTERPARTS**: This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

20. **NUMBER AND GENDER**: Whenever necessary in this Contract and where the context admits, the singular term and the related pronoun shall include the plural and the appropriate gender.

21. **BINDING EFFECT**: This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

22. **PARAGRAPH HEADING**: The paragraph heading inserted into this Contract are intended as a matter of convenience and for reference only, and in no way shall define, limit or describe the scope and nature of the subject matter contained therein. Words of any gender in this Contract shall include the other gender, and words in the singular number shall include the plural when the context requires.

23. **GRANT OF ACCESS:** Seller hereby grants to Buyer and its agents the right to enter upon the Property for the purpose of making surveys and the collection of engineering data; including an environmental site assessment, soil samples and to inspect any equipment used on site. However, the Buyer shall cause no substantial or material damage to the Property and the Property shall be restored by Buyer to its former condition after surveys and tests are completed, except for the usual and ordinary changes caused by such inspections and tests. Buyer agrees to indemnify and hold Seller harmless of and from any and all loss, cost, damage or expense incurred by Seller or Buyer as a result of or arising out of Buyer's exercise of inspection rights hereunder.

24. **ASSIGNMENT:** This Agreement may be assigned by Buyer prior to the Closing to a corporation, limited liability company, limited partnership or other entity, provided however, the Buyer shall not be released from any of his obligations to Seller hereunder, and shall at all times remain jointly and severally liable to Seller for the full and faithful performance of all obligations and undertakings required to be observed or performed by Buyer hereunder. Subject to the foregoing, this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs.

25. **EXPIRATION:** This Contract expires if not accepted on or before MAY 21<sup>ST</sup> 2019, at 3 p.m.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year written opposite their respective signatures.

**SELLER:**

**BUYER:**

Elizabeth Watson  
Print Name: ELIZABETH WATSON

\_\_\_\_\_  
Print Name: \_\_\_\_\_