

AGENDA REQUEST FORM

FOR: Council Meeting of December 1, 2020

FROM: Mayor Lioneld Jordan

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO APPROVE A CONTRACT WITH THE BANK OF FAYETTEVILLE, GREG HOUSE, FAYETTEVILLE DEPOT, LLC (AND POSSIBLY TED BELDEN) TO PURCHASE ABOUT ONE HALF ACRE IN THE DEPOT/BANK LOT FOR \$350,000.00, TO APPROVE A LEASE-TO-OWN ARRANGEMENT WITH GREG HOUSE FOR THE .2 ACRE LOT ON THE NORTH END OF THE CIVIC PLAZA, TO AGREE TO CONVEY TO GREG HOUSE THE OWNERSHIP OF ABOUT 14,000 SQUARE FEET OF THE BOTTOM FLOOR OF THE CITY'S PUBLIC PARKING DECK AND OTHER ITEMS, AND TO PASS AN EMERGENCY CLAUSE

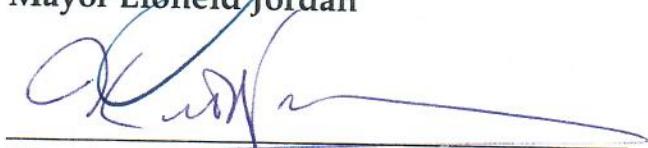
APPROVED FOR AGENDA:



Mayor Lioneld Jordan

Date

11/24/20



City Attorney Kit Williams

November 24, 2020

Date



CITY OF
FAYETTEVILLE
ARKANSAS

CITY COUNCIL MEMO

MEETING OF DECEMBER 1, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Paul Becker, Chief Financial Officer

FROM: Wade Abernathy, Director Bond and Construction Projects

DATE: 11/24/2020

SUBJECT: Approval of a contract between Bank of Fayetteville/Depot Lot site for Public Parking Deck.

RECOMMENDATION:

Staff recommends approval of the contract which will authorize land purchase for the Replacement Parking Deck allowing the project to move forward and expedite the completion prior to beginning the Arts Corridor Civic Plaza Project.

BACKGROUND:

In April 2019, Fayetteville voters approved question 8 on the bond initiative for the new cultural arts corridor and replacement parking.

Phase 1 Bonds allocated \$20,016,970 for this first phase of the CAC and replacement parking. In January 2020, Council approved the mayor to sign a letter of intent with Sage Partners LLC for the purchase of .6 acres for a parking deck and conveyance of .2 acres on the north side of the plaza.

February 2020, council was presented with contract terms for consideration.

In May of 2020, Council approved an Engineering Services contract with Olsson Engineering for the Design of the Replacement Parking Deck

May 2020, Council was presented individually concept designs and contract terms.

June 2020, Council was presented at Agenda Session with Schematic Drawings of the Deck and updated contract terms.

In June of 2020, Council Approved Change Order #2 for the CMAR services for the Replacement parking deck with Nabholz.

DISCUSSION:

Over the past several months there has been many meetings, discussions and negotiations between Administration, Staff, City Attorney, Developers, Developers Attorney and Walton Arts Center. Those countless hours and hard work have resulted in a Contract that is a fair deal for the parties involved.

The terms in this contract have included many of Individual Council member's items requested terms, as well as City Attorney Kit William's additional terms to best serve the City's Interest. Some of those terms include:

- Conservation Easement for the Historic Portion of the Train Depot.
- 7 years protection of the Arsaga's Building with no build over.
- Enhancement of Arsaga's building.
- Option to Purchase trail plaza section for trail/rail/and future mobility hub and verbiage for the time frame for that purchase of 7 years.
- Lease to purchase agreement of north plaza space allows the City to maintain ownership of property for 4 years after completion of the deck and start of plaza.
- Deck Liner to include 2000 sq.ft. PD substation owned by City.
- 330 spaces to include 290 replacement parking spaces.
- Verbiage to address time frame for 6th and 7th floor completions in 10 years
- Civic plaza building design acceptable to the City
- Transit Hub Bus Stops at Dixson and West Ave.

BUDGET/STAFF IMPACT:

N/A



DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE
CITY ATTORNEY



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff
Paul Becker, Finance Director
Wade Abernathy, Facilities Management Director

FROM: **Kit Williams**, City Attorney

DATE: November 23, 2020

RE: **City Attorney's proposed Contract for Bank of Fayetteville/Depot Lot Site for Public Parking Deck**

Last Friday I furnished you the last proposal I received from Greg House's attorney in October showing what they want the City Council to agree to give them in exchange for Greg's quarter acre. There are numerous issues with Mr. House's proposal, but let me point to just a few.

Instead of providing the City an option to purchase the one floor ground area for a possible Transit Hub Building between the Depot and the freight building as part of our consideration valued far in excess of a half million dollars going to Mr. House from the City, he demands in his October proposal that the City pay for the commercial exterior finish for his 14,000 square foot, ground floor commercial space in our deck just for an option to purchase the Transit Hub's single story space for seven and a half years. I do not know how costly the commercial grade exterior finish would be, but I believe it would be many thousands of dollars. Mr. House then places the cost of the single story, ground floor space of the Transit Hub building "for a sum equal to \$60 per square feet." According to Google and math that amounts to over Two Million Six Hundred Thousand Dollars (\$2,600,000.00) per acre.

The single story, ground floor area in our parking deck that Mr. House is receiving without any charge for the ground space is 14,000 square feet. Applying Greg House's proposed \$60.00 per square foot value for single-story ground space equals Eight Hundred and Forty Thousand Dollars (\$840,000.00). If you add that to the \$250,000.00 cash payment to Mr. House and the almost certain conveyance of the .2 acre lot on the Civic Plaza appraised at \$263,000.00, the City would be paying and conveying One Million Three Hundred Fifty Three Thousand Dollars (\$1,353,000.00) to Greg House for his less than $\frac{1}{4}$ acre lot. This does not even take into account Mr. House's right to build two addition stories on top of City's public parking deck for his exclusive use and benefit. Both of these floors are larger than his 14,000 square foot ground level commercial space.

I should point out that the Administration rejects Greg House's valuation of \$60 per square foot for the ground single-story area between the Depot and freight building for a future transit hub building. Thus, the 14,000 square feet of first floor ground space in the City's parking deck that Greg House would receive is also not fairly valued at \$60 per square foot.

The original Walton Arts Center Parking Lot (aka the West Avenue parking lot) was expressly and purposely built so patrons for popular performances at the Walton Arts Center could be assured of convenient parking. Indeed, a special provision of the bond and ballot language promised a continuation of such performance arts parking near the Walton Arts Center. Greg House's contract reads: **"The Deck shall not be permitted to have more than fifty (50) parking spaces reserved for events occurring downtown at any given time."**

That limitation on the City's use of our own public parking deck might help Greg House to lure a hotel to locate on his property because the hotel could avoid the normal expense to build or acquire parking for its employees and guests. However, this would destroy the very reason this additional Ten Million Dollars was placed on the ballot and supported by the Walton Arts Center. The City will not accept any limitations on the City's ability to apportion the parking within the City's deck. I believe that our City should continue to work the Walton Arts Center to ensure its patrons will have sufficient reserved parking for its events.

SUMMARY OF MOST IMPORTANT TERMS AND CONDITIONS IN OUR PROPOSED CONTRACT WITH GREG HOUSE

- (1) Greg House conveys slightly less than one quarter acre about one block north of Dickson Street.
- (2) Greg House conveys a conservation easement not to change the exterior, build over, nor obstruct the current view of the Depot from Dickson Street for the width of the Depot building. Greg continues to own, remodel, rent, and operate this building commercially as he has done for many years.

For this slightly under one quarter acre and the Depot building protection, the City would pay or convey the value of the following:

- (1) Two Hundred and Fifty Thousand Dollars in cash (\$250,000.00).
- (2) Most (14,000 square feet) of the ground story of the City's public parking deck. This is substantially larger than the whole portion of Greg House's asphalt lot that he is conveying to the City.
- (3) Lease-to-own the only developable lot on the Civic Plaza near Dickson Street appraised (conservatively) for Two Hundred Sixty-Three Thousand Dollars (\$263,000.00). Rent forgiven if Food Hall built properly and timely.
- (4) Greg House's right to build one or two stories atop the City's Public Parking Deck for his exclusive use and profit.

Those four extremely valuable items for Greg House were agreed to by our City staff and Greg House in the summer. That is why I have incorporated these terms into this proposed contract (attached) which the Mayor now recommends, and which I approve as probably within the City Council's discretion to accept and within the Council's legal duty to ensure any contract is fair to our citizens.

I would have substantial legal concerns about any proposed contract if even more valuable items were added for Mr. House's benefit. Please remember that this is a no-bid situation which should require extra scrutiny of the terms by the City Council. The City Council has substantial discretion to determine whether any proposed contract is in the citizens' best interests. The City Council does have a duty to ensure our taxpayers receive at least reasonably fair value for the taxpayers' revenue and property. **The City Council needs to act promptly and certainly before the end of 2020 on this proposed contract.**

If Greg House rejects any term in this very favorable contract or fails to sign it promptly, I recommend the City move the deck to another public parking lot.

**CONTRACT TO PURCHASE ABOUT ONE HALF ACRE OF PROPERTY FROM
THE BANK OF FAYETTEVILLE AND GREG HOUSE FOR THE CITY PUBLIC
PARKING DECK SITE ON WEST AVENUE AND TO LEASE-TO-OWN TO GREG
HOUSE AND TED BELDEN ABOUT ONE FIFTH OF AN ACRE ON THE NORTH
SIDE OF THE CIVIC PLAZA NEAR DICKSON STREET PURSUANT TO THE TERMS
AND CONDITIONS OF THIS AGREEMENT**

On this ____ day of December 2020, the date that the Mayor of the City of Fayetteville, the authorized representative of the Bank of Fayetteville, Greg House and Ted Belden have all signed this contract and agreed to all of its terms and conditions, this contract becomes effective and enforceable.

I

CITY OF FAYETTEVILLE'S COMMITMENTS TO THE BANK OF FAYETTEVILLE

In exchange for all of the commitments, promises, terms and conditions within this contract, the City of Fayetteville hereby agrees and covenants with the Bank of Fayetteville as follows:

- (1) The City will provide up to **Ten Million Dollars (\$10,000,000.00)** in bond funds for its costs associated with the purchase of the land, geotechnical and other preliminary testing and design work, and the design, construction and equipping of the City's public parking deck.
- (2) The City will purchase the portion of property owned by the Bank of Fayetteville (somewhat greater than one quarter of an acre) which is needed for the City's public parking deck's construction for **One Hundred Thousand Dollars (\$100,000.00)**.

II

BANK OF FAYETTEVILLE'S COMMITMENTS TO THE CITY OF FAYETTEVILLE

In exchange for the One Hundred Thousand Dollars (\$100,000.00) paid by the City of Fayetteville, the Bank of Fayetteville agrees as follows:

The Bank of Fayetteville will sell and convey to the City of Fayetteville its property, as further described in Exhibit A to this contract, by general warranty deed free and clear of all easements except the five foot pedestrian ground easement on the north side of its property which shall not intrude upon the property needed for the construction or operation of the City public parking deck.

III

CITY OF FAYETTEVILLE'S COMMITMENTS TO GREG HOUSE, FAYETTEVILLE DEPOT, LLC AND/OR TED BELDEN

In exchange for all of the commitments, promises, terms and conditions within this contract, the City of Fayetteville hereby agrees and covenants with Greg House, the Fayetteville Depot LLC, and/or Ted Belden as follows:

- (1) The City will provide up to **Ten Million Dollars (\$10,000,000.00)** in bond funds for its costs associated with the purchase of the land, geotechnical and other preliminary testing and design work, and the design, construction and equipping of the City's public parking deck.
- (2) The City will purchase the portion of the property owned by Greg House and/or the Fayetteville Depot, LLC (somewhat less than one quarter of an acre) also needed for the City's parking deck's construction (as further described in Exhibit B) for **Two Hundred and Fifty Thousand Dollars (\$250,000.00)**; and
- (3) The City will lease-to-own its about one fifth of an acre building site on the north area of the Civic Plaza next to Dickson Street (as further described in Exhibit C) for its appraised value of **Two Hundred and Sixty-Three Thousand Dollars (\$263,000.00)** payable in 36 consecutive monthly payments of Seven Thousand Three Hundred and Five Dollars (\$7,305.00) beginning on the effective date of this contract to Greg House and Ted Belden. The City shall not require these lease-to-own rental payments to be delivered by Greg House or Ted Belden to the City until the end of the three-year period after the beginning of this contract. **The City will forgo this payment and forgive this Two Hundred Sixty-Three Thousand Dollar (\$263,000.00) debt if:**
 - (A) All of the exterior including foundation, walls, windows, door, floors, stairways, elevators, roof and fourth floor rooftop deck of this about 18,000 square foot, three story Food Hall building with its fourth floor rooftop deck (constructed with the materials and in accordance with the design as depicted by Greg House's architect Rob Sharp in his presentation to the City Council and public) has been completed to a "white box" condition by the completion and opening to the public date of the Civic Plaza (the City Council by Resolution may in its sole discretion agree to changes proposed by House and/or Belden in the original design and materials to be used); and
 - (B) Within twelve (12) months after the completion and opening of the Civic Plaza, the Food Hall building must be completely finished, ready for customers and other tenants and operational to the satisfaction of the City Council in order to justify the City's forbearance and forgiveness of the accumulated rental payment debt of Two Hundred Sixty Three Thousand Dollars (\$263,000.00) in consideration of the sales and HMR taxes and other

benefits that this operating Food Hall and other businesses or offices within this large Food Hall building should generate.

- (C) Upon the payment of Two Hundred Sixty-Three Thousand Dollars (\$263,000.00) by Greg House and/or Ted Belden or their complete compliance with the requirements of (A) and (B) above to the City Council's satisfaction, the City agrees it will convey the about one fifth of an acre lot to Greg House and Ted Belden. **Without House's and Belden's complete compliance of the requirements of (A) and (B) or their prompt payment of the full Two Hundred Sixty-Three Thousand Dollars (\$263,000.00), the City may terminate the lease and sell or lease this .2 acre lot to another entity, or renegotiate with House and/or Belden.**
- (4) In further consideration of the slightly less than one quarter acre parcel that Greg House d/b/a Fayetteville Depot, LLC will sell to the City for Two Hundred and Fifty Thousand Dollars (\$250,000.00) and future probable conveyance of the City's one fifth of an acre lot appraised at Two Hundred and Sixty Three Thousand Dollars (\$263,000.00) to Greg House (and possibly also to Ted Belden), the City also will convey condominium type rights to a designated portion of about 14,000 square feet on the ground floor of the City's public parking deck for Greg House's commercial space (which may also be used by Fayetteville Depot LLC as parking until leased or otherwise used as commercial space) subject to House's payment of the construction costs outlined below and within Greg House's, Fayetteville Depot, LLC's and Ted Belden's commitments in IV.
- (5) The City also agrees to pay 50% of costs to provide water/sewer main utility access to the Food Hall site that Greg House d/b/a Fayetteville Depot, LLC and/or Ted Belden plan to build on this .2 acre parcel; and
- (6) The City through its building construction contractor also agrees to pay Greg House d/b/a Fayetteville Depot, LLC \$4,000.00 per month to rent the necessary staging area and construction space on the Depot lot needed for the construction of the City's public parking deck.
- (7) The City will further authorize Greg House and Ted Belden to build now or within ten (10) years of the date of this contract's approval floor six or floors six and seven above the City's public parking deck upon their payment of the full additional expense for the additional design and construction costs, including foundation and supporting walls strengthening and increased capacity; enhanced, enlarged and/or additional stairways and elevators deemed necessary or advisable by the City to serve their potential uses on the 6th and/or 6th and 7th floors; extension and support of utilities needed and advisable by the City to serve the additional floors; exterior facades for these floors which coordinate with and compliment the City's public parking deck exterior façade; and compliance with all Unified Development Code requirements for the design, construction and uses allowed for this building. If Greg House and/or Ted Belden or any other entity constructs the 6th

floor or the 7th floor after the City's public parking deck has been completed and is operational, they will be strictly liable for any damage occurring to the City's public parking deck during this construction. Any lay down, staging, or construction area needed or used for future construction of floor 6 and/or floor 7 must be on the Fayetteville Depot's property or other private property rather than on City property or right-of-way and shall not impede the City's use and operation of its public parking deck nor of the Fayetteville Police Substation.

IV

GREG HOUSE'S, FAYETTEVILLE DEPOT, LLC'S AND TED BELDEN'S COMMITMENTS TO THE CITY OF FAYETTEVILLE

In exchange for **Two Hundred and Fifty Thousand Dollars (\$250,000.00)**, the lease-to-own and likely conveyance of the .2 acre building site appraised at **Two Hundred and Sixty Three Thousand Dollars (\$263,000.00)**, the free use of the about **14,000 square feet of ground level commercial space** in the City's public parking deck, and all of the other commitments, promises, terms and conditions within this contract, Greg House, Fayetteville Depot, LLC and Ted Belden agree and covenant as follows:

- (1) Greg House, the Fayetteville Depot, LLC and Ted Belden promise and agree to sell and convey to the City of Fayetteville their property (somewhat less than one quarter of an acre) as described in Exhibit C to this contract by general warranty deed free and clear of all easements or title impairments. If Ted Belden does not claim any ownership rights to this parcel at the time of conveyance, he may satisfy his part of this conveyance duty by means of a separate quit claim deed to the City.
- (2) Greg House, the Fayetteville Depot, LLC and Ted Belden agree to the current general design of the City's public parking deck and agree to a condominium-type conveyance of the approximate 14,000 square foot ground floor commercial area designated in the plans of the City's public parking deck. Greg House and/or Ted Belden agree to pay for all associated costs to construct this 14,000 square foot commercial space (which includes the increased costs to construct the top 14,000 square feet of the City's public parking deck necessitated by Greg House's use of the ground floor commercial space). Greg House and Ted Belden agree to finish the exterior of this ground story 14,000 square foot commercial space to commercial standards as shown in the Lack and Hoffman presentation of the arcade and main building. The City agrees to pay for exterior finishing to those standards for the approximate 2,000 square foot area on the ground floor for the Fayetteville Police Substation and the second floor of the arcade façade facing West Avenue.
- (3) Greg House, Fayetteville Depot, LLC and Ted Belden agree to all of the requirements of paragraph III (7) regarding their duties and responsibilities if they wish to exercise their right to construct and use floor six and/or floors six and seven of the City's public parking deck. Failure of Greg House, Fayetteville Depot, LLC or Ted Belden to fully

pay for these additional design and construction costs needed to support and serve floors six and/or six and seven prior to construction of the foundation for the City's public parking deck terminates their rights to later construct these upper floors.

- (4) All parties agree that the City's main public parking deck building will abut the building now occupied by Arsaga's and be fifteen feet (15') from the West Avenue right-of-way, and that a two story "arcade" section shall fill that fifteen-foot (15') area up to the right-of-way with a finished exterior as shown in the Lack/Hoffman presentation. Greg House, Fayetteville Depot, LLC and Ted Belden shall be responsible to pay to finish their ground floor section of the arcade and main building to commercial standards as depicted in the Lack/Hoffman presentation. The City shall pay to finish the Fayetteville Police Substation and the second floor of the arcade to that same standard.
- (5) Greg House, Fayetteville Depot, LLC, and/or Ted Belden further agree to pay all utility costs (initial construction and future use) necessitated by his 14,000 square feet of commercial space on the ground floor and any necessary utilities on floors 6 and/or seven if constructed. Utility costs necessary to serve the Fayetteville Police Department substation (about 2,000 square foot office on the ground floor) will be paid by the City.
- (6) Greg House, Fayetteville Depot, LLC and/or Ted Belden further agree, promise, and covenant as follows:
 - (A) to provide access of the Transit Hub bus stops for both Dickson Street and West Avenue as illustrated on the MillerBoskus plan.
 - (B) To provide an option to purchase for seven (7) years from the date of this contract for the ground floor area up to a height of fifteen feet (15') between the historic train depot and the freight building now occupied by Arsaga's from the railroad right-of-way to the eastern side of these building for use as a Transit Hub or other public use for the then current fair market value as determined by a qualified, professional, independent appraiser paid for by the City.
 - (C) to convey to the City a permanent conservation easement for the historic depot train station building and all area from the railroad right-of-way to the eastern side of the depot building and from northern side of the historic depot to Dickson Street which will preserve the historic depot building in its current historic condition and prevent any construction above the historic depot building. This conservation easement shall also prohibit any construction upon or the parking of any large vehicles (such as food trucks) on the parking area south of the depot for the area between the railroad right-of-way to the eastern side of the depot building which could obstruct the public view of the historic train depot building from Dickson Street.
 - (D) to refrain from substantially changing or building over the freight building or Hookah Bar space for seven years from the date of this contract, except that Greg House, Fayetteville Depot, LLC, and/or Ted Belden retain the right at their sole

expense to construct a roof properly and safely attached on an agreed location on the rear of the City's public parking deck over the freight building to create a one story outdoor covered space.

V

GENERAL COMMITMENTS FOR ALL PARTIES WHO AGREE AS FOLLOWS:

- (1) Access to Entire Property. Cross easements for all property currently owned by any party or the subject of this contract shall be provided by all parties to facilitate access and development throughout this site.
- (2) Closing Date and Place. Closing shall occur within 60 days following the date this Contract has been approved by all parties. The Closing shall occur at 113 West Mountain Street, Fayetteville, Arkansas in a room supplied by the City of Fayetteville or at another location agreed upon by the parties. The Closing Date may be extended upon the mutual agreement of the parties.
- (3) Date of Possession. Possession of the building site described in Exhibit A and Exhibit B shall be delivered to the City of Fayetteville on the Closing Date free of any tenancies or other third party possessory rights.
- (4) Possession of Lease Site. Possession through the lease-to-own of the .2 acre site on the Civic Plaza will be delivered to Greg House, Fayetteville Depot, LLC, and/or Ted Belden upon the City's public parking deck completion, and the start of the City's full construction of the West Avenue Parking Lot into the Civic Plaza.
- (5) Title Insurance.
 - (a) The Bank of Fayetteville shall order a title commitment for its property described in Exhibit A as soon as practicable following the full execution of this contract through Bronson Abstract. If the report on title, binder or commitment discloses any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing), The Bank shall have thirty (30) days from the date of the City notice of such defects to make a good faith effort to cure such defects and to furnish a report showing the defects cured or removed. If such defects are not cured within thirty (30) days, the City may terminate this agreement or may, at its election, take title subject to any such defects. The cost of the title commitment and the cost of the owner's title policy shall be borne by the Bank.
 - (b) Greg House, Fayetteville Depot, LLC and/or Ted Belden shall order a title commitment for its property described in Exhibit B as soon as practicable following the full execution of this contract through Bronson Abstract. If the report on title, binder or commitment discloses any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing), Greg House and

Fayetteville Depot, LLC shall have thirty (30) days from the date of the City notice of such defects to make a good faith effort to cure such defects and to furnish a report showing the defects cured or removed. If such defects are not cured within thirty (30) days, the City may terminate this agreement or may, at its election, take title subject to any such defects. The cost of the title commitment and the cost of the owner's title policy shall be borne by Greg House, Fayetteville Depot, LLC and/or Ted Belden.

(6) Deed, Taxes, Closing Costs and Other Documents.

- (a) On the Closing date, The Bank of Fayetteville shall convey marketable and insurable title to the property described in Exhibit A by general warranty deed, free and clear of all liens, restriction, and encumbrances except easements and rights-of-way of record, or as provided in this contract.
 - (b) On the Closing date, Greg House and the Fayetteville Depot, LLC (and Ted Belden if applicable) shall convey marketable and insurable title to the property described in Exhibit B by general warranty deed, free and clear of all liens, restriction, and encumbrances except easements and rights-of-way of record, or as provided in this Contract.
- (7) Taxes and Special Assessments. Taxes and special assessments due for the parcels on or before the date of closing shall be paid by the party selling the parcel. Ad valorem taxes shall be prorated as of the date of closing. All parties shall share equally the cost of a reasonable closing fee imposed by Bronson Abstract and the sellers shall be responsible for any revenue stamps resulting from this transaction. All recordings fees for the deeds and other documents that need to be filed shall be the responsibility of the benefited party.
- (8) Risk of Loss. Risk of loss as to all property to be conveyed shall remain with the party who owns the tract until the Closing date.
- (9) All Parties' Due Diligence. All parties may enter upon the property to be conveyed or leased to conduct any surveying, testing or inspection it deems necessary to ensure the property will be appropriate and safe. If any party discovers any problems that would adversely impact its development and use of the property, that party shall notify all other parties within thirty (30) days of the date of this contract and shall be granted thirty (30) days to remediate any problem. Any party may also terminate this contract without penalty rather than remediating any problem or issue discovered.
- (10) Notices required by this Contract shall be in writing and shall be delivered to:

City of Fayetteville
ATTN: Mayor's Office
113 W. Mountain Street
Fayetteville, AR 72701
Mayor@fayetteville-ar.gov

Greg House and Fayetteville Depot, LLC
mailing address
email address

Ted Belden
mailing address
email address

- (11) Authority. Each of the undersigned individuals represents and warrants that they are authorized to enter into this contract on behalf of themselves or their respective entities and that execution hereof will bind all parties to this contract.
- (12) Counterparts. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
- (13) Scanned Signature. For purposes of executing this contract, a scanned signature shall be as effective an as actual signature.
- (14) Applicable Law. This contract shall be construed and enforced in accordance with the laws of the State of Arkansas with venue in Washington County, Arkansas.
- (15) Survival. The representations, commitments, and agreements of the parties contained herein shall survive the closing date.
- (16) No Waivers. The waiver by any party hereto of any commitment, condition, or the breach of any term, covenant or commitment herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained.
- (17) Time of Essence. Time is of the essence in this contract.
- (18) Complete Agreement. All understandings and agreements heretofore existing between the parties are merged into this contract that alone fully and completely expresses their agreement. This contract may be changed only in writing signed by all of the affected parties hereto and shall apply to and bind the successors and assigns of each of the parties hereto and shall not merge with the deeds delivered to the City at closing.

IN AGREEMENT WITH ALL OF THE TERMS AND CONDITIONS of this contract and after being properly authorized by the Fayetteville City Council, the Mayor and City-Clerk Treasurer of the City of Fayetteville, Arkansas, sign their names below:

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: _____
Lioneld Jordan, Mayor

Date: _____

ATTEST:

By: _____
Kara Paxton, City Clerk-Treasurer

IN AGREEMENT WITH ALL OF THE TERMS AND CONDITIONS of this contract, after being properly authorized to sign for Fayetteville Depot, LLC and any other entity, we sign their names below:

Greg House for himself individually and as proper legal representative or managing partner or agent of Fayetteville Depot, LLC.

Greg House

Date: _____

Ted Belden

Date: _____

IN AGREEMENT WITH ALL OF THE TERMS AND COMMITMENTS within Sections I, II and V of this contract, after being properly authorized by the Bank of Fayetteville and its parent company, I sign below:

BANK OF FAYETTEVILLE

Signature of responsible officer

Date: _____

Printed name

Title



DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE
CITY ATTORNEY



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan
City Council

CC: Susan Norton, Chief of Staff
Paul Becker, Finance Director
Wade Abernathy, Facilities Management Director

FROM: Kit Williams, City Attorney

DATE: December 29, 2020

RE: Letter from Jason Bramlett to me for distribution to City Council

During an hour long teleconference with Jason Bramlett, attorney for Gregg House, Fayetteville Depot, LLC and Ted Belden, I received several requests or demands for changes to the proposed contract I had drafted and then amended in response to their earlier requests. I asked that Jason describe every one of their requests in a letter that I could distribute to the City Council, so you could read each requested change and the reason for such change directly from their side. I have earlier today sent that letter to you. I also informed Jason that I would explain why I had chosen the language for the contract that Greg House and Ted Belden now wish changed.

Integral Part of the Co-dependent Deed

Since Mr. Bramlett states "the 6th and 7th floors have been an integral part of the co-dependent deed points between the City and House/Belden," I should examine who and how "integral" these current requests from House/Belden really are. I need first to examine a little history of the initial offer by Greg House to sell the City sufficient property

to build its public parking deck and how Greg House has continued to make new requests to sweeten the deed for him (and now Ted Belden).

I believe that the City Attorney's Office first learned of an offer from Greg House and the Bank of Fayetteville when their real estate developer adviser, Sterling Hamilton of Sage Partners, send a Letter of intent for an offer to sell in August of 2019. Later, he emailed the Mayor, Don Marr, Susan Norton and myself on September 11, 2019. (attached). Sterling's email stated: "With Greg's land that would be \$350K for about an acre of land in downtown." As is now clear, the City would be receiving only about half that amount of property and what the City would have to pay or convey has increased dramatically. The only constant has been the \$100,000.00 the City was to pay the Bank of Fayetteville for its part of the building site which appears to me to be larger than Greg's proposed property that he would convey to the City. I have requested and am still waiting for their legal description so we can know exactly how much property Greg House is offering to sell the City.

The initial concept plat from Sage Partners attached to that September 11, 2019, email (attached) shows the parking deck located on all the property from West Avenue to the Razorback Greenway. It shows "3 story 28' wide liner building 2150 sqf per floor level" running a short distance along West Avenue. Exhibit A (attached) shows that the Bank of Fayetteville owns almost all the property south of Scarpino's including all the property proposed for the proposed three story 28' wide commercial space. Since the parking deck's footprint now avoids the old freight building on Greg's property, it certainly appears the parcel he would be selling the City is much smaller than shown on the concept plat or the Bank's parcel.

Also attached is Sterling Hamilton's proposed "Letter of intent for an offer to sell the below-referenced property under the following terms and conditions...Sale Price \$250,000 plus exchange of the 0.25 acre northern parcel of the Civic Plaza..." This lists the size of Greg's parcel to be conveyed "is 0.35 acres." The current design of the deck reduces this parcel's size dramatically.

This Letter of intent included on its second page that if private development would "warrant additional parking demand beyond City constructed spaces, then Greg House could work with the City "to allow private equity funding to be contributed for additional design and construction necessary for additional foundation support, structure, floors.... to the City's parking deck." Thus, potential additional privately paid for parking (but not commercial or residential) space, was referenced by Greg House's Letter of intent. Certainly, the demand that House/Belden receive condominium space of the 6th floor for anything, but possible parking necessitated by private development on Greg's property, was not a part of the original Letter of intent to sell, nor was any mention of a possible seventh floor within their initial offer to sell.

Sterling Hamilton then furnished another Letter in intent to sell on January 14, 2020, which again showed the "Sale Prince \$250,000 plus exchange of the 0.2 acre northern parcel of the Civic Plaza." The Depot lot's parcel to be conveyed to the City was reduced in size to about 0.3 acres. Without their surveyed parcel, we still do not know the actual size of the parcel Greg House is supposed to convey to the City for hundreds of thousands of dollars.

The liner building space shown on the exhibit to their Letter of intent to sell was then reduced to one story containing about 9,600 square feet. Their current request is about 14,000 square feet (much larger than the parcel they may convey to the City). They ststed that their proposed building on the north side of the Civic Plaza "shall be no more than 3 stories..."

This Letter of intent to sell conditions any floors being built on the City's parking deck and used privately upon whether there is "additional development on the adjoining parcels owned by the Fayetteville Depot, LLC or the Bank of Fayetteville (which) warrants additional parking or commercial development (on the City's parking deck)." Obviously, no such development has occurred to justify any such privately owned floors above the City's parking deck. I believe that this January 14, 2020 Letter of Intent to sell from Sage Partners was the one presented to the City Council in the Spring of 2020 for tentative approval of its general terms.

Although Greg House's presumed right to construct floors above the City's parking deck was certainly not "an integral part of the co-dependent deed" pursuant to what was shown to the City Council for their approval, I agree that by the summer when City staff provided me with 23 proposed terms of agreement, floors 6 and/or 6 & 7 were proposed to be provided free of any air space costs as a part of this agreement if Greg House (and/or Ted Belden) merely paid the out of pocket costs of the City for the additional design and construction costs to support these additional floors. Therefore, you will find these terms within the proposed contracts that I have provided to you in your December 1st and December 15th meetings.

Response to Jason Bramlett's Letter

I want to thank Jason Bramlett for supplying us his letter to explain his clients' demands for changes to the contract that I drafted for your consideration. Now that you know the history of this land sale contract from its first offer for the City to pay \$250,000 and convey the norther building site on the Civic Plaza to its now numerous additional requirements for floors of condominium use for the free use of Greg House (with no air space compensation for the City), etc., let's address their new requests.

1. Contracting Parties.

Jason Bramlett is correct that most developers desire not to stand behind their projects, but instead wish to immunize themselves from any personal liability. Thus, even if they were responsible for major problems for the project, if the City contracts with a newly created business entity, Greg and Ted can just walk away unscathed while the City would be left to deal with an undercapitalized, just created entity. This is another reason why this is certainly not a "Partnership" where all partners are responsible for problems and liabilities as well as share of profits.

I will not recommend you reject this contract because House/Belden will not personally stand behind this agreement. However, the City Council needs to know they refuse any personal responsibility to fulfill these contractual terms.

2. Structural Enhancement Costs for Potential 6th and 7th Floors.

The contract I provided was clear that Greg House and Ted Belden did not have to invest in the structural enhancement cost (including higher elevators and stairwells, etc.) for the 6th and/or 7th floors if they deemed those expenses too costly. However, now they demand further compensation if they do forfeit the rights to the 6th and 7th floors. If they do not pursue their rights to the 6th & 7th floors:

- (a) They will no longer agree to provide the City an option to purchase the property for the transit hub.
- (b) They will reduce the length of their promise from 7 years to 5 years to not construct over or on the land on the north end of the Depot Train Station building nor the freight building used now as a coffee shop.
- (c) They will be able to build private 6th floor parking at its structural enhancement costs.

I believe their third point has never been disputed. The first two concessions are policy considerations for the City Council.

3. Scope of Work Relating to Structural Enhancement Costs.

I believe my proposed contract already identifies the significant enhancement costs to construct upper levels of the Parking Deck. I would welcome an even more detailed listing of the structural enhancement costs needed to support 6th floor parking and 7th floor “live loads” which I believe would be general residential, office and/or commercial use. Whatever these enhancement costs would be must be fully (100%) paid by the private developer as the **City cannot subsidize any of these costs using our bond funds.**

4. Time Limit to Build 6th and 7th Floor.

They want to double our proposed 10 year period in which to build those floors to 20 years. I will defer any structural concerns of delayed construction to Wade Abernathy who has studied parking decks longevity and maintenance.

5. Ground Floor Unit of the City's Parking Deck.

This ever increasing free air space use of the first floor as Greg's condominium commercial space has always been conditional upon his paying its basic construction costs including making it "commercial ready" as seen from the outside. However, the City cannot subsidize this private party using bond funds which we would be if they did not pay the City's actual costs of not using the 14,000 square feet of ground floor space for public parking and having thus to build the City Parking Deck a floor or half a floor higher to accommodate the parking lost on the ground floor.

To prevent this illegal subsidization, but let House/Belden only pay for the first floor construction and commercial finishing, I suggested that they could pay the City \$50,000.00 as the estimated costs to elevate 14,000 square feet of parking which would be offset by the City paying Greg \$50,000.00 for the conservation easement over the Depot Train Station building (not including its norther half). That \$50,000.00 would have to come from General Funds as it cannot reasonably be a part of the City Parking Deck bond funding.

6. Ground Floor Use of Food Hall Building.

City staff has always demanded that the building on the north part of the Civic Plaza along Dickson Street be finished by the time we finish constructing the Plaza. I agreed with House/Belden to weaken this requirement to allow only the shell building be finished by that time to a "black box" completion. To partly justify this rent-to-own agreement, I agreed to give them another year to at least finish the ground floor of this 3 1/2 story building to operating condition in order for them to receive loan forgiveness for the \$263,000.00 appraised value of the site.

As you see, House and Belden do not want to have to do more than have a shell building on this site indefinitely and still receive the \$263,000.00 forgiveness. This would hurt our justification supporting this lease payment forgiveness that the building is at least generating some tax revenue for the City. This again is a City Council decision.

7. Three Different Agreements Instead of Our Unified Agreement Among the City, Bank, Fayetteville Depot, LLC, House/Belden entity.

This project cannot go forward without both property owners, the Bank of Fayetteville and the Fayetteville Depot, LLC. through its owner/manager Greg House and the City to all agree to terms. This new request would cause another major delay for all involved and is a brand new request that was not earlier presented to me. Every delay plays into the hands of House and Belden as bond revenue spending rules will eventually prevent the City from doing anything but agreeing to whatever Greg and Ted demand as it will be too late to move to the School Street Parking lot. This demand should not be agreed to. When I recently learned from Jason Bramlett that he only represented House/Belden and not the Bank of Fayetteville which actually owns more of the land we need to build the parking deck where it has been designed, I called the Bank to ensure their earlier unenforceable offer to sell was still valid and had not been changed as Greg's has. Unfortunately, I have not yet heard back from its incoming President. Without the Bank's property, the parking deck cannot be built as designed.

CONCLUSION

I will draft whatever the City Council believes to be in the best interests of our citizens and City as long as such provision will not violate bond revenue requirements or other legal requirements. I hope to hear clear direction about House/Belden's latest requests from the City Council, including its two incoming members, during the Agenda Session today.

If Greg House and Ted Belden or the Bank of Fayetteville refuse to agree to and sign what the City Council has approved by your meeting of January 5th, 2021, I recommend you immediately cease further negotiation and instruct our designing engineers to move to a City owned site so we can get the City parking deck completed in time to get the Civic Plaza construction completed before our three year bond construction window closes.

Williams, Kit

From: Sterling Hamilton <shamilton@sagepartners.com>
Sent: Wednesday, September 11, 2019 8:32 AM
To: Norton, Susan; Mayor, Don; Williams, Kit
Subject: Signed LOI-Fayetteville.pdf
Attachments: Signed LOI-Fayetteville.pdf; ATT00001.htm

Hi All,

Here is the LOI from Farmers and Merchants Bank. They will sell the city the back half of their property needed to build the parking deck. Purchase price is \$100k.

With Greg's land that would be \$350k for about an acre of land in downtown. I really can't stress enough how low this number is. As stewards of the city's funds, I hope you all realize the value in this number as I'm sure our business community will find a decision to acquire the property to be more than sound.

Thanks to all for your continued patience.

Let's go Fayetteville!

Sterling



Northwest Arkansas
5100 W. JB Hunt Drive
Suite 800
Rogers, AR 72758
479-845-3000 Office

September 4, 2019

Mayor Lionel Jordan

Sage Partners on behalf of Bank of Fayetteville, Farmers and Merchants

Via Electronic Mail

Dear Mayor Jordan:

The following is a Letter of Intent for an offer to sell the below-referenced property under the following terms and conditions:

Location:	542 W Dickson - Northern Portion of Bank W Dickson Street - ~.33 Acres (Exhibit Attached)
Seller:	Farmers and Merchants Bank
Buyer:	City of Fayetteville or Special Purpose Entity
Sale Price	\$100,000 plus the guarantee of parking deck construction. Parking deck construction will be assumed to add long term value to the remainder of the bank's corner parcel. This price is roughly equivalent to the per land square foot price being proposed by the adjacent property owner, Fayetteville Depot, LLC.
Terms:	LOI will be good for 60 days Due Diligence for buyer and seller to discuss terms of a purchase and sale. Buyer and/or Seller may, at any time, cancel the LOI. Closing will occur when plans, engineering and permitting are in place. Lot split may occur, if necessary, before closing with mutual agreement by the parties to the transaction.
	The exact size and scope of the Bank of Fayetteville parcel in consideration will be determined by schematic plans and engineering through whatever entity the City of Fayetteville determines will handle the development or predevelopment process.
	The City of Fayetteville will build, to the capacity it is able, a parking deck upon the subject property at 542 W Dickson, south of the intersection of W. Watson Street and West Avenue. The parking deck will consist of no less than 292 spaces plus as many spaces as can be built with funds from the Transportation Bond or any budget number above the bond the City might deem fit.
	This LOI will be dependent on a successful negotiation for the use of a portion of the property currently owned, but not occupied, by the Bank of Fayetteville/Farmers and Merchants Bank.
Due Diligence	Due Diligence shall mean any negotiations or necessary events which will lead to a purchase and sale contract. This due diligence period will include the successful pursuit of a contribution or sale of the land owned by Farmers and Merchants Bank. Any item not listed here which buyer needs to address shall not be excluded from this non-



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binding letter of intent.

Non-Binding Agreement:

This proposal is not intended as, and does not constitute, a binding agreement by any party, nor an agreement by any party to enter into a binding agreement but is merely intended to specify some of the proposed terms and conditions of the transaction contemplated herein. Neither party may claim any legal rights against the other by reason of the signing of this letter or by taking any action in reliance thereon. Each party hereto fully understands that no party shall have any legal obligations to the other, or with respect to the proposed transaction, unless and until all of the terms and conditions of the proposed transaction have been negotiated, agreed to by all parties and set forth in a definitive agreement which has been signed and delivered by all parties. The only legal obligations, which any party shall have, shall be those contained in such signed and delivered definitive agreement referred to above.

If you have any questions, please call us to discuss at (479) 802-0028. We would appreciate your response as soon as possible. We look forward to receiving your response.

Regards,

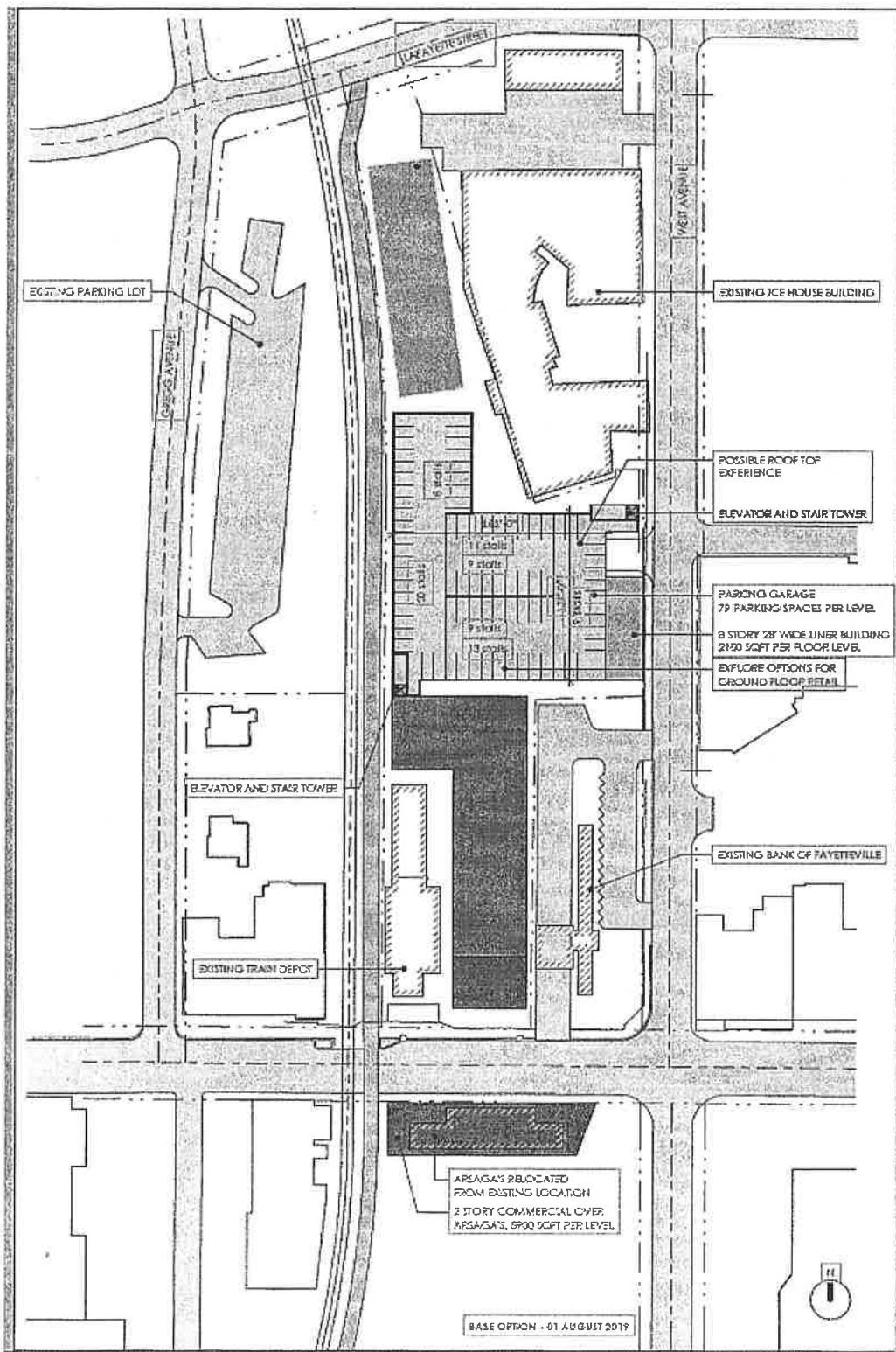
Sterling Hamilton
Sage Partners

Agreed:

Mayor Lionel Jordan, City of Fayetteville Arkansas - Buyer

Agreed:

Gary Hudson, Pres & CEO 9-10-19
Gary Hudson - Farmers and Merchants Bank - Seller





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5100 W. JB Hunt Drive
Suite 800
Rogers, AR 72758
479-845-3000 Office

October 9, 2019

Deleted: August 12, 2019

Mayor Lioneld Jordan

Sage Partners on behalf of Fayetteville Depot, LLC (Greg House)

Via Electronic Mail

Dear Mayor Jordan:

The following is a Letter of Intent for an offer to sell the below-referenced property under the following terms and conditions:

Location: Fayetteville Depot 550 W Dickson Street (Exhibit Attached)

Seller: Fayetteville Depot, LLC

Buyer: City of Fayetteville.

Deleted: or Special Purpose Entity

Sale Price \$250,000 plus exchange of the 0.25 acre northern parcel of the Civic Plaza (currently West Ave Parking Lot) city to provide survey.

Deleted: cultural arts corridor

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Terms: LOI will be good for 60 days Due Diligence for buyer and seller to discuss terms of a purchase and sale. Buyer and/or Seller may, at any time, cancel the LOI. Closing will occur when plans, engineering and permitting are in place. Lot split may occur, if necessary, before closing with mutual agreement by the parties to the transaction.

The approximate size and scope of the Depot parcel in consideration is 0.35 acres south of an extension of the north line of Watson St ROW, an access easement to allow for a second parking garage exit and a temporary construction easement. Final size and scope will be determined by schematic plans and engineering through whatever entity the City of Fayetteville determines will handle the development or predevelopment process.

Deleted:

The City of Fayetteville will work in good faith with Fayetteville Depot, LLC in order to determine the final size and scope of the exchange property at the north end of the Civic Plaza (West Ave Parking Lot). The building's uses and design should embrace the design intention and support the types of activities envisioned to activate the adjoining Civic Plaza throughout the day. The building shall be approximately 5400 sq ft footprint and shall be a maximum of 3 stories and shall comply with all the requirements of the underlying Main Street Center Zoning District and the Downtown Design Overlay District. It shall have active ground floor uses (restaurant, café, art gallery, retail shopping, etc.). While LEED Certification is not required, the building shall incorporate sustainable products, practices and programs into the building's design, construction and operation. Specifically, the building's stormwater management shall employ low impact development that is complimentary to the adjoining Civic Plaza. The building is to be built in conjunction with the construction of the

Deleted: Cultural Arts corridor

Deleted: Walton Arts Center parking

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Suite 800
Rogers, AR 72758
479-845-3000 Office

building is to be built in conjunction with the construction of the adjoining Civic Plaza.

Fayetteville Depot, LLC will work with the City of Fayetteville to ensure the protection of and access to the Freight building occupied by the Arsaga's Depot during the parking deck construction.

The City of Fayetteville will build a parking deck upon the subject property at 550 W Dickson. The parking deck will consist of no less than 290 spaces plus as many spaces as can be built with \$10 M in funds from the Cultural Arts Corridor Bond.

Should additional development on the adjoining parcels owned by Fayetteville Depot LLC or the Bank of Fayetteville/Farmers and Merchants Bank warrant additional parking demand beyond City constructed spaces, the City will work with Fayetteville Depot LLC to allow private equity funding to be contributed for additional design and construction necessary for additional foundational support, structure, floors and any other reasonable additional elements to the City's parking deck. Cost allocation shall be determined by the City's design engineering firm. The allocation of those City controlled and private equity-controlled spaces shall be documented prior to the new deck being placed in service.

This LOI will be dependent on a successful execution of the use of a portion of the property currently owned, but not occupied, by the Bank of Fayetteville/Farmers and Merchants Bank.

Due Diligence

Due Diligence shall mean any negotiations or necessary events which will lead to a purchase and sale contract. This due diligence period will include the successful pursuit of a contribution or sale of the land owned by Farmers and Merchants Bank. Any item not listed here which buyer needs to address shall not be excluded from this non-binding letter of intent.

Non-Binding Agreement:

This proposal is not intended as, and does not constitute, a binding agreement by any party, nor an agreement by any party to enter into a binding agreement but is merely intended to specify some of the proposed terms and conditions of the transaction contemplated herein. Neither party may claim any legal rights against the other by reason of the signing of this letter or by taking any action in reliance thereon. Each party hereto fully understands that no party shall have any legal obligations to the other, or with respect to the proposed transaction, unless and until all of the terms and conditions of the proposed transaction have been negotiated, agreed to by all parties and set forth in a definitive agreement which has been signed and delivered by all parties. The only legal obligations, which any party shall have, shall be those contained in such signed and delivered definitive agreement referred to above.

Deleted: warrant, through any acceptable legal mechanism, the reconstruction/replacement of the

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Deleted: The City further agrees that any spaces above the 292 required spaces will be available for lease, with revenue to the City, by any future development at 550 W Dickson Street so long as some portion of the ¶¶¶¶¶ ownership entity is comprised of Fayetteville Depot, LLC or any other entity owned in part or in whole by Greg House.¶

Deleted: Should the city, now or in the future, abandon any of the parking spaces within the then constructed parking deck Greg House reserves the right, at his cost, to construct and operate a rooftop entertainment establishment which conforms to the city's approved business uses within the current or future zoning. Greg House agrees to finance such establishment should the opportunity become available.¶
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479-845-3000 Office

If you have any questions, please call us to discuss at (479) 802-0028. We would appreciate your response as soon as possible. We look forward to receiving your response.

Regards,

A handwritten signature in black ink, appearing to read "Sterling Hamilton".

Sterling Hamilton
Sage Partners

Agreed:

Mayor Lionel Jordan, City of Fayetteville Arkansas - Buyer

Agreed:

Greg House – Fayetteville Depot, LLC - Seller



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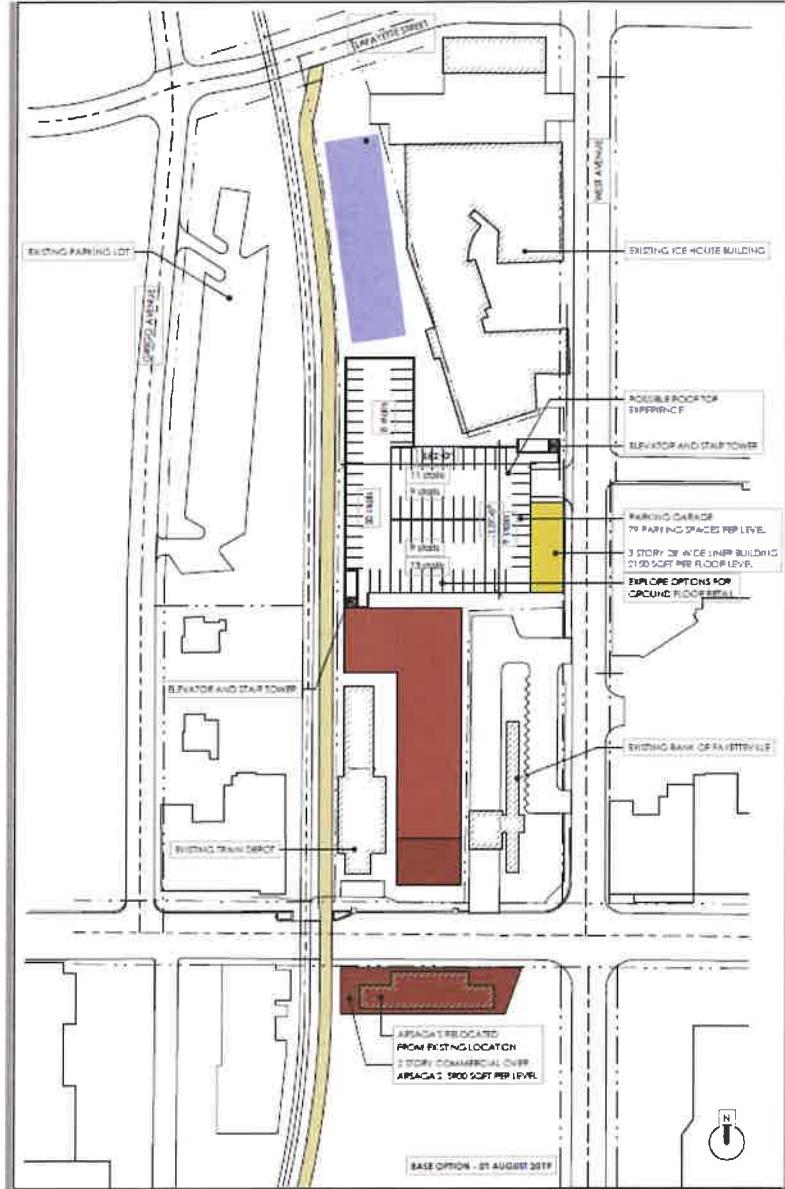
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5100 W JB Hunt Drive
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Rogers, AR 72758
479-845-3000 Office

January 14, 2020

Mayor Lionel Jordan

Sage Partners on behalf of Fayetteville Depot, LLC (Greg House)

Via Electronic Mail

Dear Mayor Jordan:

The following is a Letter of Intent for an offer to sell the below-referenced property under the following terms and conditions.

Location:	Fayetteville Depot 550 W Dickson Street (Exhibit Attached)
Seller:	Fayetteville Depot, LLC
Buyer:	City of Fayetteville
Sale Price	\$250,000 plus exchange of the 0.2 acre northern parcel of the Civic Plaza (currently West Ave Parking Lot) - city to provide survey
Terms:	LOI will be good for 60 days Due Diligence for buyer and seller to discuss terms of a purchase and sale. Buyer and/or Seller may, at any time, cancel the LOI. Closing will occur when plans, engineering and permitting are in place. Lot split may occur if necessary before closing with mutual agreement by the parties to the transaction.

The approximate size and scope of the Depot parcel in consideration is 0.3 acres south of an extension of the north line of Watson St ROW. Fayetteville Depot will also work with the city to guarantee two points of access (Ingress/Egress) to the parking deck via an easement (~0.2 Acres). Determination of these access points will occur through design and engineering.

The City agrees that liner building space will be available to Fayetteville Depot upon completion of the deck. Fayetteville Depot agrees to develop liner buildings where space is available, to city development standards and in compliance with current or future zoning restrictions per the city of Fayetteville UDC. Liner Building will also include approximately 2,000 leasable square feet for Fayetteville Police Department at then current market rent.

The City of Fayetteville will work in good faith with Fayetteville Depot, LLC in order to determine the final size and scope of the exchange property at the north end of the Civic Plaza (West Ave Parking Lot). The building's uses and design should embrace the design intention and support the types of activities envisioned to activate the adjoining Civic Plaza throughout the day. The building shall be no more than 3 stories and shall comply with all the requirements of the underlying Main Street Center Zoning District and the Downtown Design Overlay District. It shall have active ground floor uses (restaurant, cafe, art



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gallery, retail, shopping, etc.). While LEED Certification is not required, the building shall incorporate sustainable products, practices and programs into the building's design, construction and operation. Specifically, the building's stormwater management shall employ low impact development that is complimentary to the adjoining Civic Plaza.

The City shall be allowed transparency and access to communication around the selection of the any developer be it Fayetteville Depot or any other entity selected by the property owner. All normal site development and utility connection cost shall be borne by the selected building developer and/or the Fayetteville Depot, LLC. The building is to be built in conjunction with the construction of the adjoining Civic Plaza and shall be completed prior to or by the time of the Plaza opening.

Fayetteville Depot, LLC will work with the City of Fayetteville to ensure the long-term protection of, and access to, the Freight building occupied by the Arsaga's Depot and the historic train depot during the parking deck construction. This protection/preservation will be agreed to through a legal instrument recommended by both Bond Counsel and the City Attorney's Office. The City and Fayetteville Depot further agree that negotiations between Arsaga's at The Depot (Cary and Cindy Arsaga) will be complete before the city moves to approve contracts to purchase Fayetteville Depot, LLC's property. Negotiations between Arsaga's and the Depot are ongoing and until such time as a lease amendment or other legal document are signed and/or recorded by both the Arsagas and Fayetteville Depot, LLC, the city will not move forward with contracts or construction.

The City of Fayetteville will build a parking deck upon the subject property at 550 W Dickson. The parking deck will consist of no less than 290 spaces plus as many spaces as can be built with \$10 M in funds from the Cultural Arts Corridor Bond.

The City further agrees that any spaces above the 290 required parking spaces from the bond issue will be available in some capacity for use by any future tenants so long as the method of use complies with the bond requirements. Future tenants would include any tenants in the liner buildings around the deck or any future tenants from any other development on the original Fayetteville Depot, LLC parcel.

Should additional development on the adjoining parcels owned by Fayetteville Depot, LLC or the Bank of Fayetteville/Farmers and Merchants Bank warrant additional parking or commercial development demand beyond City constructed spaces, the City will work with Fayetteville Depot, LLC to allow private funding to be contributed for additional design and construction necessary for additional foundational support, structure, floors and any other reasonable additional elements to the City's parking deck. Cost allocation shall be determined by the City's design engineering firm. The allocation of those City controlled and private equity-controlled spaces shall be documented prior to the new deck being placed in service.



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This LOI will be dependent on a successful execution of the use of a portion of the property currently owned, but not occupied, by the Bank of Fayetteville/Farmers and Merchants Bank

Due Diligence

Due Diligence shall mean any negotiations or necessary events which will lead to a purchase and sale contract. This due diligence period will include the successful pursuit of a contribution or sale of the land owned by Farmers and Merchants Bank. Any item not listed here which buyer needs to address shall not be excluded from this non-binding letter of intent

Non-Binding Agreement:

This proposal is not intended as, and does not constitute, a binding agreement by any party, nor an agreement by any party to enter into a binding agreement but is merely intended to specify some of the proposed terms and conditions of the transaction contemplated herein. Neither party may claim any legal rights against the other by reason of the signing of this letter or by taking any action in reliance thereon. Each party hereto fully understands that no party shall have any legal obligations to the other, or with respect to the proposed transaction, unless and until all of the terms and conditions of the proposed transaction have been negotiated, agreed to by all parties and set forth in a definitive agreement which has been signed and delivered by all parties. The only legal obligations, which any party shall have, shall be those contained in such signed and delivered definitive agreement referred to above.

If you have any questions, please call us to discuss at (479) 802-0028. We would appreciate your response as soon as possible. We look forward to receiving your response

Regards,

Sterling Hamilton
Sage Partners

Agreed:

Mayor Lionel Jordan, City of Fayetteville Arkansas - Buyer

Agreed:

Greg House – Fayetteville Depot, LLC - Seller

Future Concept Only



DEPOT LOT DEVELOPMENT | SITE PLAN - SCALE: 1" = 50' ➔

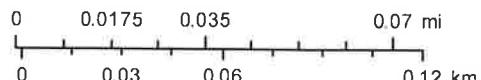
2019.12.17 TSW

Fayetteville, AR



7/20/2020, 8:50:25 AM

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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 or 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.

ORDINANCE NO. _____

AN ORDINANCE TO APPROVE REAL ESTATE PURCHASE CONTRACTS WITH THE FARMERS & MERCHANTS BANK , FAYETTEVILLE DEPOT, LLC, AND DICKSON & WEST INVESTMENTS, LLC TO PURCHASE ABOUT ONE HALF ACRE IN THE DEPOT/ BANK LOT FOR \$350,000.00, TO APPROVE A LEASE-TO-OWN ARRANGEMENT WITH DICKSON & WEST INVESTMENTS, LLC FOR THE .2 ACRE LOT ON THE NORTH END OF THE CIVIC PLAZA, TO AGREE TO CONVEY TO DICKSON & WEST INVESTMENTS, LLC THE OWNERSHIP OF ABOUT 14,000 SQUARE FEET OF THE BOTTOM FLOOR OF THE CITY'S PUBLIC PARKING DECK AND OTHER ITEMS, AND TO PASS AN EMERGENCY CLAUSE

WHEREAS, City staff and Greg House as managing member of Fayetteville Depot, LLC and Dickson & West Investments have long negotiated terms and conditions for this land purchase and lease-to-own agreement which have been properly placed within the Real Estate Purchase contracts included within this Agenda item; and

WHEREAS, the Farmers and Merchants Bank owns vital and necessary property needed for the proposed City Parking Deck and has offered to sell such property to the City for One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, City staff and Mayor Jordan recommend approval of these contracts which have approved and signed by the Farmers and Merchants Bank, Fayetteville Depot, LLC and Dickson and West Investments, LLC; and

WHEREAS, this contract includes the purchase of a valuable building site on West Street, the lease-to-own a valuable building site in the future Civic Plaza along Dickson Street, the protection through conservation easement of part of the historic Depot building, and other terms and conditions which make competitive bidding for these payments, conveyances and agreements not reasonable or practical; and

WHEREAS, to get the multi-story public parking deck constructed and operational so that the Civic Plaza can be constructed within the bond revenue time limits, all parties to this contract must have approved and signed the contract by February 18, 2021 and this ordinance should be immediately effective.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that the complexity of the contracts, the need to complete this bond funded project promptly, and the requirement that the deck location be near the Walton Arts Center renders normal competitive bidding not reasonable or practical and therefore waives formal competitive bidding, approves

the contracts included with the Agenda item and authorizes Mayor Jordan to sign these contracts and all documents necessary to carry out the terms and conditions of these contacts.

Section 2. Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that the need to get the City's public parking deck under construction as soon as possible to avoid potential problems with bond revenue spending requirements and to expedite the beneficial construction of the Civic Plaza for the peace, health and safety of our residents and visitors, the City Council declares an emergency exists and determines this ordinance shall be effective immediately upon its passage and approval.

PASSED and **APPROVED** this 18th day of February, 2021

APPROVED:

By: _____
LIONELD JORDAN, Mayor

ATTEST:

By: _____
KARA PAXTON, City Clerk/Treasurer

REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT (this “Contract”) is made and executed as of the ____ day of February, 2021, by and between **CITY OF FAYETTEVILLE, ARKANSAS (“Buyer”)**, **FAYETTEVILLE DEPOT, LLC (“Seller”)**, and **DICKSON & WEST INVESTMENTS LLC (“New Entity”)**.

WHEREAS, Buyer and the Citizens of Fayetteville have approved plans to purchase real estate necessary for the construction of a public parking facility (“**Parking Deck**”) to enhance and as part of the Cultural Arts Corridor; and

WHEREAS, Buyer, through its consultants and other professionals, has identified real estate owned by Seller as more fully described herein as suitable for construction of the Parking Deck; and

WHEREAS, subject to the terms and conditions of this Contract, Seller desires to sell the following described real estate to Buyer and to participate as a developer to construct and enhance certain improvements located in the Cultural Arts Corridor and in the Parking Deck; and

WHEREAS, Seller’s participation as a developer in the Parking Deck and in the Cultural Arts Corridor is beneficial to Buyer because Buyer will have more flexibility in authorizing use of space within the Parking Deck, and it will generate additional sales tax revenue for Buyer, improve the pedestrian experience along West Avenue, and reduce Buyer’s expense for construction of the Parking Deck, as well as other benefits.

NOW THEREFORE, in consideration of the mutual covenants stated herein, Buyer and Seller hereby agree as follows:

1. THE PROPERTY

For the price and upon and subject to the terms, conditions and provisions set forth in this Contract, Seller shall sell and convey to Buyer and Buyer shall purchase from Seller that certain real estate owned by Seller located at 550 W Dickson, Fayetteville, Washington County, Arkansas, being a portion of parcel number 765-12875-000 (the “**Property**”), and as more particularly described on Exhibit A and as depicted in Exhibit B, each being attached hereto, together with all Seller’s rights, title and interest in all public and private streets, roads, avenues, alleys and passageways, and all and singular the estates, rights, privileges, easements and appurtenances belonging or in any way appertaining to the Property.

2. PURCHASE PRICE

Purchase Price. The purchase price for the Property (“**Purchase Price**”) shall be Two Hundred Fifty Thousand Dollars (\$250,000.00) to be paid in cash at Closing.

3. DEED

On the Closing Date, Seller shall execute a deed to sell and convey to Buyer good and marketable title to the Property by special warranty deed in the form reasonably prescribed by Buyer (the “**Deed**”), subject to no liens, claims, or encumbrances (“**Encumbrances**”), except for (a) liens for ad valorem taxes that are not yet due and payable and (b) those title and survey exceptions either waived or approved in writing by Buyer after Buyer’s review of the Commitment, Survey (as those terms are hereinafter defined), and legible copies of all title exception documents identified on the Commitment and Survey (the “**Permitted Exceptions**”). Title to the Real Property as aforesaid shall be insured by the Title Company as provided in Section 5.

4. SURVEY

Buyer will order an ALTA survey (the “**Survey**”) within five (5) days of the execution of this Contract. Buyer and Seller will each pay one half of the cost of the Survey. The Survey will include the location and boundaries of the Property, the Conservation Easement (defined and described in paragraph 30(B)), the Freight Building (defined and described in paragraph 30(C)), and the Transit Hub (defined and described in paragraph 30(D)). The Survey and the boundary lines of the areas surveyed therein shall be subject to the mutual agreement of Buyer and Seller.

5. TITLE INSURANCE

Commitment and Title Policy. Within five (5) business days after the date of this Contract, Buyer will order a title insurance commitment (the “**Commitment**”) from City Title & Closing, LLC, Fayetteville, Arkansas (the “**Title Company**”) pursuant to which the Title Company shall agree to issue to Buyer, an ATLA owner’s policy of title insurance (the “**Title Policy**”) in the amount of the Purchase Price, insuring marketable fee simple title to the Real Property in Buyer upon recording of the Deed.

Seller’s Title Documents. Seller shall, at Seller’s sole expense, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered to the Title Company, on or before the Closing Date, such affidavits and other documents approved by the Seller, to the extent reasonably available to Seller, as the Title Company shall require as a condition to issuance of the Title Policy in the form herein provided (collectively, “**Seller’s Title Documents**”).

6. TITLE AND SURVEY DEFECTS

Buyer shall have ten (10) days from the receipt of the Title Commitment and copies of documents constituting exceptions to title and the Survey to examine the same and to specify to Seller in writing any matters which Buyer finds objectionable (the “**Encumbrances**”).

Seller shall have thirty (30) days to cure or remove all Encumbrances at its cost and expense. If Seller fails to cause all of the Encumbrances to be removed within such 30-day period or if Seller notifies Buyer of its decision not to cure or remove some or all of the Encumbrances, Buyer’s remedy shall be to:

- (i) Terminate this Agreement by giving Seller written notice thereof;
- (ii) Agree to extend additional time to Seller to cure or remove all Encumbrances; or
- (iii) Elect to purchase the Property subject to the Encumbrances and the Encumbrances not so removed or cured shall be deemed Permitted Exceptions and the Purchase Price shall not be reduced by any amount.

7. INVESTIGATION BY BUYER

Buyer has the right to conduct such due diligence as Buyer deems necessary in Buyer's sole discretion from the date of the execution of this agreement and continuing through five (5) business days prior to Closing; provided, however, Buyer may not conduct any intrusive testing in the subsurface soil or take any bore samples without the prior, written consent of the Seller. If Buyer, in its sole discretion is not satisfied with the results of its due diligence, Buyer may terminate this Contract at any time prior to Closing by providing written notice to Seller, whereupon this Contract shall be terminated and neither party shall have any further obligation to the other party.

8. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer the following through the date hereof and as of the Closing Date to the best of Seller's knowledge:

- 8.1. Except as disclosed to Purchaser in writing and except with respect to any written agreements with Scarpino, Inc., there are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way.
- 8.2. Seller represents and warrants that at the time of acceptance hereof and at Closing, Seller is not a "foreign person" as such term is defined in Section 1445(f) of the Internal Revenue Code of 1954.
- 8.3. There are no actions, suits, lawsuits, proceedings, or claims affecting any part of the Property, or affecting Seller with respect to the ownership, occupancy, use, or operation of any part of the Property pending in or before any court, agency, commission, or board.
- 8.4. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against Seller.
- 8.5. Seller has not received notice from any governmental authority, stating that the Property is currently in violation of any zoning, environmental, or other land use regulations or in violation of any required licenses, registrations, certificates,

permits, approvals, or other governmental authorizations relating to the use and operation of the Property. If Seller receives such a notice prior to Closing, Seller shall promptly notify Buyer of such a notice and deliver a copy thereof to Buyer.

- 8.6. Seller has not received any notice relating to its period of ownership of the Property that the Property is in violation of any applicable governmental law, regulation, or requirement relating to environmental or occupational health and safety matters or Hazardous Substances ("Environmental Laws"). As used in this Agreement, the term "Hazardous Substances" means any and all substances, materials, and wastes which are regulated as hazardous or toxic under applicable local, state, or federal law or which are classified as hazardous or toxic under applicable Environmental Laws.
- 8.7. Seller has not stored, processed, or disposed of hazardous or toxic substances on the Property.
- 8.8. No underground storage tanks are located on the Property.

For the purposes hereof, the term "**Seller's Knowledge**" shall mean the actual knowledge of Greg House, without any duty of inquiry or investigation.

BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY CLOSING DOCUMENT DELIVERED BY SELLER, (A) BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER IN CONNECTION WITH THE PROPERTY OR THIS TRANSACTION, (B) SELLER WILL SELL AND CONVEY TO BUYER, AND BUYER WILL ACCEPT THE PROPERTY "AS IS", "WHERE IS", AND "WITH ALL FAULTS" ON THE CLOSING DATE, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY, AND (C) SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, AND SELLER WILL NOT, BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH CLOSING, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.

9. TAXES AND ASSESSMENTS

Seller shall pay all real estate taxes and current installments of assessments, if any, for the year 2020. All real estate taxes and assessments, if any, levied against the Property for the year

2021, shall be prorated between Buyer and Seller as of the Closing Date based upon the latest available information.

10. CLOSING COSTS AND ADJUSTMENTS

Seller's Costs. Seller shall pay the cost of (1) one-half of the documentary stamps; (2) the cost of the title insurance policy; (3) one-half the Title Company's closing fee and document preparation fee; (4) the Title Company's title search fee; (5) all certificates, instruments and documents which Seller is required to deliver or cause to be delivered; (6) one-half of the Survey; and (7) its legal fees and expenses.

Buyer's Costs. Buyer shall pay the cost of (1) one-half of the documentary stamps; (2) one-half the Title Company's closing fee and document preparation fees; (3) all certificates, instruments and documents which Buyer is required to deliver or cause to be delivered; (4) Buyer's legal fees and expenses; and (5) one half of the Survey.

Closing Adjustments. The following adjustments shall be made at the Closing:

Taxes and assessments as set forth in Section 9 of this Contract.

If at any time any of the amounts to be apportioned under this Section 10 hereof cannot be calculated with complete precision because the amount or amounts of one or more items included in such calculation are not then known, such calculations shall be made on the basis of a reasonable estimate by Seller and Buyer of the amount or amounts of the item or items in question, based upon the previous amounts paid with respect to the Property, if any.

11. CONDEMNATION AND CASUALTY

If, prior to the Closing Date, all or any part of the Property shall be condemned by governmental or other lawful authority, Buyer shall have the option, exercised by delivery to Seller of written notice of such election on or before the fifteenth (15th) business day following the date on which Buyer receives from Seller written notice of such condemnation, or the Closing Date, whichever last occurs, of either (a) completing this transaction, in which event (i) there shall be no reduction of the Purchase Price, (ii) Seller shall have no duty to repair or restore, (iii) Seller shall pay to Buyer all condemnation proceeds received by Seller with respect to such condemnation, and (iv) Seller shall assign to Buyer all rights of Seller in and to such condemnation proceeds, or (b) cancelling this Contract.

If the Property, or any portion thereof, is damaged or destroyed by fire or other casualty prior to Closing, then, at the option of Buyer, exercised by delivery to Seller of written notice of such election on or before the fifteenth (15th) business day following the date on which Buyer receives from Seller written notice of such damage or destruction, or the Closing Date, whichever last occurs, this Contract shall terminate. In the event Buyer does not elect to terminate the Contract, this Contract shall remain in full force and effect without abatement of the Purchase Price except that Seller, at Closing, shall transfer and assign to Buyer all of Seller's

right, title and interest in and to the insurance proceeds when, as, and if received by Seller by reason of such damage or destruction, and shall convey the Property to Buyer subject to such casualty. Seller shall furnish to Buyer such documents, reasonable cooperation and assistance as Buyer requires in order for Buyer to process any insurance claim.

12. LEASES AND OTHER AGREEMENTS

During the period from the date of this Contract to and including the Closing Date, Seller shall not, without the prior written consent of Buyer enter into a lease of the Property that has a term extending beyond the Closing Date.

13. CLOSING

Closing Date. Provided all conditions to closing set forth in paragraph 29 of this Contract have been satisfied or waived by Buyer and Seller, and this Contract has not been terminated in accordance with the provisions herein set forth, the transaction contemplated herein shall close on April 1, 2021, or such other date as is mutually agreeable to Seller and Buyer. Such date for the closing of title is herein called the “**Closing Date**” or such occurrence is called the “**Closing**” or “**closing**”.

Seller’s Deliverables. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company the following items, to the extent in Seller’s possession and to the extent not previously provided to Buyer: (a) Special Warranty Deed; and (b) Seller’s Closing Statement and such other documents as Title Company may require at Closing and which are approved by the Seller.

Buyer’s Deliverables. On or before the Closing Date, Buyer shall deliver or cause to be delivered to the Title Company the following: (a) by federal wire transfer of funds to the Title Company’s escrow account an amount equal to (i) the balance of the Purchase Price due at closing, adjusted as herein provided, plus (ii) the aggregate amount of closing costs for which Buyer is responsible as provided herein, all as shown on Buyer’s closing statement; (b) and Buyer’s Closing Statement and such other documents as Title Company may require at Closing.

14. POSSESSION

Exclusive possession of the Property shall be delivered to Buyer on the Closing Date.

15. BROKERAGE

Seller hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction except Sage Partners. Seller shall pay all fees owed to Sage Partners in connection with this transaction and shall hold Buyer harmless thereon.

Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction.

16. SURVIVAL

Except as otherwise set forth herein, all warranties, representations, covenants, obligations and agreements contained in this Contract shall survive the closing hereunder and the transfer and conveyance of the Property and any and all performances hereunder for a period of six (6) months.

17. TIME

Time is of the essence of this Contract.

18. NO WAIVER

Except as herein expressly provided, no waiver by a party of any breach of this Contract or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by the other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Contract or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Contract or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

19. INSTRUMENTS IN WRITING

No agreement, consent, approval, notice, amendment, modification, understanding, or waiver of or with respect to this Contract or any agreement, instrument, or document entered into pursuant to or with respect to this Contract, or any term, provision, covenant, or condition hereof or thereof, nor any approval or consent given under or with respect to any of the foregoing, shall be effective for any purpose unless contained in a writing signed by the party against which such agreement, amendment, modification, understanding, waiver, approval or consent is asserted.

20. SUCCESSORS AND ASSIGNS

This Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties.

21. NOTICES

Any and all notices, requests, demands, or other communications hereunder shall be deemed to have been duly given if in writing and if transmitted by hand delivery with receipt

therefor, by facsimile delivery (with confirmation by hard copy), by overnight courier, or by registered or certified mail, return receipt requested, first class postage prepaid addressed as follows (or to such new address as the addressee of such a communication may have notified the sender thereof) (the date of such notice shall be the date of actual delivery to the recipient thereof):

If to Buyer: City of Fayetteville
Attn: Mayor's Office
113 W. Mountain Street
Fayetteville, AR 72701
Mayor@fayetteville-ar.gov

With a copy to: Vicki Bronson
Conner & Wintersm LLP
4375 N. Vantage Dr., Suite 405
Fayetteville, AR 72703
vbronson@cwlaw.com

If to Seller: Fayetteville Depot, LLC
Attn: Greg House
217 N. East Avenue
Fayetteville, Arkansas 72701

With a copy to: Friday, Eldredge, & Clark, LLP
3350 S. Pinnacle Hills Pkwy., Suite 301
Rogers, Arkansas 72758
Attn: Jason N. Bramlett
jbramlett@fridayfirm.com

Either party may designate a different address or addresses for itself by notice similarly given. Any notice given by registered or certified mail shall be deemed to have been given on the third day after the same is deposited in the mail, and any notice not so given shall be deemed to have been given upon receipt of the same by the party to whom the same is to be given.

22. ENTIRE AGREEMENT

This Contract contains the entire agreement with respect to the transactions contemplated herein, and there are no other terms, conditions, promises, understandings, statements, or representations, express or implied, concerning the same, and neither party is relying on any representation or statement not specifically contained herein.

23. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Arkansas.

24. ESTOPPEL

Each party confirms and agrees that (a) it has read and understood all of the provisions of this Contract; (b) it has negotiated with the other party at arm's length with equal bargaining power; and (c) it has been advised by competent legal counsel of its own choosing.

25. JOINT PREPARATION

This Contract is deemed to have been jointly prepared by the parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

26. ASSIGNMENT

Neither party may assign this contract without the prior written consent of the other party.

27. WAIVER OF JURY TRIAL

TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST THE OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS CONTRACT.

28. ATTORNEYS FEES

If either party is required to bring litigation to enforce its rights under this contract, the prevailing party shall be entitled to recover its attorney's fees and costs, including expert witness fees.

29. CONTINGENCIES

The parties obligations hereunder are conditioned upon satisfaction of the following conditions on or prior to Closing:

A. Buyer successfully entering into and closing on a contract with Farmers & Merchants Bank for the purchase of certain real estate which is adjacent to the Property and owned by Farmers & Merchants Bank and depicted on Exhibit B. Closing on this Contract is to occur simultaneously with Buyer closing on the adjacent real estate.

B. Buyer and Seller's approval of the Survey.

C. Buyer and Seller's approval of a master deed and bylaws for a Horizontal Property Regime ("HPR") for the Parking Deck to be drafted by Buyer's counsel.

D. Buyer and Seller's approval and execution of a Development Agreement concerning the Parking Deck as more particularly described in Paragraph 31.

E. Seller's approval and execution of the Conservation Easement, as more particularly described in Paragraph 30(B).

F. Buyer and Seller's approval and execution of the Cross Easements, as more particularly described in Paragraph 32.

G. Buyer and New Entity's execution of the Civic Plaza Agreement and the simultaneous closing of the transaction set forth and described therein with the Closing on the Property, as more particularly described in Paragraph 30(A).

30. ADDITIONAL CONSIDERATION

As additional consideration for the transactions contemplated herein the parties agree as follows:

A. Buyer agrees to enter into a Real Estate Purchase Agreement in favor of New Entity with respect to a parcel of real estate which is approximately one fifth of an acre (as depicted on Exhibit B) on the north side of that certain parcel of real estate currently owned by Buyer on Dickson Street (and commonly referred to as the Walton Art Center parking lot) for the sales price of Two Hundred Sixty-three Thousand Dollars (\$263,000.00), on terms materially similar to the terms and conditions set forth in this Contract (the "**Civic Plaza Agreement**").

B. Seller agrees to grant a permanent conservation easement pursuant to either the federal or state historical preservation process, such that Seller is able to obtain a charitable donation credit for the same, on and against part of the historic train depot station located on Dickson Street and owned by Seller (but only that portion currently leased to Chipotle) (the "**Depot**"), the area of which shall be determined by the Survey. Said conservation easement shall include the Depot and all area from the railroad right-of-way to the eastern side of the Depot and from the northern side of the Depot to Dickson Street (the "**Conservation Easement**"). The Conservation Easement will preserve the historic character of the Depot in accordance with the terms and conditions thereof. This Conservation Easement shall also prohibit any construction upon or the parking of any large vehicles (including food trucks) in the easement area that could obstruct the public view of the Depot from Dickson Street. The portion of the Depot building that is currently occupied by the Rendezvous Hookah Lounge is not included in the Conservation Easement. In addition to the Conservation Easement, the Seller shall donate to, and the Buyer shall accept, the developable air rights extending above the current structure of the Depot, such that Seller shall receive a charitable donation credit for the value of the air rights donated to the Buyer. Buyer makes no representations or warranties as to Seller's ability to obtain any tax credits pursuant to this paragraph.

C. Seller agrees not to substantially modify the exterior of or add to the height of the "freight" building (the "**Freight Building**") which is currently occupied by Arsaga's for seven (7) years from the date of this Contract, except that Seller may perform normal, routine, and needed maintenance and repair and shall also be entitled to construct a roof over the Freight Building and connect it to the Parking Deck to create a one-story outdoor recreation space. Should Seller desire to construct a roof and associated improvements to create a one-story outdoor recreation space, Seller shall follow all of Buyer's processes, procedures, and

requirements for construction and improvements; provided, however, the Buyer shall provide and grant any easements and consents necessary to allow for the connection of such roof structure to the Parking Deck. The Freight Building shall be depicted on the Survey.

D. Buyer shall have the option to purchase the real property and fifteen (15) feet of air space above the ground level between the Depot and the Freight Building from the railroad right-of-way to the eastern boundary of Seller's property for use as a Transit Hub or other public use (the "**Transit Hub**"). Buyer's option to purchase the Transit Hub shall begin as of the execution of this Contract and run for a period of four (4) years thereafter. If Buyer elects to exercise its option to purchase the Transit Hub, the purchase price will be based on the higher of two (2) appraisals of the Transit Hub provided by a qualified, independent appraiser, one of which shall be selected and paid for by Buyer and the second of which shall be selected and paid for by the Seller. The Transit Hub is depicted on Exhibit B and will be depicted and described on the Survey.

The terms and conditions of this paragraph 30 shall survive Closing and the filing of the Deed.

31. DEVELOPMENT OF THE PARKING DECK

Seller or its principals have formed New Entity for, among other things, the development of certain commercial space in the first floor of the Parking Deck and the potential expansion of additional floors in the Parking Deck. The approval of a Development Agreement by Buyer and Seller concerning the sharing of costs of designing, constructing, and use of the Parking Deck is an express condition to the Buyer and Seller's obligations under this Contract. The Development Agreement shall incorporate the following terms:

A. Buyer intends to construct a Parking Deck consisting of 6.5 floors, which shall be subject to the HPR.

B. New Entity shall own all of the right, title, and interest to an approximately 14,000 square foot unit in the HPR located on the first level of the Parking Deck (the "**New Entity Unit**"). New Entity shall pay all costs associated with the design and construction of the 14,000 square feet and all interior finish and exterior façade for the New Entity Unit, including the costs associated with any required fire walls and utility conduits. The New Entity Unit shall be designed and constructed in compliance with all local, state, and federal ordinances, building codes, rules, and regulations, including all of Buyer's ordinances, building codes, rules, and regulations.

C. Buyer shall retain ownership of 2,000 square feet on the first floor of the Parking Deck which it intends to use as a police facility. Buyer shall pay the costs of finishing out the 2,000 square feet for its needs, including the exterior façade, required fire walls, and utility conduits.

D. New Entity shall have the option to pay for the costs of adding a second half to the sixth floor of the Parking Deck and a seventh floor to the Parking Deck (the "**Expansion**"), PROVIDED, however, that New Entity is responsible for payment of the costs associated with

the infrastructure costs related to the additional weight and stress of adding the Expansion to the Parking Deck, and including, but not limited to enlarged, expanded, or additional stairways or elevators, extension and support of utilities, and all other costs associated with adding the Expansion to accommodate either future parking, residential units, or commercial/retail space in the Expansion (“**Increased Infrastructure Costs**”).

E. New Entity shall exercise its option for the Expansion and agree to pay the Increased Infrastructure Costs before Buyer begins construction of the Parking Deck, or no later than April 1, 2021, whichever occurs first. If New Entity exercises its option for the Expansion and agrees to pay the Increased Infrastructure Costs, New Entity shall be deeded all right, title, and interest to the units in the HPR represented by the Expansion (the “**Expansion Units**”) at the time it exercises the option for the Expansion and its agreement to pay for the Increased Infrastructure Costs. New Entity shall pay the Increased Infrastructure Costs periodically during the period of construction pursuant to invoices received from Nabholz Construction (the “**Contractor**”). If New Entity fails to pay any of the invoices from Contractor within thirty (30) days of the date of receipt of the invoice from Contractor, Contractor shall have the right to discontinue work associated with the Expansion and instead proceed with only that work that is necessary to support a 6.5 floor Parking Deck. New Entity shall remain liable to Contractor for the cost and expenses of all work that has been performed toward the Expansion regardless of whether the Expansion is completed. At no time shall the construction of the Parking Deck be ceased, delayed, or interfered with due to New Entity’s failure to timely pay the Contractor. New Entity shall be liable to Buyer for any costs, expenses, or damages, suffered by or incurred by Buyer due to New Entity’s failure to pay Contractor. If New Entity defaults in the payment of the Increased Infrastructure Costs and such default continues beyond any applicable cure period as set forth in the Development Agreement, New Entity shall quitclaim its interest in the Expansion Units to the Buyer.

F. The exterior façade of the Expansion Units shall comply with all local, state, and federal building codes, rules, regulations, and laws, including those of Buyer.

G. New Entity agrees to use commercially reasonable best efforts to complete the Expansion within fifteen (15) years from the date the City receives a Certificate of Occupancy for the Parking Deck, provided, however, New Entity shall not incur any forfeiture, fee, or other penalty in the event the Expansion is not completed within said time period. .

H. New Entity shall be liable to Buyer for any cost, damage, or injury Buyer incurs due to New Entity’s design, construction, or operation of its first-floor space and the Expansion. No materials, staging, lay down, or construction area utilized in completion of the Expansion shall be located on Buyer’s property or Buyer’s rights of way unless agreed to by the Buyer, nor shall construction of the Expansion impede or interfere in any manner with Buyer’s use and occupancy of the Parking Deck.

I. The Parking Deck will be constructed pursuant to Olsson Engineering final construction drawings as agreed by Buyer and New Entity.

J. New Entity is solely responsible for all costs of designing and constructing the Expansion.

K. In connection with the construction of the Parking Deck, to the extent Buyer utilizes property owned by Seller for a construction staging area and construction space (the “**Staging Area**”), the Buyer shall pay Seller the sum of \$4,000.00 per month to rent the Staging Area which such lease obligation shall first commence on the first day of the first month that work commences on the Parking Deck and shall terminate on the last day of the last month that the Seller or its agents remove all equipment and material from the Staging Area and will repair any damage to the area caused by Seller. .

32. CROSS EASEMENTS

The parties shall enter into such cross access easements on and across the Buyer and Seller’s property which shall be mutually agreeable as to both location, extent, and scope (the “**Cross Easements**”). The easements shall be depicted on the Survey.

[Remainder of this page is left intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Contract as of the date first above written.

BUYER:

CITY OF FAYETTEVILLE, ARKANSAS

By:

Lioneld Jordon, Mayor

Date: _____

ATTEST:

By: _____

Kara Paxton, City Clerk-Treasurer

SELLER:

FAYETTEVILLE DEPOT, LLC

By:

Name:

Title:

Date: _____

NEW ENTITY:

DICKSON & WEST INVESTMENTS LLC

By:

Name:

Title:

Date: _____

EXHIBIT A

Legal Description of Property

A part of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of Section 16, Township 16 North, Range 30 West, in the City of Fayetteville, Washington County, Arkansas being more particularly described as follows:

Commencing at the Southwest Corner of the Northwest Quarter of the Northeast Quarter of said Section 16;

Thence S86°59'31"E along the south line of said Northwest Quarter of the Northeast Quarter, 164.88 feet;

Thence N02°54'17"E, 13.24 feet;

Thence S86°58'30"E, 111.80 feet to a chiseled cross;

Thence N03°12'06"E, 81.12 feet to an 1/2" rebar;

Thence N02°14'32"E, 97.26 feet to the point of beginning;

Thence N87°29'45"W, 33.07 feet;

Thence N02°28'59"E, 11.08 feet;

Thence N87°29'45"W, 26.58 feet;

Thence N02°30'15"E, 52.05 feet;

Thence N02°54'16"E, 152.28 feet;

Thence N03°35'11"W, 24.91 feet;

Thence N48°31'14"E, 32.00 feet;

Thence S41°28'46"E, 51.32 feet;

Thence S15°17'40"E, 5.13 feet;

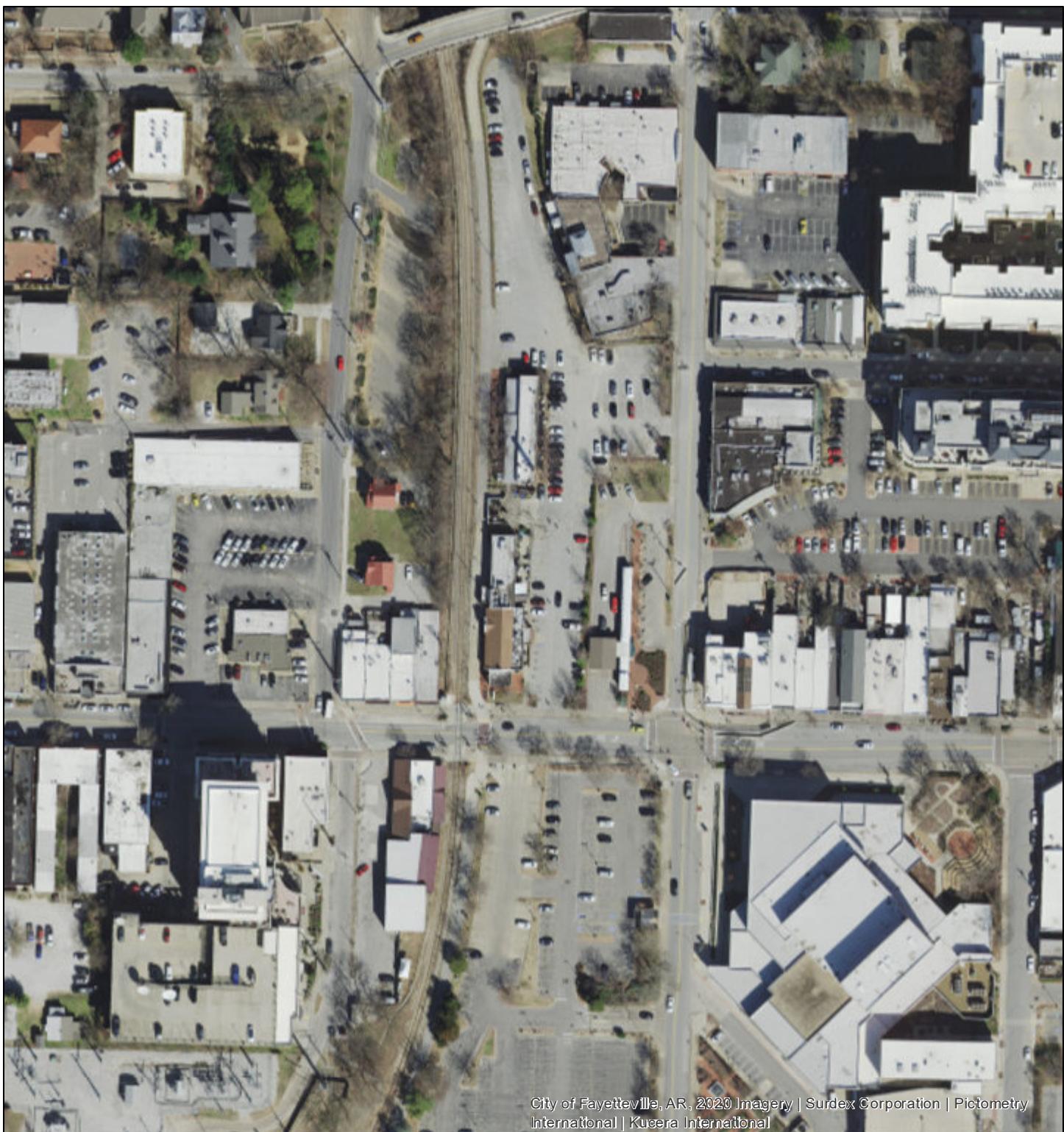
Thence S02°14'32"W, 220.61 feet to the point of beginning.

Containing 0.3 acres more or less.

EXHIBIT B

Conceptual areas outlined on Google Earth image

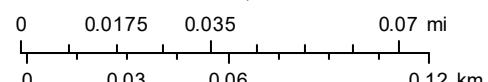
Fayetteville, AR



City of Fayetteville, AR, 2020 Imagery | Surdex Corporation | Pictometry International | Kucera International

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