

REAL ESTATE PURCHASE CONTRACT

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

WHEREAS, subject to the terms and conditions of a certain Real Estate Purchase Contract, dated of even date herewith (the “Parking Deck Contract”), Fayetteville Depot, LLC (“FD”), an affiliate of Buyer, has agreed to sell certain real estate to Seller located at 550 W. Dickson Street, Fayetteville, Washington County, Arkansas, being a portion of parcel number 765-12875-000 (the “Parking Deck Property”); and

WHEREAS, as set forth in the Parking Deck Contract, FD’s obligation to sell the Parking Deck Property to the Seller is subject to the Seller selling that certain real estate to Buyer containing approximately one fifth of an acre (as described on Exhibit A) on the north side of that certain parcel of real estate currently owned by Seller on Dickson Street (and commonly referred to as the Walton Art Center parking lot), and being a portion of parcel numbers 765-01745-002 and 765-01739-000 (the “Property”).

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 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 Sixty Three Thousand Dollars (\$263,000.00); provided, however, the Purchase Price shall be paid in thirty-six (36) monthly payments from Buyer to Seller of Seven Thousand Three Hundred Five Dollars (\$7,305.00) beginning on the third anniversary of the date of the COO Date (as defined in paragraph 30); provided, however, that Seller may waive and release Buyer from all or a portion of the Purchase Price pursuant to the conditions contained in Paragraph 30(G). If only a portion of the Purchase Price is waived pursuant to the provisions of Paragraph 30(G), then monthly payments shall be adjusted to reflect a payment amount necessary to pay the balance of the Purchase Price amortized over a period of thirty-six (36) months.

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 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, 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.

“**Seller’s knowledge**” means the actual knowledge of Mayor Lionel Jordan 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 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 three (3) 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 Seller: 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 & Winters, LLP
4375 N. Vantage Dr., Suite 405
Fayetteville, AR 72703
vbronson@cwlaw.com

If to Buyer: 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. Seller successfully entering into and closing on a contract with Farmers & Merchants Bank for the purchase of certain real estate which is adjacent to the Parking Deck Property and owned by Farmers & Merchants Bank (the "**FMB Contract**"). Closing on the FMB Contract is to occur simultaneously with Seller closing on the Parking Deck Property.

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

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

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

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

G. FD's and Seller's execution of the Parking Deck Contract and the simultaneous closing of the transaction set forth herein with respect to the Property.

30. CIVIC PLAZA BUILDING

As set forth in 2 hereof, the Purchase Price shall be waived if the Buyer constructs a building (the "**Civic Plaza Building**") on the Property in accordance with the following conditions:

A. The Civic Plaza Building (A) will be designed so that the ground floor can be operated by one or more tenants whose business offers or accommodates retail, restaurant, or commercial uses and at least one tenant offering food or beverage service which is oriented toward the Civic Plaza or (B) shall be constructed in material conformance with the design presented by Rob Sharp, a copy of which is attached as Exhibit B.

B. The development, design, and construction of the Civic Plaza Building must comply with all local, state, and federal building codes, ordinances, rules, laws, and regulations, including Seller's building codes, ordinances, rules, laws, and regulations.

C. Buyer shall indemnify and hold Seller harmless against all claims, charges, costs, damages, or expenses arising from Buyer's construction and occupancy of the Civic Plaza Building.

D. No materials, staging, lay down, or construction area utilized in completion of the Civic Plaza Building shall be located on Seller's property or Seller's rights of way, unless approved by Seller in writing, nor shall construction of the Civic Plaza Building impede or interfere in any manner with Seller's use and occupancy of any of its property.

E. Seller agrees to pay one-half of the costs for utility infrastructure to serve the Civic Plaza Building.

F. Buyer shall be responsible for all costs of design and construction of the Civic Plaza Building other than the portion of the utility infrastructure costs which Seller agreed to pay in paragraph F.

G. Seller will waive and release Buyer from the Purchase Price in full if the Civic Plaza Building is completed to a "black box" finish no later than two (2) years after the date the City receives a Certificate of Occupancy ("COO Date") for each unit it owns in the Parking Deck. If the Civic Plaza Building is not completed to a black box finish within two years of the COO Date then Seller will waive and release Buyer from the Purchase Price according to the following time periods and amounts:

i. If the Civic Plaza Building is completed to a black box finish between the second and third annual anniversary of the COO Date, Seller will waive and release Buyer from ninety percent (90%) of the Purchase Price;

ii. If the Civic Plaza Building is completed to a black box finish between the third and fourth annual anniversary of the COO Date, Seller will waive and release Buyer from eighty percent (80%) of the Purchase Price;

iii. If the Civic Plaza Building is completed to a black box finish between the fourth and the fifth annual anniversary of the COO Date, Seller will waive and release Buyer from seventy percent (70%) of the Purchase Price;

iv. If the Civic Plaza Building is not completed to a black box finish within five (5) years of the COO Date, then no portion of the Purchase Price will be waived or released and Buyer shall pay Seller the Purchase Price in full no later than the date that is seven years after the COO date.

H. In the event that the Buyer has not constructed the Civic Plaza Building within ten (10) years from the COO Date, the Seller shall have the right to acquire the Property from the Buyer for a purchase price equal to the Purchase Price.

For purposes hereof, the term “black box” shall mean that the exterior of the Civic Plaza Building will be completely finished with all doors, windows and exterior finishes fully installed, all utilities installed to be accessible to the interior of the building and ready for final installation. Buyer agrees to use its best commercially reasonable efforts to have the Civic Plaza Building occupied and open for business as soon as reasonably practical.

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

[Remainder of this page is left intentionally blank.]

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

SELLER:

CITY OF FAYETTEVILLE, ARKANSAS

By:

Lioneld Jordon, Mayor

Date: _____

ATTEST:

By:

Kara Paxton, City Clerk-Treasurer

BUYER:

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 Northwest Corner of a parcel described in Book 1387, Page 141 said point being the intersection of the South Right-of-Way Line of Dickson Street and the East Right of Way Line of Arkansas and Missouri Railroad.

Thence S87°05'47"E along said Right-of-Way line, 5.30 feet;

Thence S02°54'13"W, 10.00 feet to the point of beginning;

Thence S87°05'47"E parallel to and 10.00 feet South of said South Right-of-Way line, 145.89 feet;

Thence S30°54'13"W, 64.35 feet;

Thence N59°05'47"W, 18.62 feet;

Thence N87°05'47"W, 67.73 feet;

Thence S02°54'13"W, 14.64 feet;

Thence N87°05'47"W, 22.01 feet;

Thence N02°54'13"E, 23.79 feet;

Thence N87°05'47"W, 9.50 feet;

Thence N02°54'13"E, 38.93 feet to the point of beginning.

Containing 0.2 acres more or less.

EXHIBIT B

Fayetteville Food Hall Conceptual Presentation by Houses, Inc. and Rob Sharp