

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.

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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