



Legislation Text

File #: 2022-0693, Version: 1

WEST END APARTMENTS:

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SIGN AN OFFER TO PURCHASE APPROXIMATELY 1.74 ACRES OF LAND LOCATED AT 1125, 1137, 1153, AND 1189 NORTH WEST END AVENUE FOR THE AMOUNT OF \$1,390,000.00 PLUS CLOSING COSTS, TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$10,000.00, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, the structures located at 1125, 1137, 1153 and 1189 N West End Ave (commonly referred to as the West End Apartments) have flooded multiple times according to city records; and

WHEREAS, this flooding has led to significant loss of property for the residents and created a life safety issue in both the 2017 and 2022 flooding events; and

WHEREAS, this flooding puts both the residents and the City of Fayetteville Emergency Services at risk when these flooding events occur; and

WHEREAS, as a service to our residents, the City of Fayetteville participates in the Federal Emergency Management Agency (FEMA) Community Rating System (CRS). This provides for discounts (currently 5%) on most flood insurance policies within the City limits; and

WHEREAS, as of November 30, 2018, the City of Fayetteville contained 532 flood insurance policies resulting in approximately \$522,224 in annual premiums paid. The total insurance coverage in force was just over \$122 million and the total paid losses since entering the program in 1982 was approximately \$3.2 million; and

WHEREAS, CRS requires the participating community to develop and implement a plan to deal with structures that continually flood. In many instances, including this one, the only economically feasible option is to purchase the property; and

WHEREAS, it will increase Fayetteville's overall flood resiliency and will reduce the overall flood loss to the community during large rain events affirming one goal of the Washington County Pre-Hazard Mitigation plan.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign an offer to purchase approximately 1.74 acres of land located at 1125, 1137, 1153, and 1189 North West End Avenue for the amount of \$1,390,000.00 plus closing costs as well as any other documents necessary to

effectuate the purchase of this property, and further approves a project contingency in the amount of \$10,000.00.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution.

City of Fayetteville Staff Review Form

2022-0693

Legistar File ID

8/16/2022

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

Chris Brown

7/27/2022

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a resolution authorizing the purchase of property and structures located at 1125, 1137, 1153 and 1189 N West End Ave, in the amount of \$1,390,000 plus a \$10,000 contingency for the associated closing costs and to approve a budget adjustment

Budget Impact:

4704.860.7405-5805.00

4704 - Drainage Bond Projects

Account Number

Fund

46040.7405

Drainage Projects - Floodplain Buyout/Elevation

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 5,586,277.00

Funds Obligated \$ 5,261,669.87

Current Balance **\$ 324,607.13**

Does item have a cost? Yes

Item Cost \$ 1,390,000.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 1,390,000.00

Remaining Budget **\$ 324,607.13**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF AUGUST 16, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, City Engineer

FROM: Alan Pugh, Staff Engineer

DATE: July 27, 2022

SUBJECT: Approval of a resolution authorizing the purchase of property and structures located at 1125, 1137, 1153 and 1189 N West End Ave, in the amount of \$1,390,000 plus a \$10,000 contingency for the associated closing costs and to approve a budget adjustment.

RECOMMENDATION:

Staff recommends approval of a resolution authorizing the purchase of property and structures located at 1125, 1137, 1153 and 1189 N West End Ave, in the amount of \$1,390,000 plus a \$10,000 contingency for the associated closing costs and to approve a budget adjustment.

This recommendation is based on the following:

1. The structures located at 1125, 1137, 1153 and 1189 N West End Ave (Commonly referred to as the West End Apartments) have flooded multiple times according to city records.
2. This flooding has left to significant loss of property for the residents and created a life safety issue in both the 2017 and 2022 flooding events.
3. This flooding puts both the residents and the City of Fayetteville Emergency Services at risk when these flooding events occur.
4. As a service to our residents, the City of Fayetteville participates in the Federal Emergency Management Agency (FEMA) Community Rating System (CRS). This provides for discounts (currently 5%) on most flood insurance policies within the City limits.
5. As of November 30, 2018, the City of Fayetteville contained 532 flood insurance policies resulting in approximately \$522,224 in annual premiums paid. The total insurance coverage in force was just over \$122 million and the total paid losses since entering the program in 1982 was approximately \$3.2 million.
6. CRS requires the participating community to develop and implement a plan to deal with structures that continually flood. In many instances, including this one, the only economically feasible option is to purchase the property.
7. It will increase Fayetteville's overall flood resiliency
8. It will reduce the overall flood loss to the community during large rain events affirming one goal of the Washington County Pre-Hazard Mitigation plan.

BACKGROUND:

The subject property and structures are located within Zone AE according to flood insurance rate map 05143C0220F with portions of the structures and the property located within the floodway.

For those not familiar, the Special Flood Hazard Area (SFHA) is made up of multiple “zones.” These zones identify the various risks as well as the applicable regulations for development. Zone AE is commonly referred to as the 100-year floodplain and is made up of both floodplain and floodway. The floodway is the area designated by the Federal Emergency Management Agency, FEMA, for flood water conveyance. This is often relatively high velocity flood waters and the regulations are very restrictive as the intent is for this area to remain open space in order to preserve that conveyance. It is also the intent of the regulation to restrict developments in these areas which are the most susceptible to flooding. Unfortunately, these structures were located within a high-risk area prior to the maps being adopted by the City and as such have a long history of flooding.

DISCUSSION:

The West End Apartments contain approximately 50 total units spread over 4 structures. As stated previously, this apartment complex has flooded multiple times with the most recent occurring in April of 2017 and May of 2022. During those events, water entered all 4 of the buildings located on the property and impacted all of the residents. In each event, residents suffered the loss of much of their property including in some instances the vehicles they own that were in the parking area. Due to the velocity of the floodwater, emergency services also had to perform swiftwater rescues for many of the residents located in the facility endangering both the residents and the emergency crews. As an increase in the danger, the May 2022 event occurred in the early morning hours with little warning to the residents of the facility.

As a response to the flooding that occurred in 2017, City staff brought forward a proposal for a flood study to be completed to look at potential solutions to the flooding for the Hamestring Creek area upstream of I-49. This included several tributaries of Hamestring Creek including the tributary that flows next to the West End Apartments. As a result of that study, there was no real action with regard to upsizing culverts and channels that would reduce or eliminate the flooding to these structures. Left with no other feasible solutions, staff began to research the potential to purchase the structures. While we do understand the impact it would have to the residents of the West End Apartments, staff feels that the life safety issues and continual flood losses experienced by the owner and residents warrant the purchase of these facilities by the City and removal of those residents from harm’s way.

After the May 2022 event, the apartment complex was offered for sale. At that time, staff began working with the administration on the potential to purchase the apartments while there was a willing seller. As such, this proposal is brought forward for council’s consideration to purchase the facility. After the purchase, there are potential grant options that could help cover at least a portion of the demolition costs and restoration of the riparian area. Due to the urgency

associated with the purchase, these items will be brought forward at a later date for council's consideration.

It should be noted that this property is currently under contract to purchase. The attached draft offer letter would be contingent on the current offer to purchase not being completed for any reason. Upon approval from council, the offer letter will be signed and forwarded to the owner and the Land Sale Agreement which is also attached would be completed. If the offer is accepted and the current land sale is not completed for some reason, the City would proceed with preparing all necessary documents and scheduling a closing date.

BUDGET/STAFF IMPACT:

As a part of the process, engineering staff had the property appraised to get a general idea of the market value. As of July 2022, the market value of the property was indicated to be \$1,390,000 based on that appraisal. The proposed source for the funding would be the 2019 Drainage Bond Funds as portions of the funding were originally planned for floodplain buyout opportunities.

Attachments:

See photos on following pages

Draft offer letter

Draft Land Sale Agreement

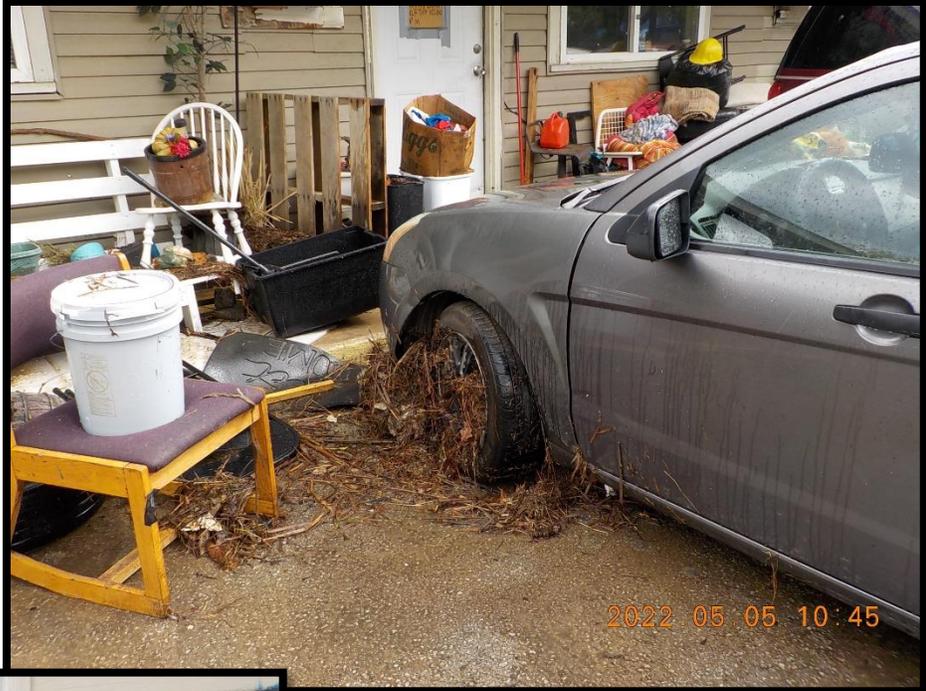
May 2022 Flood:



High water mark located on a door at 1125 N West End Ave.

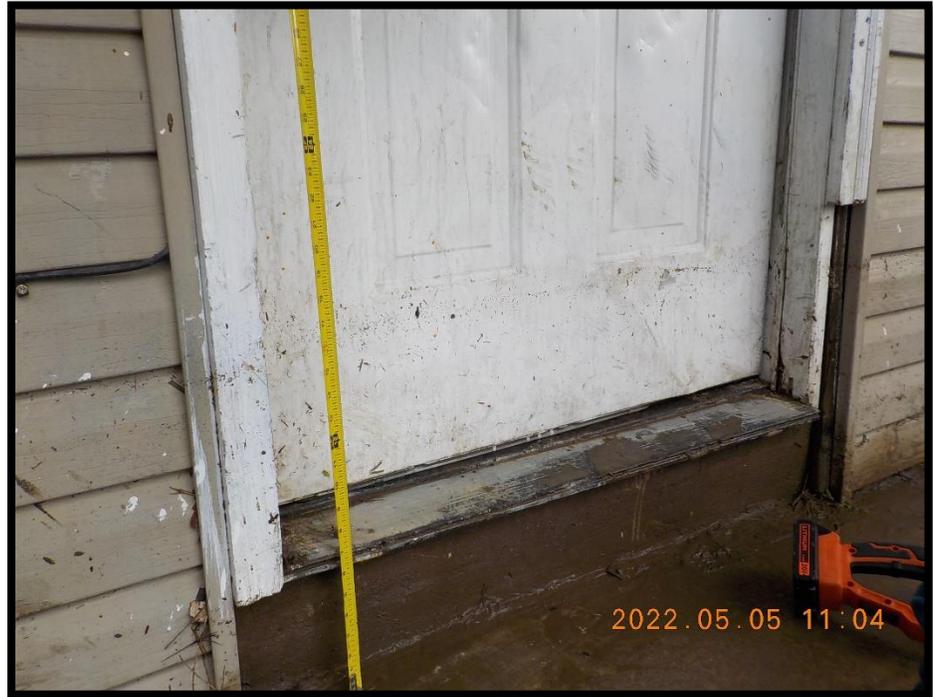


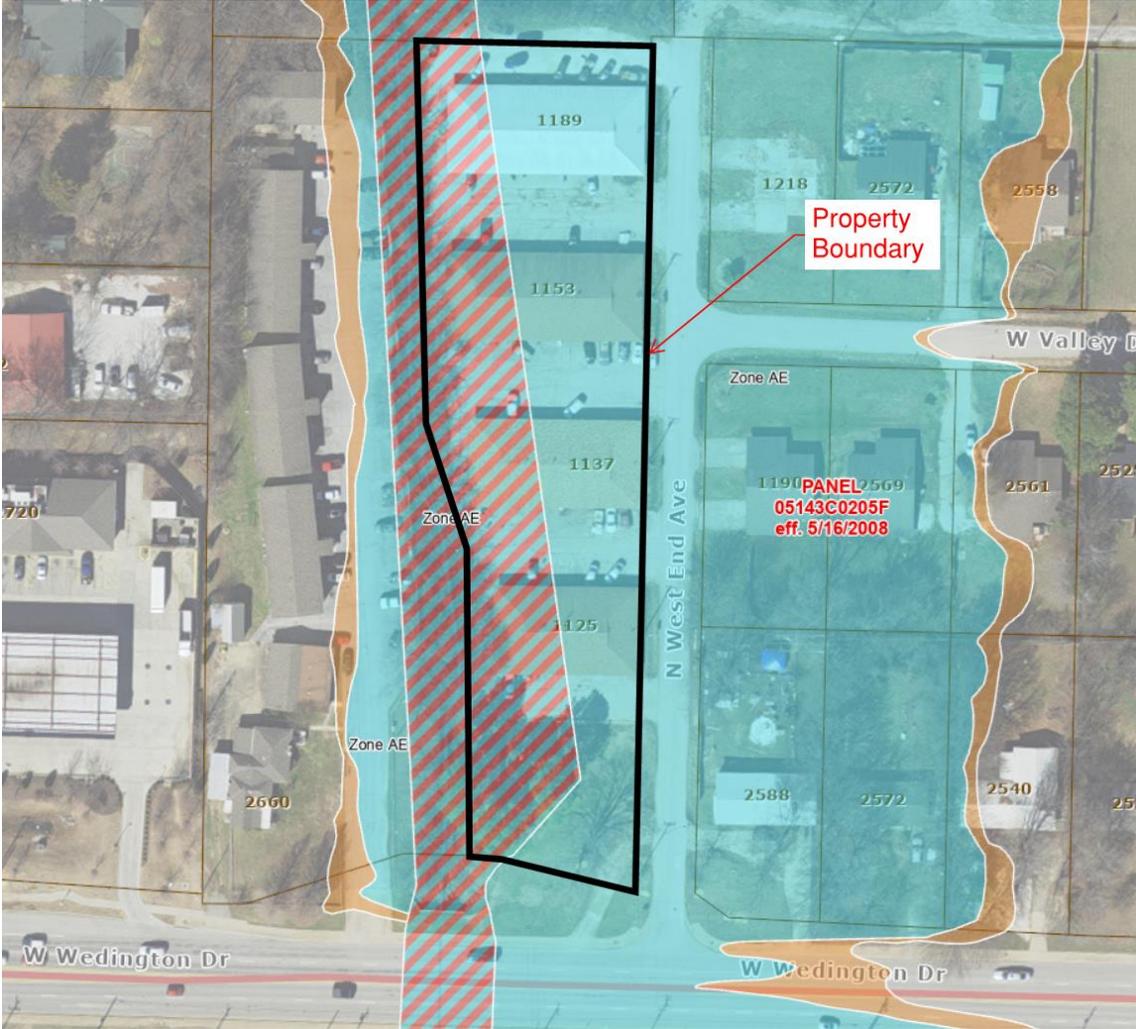
Debris and some items lost in the flood by residents



High water mark on door at 1153 N West End

High water mark on door at 1189 N West End. Depth from sidewalk grade approximately 18 inches.





Map of the floodplain/floodway



CITY OF
FAYETTEVILLE
ARKANSAS

July 29, 2022

WERP, LLC
418 E Huntsville Road
Fayetteville, AR 72701

RE: West End Apartments
Parcel #765-13695-000
Offer to Purchase

Dear Ladies and Gentlemen:

As you may be aware, the City of Fayetteville is working diligently to gain approval to purchase a property you own known as West End Apartments. You are fully aware that there have been flooding issues at this location and our purchase of the property would prevent someone else purchasing it and having the same issues you and your tenants have.

Based on a recent appraisal, the City offers to purchase this property for the amount of \$1,390,000.00, contingent upon execution of a final Land Sale Agreement and the property being completely vacant of all tenants at the time the Land Sale Agreement is executed. A copy of the appraisal can be provided if you wish to see it. Below are the general terms of the City's offer:

- A. Purchase Price of \$1,390,000.00
- B. Closing to occur within 90 days following the date of the Land Sale Agreement
- C. Title Insurance to be provided by Seller
- D. Taxes to be prorated as of the date of closing
- E. Both parties shall equally share closing fees.
- F. Buyer shall be responsible for any revenue stamps and recording fees

The full details of the sale will be memorialized in a final Land Sale Agreement negotiated between you and the City at a future date. A draft Land Sale Agreement is included for your reference.

A City Land Agent will be glad to meet with you or your representatives at your convenience and discuss this offer and there will be an official closing handled by a title company within 90 days of all approvals and signatures. Please contact Holly Jones at (479) 444-3414 (hjones@fayetteville-ar.gov) or Brandi Samuels at 479-444-3421 (bsamuels@fayetteville-ar.gov) regarding the closing. For any other questions or concerns, please contact Alan Pugh, Stormwater Engineer at (479) 575-8208 (apugh@fayetteville-ar.gov), or Chris Brown, Public Works Director/City Engineer, can be reached at (cbrown@fayetteville-ar.gov).

If the general terms above meet with your approval, please indicate your acceptance by signing below and we will work with you to finalize the Land Sale Agreement.

Sincerely,

Lioneld Jordan
Mayor

LJ/hj

Accepted: _____
WERP, LLC
By: _____
Title: _____

LAND SALE AGREEMENT

This Land Sale Agreement is made and entered into by and between the City of Fayetteville, Arkansas, an Arkansas municipal corporation (hereinafter "City" or "Fayetteville") and **WERP, LLC, an Arkansas Limited Liability Company** (hereinafter "the Sellers").

TERMS AND CONDITIONS

1. PURCHASE AND SALE

Subject to the terms and conditions, mutual promises and covenants of this Agreement, the City of Fayetteville agrees to purchase, and the Sellers agree to sell, the following described property (the "Property"):

SEE ATTACHED EXHIBIT "A"
FOR PROPERTY DESCRIPTION

2. PURCHASE PRICE

Subject to the terms and conditions, mutual promises and covenants of this Agreement, the City agrees to purchase the Property for **One Million, Three Hundred Ninety Thousand Dollars and No/100 (\$1,390,000)** to be paid to the Sellers by the City on or before the Closing Date.

3. CONTINGENCIES

This sale shall be contingent upon the property being vacant of all tenants at the time this Agreement is signed by the Seller and Seller is responsible for maintaining that vacancy until closing.

4. CLOSING DATE AND PLACE

Closing shall occur within 90 days following the date this Agreement has been executed by the 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.

5. DATE OF POSSESSION

Possession of the Property shall be delivered to the City of Fayetteville on the Closing Date free of any tenancies or other third-party possessory rights.

6. TITLE INSURANCE

The Sellers shall order a title commitment on the Property, as soon as practicable following the full execution of this Agreement, through a title insurance company selected by the Sellers and acceptable to the City. 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 Sellers 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 Sellers.

7. DEED, TAXES, CLOSING COSTS, AND OTHER DOCUMENTS

On the Closing date, the Sellers shall convey marketable and insurable title to the premises by general warranty deed, free and clear of all liens, restrictions, and encumbrances except easements and rights-of-way of record, or as provided in this Agreement

Taxes and special assessments due on or before the date of closing shall be paid by Sellers. Ad valorem taxes shall be prorated as of the date of closing. The City and the Sellers shall equally share the cost

of a reasonable closing fee imposed by the closing agent employed by parties provided however that the City shall be responsible for any revenue stamps resulting from this transaction and all recordings fees for the deed and other documents that need to be filed.

8. *RISK OF LOSS*

Risk of loss as to the Property shall remain with the Sellers until the Closing date.

9. *THE CITY OF FAYETTEVILLE'S DUE DILIGENCE*

The City may enter upon the Property to conduct any surveying, testing or inspection it deems necessary to ensure the Property will be appropriate and safe. If the City discovers any problems that would adversely impact its development and use of the Property for its facilities, the City shall notify the Sellers who shall be granted sixty (60) days to remediate any problem. The Sellers may also terminate this Agreement without penalty rather than remediating any problem or issue discovered by the City.

10. *NOTICES*

Notices required by this Agreement shall be in writing and shall be delivered to:

City of Fayetteville
ATTN: Mayor's Office
113 W. Mountain Street
Fayetteville, AR 72701

WERP, LLC, an Arkansas Limited Liability Company
c/o John C. Cloyed, Jr.
418 E Huntsville Road
Fayetteville, AR 72701

11. *AUTHORITY*

Each of the undersigned individuals represent and warrant that they are authorized to enter into this Agreement on behalf of themselves or their respective entities and that execution hereof will bind all parties to this Agreement.

12. *COUNTERPARTS*

This Agreement 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. *FACSIMILE*

For purposes of executing this Agreement, a scanned or facsimile signature shall be as effective as an actual signature.

14. *APPLICABLE LAW*

This Agreement 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, warranties, and agreements of the parties contained herein shall survive the closing date.

16. *NO WAIVERS*

The waiver by either party hereto of any condition or the breach of any term, covenant or conditions 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 Agreement.

18. *INVALIDITY*

If for any reason any term or provision of this Agreement shall be declared void and unenforceable by any court of law or equity, it shall only affect such particular term or provision of this Agreement and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

19. *COMPLETE AGREEMENT*

All understandings and agreements heretofore existing between the parties are merged into this Agreement that alone fully and completely expresses their agreement. This Agreement may be changed only in writing signed by all of the parties hereto and shall apply to and bind the successors and assigns of each of the parties hereto and shall not merge with the deed delivered to the City at closing.

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

PURCHASER:

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Lioneld Jordan, Mayor

ATTEST: _____

Kara Paxton, City Clerk-Treasurer

Date: _____

IN AGREEMENT WITH ALL OF THE TERMS AND CONDITIONS of this Land Sale Agreement, Sellers sign below:

SELLER:

**WERP, LLC,
an Arkansas Limited Liability Company**

By: _____
John C. Cloyed, Jr., Manager

By: _____
John F. Cloyed, Member

By: _____
Ellen Cloyed, Member

Date: _____

Legal Description from Warranty Deed: 2015-13714

A part of the of SE ¼ of the NE ¼ of Section 7, T-16-N, R-30W, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 1,029.00 feet west and 62.55 feet north of the SE

corner of said 40 acre tract and running thence N 76 degrees 56'27" W along the north right of way of Wedington Drive 92.29 feet; thence N 89 degrees 44'02" W along said right of way 60 feet to the centerline of a creek; thence along said creek centerline N00 degrees 36'11" W, 70.93 feet; thence N01 degrees 31'24"W, 124.97 feet; thence N17 degrees 57'03" W, 87.21 feet, thence N00 degrees 20'43"E, 55.04 feet; thence N01 degrees 05'58" W, 91.44 feet; thence N03 degrees 20'10"W 101.23 feet; thence leaving said creek centerline N89 degrees 57'55" E 161.95 feet to the west right of way line of West end drive thence along said right of way south 547.45 feet to the point of beginning. Containing 1.74 acres, more or less. Subject to the portion of utility restrictions and rights of way of record. Subject to any easements, rights of way, restrictive covenants and/or bills of assurance of record, if any.

DRAFT