

**City Council Agenda Items
and
Contracts, Leases or Agreements**

1/15/2013

City Council Meeting Date
Agenda Items Only

Paul A Becker
Submitted By

Finance and Internal Services
Division

Finance and Internal Services
Department

Action Required:

The City has received an offer for the purchase 1.87 acres of City Property known as the old Tyson Property at 1851 E. Huntsville Road. Kum & Go L.C. has made an offer to purchase said property for \$900,000 .They also have agreed to reimburse the City for the costs of demolition of the existing structure including the foundation, footings and pavement removal. Kum & Go L.C. proposes to construct a convenience store that sells petroleum on the property. The City administration recommends acceptance of this offer.

N/A	\$ -	
Cost of this request	Category / Project Budget	Program Category / Project Name
	\$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	\$ -	
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

Paul a. Becker 1-2-2012
Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 1-2-13
City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Becker 1-2-2013
Finance and Internal Services Director Date

Received in City Clerk's Office 01-02-13 P12:36 RCVD
[Signature]

[Signature] 1-2-13
Chief of Staff Date

Received in Mayor's Office
ENTERED 1/2/13 [Signature]

[Signature] 1/2/13
Mayor Date

Comments:

Added to the February 5, 2013 City Council mtg. Revised January 15, 2009

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr Chief of Staff

From: Paul A Becker

Date: January 2, 2013

Subject: Sale of 1.87 acres of the former Tyson Property to Kum & Go L.C.

PROPOSAL: The Tyson Property was purchased by the City in 2004 for \$1.1 million. The total parcel was 11.17 acres. In addition to property required for right of way for Highway 16 widening, the City constructed a fire station on a portion of the property.

The City has received an offer to purchase 1.87 acres of the remaining property from Kum & Go L.C. for \$900,000 and 25% (up to \$100,000) of the costs of demolition of the existing structure including the foundation, footings and pavement removal.

If the City Council chooses to accept this offer, the City would receive enough to tear down and remove a hazardous structure. Still retain in excess of 8 acres of the property and after road improvement costs still have some cash for future appropriation. An additional benefit would be a new business on the tax rolls.

RECOMMENDATION: The City administration recommends the City Council accept the purchase offer from Kum & Go.

BUDGET IMPACT: The City would receive sufficient funds to remove the old Tyson building and hopefully has some left over for future appropriation..



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director
Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

DATE: December 18, 2012

RE: Tyson Property Purchase and Proposed Sale of 2 Acres

On November 16, 2004, Mayor Coody and Finance Director Steve Davis presented an Offer and Acceptance Contract and a Donation Contract to purchase 11.17 acres on Highway 16 East and Happy Hollow Road for \$1,100,000.00 to the Fayetteville City Council. I could find no memo from the administration supporting this purchase in the City Clerk's Agenda packet file, but have attached the City Council minutes in which the purchase was partially justified as a potential savings of \$100,000.00 in right-of-way costs for the widening of Highway 16 East, as well as to eliminate the land costs for a new fire station. There was some talk about being able to use the Tyson Mexican Original taco/corn chip factory building for fire, police or other city services, but that later proved not feasible. I believe that the only thing that factory was put to use for was warehousing of Hurricane Katrina donations.

The City Council voted almost unanimously to purchase this 11 acres and later built Fire Station Five on a western portion of this land. After reductions for the land to build the fire station and right-of-way dedications slightly more than ten acres remains. However, the

Tyson/Mexican Original Factory became an eyesore and has been vandalized and stripped of its valuable metals by thieves. Our police frequently have been called to the site for ongoing problems and safety issues. Mayor Jordan and many aldermen have expressed the need to demolish the building so the site could eventually be attractively developed. Strategic Planning even presented scenarios for site development on this ten acres. One major problem was always money - full building and foundation demolition and all pavement removal cost was roughly estimated at \$475,000.00 by the contractor who built our Courts/Prosecutor building. With the City Budget cut over Two Million Dollars, wages frozen and more than twenty previously budgeted city positions left vacant, there was no extra money for a demolition project.

A few months ago, Kum & Go, L.C. representatives spoke to Mayor Jordan and senior staff about acquiring a building site for one of their convenience store/gas stations on the Tyson Property. Kum & Go, L.C. has rapidly expanded into Washington and Benton Counties opening or constructing more than a dozen new and attractive stores the last few years. Mayor Jordan said he would certainly entertain such proposal which could help Fayetteville demolish the old factory.

Kum & Go, L.C. initially proposed to buy the entire remaining 10 acres for \$985,000.00 which would be reduced by about \$40,000.00 for their realtor's fee. All required rights-of-way, green space, etc. would further reduce the amount paid to the City for all of our property. There were other terms in this initial offer that the City could not accept.

Rather than simply rejecting this first proposal, the Mayor authorized me to develop a counterproposal for his approval. I obtained the actual amounts Kum & Go, L.C. had paid for its many new acquisitions for its new stores in Washington and Benton Counties. I analyzed these acquisition costs on a per square foot, per acre, and per store basis. This data showed that we had been offered much less per acre than what had been paid to every other seller. I do not fault or criticize Kum & Go, L.C. for this. Businesses always seek to get the best deal possible. It is **our** responsibility to ensure our taxpayers get fair value for their assets.

Mayor Jordan, in consultation with Chief of Staff Don Marr and Finance Director Paul Becker then authorized me to convey a counterproposal to Kum & Go, L.C. in which we would sell them either a single two acre lot or both two acre lots (at a less per acre cost) that front Highway 16 East, cost share the demolition expense of the Tyson factory, and cost share a street entry into this 10 acre parcel from the signaled intersection.

Kum & Go, L.C. graciously worked with us and chose to purchase the two acre lot on the East side of the property. After further negotiation, Kum & Go, L.C. agreed to pay \$900,000.00 for this 1.87 acre lot, cost share 50/50 with the City to build the center street from the signaled intersection to the intersection with the street running along the southern portion of this lot to Ray Avenue. We hope these streets when completed will help the neighborhood served by Ray to more easily go East on Martin Luther King or Highway 16 during the morning rush hour.

Kum & Go L.C. also agreed to pay 25% of the costs (to be capped at \$100,000.00) for the demolition of the old Tyson factory, its foundation and footings and all pavement removal. I believe the Mayor and many Aldermen will be glad that we can finally remove the unattractive hulk and return some of this property into productive use.

If the City Council agrees to this sale, then the City will be able to demolish the factory, build needed streets, net several hundred thousand dollars, be able to sell a very commercially viable two acre lot fronting Highway 16 East and keep a 4.7 acre lot on the South side of the lot for City uses (Police, Parks and Recreation HQ, Transportation, etc.).

I want to thank Mayor Jordan for his leadership and determination during this negotiation. He has ensured that our citizens will receive fair value for their property while remaining fair and friendly to Kum & Go.

RESOLUTION NO. 183-04

A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND TYSON FOODS, INC. FOR THE PURCHASE OF PROPERTY LOCATED AT 1851 EAST HUNTSVILLE ROAD IN THE AMOUNT OF \$1,100,000.00 AND A DONATION CONTRACT; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$4,000.00 TO COVER APPRAISAL AND CLOSING COSTS.

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 approves an Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00, and a Donation contract. Copies of the Offer and Acceptance contract marked Exhibit "A," and the Donation contract marked Exhibit "B," are attached hereto and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.

PASSED AND APPROVED this 16th day of November 2004.

APPROVED:

By: 

DAN COODY, Mayor

ATTEST:

By: 

SONDRA SMITH, City Clerk



RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SELL ABOUT TWO ACRES OF THE TYSON FACTORY PROPERTY ON HUNTSVILLE ROAD FOR \$900,000.00 TO KUM & GO, L.C., TO AGREE TO COST SHARE WITH KUM & GO ROADS OR DRIVEWAYS WITHIN THE TYSON PROPERTY ADJOINING THIS TWO ACRE PARCEL AND THE DEMOLITION OF THE FACTORY, AND TO RECOMMEND REZONING THIS PARCEL TO NEIGHBORHOOD COMMERCIAL OR OTHER ZONING DISTRICT SATISFACTORY TO KUM & GO, L.C.

WHEREAS, the City of Fayetteville used portions of the Tyson factory's lot obtained in 2004 for Highway 16 East right-of-way needs and for the construction of a new fire station; and

WHEREAS, now Kum & Go, L.C. has offered to purchase about two acres of the remaining ten acres to be used for a Kum & Go gas station/convenience store; and

WHEREAS, the City Administration and Kum & Go, L.C. have worked out a proposed agreement in which Kum & Go, L.C. would pay \$900,000.00 for this two acre parcel and the City and Kum & Go would cost share 50/50 for the streets or driveways within the ten acre parcel on the west and south sides of the two acre parcel, Kum & Go would cost share 25% (up to \$100,000.00) for the demolition of the old factory and both parties would agree to the broad terms of the Concept Plat submitted by Kum & Go, L.C.

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 has determined that for the purposes of this proposed sale to Kum & Go, L.C., the parcel of about two acres should be rezoned to Neighborhood Commercial or other zoning district agreeable to Kum & Go, L.C. prior to its conveyance.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign a Land Sale Agreement with Kum & Go, L.C. for the parcel shown on the concept plat (slightly less than two acres) for \$900,000.00 and sign the deed conveying such parcel to Kum & Go, L.C.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby agrees: to cost share 50/50 with Kum & Go, L.C. for streets or driveways running from the intersection of Happy Hollow and Huntsville through the property (on the west side of the two acre lot) and along the southern border of this parcel to Ray Avenue; to cost share 75/25 (up to \$100,000.00)

for the demolition and removal of the Tyson factory; to agree not to sell any other city-owned property within one mile of this parcel for use of another convenience store/gas station, liquor store or tobacco store; and to agree to the development of this parcel in the general form shown in the Concept Plat attached to the Land Sale Agreement.

PASSED and **APPROVED** this 15th day of January, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



REVISED LETTER OF INTENT

December 14, 2012

To: City of Fayetteville, Fayetteville AR

In response to the City of Fayetteville’s letter, dated December 5, 2012, the purpose of this letter (the “**Letter**”) is to set forth certain nonbinding understandings between City of Fayetteville (“**Seller**”), and KUM & GO, L.C., an Iowa limited liability company (“**Buyer**”).

This Letter reflects our mutual understanding of the matters described in it, but each party acknowledges that the provisions of this Letter are not intended to create or constitute any legally binding obligation between Seller and Buyer, and neither party shall have any liability to the other party with respect to this Letter unless or until a definitive agreement has been executed and delivered by and between the parties. If a definitive agreement is not executed and delivered by and between the parties for any reason, no party to this Letter shall have any liability to the other based upon, arising from, or relating to the provisions set forth in this Letter.

Premises:	Locally known as 1851 E. Huntsville Rd, Fayetteville, Arkansas. Approximately +/- 81,612 sf (1.87± acres) as shown as Lot 1 on the visual depiction is attached hereto on Exhibit “A.” The actual legal description shall be substituted herein following receipt by Buyer of a title commitment for the Premises.
Purchase Price:	The Purchase Price of the Premises shall be <u>\$ \$900,000.</u>
Closing:	One-hundred and eighty (180) days from execution of purchase agreement with Buyer having 3 options to extend the Closing Date by 60 days each, upon the exercise of each such option, 1/3 of the Escrow Deposit shall become non-refundable to Buyer, but shall be applicable to the Purchase Price.
Conveyance:	Seller shall convey marketable and insurable title to the Premises by general warranty deed, free and clear of all liens, restrictions and encumbrances except as provided in the Purchase Agreement.

Buyer's Due Diligence / Inspections:	Buyer shall have until the Closing Date in order to conduct its "due diligence" inspections and to determine the suitability of the Premises for Buyer's intended use and/or development. During such period, Buyer shall be entitled to enter upon the Premises to conduct such testing/inspections as Buyer deems necessary for Buyer's intended use of the Premises. Buyer shall be permitted to terminate the purchase agreement by notice to Seller at any time until the closing, as it may be extended. Further, in the event that more than sixty (60) days have elapsed since the Closing Date and Buyer has not terminated the agreement or otherwise elected to proceed to closing as provided therein, then at any time thereafter Seller may, by written notice to Buyer, cancel and terminate the agreement, unless Buyer within ten (10) days of such notification waives the conditions precedent in writing and elects to proceed with the closing.
Environmental:	Seller warrants to the best of its knowledge and belief that (i) there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Premises, (ii) the Premises does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and (iii) Seller has done nothing to contaminate the Premises with hazardous wastes or substances. Seller warrants that the property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks.
Abstract/Title Insurance:	Seller shall provide Buyer with its most recent abstract and/or title commitment. Buyer shall order a title commitment on the Premises, as soon as practicable following the full execution of the purchase agreement contemplated by this letter of intent, through Escrow Agent for an ALTA Form B owner's policy (2006 version, if available), with extended coverage, or a comparable form, from a title insurance company approved by Buyer in the amount of the purchase price, covering the date of this Agreement, and shall provide to Buyer the basic owner's title insurance commitment within twenty (20) days of the effective date. If the

	<p>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 from the proceeds due Seller), Seller shall have thirty (30) days from the date of Buyer's 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, Buyer 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 Seller. The cost of any lender's title policy and extended owner's title insurance coverage shall be borne by the Buyer.</p>
Escrow Deposit:	<p>Within ten (10) days after the date of the signature of the full execution of the purchase agreement contemplated by this letter of intent, Buyer shall deposit with the Escrow Agent the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) ("Escrow Deposit").</p>
Escrow Agent/Title Company:	<p>Waco Title, Fayetteville, Arkansas</p>
Use Restriction:	<p>Seller and its affiliates shall restrict the use of any and all real estate owned or controlled by Seller and its affiliates within one mile of the Premises for a period of twenty (20) years from being used for the following uses:</p> <ol style="list-style-type: none"> a. A gasoline station, including any type of business that sells diesel fuel, ethanol fuel, bio-fuel or any other type of fuel used to power motorized vehicles designed primarily for use on public streets and highways. b. A convenience store. c. A cigar, tobacco or pipe shop. d. A business that generates more than fifty percent (50%) of its gross revenue from the sale of beer or liquor products for off premise consumption.

Real Estate Brokers/Commissions:	CBRE NW Arkansas, David Erstine, represents Buyer as Buyer's Broker. Buyer's broker commission to be paid by Buyer at closing (or pursuant to a separate agreement).
Seller's Work:	<p>Seller, at Seller's cost and expense not to exceed one-half (50%), shall construct or contribute funds for the construction of adequate streets, per the design standards of the City of Fayetteville, along the western and southern boundaries of Lot 1, including the intersection of the two planned streets, as shown on Exhibit "A". Buyer shall be responsible for the cost and expense of the remaining one-half (50%) of the street construction costs excluding any land cost;</p> <p>Prior to Closing, Seller, at Seller's cost and expense, shall raze any existing building and site improvements on the Premises. At the later of Closing or the completion of such work, Buyer shall reimburse the lesser of twenty-five (25%) or \$100,000 to the City for such work;</p>
Buyer's Work:	<p>Buyer shall, at Buyer's sole cost and expense, complete any such City required street improvements, as typically required, on the eastern boundary of Lot 1 and as shown on Exhibit "A", along Ray Avenue;</p> <p>Buyer shall, at Buyer's sole cost and expense, complete the construction of the Regional Detention Pond ("Pond") as shown on Exhibit "A". Said Pond shall serve Lots 1 & 2 as shown on Exhibit "A". The Pond shall meet City design requirements and include a low impact development design.</p>
Purchase Agreement:	Within ten (10) days of the full execution of this letter of intent, Buyer shall prepare and present to Seller a draft of a binding purchase agreement on a form substantially similar to Exhibit "B" attached hereto, as altered by the terms and conditions set forth herein.

Very truly yours,

KUM & GO, L.C.

By: 
Real Estate Development Rep.

Agreed and accepted this _____ day of _____, 20__.

City of Fayetteville

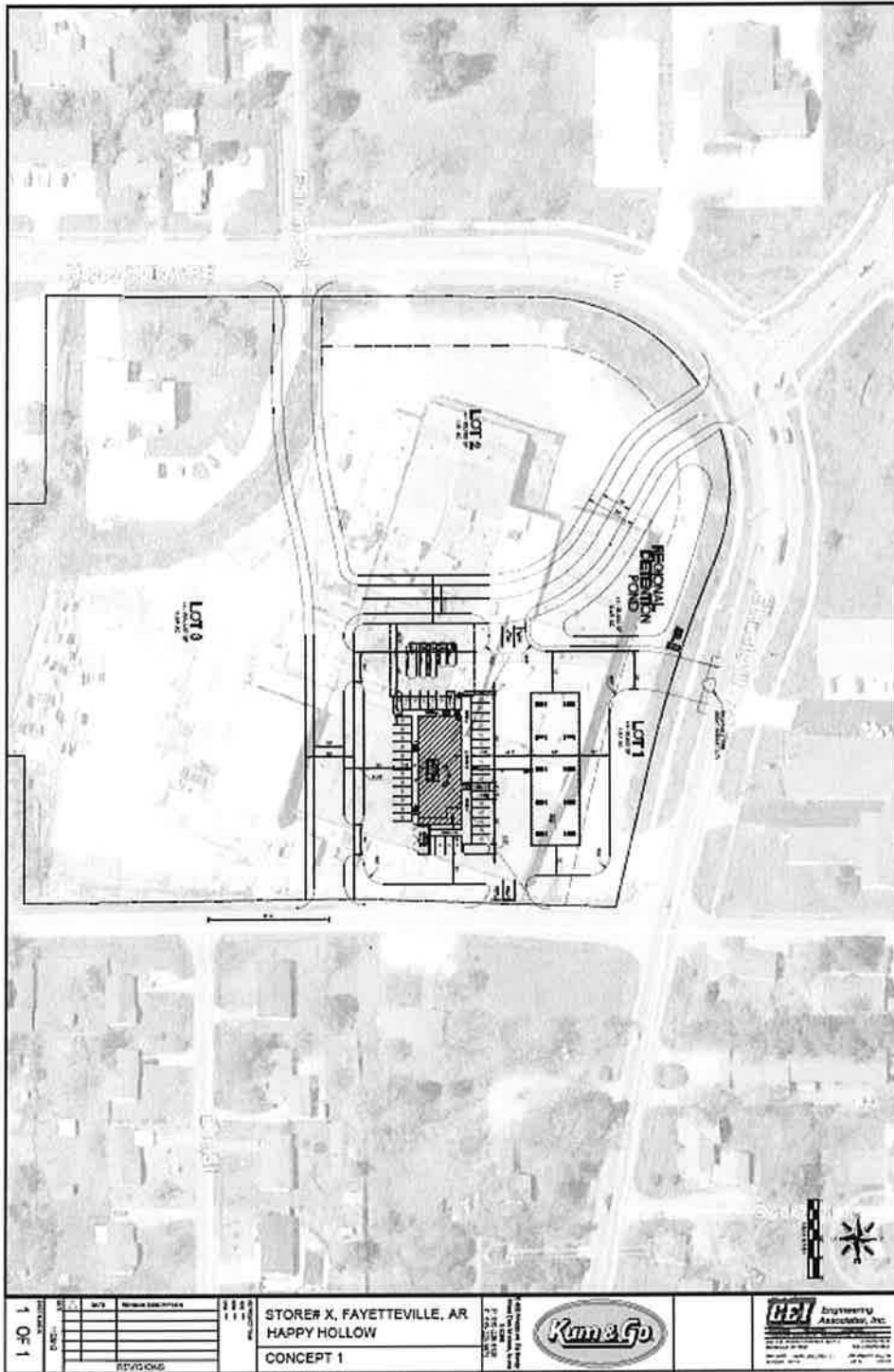
By: _____

Print: _____

Its: _____

EXHIBIT "A"

VISUAL DEPICTION





Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

FROM: Kit Williams, City Attorney

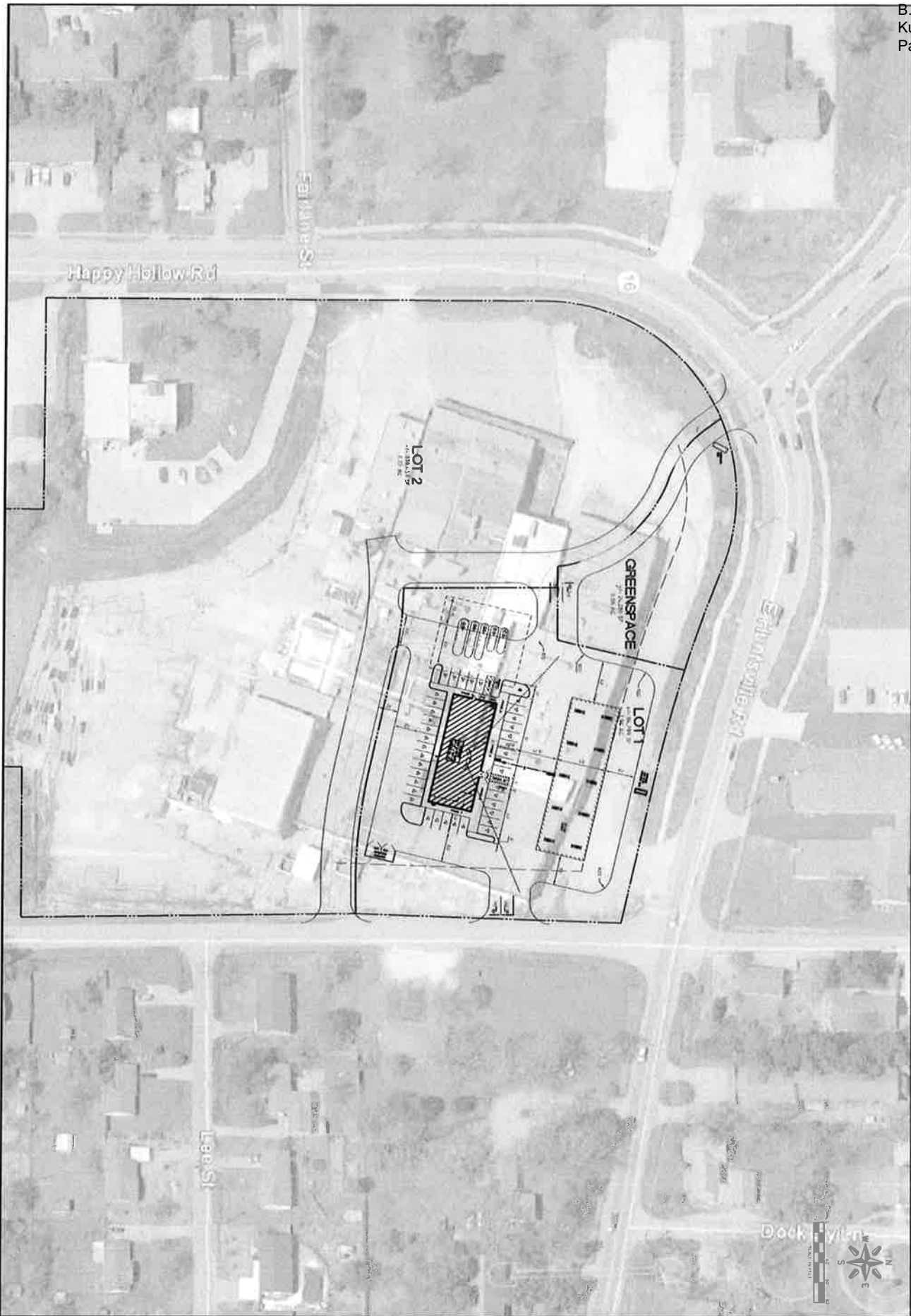
A handwritten signature in blue ink, appearing to read 'Kit Williams', with a long horizontal flourish extending to the right.

DATE: January 8, 2013

RE: Concept Plat from CEI for Kum & Go

Attached please find "Concept 4" for the Lot proposed to be sold to Kum & Go, L.C. It has agreed to remove the direct driveway access onto Huntsville and eliminate one of the curb cuts onto the southern drive or street. The lot is still less than 2 acres, but is now shown to be about 1.94 acres.

One thing that needs to be clarified is that **only City of Fayetteville owned property** within a mile of this site would be restricted from being sold to be used as a convenience store/gas station. **There would be no such restrictions for privately owned property.** This restriction would primarily affect the other possible commercial lot along Happy Hollow (Highway 16 East) which is part of the 10 acre Tyson factory parcel.



NO.	DATE	REVISIONS
1	11/28/12	

STORE XXX, FAYETTEVILLE, AR
HAPPY HOLLOW
CONCEPT 4



CEI Engineering Associates, Inc.
 1222 N. ...
 Fayetteville, AR 72701
 P: 479-781-1111
 F: 479-781-1112
 www.cei-engineering.com



**TO: Mayor Jordan
City Council**

**Kit Williams
City Attorney**

**Jason B. Kelley
Assistant City Attorney**

**CC: Don Marr, Chief of Staff
Paul Becker, Finance Director**

FROM: Kit Williams, City Attorney

DATE: January 15, 2013

**RE: Resolution to Accept \$1,000,000.00 Offer
From Casey's Marketing Company, Inc.**

Since we have received a signed original offer from Casey's Marketing Company, Inc. d/b/a Casey's General Store in the amount of **ONE MILLION DOLLARS** (\$1,000,000.00) for the two acre parcel of the old Tyson factory property, I have prepared the attached Resolution for the City Council's consideration and use if the City Council determines this is the best offer to purchase the two acre parcel.

If an Alderman wishes to propose that Casey's million dollar offer be accepted, the Alderman should move to amend the Resolution in your Agenda Packet which I drafted when the only offer was one for \$900,000.00 from Kum & Go, L.C. to the Resolution attached to this memo.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SELL ABOUT TWO ACRES OF THE TYSON FACTORY PROPERTY ON HUNTSVILLE ROAD FOR \$1,000,000.00 TO CASEY'S MARKETING COMPANY, INC., TO AGREE TO COST SHARE WITH CASEY'S MARKETING COMPANY, INC. ROADS OR DRIVEWAYS WITHIN THE TYSON PROPERTY ADJOINING THIS TWO ACRE PARCEL AND THE DEMOLITION OF THE FACTORY, AND TO RECOMMEND REZONING THIS PARCEL TO NEIGHBORHOOD COMMERCIAL OR OTHER ZONING DISTRICT SATISFACTORY TO CASEY'S MARKETING COMPANY, INC.

WHEREAS, the City of Fayetteville used portions of the Tyson factory's lot obtained in 2004 for Highway 16 East right-of-way needs and for the construction of a new fire station; and

WHEREAS, now Casey's Marketing Company, Inc. has offered to purchase about two acres of the remaining ten acres to be used for a Casey's Marketing Company, Inc. gas station/convenience store; and

WHEREAS, the City Administration and Casey's Marketing Company, Inc. have worked out a proposed agreement in which Casey's Marketing Company, Inc. would pay \$1,000,000.00 for this two acre parcel and the City and Casey's Marketing Company, Inc., would cost share 50/50 for the streets or driveways within the ten acre parcel on the west and south sides of the two acre parcel, Casey's Marketing Company, Inc., would cost share 25% (up to \$100,000.00) for the demolition of the old factory and both parties would agree to the broad terms of the Concept Plat submitted by Casey's Marketing Company, Inc.

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 has determined that for the purposes of this proposed sale to Casey's Marketing Company, Inc., the parcel of about two acres should be rezoned to Neighborhood Commercial or other zoning district agreeable to Casey's Marketing Company, Inc. prior to its conveyance.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign the attached Land Sale Agreement with Casey's Marketing Company, Inc. for the parcel shown on the concept plat (about two acres) for \$1,000,000.00 and sign the deed conveying such parcel to Casey's Marketing Company, Inc.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby agrees: to cost share 50/50 with Casey's Marketing Company, Inc. for streets or driveways running from the intersection of Happy Hollow and Huntsville through the property (on the west side of the two acre lot) and along the southern border of this parcel to Ray Avenue; to cost share 75/25

(up to \$100,000.00) for the demolition and removal of the Tyson factory; to agree not to sell any other city-owned property within one mile of this parcel for use of another convenience store/gas station, liquor store or tobacco store; and to agree to the development of this parcel in the general form shown in the Concept Plat attached to the Land Sale Agreement.

PASSED and **APPROVED** this 15th day of January, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



Kit Williams handed out at the 1-15-13 cc mtg

CASEY'S GENERAL STORES, INC.

P.O. Box 3001 • One Convenience Blvd., Ankeny, Iowa 50021-8045 • 515-965-6100

Sender's Direct-Dial Telephone Number: 515-965-6284

E-mail Address: doug.beech@caseys.com

Fax Number: 515-965-6160

January 14, 2013

Via Overnight Mail

City of Fayetteville
Attn: Kit Williams, City Attorney
113 West Mountain
Fayetteville, AR 72701

RE: Land Sale Agreement

Dear Kit:

Please find enclosed the original Land Sale Agreement that has been signed on behalf of Casey's Marketing Company. If the Agreement is approved by the City, please have it signed and return it back to my attention at Casey's.

If you have any questions, please feel free to contact me. Thank you.

Very truly yours,

Douglas M. Beech
Legal Counsel

DMB/slc
Enclosure

pc: Kirk Haworth/Melani Samora

Emailed to Alderman for the 1-15-13 CC Mtg.



Departmental Correspondence



B. 1
Kum & Go, L.C.
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www.accessfayetteville.org

LEGAL
DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

DATE: January 14, 2013

RE: Offer from Casey's Marketing Company, Inc. d/b/a/ Casey's General Store

This afternoon I received the attached Land Sale Agreement signed by Casey's Marketing Company, Inc. for the two acre parcel of the old Tyson factory property that is also sought by Kum & Go, L.C. Casey's has raised Kum & Go's offer of \$900,000.00 (plus other agreements) by \$100,000.00 to \$1,000,000.00 (plus the same agreements) for this property.

Casey's offer will be able to be considered along with Kum & Go's proposal at tomorrow night's meeting.

LAND SALE AGREEMENT

This Land Sale Agreement is made and entered into by and between the City of Fayetteville, Arkansas, a municipal corporation of the State of Arkansas (hereinafter "City" or "Fayetteville") and Casey's Marketing Company, an Iowa corporation authorized to do business in Arkansas (hereinafter "Casey's").

The City of Fayetteville agrees to sell an approximate 2 acre parcel it owns which is a northeastern portion of the about 10 acre parcel of the old Tyson factory site at 1851 East Huntsville Road, Fayetteville, Arkansas to Casey's for \$1,000,000.00 and to perform the other terms and conditions of this Agreement for this \$1,000,000.00 and Casey's performance of all of the terms and promises set forth later in this Agreement.

Casey's agrees to pay to the City of Fayetteville \$1,000,000.00 for this approximate 2 acre parcel and to perform all of the terms set forth later in this Agreement for the City's performance of all of its required terms and conditions.

TERMS AND CONDITIONS

1. Sale

Subject to existing easements and rights of way and subject to the terms and conditions, mutual promises and covenants of this Agreement, the City of Fayetteville agrees to sell a northeastern parcel of approximately 2 acres (hereinafter "**Development Site**") of the 10.05 acre parcel located at 1851 East Huntsville Road, Fayetteville, Arkansas (after it has been split or subdivided from the larger tract) by warranty deed to Casey's for the amount of One Million Dollars (\$1,000,000.00). This Development Site shall be approximately 2 acres. The parties hereby agree that at this time there is no existing survey or plat of the Development Site. The parties acknowledge that the Development Site being conveyed to Casey's is a portion of a larger existing real estate parcel of which the City does not have a current legal description. The parties agree that the Development Site will be approximately located as set forth on Exhibit "A" attached hereto and incorporated herein by reference.

The parties agree that a new metes and bounds legal description of the Development Site will be determined and created pursuant to a survey and a lot split procedure for the Development Site. Casey's shall be responsible for the cost of any required survey of the Development Site.

2. Purchase

Subject to the terms and conditions, mutual promises and covenants of this Agreement, Casey's agrees to buy the Development Site for \$1,000,000.00 to be paid to the City of Fayetteville on or before the Closing Date.

3. Demolition Of Tyson Factory

A. The City of Fayetteville agrees to demolish or pay a reputable contractor to demolish and remove unsalvageable debris of the old Tyson Factory to include removing its foundation, footings and slab within four months of both parties' execution of this Agreement.

B. In addition to the purchase price, Casey's agrees to reimburse the City the lesser of 25% of the demolition and removal costs of the factory or \$100,000.00 within thirty (30) days after the City notifies Casey's that the demolition is complete. Such payment is not refundable unless the City materially breaches this Agreement.

4. Cost Shares for Streets/Driveways

The City of Fayetteville and Casey's agree to cost share 50/50 (both to pay equal amounts) of the design and construction expenses (including the reasonable value of City professional or construction activities) of a street or driveway from the intersection of Happy Hollow and Huntsville Road to the southwest corner of the Development Site and from that point to Ray Avenue along the southern border of the Development Site. The City will not charge Casey's for the property used for the roadway and the roadway shall remain City property, but the City shall grant Casey's and the public a full access easement to use these streets/driveways. Such street construction and cost share shall not occur until the Development Site has received formal development approval and actual construction by Casey's has commenced.

5. Landscaped Area

An agreed upon area northwest of the Development Site and east of the road from the Happy Hollow intersection with Huntsville Road to the southwest corner of the Development Site shall be retained or easement granted for the City's use. Casey's shall pay to have this property landscaped with a sufficient and prominent space left for a City sculpture, monument, sign or piece of art as determined appropriate by the City Council. Casey's and the City shall jointly work on the landscaping plan which will not include items that would unduly block the view of Casey's store from the Happy Hollow/Huntsville intersection. Casey's will pay for installation of necessary irrigation, but the City will be responsible for maintenance of this landscaped area once fully and properly installed. Parts of this area may be used for future Highway 16 right-of-way needs, including a possible roundabout to replace the current intersection.

6. Escrow Deposit

Within ten days after the execution of this Land Sale Agreement, Casey's will deposit with Waco Title Company, Fayetteville, Arkansas ("Escrow Agent") the sum of Fifteen Thousand Dollars (\$15,000.00) as the escrow deposit to be held, administered and disbursed in accordance with the terms of this Agreement.

7. Closing Date and Place

Closing shall occur within 180 days following the date this Agreement has been executed by both parties. The Closing shall occur at 113 West Mountain Street, Fayetteville, Arkansas in a room supplied by the City of Fayetteville. Casey's shall have the option to extend the Closing date by up to two (2) consecutive sixty (60) day periods by notifying the City of Casey's exercise of each such extension option. Upon the exercise of the first such extension option, \$5,000.00 of the Escrow Deposit shall become non-refundable to Casey's but applicable to the purchase price at Closing. Upon the exercise of the last extension option, \$5,000.00 of the Escrow Deposit shall also become non-refundable to Casey's, but applicable to the purchase price at Closing.

8. Date of Possession

Possession of the Development Site shall be delivered to Casey's on the Closing date free of any tenancies or other third party possessory rights.

9. Title Insurance

The City of Fayetteville shall order a title commitment on the Development Site, as soon as practicable following the full execution of this Agreement, through a title insurance company selected by the City and acceptable to Casey's, for an ALTA Form B owner's policy, with extended coverage, or a comparable form, from a title insurance company in the amount of the purchase price, covering the date of this Agreement, and said title insurance company shall provide to Casey's the basic owner's title insurance commitment within twenty (20) days of the signing of the Agreement. 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 from the proceeds due the City), the City shall have thirty (30) days from the date of Casey's 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, Casey's 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 City of Fayetteville. The cost of any lender's title policy and extended owner's title insurance coverage shall be borne by Casey's.

10. Deed and Other Documents

On the Closing date, the City of Fayetteville shall convey marketable and insurable title to the premises by general warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement, subject only to current real estate taxes (to be apportioned between the parties) and existing easements. Casey's and the City of Fayetteville shall equally share the cost a reasonable closing fee imposed by the closing agent employed by parties provided however that Casey's 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.

11. Use Restriction

At Closing the City of Fayetteville shall restrict the use when sold to a third party of any and all real estate owned by the City of Fayetteville within one mile of the Development Site for a period of twenty (20) years by placing within any deed conveying such City owned property to a third party during the next 20 years

a prohibition of the use of such property until 2033 for a gas station, convenience store, tobacco store, or business that generates more than 50% of its revenue from the sale of alcoholic beverages for off-premises consumption.

12. *Real Estate Taxes*

Real estate taxes shall be prorated in customary fashion to date of possession.

13. *Risk of Loss*

Risk of loss as to the Development Site shall remain with the City of Fayetteville until the Closing date.

14. *Environmental Matters*

The City warrants to the best of its knowledge and belief that (i) there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Development Site, (ii) the Development Site does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and(iii) the City had done nothing to contaminate the Development Site with hazardous wastes or substances. The City warrants that the Development Site is not subject to any local, state, or federal judicial or administrative action, investigation or other, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. Casey's shall be responsible for the costs of any Phase I or Phase II environmental site assessment for the Development Site, and for the costs of other customary third party due diligence reports.

15. *Casey's Due Diligence*

Casey's may enter upon the Development Site to conduct any surveying, testing or inspection it deems necessary to ensure the Development Site will be appropriate for the construction and use for a Casey's gas station/convenience store. If Casey's discovers any problems that would adversely impact its development and use of the Development Site for its store, Casey's shall notify the City which is granted sixty (60) days to remediate any problem. The City may also terminate this Agreement without penalty rather than remediating any problem or issue discovered by Casey's.

16. Large Scale Development Approval

Casey's shall, at its sole cost and expense, prepare a Large Scale Development plat of the Development Site and obtain any and all approvals necessary for Casey's intended use of the Development Site as a gas station/convenience store. The City shall reasonably cooperate with Casey's in Casey's request for development approval of a gas station and convenience store. Casey's must present its development proposal through the normal City process and follow the Unified Development Code requirements.

17. Casey's Conditions Precedent

Casey's obligation to close this transaction is expressly conditioned upon each of the following:

- (a) City shall have performed and complied in all material respects with all agreements, terms, and conditions required by this agreement to be performed by and complied with by City on or before the Closing date.
- (b) All representations, warranties and covenants of City contained in this Agreement shall be true and correct in all material respects as of the Closing date.
- (c) Casey's has obtained final approval of its Large Scale Development proposal to construct a gas station/convenience store on the Development Site.

If any of Casey's conditions precedent have not been satisfied or complied with prior to the Closing date, Casey's may, by written notice to City within seven (7) days of the Closing date cancel and terminate this Agreement. In the event that this Agreement is terminated by Casey's as permitted by this Section, neither party shall retain any rights or obligations under this Agreement, except that the Escrow Deposit shall be returned to Casey's, except any portion thereof that has become non-refundable to Casey's and the 25% of demolition costs up to \$100,000.00 must still be paid to the City and not be refundable to Casey's unless the City has refused to grant reasonable development rights to Casey's after its good faith application for such development rights. Notwithstanding the foregoing, Casey's, in its sole discretion, may waive any conditions precedent in its favor and elect to proceed with the closing by the Closing date.

18. Broker

Casey's has been represented by Steve Fineberg & Associates, Inc. during this sale and will be responsible to pay their brokerage fee.

19. Notices

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

Casey's General Stores, Inc.

ATTN: Kirk Haworth
One S.E. Convenience Blvd.
P.O. Box 3001
Ankeny, IA 50021

or by FAX (515) 965-6107

or to:

City of Fayetteville

ATTN: Mayor's Office
113 W. Mountain Street
Fayetteville, AR 72701 72701-6083

or by FAX (479) 575-8257.

20. Authority

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

21. 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.

22. Facsimile

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

23. Applicable Law

This Agreement shall be construed and enforced in accordance with the laws and public policies of the State of Arkansas.

24. Survival

The representations, warranties, and agreements of the parties contained herein shall survive the closing date.

25. 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.

26. Time of Essence

Time is of the essence in this Agreement.

27. 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.

28. 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 both 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 Casey's at closing.

BUYER:

SELLER:

Date: 1/14/13

Date: _____

CASEY'S MARKETING COMPANY

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: 
SAM J. BILLMEYER
Vice President

By: _____
LIONELD JORDAN
Mayor

Witness:

ATTEST:

By: 

By: _____
Sondra E. Smith, City Clerk

Fed. I.D. No.: 42-1435913
FAX No.: (515) 965-6107
Address: One S.E. Convenience Blvd.
P.O. Box 3001
Ankeny, IA 50021

Emailed to alderman for the 1-15-13 cc mg

From: "Amy Mills" <amy@arkrealestate.com>
To: "Kit Williams" <kwilliams@ci.fayetteville.ar.us>
Date: 1/15/2013 12:25 PM
Subject: Casey's Photo
Attachments: Caseys exterior 3.jpg; caseys exterior 1.jpg; Caseys exterior.jpg

Thank you Kit.

I am attaching a few photos of some other Casey's in Northwest Arkansas. We currently have 9 open stores in Northwest Arkansas and 6 more under construction. Hopefully you have visited one of our locations in Arkansas but if you haven't you will be surprised to see that the stores offer many features including home made to go items including subs, pizza and cookies.

If I can provide any other details about Casey's stores to help familiarize you and the council with Casey's stores let me know how I can help.

Amy

Amy Mills, CCIM
Executive Broker
Commercial Sales & Leasing
Steve Fineberg & Associates, Inc.
479-271-4161 (Office) 479-685-8875 (Cell)
www.arkrealestate.com

-----Original Message-----

From: Kit Williams [mailto:kwilliams@ci.fayetteville.ar.us]
Sent: Tue 1/15/2013 10:58 AM
To: Amy Mills
Subject: RE: Attached Image

Amy,

We received and distributed Casey's better offer to the City Council. I will have a substitute Resolution ready to accept this offer if that is what the City Council wants to do tonight.

Kit

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701

>>> "Amy Mills" <amy@arkrealestate.com> 1/15/2013 9:37 AM >>>
Hi Kit,

Wanted to let you know that the client I called about earlier this month is Casey's as they disclosed in their offer to you yesterday.

I will be at the city council meeting tonight and look forward to meeting you.

If you need anything from me or Casey's before the meeting please let us

know.

Amy

Amy Mills, CCIM
Executive Broker
Commercial Sales & Leasing
Steve Fineberg & Associates, Inc.
479-271-4161 (Office) 479-685-8875 (Cell)
www.arkrealestate.com

-----Original Message-----

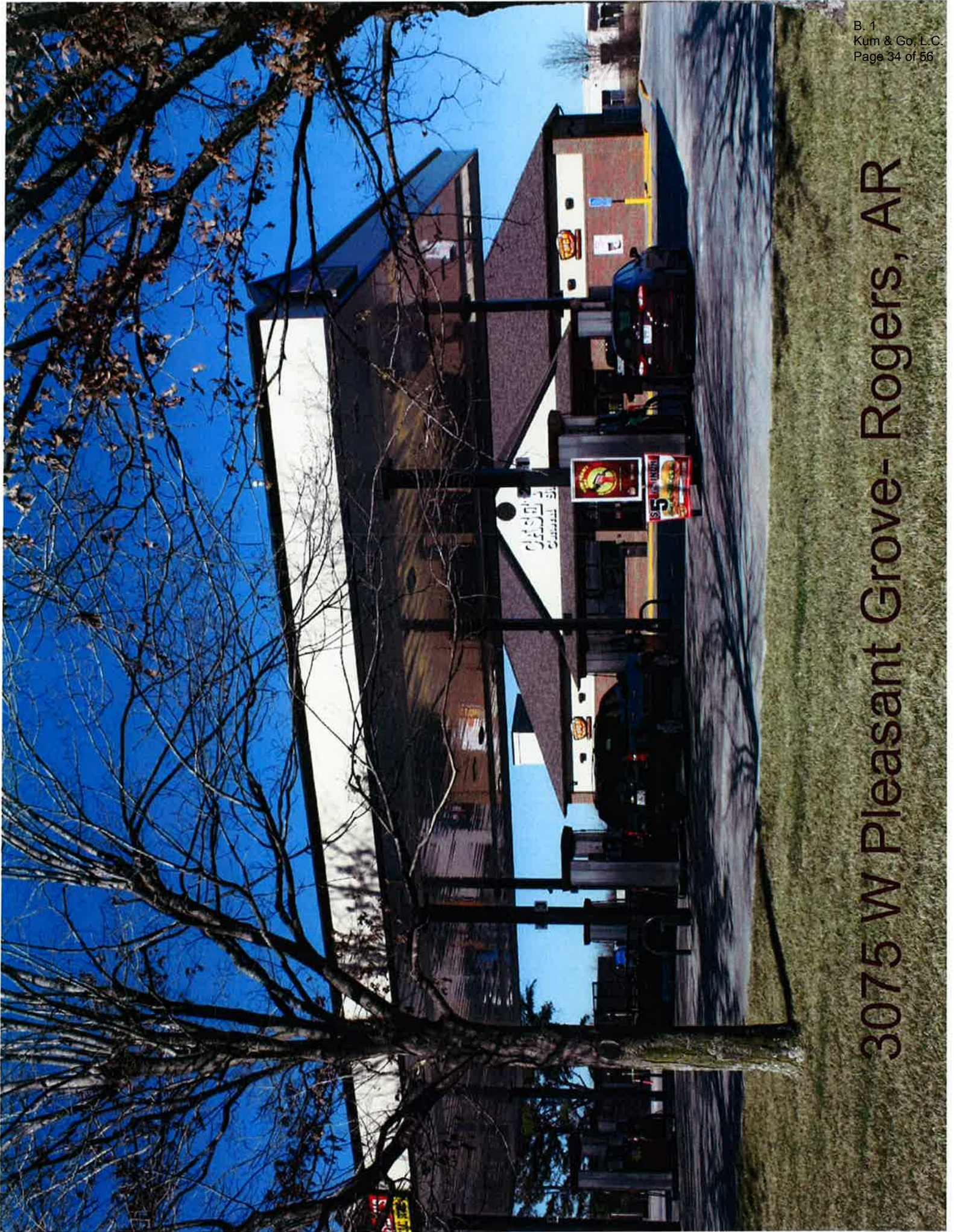
From: Kit Williams [mailto:kwilliams@ci.fayetteville.ar.us]
Sent: Friday, January 04, 2013 3:58 PM
To: Lioneld Jordan
Subject: Fwd: Attached Image

Mayor,

Pursuant to their request, I am forwarding the proposed Land Sale Agreement to representatives of the other entities which might want to make an offer to buy the 1.87 acre parcel from the Tyson property.

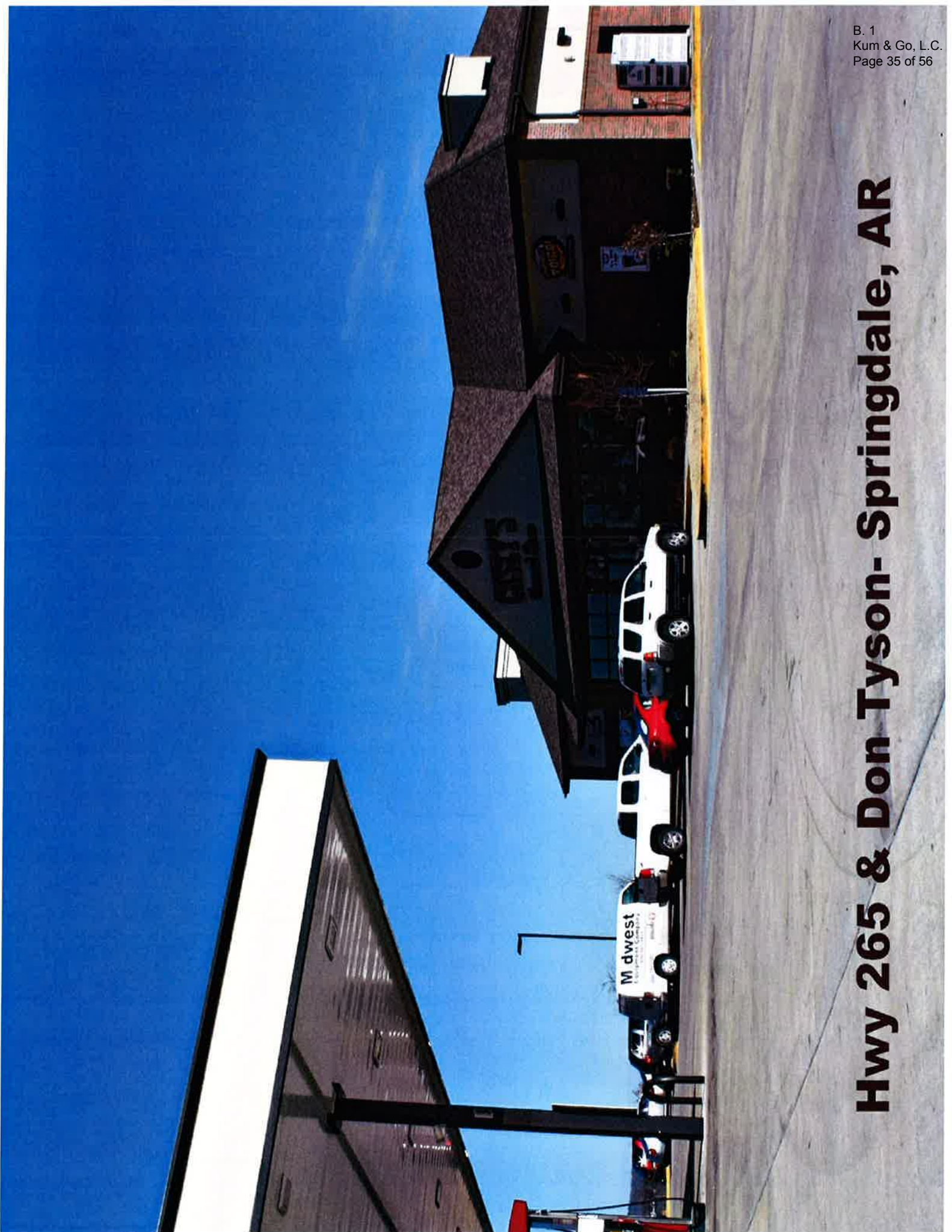
Kit

Kit Williams, Fayetteville City Attorney
(479) 575-8313
FAX (479) 575-8315
113 West Mountain
Fayetteville, AR 72701



3075 W Pleasant Grove- Rogers, AR

Hwy 265 & Don Tyson- Springdale, AR





Hwy 265 & Don Tyson- Springdale, AR



TO: Mayor Jordan
City Council

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

DATE: January 15, 2013

RE: Resolution to Accept \$1,000,000.00 Offer
From Kum & Go, L.C.

We have received a signed original offer from Kum & Go, L.C. in the amount of **ONE MILLION DOLLARS** (\$1,000,000.00) for the two acre parcel of the old Tyson factory property. I have prepared the attached Resolution for the City Council's consideration and use if the City Council determines this is the best offer to purchase the two acre parcel.

If an Alderman wishes to propose that Kum & Go's million dollar offer be accepted, the Alderman should move to amend the Resolution in your Agenda Packet which I drafted when the only offer was one for \$900,000.00 from Kum & Go, L.C. to the Resolution attached to this memo.

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SELL ABOUT TWO ACRES OF THE TYSON FACTORY PROPERTY ON HUNTSVILLE ROAD FOR \$1,000,000.00 TO KUM & GO, L.C., TO AGREE TO COST SHARE WITH KUM & GO ROADS OR DRIVEWAYS WITHIN THE TYSON PROPERTY ADJOINING THIS TWO ACRE PARCEL AND THE DEMOLITION OF THE FACTORY, AND TO RECOMMEND REZONING THIS PARCEL TO NEIGHBORHOOD COMMERCIAL OR OTHER ZONING DISTRICT SATISFACTORY TO KUM & GO, L.C.

WHEREAS, the City of Fayetteville used portions of the Tyson factory's lot obtained in 2004 for Highway 16 East right-of-way needs and for the construction of a new fire station; and

WHEREAS, now Kum & Go, L.C. has offered to purchase about two acres of the remaining ten acres to be used for a Kum & Go gas station/convenience store; and

WHEREAS, the City Administration and Kum & Go, L.C. have worked out a proposed agreement in which Kum & Go, L.C. would pay \$1,000,000.00 for this two acre parcel and the City and Kum & Go would cost share 50/50 for the streets or driveways within the ten acre parcel on the west and south sides of the two acre parcel, Kum & Go would cost share 25% (up to \$100,000.00) for the demolition of the old factory and both parties would agree to the broad terms of the Concept Plat submitted by Kum & Go, L.C.

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 has determined that for the purposes of this proposed sale to Kum & Go, L.C., the parcel of about two acres should be rezoned to Neighborhood Commercial or other zoning district agreeable to Kum & Go, L.C. prior to its conveyance.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign a Land Sale Agreement with Kum & Go, L.C. for the parcel shown on the concept plat (about two acres) for \$1,000,000.00 and sign the deed conveying such parcel to Kum & Go, L.C.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby agrees: to cost share 50/50 with Kum & Go, L.C. for streets or driveways running from the intersection of Happy Hollow and Huntsville through the property (on the west side of the two acre lot) and along the southern border of this parcel to Ray Avenue; to cost share 75/25 (up to \$100,000.00)

for the demolition and removal of the Tyson factory; to agree not to sell any other city-owned property within one mile of this parcel for use of another convenience store/gas station, liquor store or tobacco store; and to agree to the development of this parcel in the general form shown in the Concept Plat attached to the Land Sale Agreement.

PASSED and **APPROVED** this 15th day of January, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

LAND SALE AGREEMENT

This Land Sale Agreement is made and entered into by and between the City of Fayetteville, Arkansas, a municipal corporation of the State of Arkansas (hereinafter "City" or "Fayetteville") and Kum & Go, L.C., an Iowa limited liability company authorized to do business in Arkansas (hereinafter "Kum & Go").

The City of Fayetteville agrees to sell about a 1.96 acre parcel it owns which is a northeastern portion of the about 10 acre parcel of the old Tyson factory site at 1851 East Huntsville Road, Fayetteville, Arkansas to Kum & Go, L.C. for \$1,000,000.00 and to perform the other terms and conditions of this Agreement for this \$1,000,000.00 and Kum & Go's performance of all of the terms and promises set forth later in this Agreement.

Kum & Go, L.C. agrees to pay to the City of Fayetteville \$1,000,000.00 for this 1.96 acre parcel and to perform all of the terms set forth later in this Agreement for the City's performance of all of its required terms and conditions.

TERMS AND CONDITIONS

1. Sale

Subject to existing easements and rights of way and subject to the terms and conditions, mutual promises and covenants of this Agreement, the City of Fayetteville agrees to sell a northeastern parcel of about 1.96 acres (hereinafter "**Development Site**") of the 10.05 acre parcel located at 1851 East Huntsville Road, Fayetteville, Arkansas (after it has been split or subdivided from the larger tract) by warranty deed to Kum & Go, L.C. for the amount of One Million Dollars (\$1,000,000.00). This Development Site of about 1.96 acres shall be as shown on the plat attached at Exhibit A and as more particularly described on Exhibit B (to be provided).

The parties agree that a new metes and bounds legal description of the Development Site will be determined and created pursuant to a survey and a lot split procedure for the Development Site. Kum & Go shall be responsible for the cost of any required survey of the Development Site.

2. Purchase

Subject to the terms and conditions, mutual promises and covenants of this Agreement, Kum & Go, L.C. agrees to buy the Development Site for \$1,000,000.00 to be paid to the City of Fayetteville on or before the Closing Date.

3. Demolition Of Tyson Factory

A. The City of Fayetteville agrees to demolish or pay a reputable contractor to demolish and remove unsalvageable debris of the old Tyson Factory to include removing its foundation, footings and slab within four months of both parties' execution of this Agreement.

B. In addition to the purchase price, Kum & Go, L.C. agrees to reimburse the City the lesser of 25% of the demolition and removal costs of the factory or \$100,000.00 within thirty (30) days after the City notifies Kum & Go that the demolition is complete. Such payment is not refundable unless the City materially breaches this Agreement.

4. Cost Shares for Streets/Driveways

The City of Fayetteville and Kum & Go agree to cost share 50/50 (both to pay equal amounts) of the design and construction expenses (including the reasonable value of City professional or construction activities) of a street or driveway from the intersection of Happy Hollow and Huntsville Road to the southwest corner of the Development Site and from that point to Ray Avenue along the southern border of the Development Site. The City will not charge Kum & Go for the property used for the roadway and the roadway shall remain City property, but the City shall grant Kum & Go and the public a full access easement to use these streets/driveways. Such street construction and cost share shall not occur until the Development Site has received formal development approval and actual construction by Kum & Go has commenced.

5. Landscaped Area

The area northwest of the Development Site and east of the road from the Happy Hollow intersection with Huntsville Road to the southwest corner of the Development Site shall be retained as City property. Kum & Go shall pay to have this property landscaped with a sufficient and prominent space left for a City

sculpture, monument, sign or piece of art as determined appropriate by the City Council. Kum & Go and the City shall jointly work on the landscaping plan which will not include items that would unduly block the view of Kum & Go's store from the Happy Hollow/Huntsville intersection. Kum & Go will pay for installation of necessary irrigation, but the City will be responsible for maintenance of this landscaped area once fully and properly installed. Parts of this area may be used for future Highway 16 right-of-way needs, including a possible roundabout to replace the current intersection.

6. Escrow Deposit

Within ten days after the execution of this Land Sale Agreement, Kum & Go will deposit with Waco Title Company, Fayetteville, Arkansas ("Escrow Agent") the sum of Fifteen Thousand Dollars (\$15,000.00) as the escrow deposit to be held, administered and disbursed in accordance with the terms of this Agreement.

7. Closing Date and Place

Closing shall occur within 180 days following the date this Agreement has been executed by both parties. The Closing shall occur at 113 West Mountain Street, Fayetteville, Arkansas in a room supplied by the City of Fayetteville. Kum & Go shall have the option to extend the Closing date by up two (2) consecutive sixty (60) day periods by notifying the City of Kum & Go's exercise of each such extension option. Upon the exercise of the first such extension option, \$5,000.00 of the Escrow Deposit shall become non-refundable to Kum & Go but applicable to the purchase price at Closing. Upon the exercise of the second such extension option, \$5,000.00 of the Escrow Deposit shall become non-refundable to Kum & Go, but applicable to the purchase price at Closing.

8. Date of Possession

Possession of the Development Site shall be delivered to Kum & Go on the Closing date free of any tenancies or other third party possessory rights.

9. Title Insurance

The City of Fayetteville shall order a title commitment on the Development Site, as soon as practicable following the full execution of this Agreement, through a title insurance company selected by the City and acceptable to Kum & Go, for an ALTA Form B owner's policy, with extended coverage, or a comparable form,

from a title insurance company in the amount of the purchase price, covering the date of this Agreement, and said title insurance company shall provide to Kum & Go the basic owner's title insurance commitment within twenty (20) days of the effective date. 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 from the proceeds due the City), the City shall have thirty (30) days from the date of Kum & Go's 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, Kum & Go 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 City of Fayetteville. The cost of any lender's title policy and extended owner's title insurance coverage shall be borne by Kum & Go.

10. Deed and Other Documents

On the Closing date, the City of Fayetteville shall convey marketable and insurable title to the premises by general warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement, subject only to current real estate taxes (to be apportioned between the parties) and existing easements. Kum & Go and the City of Fayetteville shall equally share the cost a reasonable closing fee imposed by the closing agent employed by parties provided however that Kum and Go 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.

11. Use Restriction

At Closing the City of Fayetteville shall restrict the use when sold to a third party of any and all real estate owned by the City of Fayetteville within one mile of the Development Site for a period of twenty (20) years by placing within any deed conveying such City owned property to a third party during the next 20 years a prohibition of the use of such property until 2033 for a gas station, convenience store, tobacco store, or business that generates more than 50% of its revenue from the sale of alcoholic beverages for off-premises consumption.

12. Real Estate Taxes

Real estate taxes shall be prorated in customary fashion to date of possession.

13. Risk of Loss

Risk of loss as to the Development Site shall remain with the City of Fayetteville until the Closing date.

14. Environmental Matters

The City warrants to the best of its knowledge and belief that (i) there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Development Site, (ii) the Development Site does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and (iii) the City had done nothing to contaminate the Development Site with hazardous wastes or substances. The City warrants that the Development Site is not subject to any local, state, or federal judicial or administrative action, investigation or other, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. Kum & Go shall be responsible for the costs of any Phase I or Phase II environmental site assessment for the Development Site, and for the costs of other customary third party due diligence reports.

15. Kum & Go's Due Diligence

Kum & Go may enter upon the Development Site to conduct any surveying, testing or inspection it deems necessary to ensure the Development Site will be appropriate for the construction and use for a Kum & Go gas station/convenience store. If Kum & Go discovers any problems that would adversely impact its development and use of the Development Site for its store, Kum & Go shall notify the City which is granted sixty (60) days to remediate any problem. The City may also terminate this Agreement without penalty rather than remediating any problem or issue discovered by Kum & Go.

16. Large Scale Development Approval

Kum & Go shall, at its sole cost and expense, prepare a Large Scale Development plat of the Development Site and obtain any and all approvals necessary for Kum & Go's intended use of the Development Site as a gas station/convenience store. The City shall reasonably cooperate with Kum & Go in Kum & Go's request for development approval of a gas station and convenience

store. Kum & Go must present its development proposal through the normal City process and follow the Unified Development Code requirements.

17. Kum & Go's Conditions Precedent

Kum & Go's obligation to close this transaction is expressly conditioned upon each of the following:

- (a) City shall have performed and complied in all material respects with all agreements, terms, and conditions required by this agreement to be performed by and complied with by City on or before the Closing date.
- (b) All representations, warranties and covenants of City contained in this Agreement shall be true and correct in all material respects as of the Closing date.
- (c) Kum & Go has obtained final approval of its Large Scale Development proposal to construct a gas station/convenience store on the Development Site.

If any of Kum & Go's conditions precedent have not been satisfied or complied with prior to the Closing date, Kum & Go may, by written notice to City within seven (7) days of the Closing date cancel and terminate this Agreement. In the event that this Agreement is terminated by Kum & Go as permitted by this Section, neither party shall retain any rights or obligations under this Agreement, except that the Escrow Deposit shall be returned to Kum & Go, except any portion thereof that has become non-refundable to Kum & Go and the 25% of demolition costs up to \$100,000.00 must still be paid to the City and not be refundable to Kum & Go unless the City has refused to grant reasonable development rights to Kum & Go after its good faith application for such development rights. Notwithstanding the foregoing, Kum & Go, in its sole discretion, may waive any conditions precedent in its favor and elect to proceed with the closing by the Closing date.

18. Broker

Kum & Go has been represented by David Erstine of CBRE | NW Arkansas during this sale and will be responsible to pay his brokerage fee.

19. Notices

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

Kum & Go, L.C.

ATTN: Real Estate Development
c/o Rob Wadle (or successor)
6400 Westown Parkway
W. Des Moines, Iowa 50266

or by FAX (515) 226-1595

or to:

City of Fayetteville

ATTN: Mayor's Office
113 W. Mountain Street
Fayetteville, AR 72701 72701-6083

or by FAX (479) 575-8257.

20. Authority

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

21. 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.

22. Facsimile

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

23. *Applicable Law*

This Agreement shall be construed and enforced in accordance with the laws and public policies of the State of Arkansas.

24. *Survival*

The representations, warranties, and agreements of the parties contained herein shall survive the closing date.

25. *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.

26. *Time of Essence*

Time is of the essence in this Agreement.

27. *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.

28. *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 both 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 Kum & Go at closing.

Date: 11/15/2013

Date: _____

KUM & GO, L.C.

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: Niki Delphi Wips

By: _____

LIONELD JORDAN
Mayor

Title: SVP, Store Development

Witness:

ATTEST:

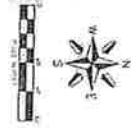
By: Stacie Hatch

By: _____

Sondra E. Smith, City Clerk

Fed. I.D. No.: 42-1352663
FAX No.: (515) 457-6179
Address: 6400 Westown Parkway, West
Des Moines, IA 50266



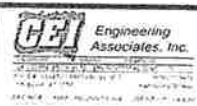


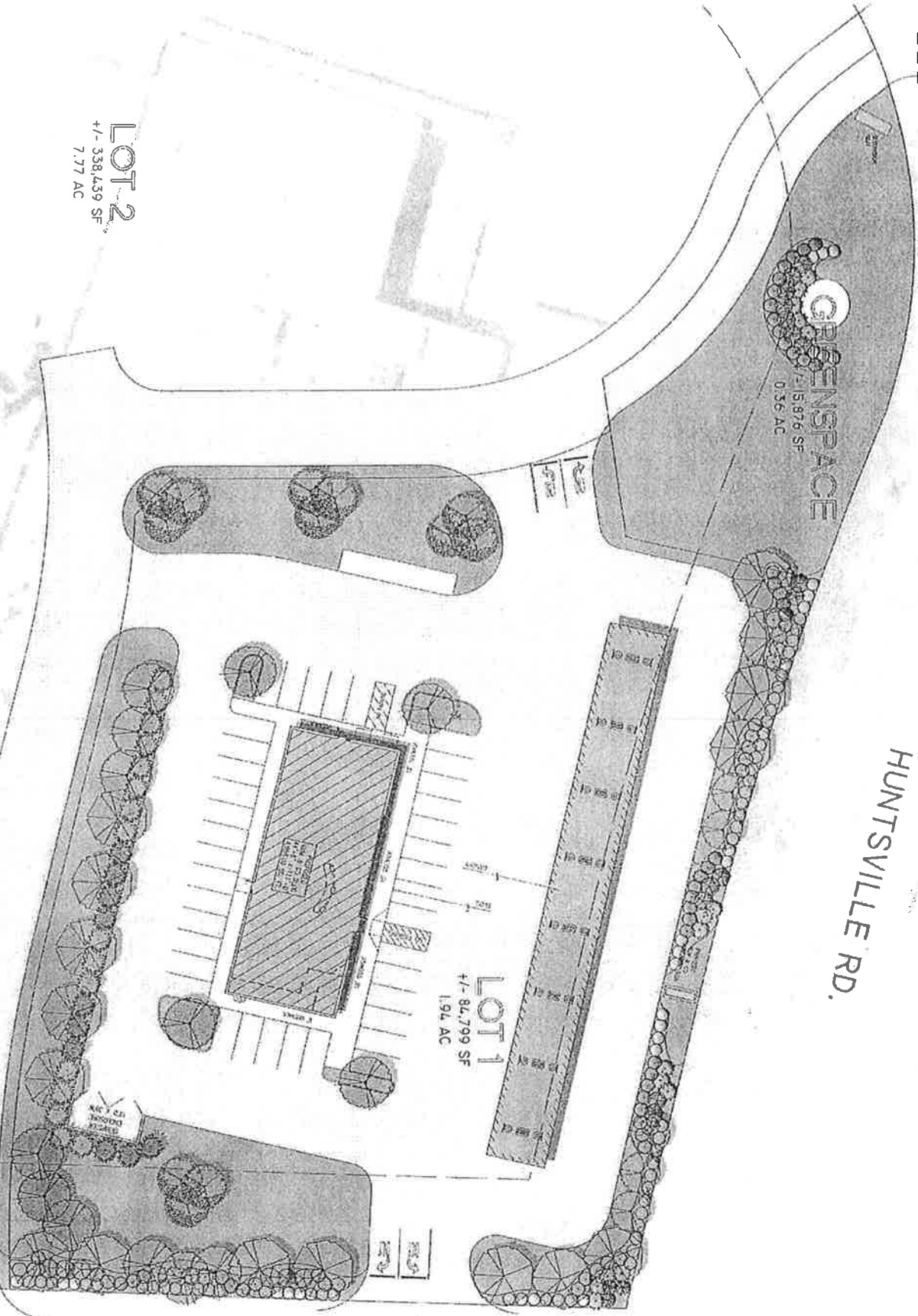
NO.	DATE	REVISION/DESCRIPTION

REVISIONS

STORE XXX, FAYETTEVILLE, AR
 HAPPY HOLLOW
 CONCEPT 5-A

Kum & Go, L.C.
 1100 Westham Parkway
 West One, Missouri, 63091
 P. 636.252.0128
 F. 636.252.0173





LOT 2
+/- 338,439 SF
7.77 AC

GREENSPACE
+/- 15,876 SF
0.36 AC

LOT 1
+/- 84,799 SF
1.94 AC

RAY AVE.

HUNTSVILLE RD.



Emailed to Alderman for the 1-15-13 CC mtg.

From: Jesse Fulcher
To: Branson, Lisa
CC: Garner, Andrew; Williams, Kit
Date: 1/15/2013 2:25 PM
Subject: Kum & Go concept plan and building elevations
Attachments: Kum & Go concept plan overall site.pdf; Kum & Go concept plan close up.pdf;
Kum & Go Elevations.pdf

I've attached the concept site plans (close up and overall site) and the proposed building elevations.

Jesse



DATE	REVISION DESCRIPTION

STORE XXX, FAYETTEVILLE, AR
 HAPPY HOLLOW
 CONCEPT 5 - OVERALL



CEI Engineering Associates, Inc.
 1000 N. UNIVERSITY BLVD. SUITE 100
 FAYETTEVILLE, AR 72701
 PHONE: 479-326-1111 FAX: 479-326-1112
 WWW.CEI-AR.COM



1 OF 1 11/25/12	REVISIONS NO. DATE DESCRIPTION OF REVISIONS	STORE XXX, FAYETTEVILLE, AR HAPPY HOLLOW CONCEPT 5		
	PROJECT NO. SHEET NO.	DATE DRAWN BY CHECKED BY	SCALE PROJECT NO. SHEET NO.	KUM & GO 1000 N. UNIVERSITY BLVD. FAYETTEVILLE, AR 72701 P. 479-2222 F. 479-2222

Handed out at the City Council Meeting

01-15-13

B. 1
Kum & Go, L.C.
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Departmental Correspondence



LEGAL
DEPARTMENT

www.accessfayetteville.org

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

FROM: Kit Williams, City Attorney

DATE: January 15, 2013

RE: Options

OPTIONS FOR THE CITY COUNCIL

Regarding Proposed Land Sale Agreement For Two Acre Parcel

I believe that the City Council has at least the following options regarding the proposed sale of about two acres of the ten acre Tyson factor site:

(1) **Approve the sale to Kum & Go, L.C.** for One Million Dollars, plus up to \$100,000.00 in demolition costs of the old factory and other terms with the Land Sale Agreement Kum & Go has provided. This would be accomplished by amending the old Resolution in your Agenda Packet to the new one handed out tonight and passing it.

(2) **Approve the sale to Casey's Marketing Company, Inc.** for One Million Dollars, plus up to \$100,000.00 in demolition costs of the old factory and other terms with the Land Sale Agreement Kum & Go has provided. This would be accomplished by amending the old Resolution in your Agenda Packet to the new one handed out tonight and passing it.

(3) **Table the Resolution** and authorize both parties to provide a sealed offer to sweeten or improve their offer so that the decision of which purchase offer is best for our citizens and City is made at the next (February 5, 2013) City Council meeting. This sealed offer to improve the current offer should be delivered to me in sealed envelope by 4:00 p.m. on February 5, 2013 and not opened until the City Council reaches the Old Business section for the Land Sale Agreement. I would

then publicly open and read such sealed offer to the City Council and provide it to City Clerk Sondra Smith for our records.

This sealed offer would only include whatever enhancements in price over and above the current offers that either Kum & Go or Casey's General Store would wish to make. This can be zero or any amount of additional money that the company wishes to make. No language to the effect that the company would match or equal the other company's final offer will be considered or have any operative effect. Only an actual amount of dollars increasing its current offer of \$1,000,000.00 will be considered.

The City Council will then consider both final offers and determine which is the most advantageous for the citizens and City of Fayetteville. No further offers to increase or match a competitor's bid will be considered.

If another party wished to submit its offer for this property, it must notify the Mayor's Office no later than 4:30 p.m. on January 28, 2013 by providing a signed Land Sale Agreement in the form as agreed to by both Kum & Go, L.C., and Casey's Marketing Company, Inc. in an amount of at least \$1,000,000.00. If the City determines that this is a valid and proper offer from a company that has established its financial and commercial ability to develop a good business on this parcel, this business will also be allowed to submit a final sealed improvement offer to the City Attorney's Office by 4:00 p.m. on February 5, 2013.

(4) The City Council may reject all offers to purchase this two acre site for \$1,000,000.00, plus another \$100,000.00 for the demolition of the old factory.