

City of Fayetteville Staff Review Form

2015-0454

Legistar File ID

10/6/2015

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

Connie Edmonston

9/25/2015

Parks & Recreation /
Parks & Recreation Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of Real Estate Contract with Apple Seeds, Inc. to purchase house on 2648 Old Wire Road by Gulley Park in the amount of \$200,000 and approval of two acres Land Lease Agreement in Gulley Park.

Budget Impact:

<hr/>		<hr/>	
Account Number		Fund	
<hr/>		<hr/>	
Project Number		Project Title	
Budgeted Item?	<u>NA</u>	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	<u>NA</u>	Item Cost	
Budget Adjustment Attached?	<u>NA</u>	Budget Adjustment	
		Remaining Budget	\$ -

V20140710

Previous Ordinance or Resolution # 165-15,157-14

Original Contract Number: _____

Approval Date: _____

Comments: Request for approval of an offer to sell a city-owned house located adjacement to Gulley Park.

MEETING OF OCTOBER 6, 2015

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Connie Edmonston, Parks and Recreation Director

DATE: September 25, 2015

SUBJECT: Approval of Real Estate Contract with Apple Seeds, Inc. to purchase house on 2648 Old Wire Road by Gulley Park in the amount of \$200,000.00 and approval of two acres Land Lease Agreement in Gulley Park

RECOMMENDATION:

Approval of a Real Estate Contract with Apple Seeds, Inc. to purchase a house on 2648 Old Wire Road by Gulley Park in the amount of \$200,000 and approval of a two acres Land Lease Agreement in Gulley Park.

BACKGROUND:

On September 15, 2015, City Council approved Resolution 165-15 authorizing a contract with Real Assets, Inc. to represent the City in selling approximately 1.25 acres of city-owned real property on Old Wire Road near Gulley Park for a six percent (6%) commission. The houses were listed at the appraised values or best offer as follows: \$111,500.00 for 2634 Old Wire Road and \$218,500.000 for 2648 Old Wire Road. The City has followed the Sale of Municipal Owned Property as outlined in City Ordinance §34.27 Sale of Municipally Owned Real Property.

DISCUSSION:

The City has received two offers for the property on 2648 Old Wire Road that includes a house and shop building on a 0.75 acre lot. The first offer was received on September 16, 2015 for \$136,000.00. The City rejected this offer. On September 17, 2015 an offer in the amount of \$200,000.00 was received from Apple Seeds, Inc. This offer was contingent upon receiving suitable in-house financing; execution of a lease for two acres in Gulley Park adjacent to this property for a teaching farm; approval of a conditional use permit for the operation of a limited business on the property by the Planning Commission; and satisfactory inspection of the property by the buyer.

Apple Seeds, Inc. intentions are to purchase the house and shop building, as well as lease two acres adjacent in Gulley Park for the establishment of the Apple Seeds Teaching Farm. Their offer for the property is dependent upon City Council's approval of leasing the two acres. The teaching farm is an integral part of their mission and business in which school-age children will learn and experience how to garden. Their program will utilize the house and shop building as an extended teaching classroom and "healthy" cooking area.

Apple Seeds, Inc. is a 501(c)(3) non-profit corporation. Their mission statement is: "Apple Seeds inspires healthy living through garden-based education". Their mission reinforces our Parks and Recreation "Be Active" initiative by encouraging a healthy and active lifestyle, plus it promotes the City's mission to provide a diversified parks system.

A master plan for the additional ten acres of newly acquired land at Gulley Park has not been developed at this point in time. Park and Recreation Staff worked with Apple Seeds to identify land for the two acres teaching farm that would complement the remaining acres in the park. The City Attorney's office drafted a lease agreement similar in nature to the lease at Lake Fayetteville Park with the Botanical Gardens of the Ozarks. The agreement is for a 20 year lease in which Apple Seeds as part of this consideration would provide free access to the teaching farm for all Fayetteville residents on Saturdays from 9 am until noon during the garden's growing season of March through October. In addition, they will provide two free public Garden-Based Educational Workshops each year. The City believes leasing two acres of Gulley Park will be an excellent opportunity for a partnership with a local non-profit organization that is helping us to build a healthier community. If the offer for sale and land lease agreement are both approved by City Council, the conditional use permit will be presented at the October 26, 2015 Planning Commission meeting.

BUDGET/STAFF IMPACT:

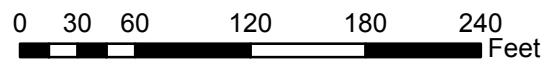
Cost for the real estate broker's services will be taken out of the closing costs for the sale of the home. Staff will bring forward recognition of these revenues for a park project in the near future for City Council's consideration.

Attachments:

- Staff Review Form
- Property Location Map
- City Attorney Memo
- Real Estate Contract with Apple Seeds, Inc.
- Apple Seeds Proposal to the City
- Apple Seeds, Inc. Land Lease Agreement
- Apple Seeds Board Minutes
- Apple Seeds Land Lease Agreement Map
- Resolution 165-15: Real Assets, Inc. Contract



2634 and 2648 Old Wire Road
Fayetteville, AR





OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
City Council

CC: Connie Edmonston, Parks & Recreation Director

FROM: Kit Williams, City Attorney

A blue ink handwritten signature of Kit Williams, written over a horizontal line.

DATE: September 24, 2015

RE: Proposed Lease of two acres of recently acquired land to Apple Seeds Farm

As you remember, the Fayetteville City Council recently authorized Mayor Jordan to purchase about 9.7 acres of land adjoining Gulley Park to add it to the park. As part of the \$1.1 million total purchase price, the City purchased the 9.7 acres for \$640,000.00. The City was required to purchase the owners' two houses which we still have been unable to sell for their appraised amounts. We may be able to sell the more modern, better house (2648 Old Wire Road) for \$200,000.00 to Apple Seeds if we agree to a twenty year lease to Apple Seeds for two acres of the land we just purchased. These two acres cost our taxpayers about \$132,000.00 so to be legal, the City's taxpayers must receive a reasonably commensurate rental amount of money or services to support leasing of this land (which will effectively take the land out of public use during the 20 year lease period).

Rather than any money, Apple Seeds is proposing to offer some services for our taxpayers. It is proposing a similar "free admission" to the farm (not buildings) weekly from 9:00 a.m. until noon which is identical to the major consideration for the Botanical Garden lease. This free citizen admission requirement is effective only during March through October each year during the anticipated garden preparation, planting growing, harvesting and winterization period for the garden.

The Botanical Garden lease requires additional free access to Fayetteville students for educational purposes. Apple Seeds is proposing two free to Fayetteville citizens gardening workshops a year (about three hours each scheduled in agreement with the Parks Department). Hopefully Apple Seeds may also work with the Fayetteville School District to provide some additional free educational access for our school students.

The proposed lease is contingent upon Apple Seeds' purchase of 2648 Old Wire Road for their offered price of \$200,000.00. Because of the realtor's fee and closing costs, the net to our taxpayers would be about \$185,000.00 if the sale is consummated. Apple Seeds \$200,000.00 offer is close to the \$218,500.00 that our taxpayers paid for 2648 Old Wire Road. Being able to move quickly to sell 2648 Old Wire Road for \$200,000.00 may be viewed as another part of the consideration to support the 20 year lease of the two acres.

Since the City has not yet accepted the \$200,000.00 offer by Apple Seeds (only the City Council can agree to sell City property), it is possible that a higher or more attractive offer to buy 2648 Old Wire Road could be made. If the City Council would accept a different purchase offer, this lease would never go into effect.

CONCLUSION

The City Council has significant (but not unlimited) discretion in determining whether offered consideration for the lease of City property provides "adequate consideration and serves a proper governmental end." Arkansas Attorney General Opinion No. 2001-135. "The Arkansas Supreme Court has held that even non-monetary consideration can be adequate if a 'public advantage' will result from the lease." *Id.* Non-monetary consideration is what supports our leases with the Senior Center, Walton Arts Center and Botanical Garden of the Ozarks. If your opinion is that Apple Seeds is offering adequate and sufficient public services or other "public advantage" for the proposed lease of the two acres, you may approve the lease and authorize Mayor Jordan to sign it.

Real Estate Contract (Residential)

Page 1 of 12



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FORM SERIAL NUMBER: **086862-700144-2516144**

1. PARTIES: _____ **Apple Seeds, Inc.** _____

(individually or collectively, the "Buyer") offers to purchase, subject to the terms and conditions set forth herein, from the undersigned (individually or collectively, the "Seller"), the real property described in Paragraph 2 of this Real Estate Contract (the "Property"):

2. This Property is Single family detached home with land One-to-four attached dwelling with land
 Manufactured / Mobile Home with land Condominium / Town Home
(See Condominium/Town Home Addendum Serial No. _____)

ADDRESS AND LEGAL DESCRIPTION:

2648 Old Wire Road, Fayetteville, Arkansas 72703

house, shop building, and .75 acre lot mol.

parcel # 765-16092-000 36-17-30

3. PURCHASE PRICE: Subject to the following conditions, Buyer shall pay the following to Seller and, if so stated in Paragraph 3B assume the following obligations of Seller for the Property (the "Purchase Price"):

A. PURCHASE PURSUANT TO NEW FINANCING: Subject to Buyer's ability to obtain financing on the terms and conditions set forth herein and the Property appraising for not less than the Purchase Price, the Purchase Price shall be the exact sum of _____ \$ **200,000.00**
with Buyer paying in cash at Closing as down payment, the sum of _____ \$ **20%**
with the balance of the Purchase Price (the "Balance") to be paid pursuant to the following:

(i) **NEW LOAN:** Subject to the Buyer's ability to obtain a loan to be secured by the Property in the amount of _____ \$ _____
with such loan to be payable over a period of _____ years.

Discount points not to exceed _____ % of loan at Closing. Interest rate will be:

Fixed rate not to exceed _____ % per annum (see below)

Variable rate with an initial rate not to exceed _____ % per annum

and a maximum rate not to exceed _____ % per annum (see below)

If the loan rate in Paragraph 3A(i) is available at time of application and Buyer chooses not to lock in loan rate at application through time of Closing, Buyer agrees to accept prevailing loan rate at the time of Closing.

Loan type will be:

Conventional. Mortgage Insurance: Not applicable Paid as follows: _____

VA. Funding fee paid as follows: *(Continues on Page 2 of 10, for "VA NOTICE TO BUYER")*

FHA. Items to be financed: *(Continues on Page 2 of 10, for "FHA NOTICE TO BUYER")*

USDA-RD. Items to be financed: _____

(ii) **OTHER FINANCING:** Subject to Buyer's ability to obtain financing in the amount of _____ \$ **80%**
from a source and being payable as follows: **suitable in-house financing from a local lender**

B. PURCHASE PURSUANT TO LOAN ASSUMPTION (See Loan Assumption Addendum attached)

C. PURCHASE PURSUANT TO CASH: Cash at Closing in the exact sum of _____ \$ _____

Page 1 of 12

Serial#: 086862-700144-2516144

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Page 2 of 12



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3. PURCHASE PRICE: (continued from Page 1)

IF LOAN TYPE IS VA, I ACKNOWLEDGE THE FOLLOWING "VA NOTICE TO BUYER:"

It is expressly agreed, notwithstanding any other provisions of this Real Estate Contract, Buyer shall not incur any penalty by forfeiture of Earnest Money or otherwise be obligated to complete this purchase of the Property described herein, if the Real Estate Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. Buyer shall, however, have the privilege and option of consummating this Real Estate Contract without regard to the amount of the reasonable value of the Property established by the Department of Veterans Affairs. If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by the Department of Veterans Affairs, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the Department of Veterans Affairs and which Buyer represents will not be from borrowed funds. If Department of Veteran's Affairs reasonable value of the Property is less than the Purchase Price, Seller may reduce the Purchase Price to an amount equal to the Department of Veterans Affairs reasonable value and the parties to the sale shall close at such lower Purchase Price with appropriate adjustments to Paragraph 3 above.

IF LOAN TYPE IS FHA, I ACKNOWLEDGE THE FOLLOWING "FHA NOTICE TO BUYER:"

It is expressly agreed, notwithstanding any other provisions of this Real Estate Contract, Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money Deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than \$_____. Buyer shall have the privilege and option of consummating this Real Estate Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

We hereby certify the terms and conditions of this Real Estate Contract are true to the best of our knowledge and belief and any other agreement entered into by any of the parties in connection with this real estate transaction is part of, or attached to, this Real Estate Contract.

- Buyer has received HUD/FHA's Form No. HUD-92564-CN,
"For Your Protection: Get a Home Inspection."**

Page 2 of 12

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Page 3 of 12



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FORM SERIAL NUMBER: **086862-700144-2516144**

4. AGENCY: (check all that apply)

- A. LISTING FIRM AND SELLING FIRM REPRESENT SELLER:** Buyer acknowledges Listing Firm and Selling Firm and all licensees associated with those entities are the agents of Seller and it is Seller who employed them, whom they represent, and to whom they are responsible. Buyer acknowledges that before eliciting or receiving confidential information from Buyer, Selling Firm, which may be the same as Listing Firm, verbally disclosed that Selling Firm represents Seller
- B. LISTING FIRM REPRESENTS SELLER AND SELLING FIRM REPRESENTS BUYER:** Buyer and Seller acknowledge Listing Firm is employed by Seller and Selling Firm is employed by Buyer. All licensees associated with Listing Firm are employed by, represent, and are responsible to Seller. All licensees associated with Selling Firm are employed by, represent, and are responsible to Buyer. Buyer acknowledges Selling Firm verbally disclosed Listing Firm represents Seller. Seller acknowledges Listing Firm verbally disclosed Selling Firm represents Buyer.
- C. LISTING FIRM AND SELLING FIRM ARE THE SAME AND REPRESENT BOTH BUYER AND SELLER:** Seller and Buyer hereby acknowledge and agree Listing and Selling Firm are the same and all licensees associated with Listing and Selling Firm are representing both Buyer and Seller in the purchase and sale of the above referenced Property and Listing/Selling Firm has been and is now the agent of both Seller and Buyer with respect to this transaction. Seller and Buyer have both consented to and hereby confirm their consent to agency representation of both parties. Further, Seller and Buyer agree:
- (i) Listing/Selling Firm shall not be required to and shall not disclose to either Buyer or Seller any personal, financial or other confidential information concerning the other party without the express written consent of that party; however, Buyer and Seller agree Listing/Selling Firm shall disclose to Buyer information known to Listing/Selling Firm related to defects in the Property and such information shall not be deemed "confidential information." Confidential information shall include but not be limited to any price Seller is willing to accept that is less than the offering price or any price Buyer is willing to pay that is higher than that offered in writing.
 - (ii) by selecting this option 4C, Buyer and Seller acknowledge when Listing/Selling Firm represents both parties, a possible conflict of interest exists, and Seller and Buyer further agree to forfeit their individual right to receive the undivided loyalty of Listing/Selling Firm.
 - (iii) to waive any claim now or hereafter arising out of any conflicts of interest from Listing/Selling Firm representing both parties. Buyer and Seller acknowledge Listing/Selling Firm verbally disclosed Listing/Selling Firm represents both parties in this transaction, and Buyer and Seller have given their written consent to this representation before entering into this Real Estate Contract.
- D. SELLING FIRM REPRESENTS BUYER (NO LISTING FIRM):** Seller acknowledges Selling Firm and all licensees associated with Selling Firm are the agents of Buyer and it is Buyer who employed them, whom they represent, and to whom they are responsible. Seller acknowledges that at first contact, Selling Firm verbally disclosed that Selling Firm represents Buyer. Any reference to "Listing Firm" in this Real Estate Contract will be considered to mean Selling Firm, both Buyer and Seller acknowledging that all real estate agents (unless Seller is a licensed Real Estate Agent) involved in this Real Estate Contract only represent Buyer.
- E. NON-REPRESENTATION:** See Non-Representation Disclosure Addendum

Page 3 of 12

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Page 4 of 12



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5. LOAN AND CLOSING COSTS: Unless otherwise specified, all of Buyer's closing costs, including origination fees, assumption fees, loan costs, prepaid items, loan discount points, closing fee, and all other financing fees and costs charged by Buyer's lender or any additional fees charged by Closing Agent(s), are to be paid solely by Buyer except for costs that cannot be paid by Buyer. If Buyer is obtaining a VA or FHA loan, the "Government Loan Fees" shall be paid by Seller, up to the sum of \$ _____ (the "Seller Loan Cost Limit"), which is not included in any loan or closing cost provisions listed below. Notwithstanding any provision to the contrary, should the Government Loan Fees exceed the Seller Loan Cost Limit, Seller shall have the option to either pay such excess amount or terminate this Real Estate Contract and have the Earnest Money returned to Buyer. Seller is to pay Seller's closing costs.

Should Buyer be entitled to a credit at Closing for repairs pursuant to Paragraph 16 of this Real Estate Contract, the amount of such credit shall be reflected on the settlement statement(s). Buyer and Seller warrant all funds received by Buyer from Seller (or other sources) will be disclosed to the Closing Agent(s) and reflected on the settlement statement(s).

6. APPLICATION FOR FINANCING: If applicable, Buyer agrees to make a complete application for new loan or for loan assumption within five (5) business days from the acceptance date of this Real Estate Contract. In order to make a complete application as required by this Paragraph 6, Buyer agrees to provide lender with any requested information and pay for any credit report(s) and appraisal(s) required upon request. Unless otherwise specified, if said loan is not closed or assumed, Buyer agrees to pay for loan costs incurred, including appraisal(s) and credit report(s), unless failure to close is solely the result of Seller's breach of this Real Estate Contract, in which case such expenses will be paid by Seller. Buyer understands failure to make a complete loan application as defined above may constitute a breach of this Real Estate Contract.

7. EARNEST MONEY:

- A. Yes, see Earnest Money Addendum.
 B. No.

8. NON-REFUNDABLE DEPOSIT: The Non-Refundable Deposit (hereinafter referred to as the "Deposit") is funds tendered by Buyer to Seller to compensate Seller for liquidated damages that may be incurred by Seller resulting from Buyer failing to close on this Real Estate Contract. The liquidated damages shall include, but not be limited to, Seller's time, efforts, expenses and potential loss of marketing due to Seller's removal of Property from market. The Deposit is not refundable to Buyer unless failure to close is exclusively the fault of Seller or if Seller cannot deliver marketable title to the Property. The Deposit will be credited to Buyer at Closing. Buyer shall hold Listing Firm and Selling Firm harmless of any dispute regarding Deposit. Buyer expressly acknowledges The Deposit is not to be held by either Listing Firm or Selling Firm. The Deposit may be commingled with other monies of Seller, such sum not being held in an escrow, trust or similar account.

A. The Deposit is not applicable.

If Buyer is obtaining Government Financing (FHA, VA or other) Deposit is not applicable.

B. Buyer will pay to Seller the Deposit in the amount of \$ _____

- i. Within _____ days following the date this Real Estate Contract has been signed by Buyer and Seller.
 ii. Within three (3) business days of execution of Paragraph 4(a) of the Inspection, Repair & Survey Addendum.
 iii. Other: _____

9. CONVEYANCE: Unless otherwise specified, conveyance of the Property shall be made to Buyer by general warranty deed, in fee simple absolute, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the Property. Unless expressly reserved herein, **SUCH CONVEYANCE SHALL INCLUDE ALL MINERAL RIGHTS OWNED BY SELLER CONCERNING AND LOCATED ON THE PROPERTY, IF ANY, UNLESS OTHERWISE SPECIFIED IN PARAGRAPH 30. IT IS THE RESPONSIBILITY OF THE BUYER TO INDEPENDENTLY VERIFY AND INVESTIGATE THE EXISTENCE OR NONEXISTENCE OF MINERAL RIGHTS AND ANY LEGAL RAMIFICATIONS THEREOF.** Seller warrants and represents only signatures set forth below are required to transfer legal title to the Property. Seller also warrants and represents Seller has peaceable possession of the Property, including all improvements and fixtures thereon, and the legal authority and capacity to convey the Property by a good and sufficient general warranty deed free from any liens, leaseholds or other interests.

Page 4 of 12

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Page 5 of 12



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10. TITLE REQUIREMENTS: Buyer and Seller understand Listing Firm and Selling Firm are not licensed title insurance agents as defined by Arkansas law and do not and cannot receive direct or indirect compensation from any Closing Agent regarding the closing process or the possible purchase of title insurance by one or more of Buyer and Seller. An enhanced version of title insurance coverage may be available to Buyer for this transaction. Discuss enhanced title insurance coverage with your title insurance provider to determine availability and features.

- A. Seller shall furnish, at Seller's cost, a complete abstract reflecting merchantable title to Buyer or Buyer's Attorney.
- B. Seller shall furnish, at Seller's cost, an owner's policy of title insurance in the amount of the Purchase Price. If a loan is secured for the purchase of the Property, Buyer agrees to pay mortgagee's portion of title policy. If Buyer elects to obtain enhanced title insurance coverage, Buyer shall pay for the increase in title insurance cost in excess of the cost of a standard owner's title policy.
- C. Buyer and Seller shall equally split the cost of a combination owner's and mortgagee's policy of title insurance, either standard or enhanced (if enhanced coverage is desired by Buyer and available), in the amount of (as to owner's) the Purchase Price and (as to mortgagee's) the loan amount (not to exceed the Purchase Price).
- D. Other: _____

Buyer shall have the right to review and approve a commitment to provide title insurance prior to Closing. If objections are made to Title, Seller shall have a reasonable time to cure the objections. Regardless of the policy chosen, Buyer and Seller shall have the right to choose their Closing Agent(s).

11. SURVEY: Buyer has been given the opportunity to obtain a new certified survey. Should Buyer decline to obtain a survey as offered in Paragraph 11A of this Real Estate Contract, Buyer agrees to hold Seller, Listing Firm and Selling Firm involved in this Real Estate Contract harmless of any problems relative to any survey discrepancies that may exist or be discovered (or occur) after Closing.

- A. A new survey satisfactory to Buyer, certified to Buyer within thirty (30) days prior to Closing by a registered land surveyor, showing property lines only showing all improvements, easements and any encroachments will be provided and paid for by: Buyer Seller Equally split between Buyer and Seller.
- B. No survey shall be provided.
- C. Other: Seller to provide recent survey

Should Buyer agree to accept the most recent survey provided by Seller, this survey is for information purposes only and Buyer will not be entitled to the legal benefits of a survey certified in Buyer's name.

12. PRORATIONS: Taxes and special assessments due on or before Closing shall be paid by Seller. Any deposits on rental Property are to be transferred to Buyer at Closing. Insurance, general taxes, special assessments, rental payments and interest on any assumed loan shall be prorated as of Closing, unless otherwise specified herein. Buyer and Seller agree to prorate general ad valorem taxes based on the best information available at Closing. Buyer and Seller agree to hold any Closing Agent(s) selected by Buyer and Seller, Listing Firm and Selling Firm harmless for error in such tax proration computation caused by unknown facts or erroneous information (or uncertainty) regarding the Homestead Tax Exemption adopted by the voters of the State of Arkansas in the Year 2000, as amended from time to time.

13. FIXTURES AND ATTACHED EQUIPMENT: Unless specifically excluded herein all fixtures and attached equipment, if any, are included in the Purchase Price. Such fixtures and attached equipment shall include but not be limited to the following: dishwasher, disposal, trash compactor, ranges, ovens, water heaters, exhaust fans, heating and air conditioning systems, plumbing and septic systems, electrical system, intercom system, ceiling fans, window air conditioners, carpeting, indoor and outdoor light fixtures, window and door coverings and related hardware, gas or electric grills, awnings, mail boxes, garage door openers and remote controls, antennas, fireplace inserts, _____

and any other items bolted, nailed, screwed, buried or otherwise attached to the Property in a permanent manner. Television satellite receiver dish, cable wiring, water softeners, and propane and butane tanks also remain, if owned by Seller. Buyer is aware the following items are not owned by Seller or do not convey with the Property: _____

Page 5 of 12

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Page 6 of 12



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14. OTHER CONTINGENCY:

- A. No Other Contingency. (Except for those conditions listed elsewhere in this Real Estate Contract.) It is understood and agreed Seller has the right to enter into subordinate Real Estate Contracts and other Real Estate Contracts shall not affect this Real Estate Contract.
- B. This Real Estate Contract is contingent upon:

_____ on or before (month) _____ (day) _____, (year) _____.

During the term of this Real Estate Contract (**Select one**):

- (i) **Binding with Escape Clause:** Seller has the right to continue to show the Property and solicit and enter into another Real Estate Contract on this Property. However, all Real Estate Contracts shall be subject to termination of this Real Estate Contract. Should Seller elect to provide written notice of an additional Real Estate Contract being accepted by Seller, Seller shall utilize the "Seller's Contingency Notice Addendum" (the "Notice") and Buyer shall have _____ hours to remove this contingency. Buyer shall be deemed in receipt of the Notice upon the earlier of (a) actual receipt of the Notice, or (b) five (5) business days after Seller or Listing Firm deposits the Notice in the United States mail, certified for delivery to Buyer at _____ with sufficient postage to ensure delivery. Removal of this contingency shall occur only by delivery of Notice, in a manner ensuring actual receipt, to Seller or Listing Firm. Time is of the essence. In the event Buyer removes the contingency and does not perform on this Real Estate Contract for any reason concerning this contingency, Seller may assert all legal or equitable rights that may exist as a result of Buyer breaching this Real Estate Contract. Alternatively, Seller at his sole and exclusive option, may retain the Earnest Money, as liquidated damages. If this contingency is removed, a Closing date shall be agreed upon by the parties. If a Closing date is not agreed upon, Closing shall occur _____ calendar days from removal. Should Buyer not remove this contingency as specified, this Real Estate Contract shall be terminated with Buyer and Seller both agreeing to sign a Termination of Contract Addendum with Buyer to recover Earnest Money. All time constraints in this Real Estate Contract referred to in Paragraphs 6, 16B, 17, 18 19B, 20B, and 21 refer to the time Buyer removes the contingency.
- (ii) **Binding without Escape Clause:** It is understood and agreed Seller has the right to enter into subordinate Real Estate Contracts and any subordinate Real Estate Contracts entered into by Seller shall not affect this Real Estate Contract.

15. HOME-WARRANTY PLANS: Buyer understands the benefits of a home-warranty contract which may include coverage for most major appliances, plumbing, electrical, heating and air conditioning systems. The home-warranty contract covers unexpected mechanical failures due to wear and tear and is subject to a per-claim deductible. The availability of a home-warranty contract, cost and applicable deductible have been explained to Buyer, and Buyer chooses:

- A. No home-warranty contract concerning the condition of any real or personal Property to be conveyed from Seller to Buyer for any period after the Closing.
- B. A limited one-year home-warranty plan will be provided to Buyer concerning the condition of the Property and will be paid for by _____ at a cost not to exceed \$ _____ plus sales tax. This home-warranty contract will not imply any warranty by Seller after Closing. Coverages vary and the coverage received is solely set forth in the home-warranty documents between Buyer and Home-Warranty Company, _____, and no representation or explanation will be provided by Seller, Selling Firm or Listing Firm, Buyer being solely responsible to determine the extent and availability of coverage. Listing Firm and/or Selling Firm may receive compensation from the warranty company.
- C. Other Warranty: _____

Page 6 of 12

Serial#: 086862-700144-2516144

Prepared by: Kathy Bell | Lindau and Associates | KathyBell@swbell.net |

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Real Estate Contract (Residential)

Page 7 of 12



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16. INSPECTION AND REPAIRS:

- A. Subject to Paragraph 25, the sale of the Property, in its condition as existing on the date Buyer signed this Real Estate Contract, shall take place on an "AS IS, WHERE IS, WITH ALL FAULTS BASIS" and Buyer acknowledges and agrees to voluntarily waive and decline any right to further inspect or require repair of the Property. An example are the rights declined and waived by Buyer in Paragraph 16B of this Real Estate Contract.
- B. Buyer shall have the right, at Buyer's expense, with the cooperation of Seller, to inspect the electrical, mechanical, plumbing, environmental conditions, appliances, and all improvements, structure(s) and components on or about the Property (collectively the "Inspection Items") within TEN (10) BUSINESS DAYS after the date this Real Estate Contract is accepted. Seller, Listing Firm and Selling Firm recommend Buyer use a representative(s) chosen by Buyer to inspect Inspection Items. **Buyer is not relying on Listing Firm or Selling Firm to choose a representative to inspect or re-inspect Inspection Items; Buyer understands any representative desired by Buyer may inspect or re-inspect Inspection Items.** Buyer shall neither make nor cause to be made, unless authorized by Seller in writing, any invasive or destructive Buyer inspections or investigations. Seller agrees to have all utilities connected and turned on to Property to allow Buyer to inspect and re-inspect Inspection Items. If Property being purchased is not new, Buyer acknowledges Inspection Items may not be new. Buyer does not expect Inspection Items to be like new and recognizes ordinary wear and tear to Inspection Items is normal. For the purpose of this Paragraph 16B, "normal working order" means that Inspection Items function for the purpose for which they are intended. The fact any or all Inspection Items may cease to be in normal working order, be discovered or occur, after Closing, shall not require repair by Seller, or provide legal or other liability to Seller, Listing Firm or Selling Firm.

If Buyer elected to inspect the Inspection Items, Buyer shall deliver an Inspection, Repair and Survey Addendum to Seller or Listing Firm within the allotted ten (10) business day period so the Inspection, Repair, and Survey Addendum is actually received by Seller or Listing Firm within the allotted (10) business day period, stating inspections have been performed and listing all items Buyer requests the Seller to repair or stating no repairs are requested. If Buyer is not satisfied with a personal or professional inspection and elects to terminate this Real Estate Contract, both Buyer and Seller agree to sign a Termination of Contract Addendum with Buyer to recover Earnest Money. If Buyer requests repairs, Seller shall have (5) business days to respond to the Buyer's repair request. If Seller does not respond within the allotted (5) business days, Buyer may elect to: (1) accept Property in its condition at Closing, or (2) terminate this Real Estate Contract and recover Earnest Money and both Buyer and Seller agree to sign a Termination of Contract Addendum.

If Buyer and Seller are not able to negotiate requested repairs, Buyer and Seller agree this Real Estate Contract is terminated and further agree to sign a Termination of Contract Addendum. **IN THE EVENT BUYER DOES NOT MAKE THE NECESSARY REQUIRED INSPECTIONS OR DOES NOT PRESENT THE INSPECTION, REPAIR AND SURVEY ADDENDUM TO SELLER OR LISTING FIRM IN THE ALLOTTED TEN (10) BUSINESS DAY TIME PERIOD, BUYER WAIVES ALL RIGHTS TO A RE-INSPECTION AND ASSUMES COMPLETE RESPONSIBILITY FOR ANY AND ALL FUTURE REPAIRS AND THE CONDITION OF THE PROPERTY.**

If Buyer timely inspected Property and Seller received the Inspection, Repair and Survey Addendum within the time period set forth above, Buyer shall have the right to re-inspect all Inspection Items immediately prior to Closing to ascertain whether Inspection Items are in normal working order and to determine whether all requested and accepted repairs have been made. If Inspection Items are found not to be in normal working order upon re-inspection, Buyer may elect to: (1) accept Property in its condition at Closing, or (2) terminate this Real Estate Contract and recover the Earnest Money and, in the event termination is elected, both Buyer and Seller agree to sign a Termination of Contract Addendum.

If Buyer closes on Property believing conditions exist at Property that require repair as allowed by this Paragraph 16B, Buyer waives all right to assert a claim against Seller, Selling Firm or Listing Firm concerning the condition of Property. Buyer understands and agrees that, pursuant to the terms of Paragraph 16B, Buyer will be accepting Property at Closing "AS IS, WHERE IS AND WITH ALL FAULTS".

Real Estate Contract (Residential)

Page 8 of 12



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17. THIRD PARTY REQUIREMENTS:

Any requirements for repair by FHA, VA, USDA-RD, the lender, termite control company or other "third party" requirements shall be delivered to Seller promptly upon receipt by Buyer. Seller shall have five (5) business days to respond to "Third Party" requirements upon receipt or Buyer may (1) accept the property in its condition at Closing as well as the responsibility for the completion of "Third Party" requirements, or (2) terminate this Real Estate Contract and recover the Earnest Money with Buyer and Seller agreeing to sign the Termination of Contract Addendum. If Buyer and Seller are unable to negotiate for the requested "Third Party" Requirements to be performed, this contract may be terminated with Buyer and Seller both agreeing to sign the Termination of Contract Addendum.

Buyer shall have the right to re-inspect all "Third Party" Requirements immediately prior to closing to ascertain whether "Third Party" Requirements have been made. If Buyer finds "Third Party" Requirements have not been made, Buyer may (1) accept the property in its condition at Closing as well as the responsibility for the completion of "Third Party" Requirements, or (2) terminate this contract and recover the Earnest Money with Buyer and Seller both agreeing to sign the Termination of Contract Addendum

18. SELLER PROPERTY DISCLOSURE:

- A. Buyer and Seller acknowledge that upon the authorization of Seller, either Selling Firm or Listing Firm have delivered to Buyer, prior to the execution of this Real Estate Contract, a written disclosure prepared by Seller concerning the condition of the Property, but this fact neither limits nor restricts Buyer's Disclaimer of Reliance set forth in Paragraph 29 of this Real Estate Contract, nor the rights provided Buyer in Paragraph 16. The written disclosure prepared by Seller is dated (month) _____ (day) _____, (year) _____, and is warranted by Seller to be the latest disclosure and the answers contained in the disclosure are warranted to be true, correct, and complete to Seller's knowledge.
- B. Buyer hereby requests Seller to provide a written disclosure about the condition of the Property that is true and correct to Seller's knowledge within three (3) business days, after this Real Estate Contract has been signed by Buyer and Seller. If Seller does not provide the disclosure within the three (3) business days, Buyer may declare this Real Estate Contract terminated with Buyer and Seller both agreeing to sign the Termination of Contract, with Buyer to receive a refund of the Earnest Money. If Buyer finds the disclosure unacceptable within three (3) business days after receipt of disclosure, this Real Estate Contract may be declared terminated by Buyer, with Buyer and Seller both agreeing to sign the Termination of Contract with Buyer to receive a refund of the Earnest Money. Receipt of this disclosure neither limits nor restricts in any way Buyer's Disclaimer of Reliance set forth in Paragraph 29 of this Real Estate Contract, nor the rights provided to Buyer in Paragraph 16.
- C. Although a disclosure form may have been completed (or can be completed) by Seller, Buyer has neither received nor requested and does not desire from Seller a written disclosure concerning the condition of the Property prior to the execution of this Real Estate Contract, but this fact neither limits nor restricts in any way Buyer's Disclaimer of Reliance set forth in Paragraph 29 of this Real Estate Contract. BUYER IS STRONGLY URGED BY SELLING FIRM AND LISTING FIRM TO MAKE ALL INDEPENDENT INSPECTIONS DEEMED NECESSARY PRIOR TO SIGNING THIS REAL ESTATE CONTRACT, IN ADDITION TO THOSE INSPECTIONS PERMITTED BY PARAGRAPH 16B OF THIS REAL ESTATE CONTRACT.
- D. Buyer understands no disclosure form is available and will not be provided by Seller. This fact neither limits nor restricts in any way the Buyer's Disclaimer of Reliance set forth in Paragraph 29 of this Real Estate Contract. BUYER IS STRONGLY URGED BY SELLING FIRM AND THE LISTING FIRM TO MAKE ALL INDEPENDENT INSPECTIONS DEEMED NECESSARY PRIOR TO SIGNING THIS REAL ESTATE CONTRACT, IN ADDITION TO THOSE INSPECTIONS PERMITTED BY PARAGRAPH 16B OF THIS REAL ESTATE CONTRACT.

Page 8 of 12

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Page 9 of 12



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FORM SERIAL NUMBER: **086862-700144-2516144**

19. TERMITE CONTROL REQUIREMENTS:

- A. None
- B. A Letter of Clearance (Wood Infestation Report) requiring a Termite Protection Contract with a One-Year (1) Warranty to include treatment if allowed by applicable law and the Arkansas State Plant Board and full protection plan shall be provided by Seller at Seller's cost at closing. Seller shall order a proposal from a licensed Termite Contractor within ten (10) business days after acceptance of this Real Estate Contract. All repairs necessary to allow issuance of such Termite Protection Contract, excluding a new Termite Protection Treatment, are to be part of the Third-Party Requirements pursuant to Paragraph 17. If Buyer is obtaining financing, such Termite Protection Contract shall be in a form acceptable to the Lender and Buyer.
- C. Other: _____

20. LEAD-BASED PAINT RISK ASSESSMENT/INSPECTION:

- A. Buyer understands and agrees that, according to the best information available, improvements on this Property were not constructed prior to 1978 and should not contain lead-based paint hazards.
- B. Buyer has been informed that the Property, including without limitation garages, tool sheds, other outbuildings, fences, signs and mechanical equipment on the Property that were constructed prior to 1978, may contain lead-based paint. Seller will provide the Lead-Based Paint Disclosure (pre-1978 construction) within three (3) business days after acceptance of this Real Estate Contract. The obligation of Buyer under this Real Estate Contract is contingent upon Buyer's acceptance of the Lead-Based Paint Disclosure provided by Seller and an Inspection and/or Risk Assessment of the Property for the presence of lead-based paint and/or lead-based paint hazards obtained at Buyer's expense. If Buyer finds either the Lead-Based Paint Disclosure or the Inspection and/or Risk Assessment unsatisfactory, in the sole discretion of Buyer, within ten (10) calendar days after receipt by Buyer of the Lead-Based Paint Disclosure, Buyer shall have the absolute option to unilaterally terminate this Real Estate Contract with Earnest Money returned to Buyer and, with neither Buyer nor Seller having further obligation to the other thereafter. Buyer shall submit any request for abatement repairs in writing as part of the Third-Party Requirements specified in Paragraph 17 of the Real Estate Contract. Buyer may remove this contingency and waive the unilateral termination right at any time without cause by written General Addendum signed by Buyer and delivered to Seller. If Buyer does not deliver to Seller or Listing Firm a Termination of Real Estate Contract Addendum terminating this Real Estate Contract within the ten (10) calendar days after receipt by Buyer of the Lead-Based Paint Disclosure, this contingency shall be deemed waived and Buyer's performance under this Real Estate Contract shall thereafter not be conditioned on Buyer's satisfaction with the Lead-Based Paint Inspection and/or Risk Assessment of the Property.

Buyer has been advised of Buyer's rights under this Paragraph 20.

- 21. INSURANCE:** This Real Estate Contract is conditioned upon Buyer's ability to obtain homeowner/hazard insurance for the Property within ten (10) business days after the acceptance date of this Real Estate Contract. If Buyer does not deliver to Seller or Listing Firm a written notice from an insurance company within the time set forth above of Buyer's inability to obtain homeowner/hazard insurance on the Property, this condition shall be deemed waived (but without waiver of conditions, if any, set in Paragraph 3) and Buyer's performance under this Real Estate Contract shall thereafter not be conditioned upon Buyer's obtaining insurance. If Buyer has complied with the terms of this Paragraph 21 and has timely provided written notice to Seller of Buyer's inability to obtain such insurance, this Real Estate Contract shall be terminated with Earnest Money to be returned to Buyer, subject to Earnest Money Addendum

Page 9 of 12

Serial#: 086862-700144-2516144

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Real Estate Contract (Residential)

Page 11 of 12



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FORM SERIAL NUMBER: 086862-700144-2516144

28. **MERGER CLAUSE:** This Real Estate Contract, when executed by both Buyer and Seller, shall contain the entire understanding and agreement between Buyer and Seller with respect to all matters referred to herein and shall supersede all prior or contemporaneous agreements, representations, discussions and understandings, oral or written, with respect to such matters. This Real Estate Contract shall not supersede any agency agreements entered into by Buyer or Seller and Listing Firm or Selling Firm
29. **BUYER'S DISCLAIMER OF RELIANCE:**
- A. BUYER CERTIFIES BUYER WILL PERSONALLY INSPECT OR HAVE A REPRESENTATIVE INSPECT THE PROPERTY AS FULLY AS DESIRED PRIOR TO CLOSING. BUYER CERTIFIES BUYER HAS NOT AND WILL NOT RELY ON ANY WARRANTIES, REPRESENTATIONS, OR STATEMENTS OF SELLER, LISTING FIRM, SELLING FIRM, OR ANY AGENT, INDEPENDENT CONTRACTOR, OR EMPLOYEE ASSOCIATED WITH THOSE ENTITIES, OR INFORMATION FROM MULTIPLE LISTING SERVICES OR OTHER WEBSITES REGARDING MINERAL RIGHTS, YEAR BUILT, SIZE (INCLUDING WITHOUT LIMITATION THE SQUARE FEET IN IMPROVEMENTS LOCATED ON THE PROPERTY), QUALITY, VALUE OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ALL IMPROVEMENTS, APPLIANCES, PLUMBING, ELECTRICAL OR MECHANICAL SYSTEMS. HOWEVER, BUYER MAY RELY UPON ANY WRITTEN DISCLOSURES PROVIDED BY SELLER. LISTING FIRM AND SELLING FIRM CANNOT GIVE LEGAL ADVICE TO BUYER OR SELLER. LISTING FIRM AND SELLING FIRM STRONGLY URGE STATUS OF TITLE TO THE PROPERTY, CONDITION OF PROPERTY, MINERAL RIGHTS, AND SQUARE FOOTAGE OF IMPROVEMENTS, QUESTIONS OF SURVEY AND ALL OTHER REQUIREMENTS OF BUYER SHOULD EACH BE INDEPENDENTLY VERIFIED AND INVESTIGATED BY BUYER OR A REPRESENTATIVE CHOSEN BY BUYER.
- B. BUYER AGREES TO SIGN PAGE 4 OF THE INSPECTION, REPAIR AND SURVEY ADDENDUM PRIOR TO CLOSING IF BUYER ACCEPTS THE CONDITION OF THE PROPERTY AND INTENDS TO CLOSE.
30. **OTHER:** *This offer is Contingent upon :*
- execution of a lease with the City of Fayetteville for 2 acres in Gulley Park adjacent to the subject property.*
- the approval by the planning commission, and any other relevant government official, of a conditional use permit for the operation of a limited business at the subject property.*
- a satisfactory inspection by buyer as described in 16B, however buyer will not request any repairs by seller*
31. **TIME:** Buyer and Seller agree time is of the essence with regard to all times and dates set forth in the Real Estate Contract. Unless otherwise specified, days as it appears in the Real Estate Contract shall mean calendar days. Further, all times and dates set forth in the Real Estate Contract refer to Arkansas Central time and date.
32. **ATTORNEY'S FEES:** Should Buyer or Seller initiate any type of administrative proceeding, arbitration, mediation or litigation against the other (or against an agent for the initiating party or agent for the non-initiating party), it is agreed by Buyer and Seller (aforementioned agents being third-party beneficiaries of this Paragraph 32) that all prevailing parties shall be entitled to an award of their respective costs and attorney's fees incurred in defense of such initiated action against the non-prevailing party.
33. **COUNTERPARTS:** This Real Estate Contract may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.
34. **FIRPTA COMPLIANCE, TAX REPORTING:** Buyer and Seller agree to disclose on or before Closing, to the person or company acting as Closing Agent for this transaction, their United States citizenship status, solely for the purpose of compliance with the Foreign Investment in Real Property Taxation Act (FIRPTA). In addition Buyer and Seller shall execute all documents required by such Closing Agent to document compliance with the FIRPTA and all other applicable laws. Buyer and Seller agree nothing in this Real Estate Contract is intended to limit the responsibility of the Closing Agent as defined pursuant to United States Treasury Regulation 1.6045-4 to (i) be the "reporting person" under state and federal tax laws (including without limitation 26 USC Section 6045(e)), and (ii) file all necessary forms regarding the Closing, including without limitation form 1099, 8288 or 8288A. By accepting the role as Closing Agent, this Agreement shall obligate the Closing Agent to fulfill their responsibilities as set forth above and as defined by the above statutes. Seller will execute an affidavit confirming compliance with FIRPTA, as prepared by the Closing Agent.
35. **LICENSEE DISCLOSURE:** Check all that apply:
- A. Not Applicable.
- B. One or more parties to this Real Estate Contract acting as a Buyer Seller hold a valid Arkansas Real Estate License.
- C. One or more owners of any entity acting as Buyer Seller hold a valid Arkansas Real Estate License

Page 11 of 12

Serial# 086862-700144-2516144

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Real Estate Contract (Residential)

Page 12 of 12



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36. EXPIRATION: This Real Estate Contract expires if not accepted on or before (month) September
(day) 25, (year) 2015, at 5:00 (a.m.) (p.m.).

THIS IS A LEGALLY BINDING REAL ESTATE CONTRACT WHEN SIGNED BY THE PARTIES BELOW. READ IT CAREFULLY. YOU MAY EMPLOY AN ATTORNEY TO DRAFT THIS FORM FOR YOU. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART, CONSULT YOUR ATTORNEY BEFORE SIGNING. REAL ESTATE AGENTS CANNOT GIVE YOU LEGAL ADVICE. THE PARTIES SIGNED BELOW WAIVE THEIR RIGHT TO HAVE AN ATTORNEY DRAFT THIS FORM AND HAVE AUTHORIZED THE REAL ESTATE AGENT(S) TO FILL IN THE BLANKS ON THIS FORM.

THIS FORM IS PRODUCED AND COPYRIGHTED BY THE ARKANSAS REALTORS® ASSOCIATION. THE SERIAL NUMBER BELOW IS A UNIQUE NUMBER NOT USED ON ANY OTHER FORM. THE SERIAL NUMBER BELOW SHOULD BE AN ORIGINAL PRINTING, NOT MACHINE COPIED, OTHERWISE THE FORM MAY HAVE BEEN ALTERED. DO NOT SIGN THIS FORM IF IT WAS PREPARED AFTER DECEMBER 31, 2015.

FORM SERIAL NUMBER: 086862-700144-2516144

The above Real Estate Contract is executed on
(month) September (day) 17, (year) 2015, at _____ (a.m.) (p.m.).

Lindsey and Associates 9/17/2015 12:38 PM PDT
Selling Firm
Signature: Holly Daniels Signature: Emily Collins Board Chair

Printed Name: Holly Daniels Printed Name: Apple Seeds, Inc.
Principal or Executive Broker Buyer
Signature: Kathy Ball 9/17/2015 3:46 PM CDT Signature: Amanda Warren Board secretary

Printed Name: Kathy Ball Printed Name: Apple Seeds, Inc.
Selling Agent Buyer

The above Real Estate Contract is executed on
(month) 09 (day) 18, (year) 2015, at 10:00 (a.m.) (p.m.).

REAL ASSETS
Listing Firm
Signature: _____ Signature: _____

Printed Name: MARK A BREWER Printed Name: _____
Principal or Executive Broker Seller

Signature: _____ Signature: _____

Printed Name: MARK A. BREWER Printed Name: _____
Listing Agent Seller

The above offer was rejected counter-offered (Form Serial Number _____)
 Buyer informed of Notification of Existing Real Estate Contract Addendum
(Form Serial Number _____)
on (month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.).

Seller's Initials Seller's Initials

Serial# 086862-700144-2516144

General Addendum

Page 1 of 2



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FORM SERIAL NUMBER: 093875-000144-3039195

Regarding the Real Estate Contract (Form Serial Number 086862-700144-2516144),
dated (month) September (day) 17, (year) 2015, between Buyer/Lessee,
Apple Seeds, Inc, and Seller/Lessor,
City of Fayetteville, covering the
real property known as 2648 Old Wire Road, Fayetteville, Arkansas 72703

(the "Property"), the undersigned Buyer and Seller, in consideration for the covenants, agreements and promises made below and other good and valuable consideration, receipt and sufficiency being acknowledged, agree as follows:

***This contract is subject to approval by the Fayetteville City Council
Fayetteville, Arkansas***

-The expiration date on the Real Estate Contract is changed to October 9, 2015

General Addendum



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Page 2 of 2

This General Addendum, upon its execution by both parties, incorporates by reference all provisions of the above-referenced Real Estate Contract not expressly modified herein. This General Addendum may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.

EXPIRATION: This General Addendum shall not be effective unless signed by Buyer/Lessee and Seller/Lessor on or before (month) October (day) 9, (year) 2015, at 5:00 (a.m.) (p.m.).

THIS IS A LEGALLY BINDING AGREEMENT WHEN SIGNED BY THE PARTIES BELOW. READ IT CAREFULLY. YOU MAY EMPLOY AN ATTORNEY TO DRAFT THIS FORM FOR YOU. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART, CONSULT YOUR ATTORNEY BEFORE SIGNING. REAL ESTATE AGENTS CANNOT GIVE YOU LEGAL ADVICE. THE PARTIES SIGNED BELOW WAIVE THEIR RIGHT TO HAVE AN ATTORNEY DRAFT THIS FORM AND HAVE AUTHORIZED THE REAL ESTATE AGENT(S) TO FILL IN THE BLANKS ON THIS FORM. THIS FORM IS PRODUCED AND COPYRIGHTED BY THE ARKANSAS REALTORS' ASSOCIATION. THE SERIAL NUMBER BELOW IS A UNIQUE NUMBER NOT USED ON ANY OTHER FORM. THE SERIAL NUMBER BELOW SHOULD BE AN ORIGINAL PRINTING, NOT MACHINE COPIED, OTHERWISE THE FORM MAY HAVE BEEN ALTERED. DO NOT SIGN THIS FORM IF IT WAS PREPARED AFTER DECEMBER 31, 2015.
FORM SERIAL NUMBER: 093875-000144-3039195

The above General Addendum is executed on (month) September (day) 23, (year) 2015, at _____ (a.m.) (p.m.).

Lindsey and Associates

Selling Firm

Signature: Holly Daniels 9/24/2015 10:55 AM CDT Signature: Emily Collins Board Chair

Printed Name: Holly Daniels Printed Name: Apple Seeds, Inc.
Principal or Executive Broker Buyer/Lessee

Signature: Kathy Ball 9/23/2015 4:15 PM CDT Signature: Amanda Warren Board secretary

Printed Name: Kathy Ball Printed Name: Apple Seeds, Inc.
Selling Agent Buyer/Lessee

The above General Addendum is executed on (month) Sept (day) 23, (year) 2015 at 3:30 (a.m.) (p.m.).

Real Assets Inc.

Listing Firm

Signature: _____ Signature: _____

Printed Name: MARK A. BREWER Printed Name: _____
Principal or Executive Broker Seller/Lessor

Signature: _____ Signature: _____

Printed Name: MARK A. BREWER Printed Name: _____
Listing Agent Seller/Lessor

Page 2 of 2

Serial#: 093875-000144-3039195

Prepared by: Kathy Ball | Lindsey and Associates | kball@lcahall.net |

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General Buyer/Lessee Disclaimer

Page 1 of 1



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Refers to Real Estate Contract / Rental-Lease Agreement Serial Number _____
Property Address: 2648 Old Wire Road, Fayetteville, Arkansas 72703

Presence of Mold in a Property

Mold, mildew, spores and other microscopic organisms and/or allergens (collectively referred to as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and cause serious physical illnesses, including, but not limited to, allergic and/or respiratory reactions or other problems, particularly in persons with immune system problems, young children and/or the elderly. Mold has also been reported to cause extensive damage to personal and real property.

Existence of Chemical or Drug Substances in a Property

Buyer/Lessee is strongly urged, as part of any pre-closing investigation desired by Buyer/Lessee concerning the Property to: (i) conduct testing for possible existence of chemical(s) to manufacture illegal drugs or illegal drug substances in, on or about the Property, as desired by Buyer/Lessee, and (ii) to visit with applicable law enforcement authorities about possible prior illegal activity on or about the Property.

Presence of a Convicted Sexual Offender in the Neighborhood

If the presence of a registered sex offender is a matter of concern to Buyer/Lessee, Buyer/Lessee understands Buyer/Lessee must contact local law enforcement officials or access the State of Arkansas registered sexual offender website at <http://www.acic.org> regarding such information.

Flood or Flood Prone

If the location of the Property being in a Flood or Flood Prone area is of concern to Buyer, Buyer may access FEMA (Federal Emergency Management Authority) at www.msc.fema.gov regarding such information.

Your mortgage lender may require you to purchase flood insurance in connection with your purchase of this property. The National Flood Insurance Program provides for the availability of flood insurance but also establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Due to recent amendments to federal law governing the NFIP those premiums are increasing, and in some cases will rise by a substantial amount over the premiums previously charged for flood insurance for the property. As a result, you should not rely on the premiums paid for flood insurance on this property previously as an indication of the premiums that will apply after you complete your purchase. In considering your purchase of this property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future.

Real estate agents cannot suggest, refer, recommend, or infer that you should or should not use an inspector for Mold, Chemical and Drug Substances. Should you desire an inspection by a qualified inspector, you should contact an inspector who has been authorized and/or certified to capture samples for laboratory testing. No warranty, representation or recommendation can be made by real estate agent(s) concerning any inspector. The Buyer(s)/Lessee(s) signing this disclaimer is/are **STRONGLY URGED** to independently determine the competency of any inspector to be used in connection with the purchase, sale or rental of real estate. By signing this form in the space below, it is acknowledged that the disclaimer listed above has been read and understood, the real estate agent(s) has/have fully complied with the policy outlined herein and I/we understand our responsibility to independently choose and determine the competency of an inspector.

Emily Collins Board Chair

Buyer / Lessee

9/24/2015 10:55 AM CDT

Date

Amanda Warren Board secretary

Buyer / Lessee

9/23/2015 4:15 PM CDT

Date

Page 1 of 1

Serial#: 025483-400144-3039235

Prepared by Kathy Ball, I. Lindsey and Associates, I. Kalkball@ruball.net

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Non-Exclusive Buyer Representation Agreement

Page 1 of 4



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Form Serial Number: 076473-100144-3039317

1. **RIGHT TO REPRESENT:** In consideration of the services of _____
Lindsey and Associates (by and through the Principal Broker or agent thereof assigned by Selling Firm) (hereafter collectively called "Selling Firm") for the purpose of representing _____
Apple Seeds, Inc (hereafter called "Buyer") to possibly acquire an interest in real property, Buyer and Selling Firm agree to conduct negotiations for property made known to Buyer by Selling Firm (the "Property") through Selling Firm. Listing Firm, as used in this Non-Exclusive Buyer Representation Agreement, is a real estate brokerage firm representing persons having property that Buyer may want to purchase. Listing Firm may be the same as Selling Firm and properties owned by persons represented by Selling Firm may be shown to Buyer only if authorized in Paragraph 3 below. Seller, as used in this Non-Exclusive Buyer Representation Agreement, refers to any owner of a property presented or offered to Buyer.
2. **DURATION OF AGENCY:** Selling Firm's authority as Buyer's agent begins at 12:01 a.m. on (month) September (day) 17, (year) 2015, and expires at 11:59 p.m. on (month) December (day) 30, (year) 2015, or upon completion of the acquisition of the Property, unless extended by mutual written agreement of Buyer and Selling Firm. This Non-Exclusive Buyer Representation Agreement may be cancelled at any time by either party.
3. **AGENCY REPRESENTATION:** Buyer understands that Selling Firm may be in the business of representing both buyers and sellers for the purchase and sale of real property. If Buyer decides to view or purchase property from a Seller also represented by Selling Firm, Buyer hereby agrees that:
- A. SELLING FIRM MAY REPRESENT BOTH BUYER AND SELLER** and such agreement by Buyer means:
- (i) Listing/Selling Firm shall not be required to and shall not disclose to either Buyer or Seller any personal, financial or other confidential information concerning the other party without the express written consent of that party; however, Buyer agrees Listing/Selling Firm shall disclose to Buyer information known to Listing/Selling Firm related to defects in the Property and such information shall not be deemed "confidential information." Confidential information shall include but not be limited to any price Seller is willing to accept that is less than the offering price or any price Buyer is willing to pay that is higher than that offered in writing.
 - (ii) Buyer, by selecting this option 3A, acknowledges that when Listing/Selling Firm represents both Buyer and Seller a possible conflict of interest exists, and Buyer further agrees to waive and forfeit individual rights to receive the undivided loyalty of Selling Firm.
 - (iii) Buyer waives any claim now or hereafter arising out of any conflicts of interest from Selling Firm representing both parties. Buyer acknowledges Selling Firm verbally disclosed that Selling Firm may represent both buyers and others, and Buyer has consented to Selling Firm representing both Buyer and Seller before entering into this Non-Exclusive Buyer Representation Agreement.
 - (iv) It is not a breach of fiduciary duty to inform a Seller also represented by Selling Firm of the existence or possibility of offers to purchase the Property other than those contemplated or submitted by Buyer.
- B. SELLING FIRM MAY NOT REPRESENT BOTH:** Buyer understands that Selling Firm may not show to Buyer properties listed with Selling Firm.

Page 1 of 4

Serial#: 076473-100144-3039317

Prepared by: Kathy Bell | Lindsey and Associates | Kbell@lindsey.com

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Non-Exclusive Buyer Representation Agreement

Page 2 of 4



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4. **EARNEST MONEY:** Buyer authorizes and instructs Selling Firm to tender any Earnest Money presented by Buyer with a Real Estate Contract to Listing Firm to be deposited in Listing Firm's escrow account. The Real Estate Contract will serve as a receipt to Buyer for Earnest Money tendered. Should Buyer's Earnest Money be forfeited, Selling Firm will not accept any portion of the forfeited monies from Listing Firm unless consented to by Buyer. If a dispute between Seller and Buyer arises, Buyer authorizes Selling Firm to instruct Listing Firm to interplead the disputed Earnest Money in a court of law or to an arbitrator, and to have Selling Firm's and Listing Firm's costs and attorneys' fees paid out of the funds entered for interpleading.
5. **COST OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES:** Selling Firm will not obtain nor order products or services from outside sources unless Buyer has agreed to pay for them when payment is due.
6. **SELLING FIRM'S FEE:** In consideration of the services to be performed by Selling Firm, Buyer agrees Selling Firm shall be compensated as follows:
- A.** Selling Firm shall collect a fee from Listing Firm or Seller. Buyer shall not be responsible for Selling Firm's compensation; or
- B.** Buyer shall pay to Selling Firm a professional fee of either:
- (i) _____ percent (_____ %) of the gross amount of any accepted Real Estate Contract entered into by Buyer and procured by Selling Firm (or value of any property exchanged for the Property) plus \$ _____ for professional services rendered; or
- (ii) \$ _____ for professional services rendered.
- This fee will be due at the scheduled Closing of the transaction. Buyer is obligated to pay Selling Firm's fee. However, Selling Firm is authorized to accept partial or complete payment of Selling Firm's fee from Seller or from Listing Firm.
- Selling Firm may not have access to any information concerning properties for sale and not listed with a real estate licensee. Buyer agrees Selling Firm shall not have any duty to review or learn of any "For Sale By Owners" or properties not listed with real estate licensees that may suit the desires or needs of Buyer.
7. **FAIR HOUSING:** Buyer agrees that Selling Firm will provide equal services to all interested persons without regard to race, color, religion, sex, national origin, handicap, sexual orientation or familial status. Additionally, Buyer agrees that Selling Firm and Buyer must comply with all state and federal laws while performing this Non-Exclusive Buyer Representation Agreement.
8. **BUYER WARRANTY, REPRESENTATION AND AUTHORIZATION:** Buyer warrants and represents to Selling Firm that no exclusive representation or exclusive agency agreement is in force. Buyer understands that if the warranty and representation contained herein is not true Buyer is strongly encouraged to seek legal advice concerning the possibility of liability for two or more commissions before signing this Non-Exclusive Buyer Representation Agreement. Unless otherwise specified, Buyer warrants, represents and authorizes Selling Firm to take the following actions as deemed appropriate by Selling Firm:
- A.** Inform at the time of initial contact all prospective sellers or their agents with whom Selling Firm has contact pursuant to this Non-Exclusive Buyer Representation Agreement that Selling Firm is acting on behalf of and represents Buyer;
- B.** Disclose Buyer's identity to third parties without prior consent of Buyer unless otherwise specified;
- C.** Present, negotiate and sell properties submitted to Buyer to other prospective buyers.

Page 2 of 4

Serial#: 076473-100144-3039317

Prepared by Kelly Bell, Lindsey and Associates, L.L.C. bell@kellybell.com

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Non-Exclusive Buyer Representation Agreement

Page 3 of 4



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Form Serial Number: 076473-100144-3039317

9. **CLOSING PROTECTION:** Buyer shall have the right to request that title insurer(s), if any, issue closing protection to indemnify against loss of closing funds because of acts of a Closing Agent, title insurer's named employee, or title insurance agent. Any cost for closing protection will be paid by the requesting party(ies). Selling Firm strongly advises Buyer to inquire of the Closing Agent(s) about the availability and benefits of closing protection.

Buyer has been advised of the availability of purchasing a Closing Protection Letter, an additional binder to be added to the Title Insurance Policy at closing. The Closing Protection Letter may be required at the lender's discretion.

10. **SPECIAL CONDITIONS:**

11. **LIMITATION OF RESPONSIBILITY:** Selling Firm shall not be responsible for the condition of the Property and strongly recommends Buyer obtain all third-party inspections deemed necessary by Buyer to determine the condition of the Property including without limitation those provided by the Real Estate Contract. Particularly, Selling Firm does not warrant the Property to be free from mechanical, electrical, structural, infestation, support, environmental or other defects and further disclaims knowledge regarding whether the Seller owns any mineral rights or interests regarding the Property unless specifically set forth in any contract between Buyer and another party. (If ownership of mineral rights is important to Buyer, an Arkansas licensed attorney should be consulted.) Buyer hereby covenants and agrees to indemnify Selling Firm and hold Selling Firm harmless from any and all liability, obligations or demands made by third parties against Selling Firm as a result of Selling Firm's efforts in finding properties for Buyer, including but not limited to damage or injury to property or persons and reasonable attorney's fees. Further, Buyer acknowledges that Selling Firm does not warrant that the Property or any terms of purchase concerning the Property constitutes a transaction more favorable to Buyer than if Buyer were not represented by Selling Firm.

12. **SEVERABILITY:** The invalidity or unenforceability of any provisions of this Non-Exclusive Buyer Representation Agreement shall not affect the validity or enforceability of any other provision of this Non-Exclusive Buyer Representation Agreement, which shall remain in full force and effect

13. **ENTIRE AGREEMENT, MODIFICATION LIMITED:** This Non-Exclusive Buyer Representation Agreement constitutes the entire agreement concerning the subject matter hereof between Buyer and Selling Firm and supersedes any previous oral or written agreement or understanding concerning the employment of Selling Firm by Buyer, or otherwise. This Non-Exclusive Buyer Representation Agreement may not be modified except in writing executed by both Buyer and Selling Firm. Any contract entered into by Seller and Buyer shall not affect, in any respect, this Non-Exclusive Buyer Representation Agreement, except as specifically set forth therein.

14. **TIME:** Buyer and Selling Firm agree time is of the essence with regard to all times and dates set forth in this Non-Exclusive Buyer Representation Agreement. Unless otherwise specified, days as it appears in this Non-Exclusive Buyer Representation Agreement shall mean calendar days. Further, all times and dates set forth in this Non-Exclusive Buyer Representation Agreement refer to Arkansas Central time and date.

Non-Exclusive Buyer Representation Agreement

Page 4 of 4



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Form Serial Number: 076473-100144-3039317

15. **COUNTERPARTS:** This Non-Exclusive Buyer Representation Agreement may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.

THIS IS A LEGALLY BINDING AGREEMENT WHEN SIGNED BY THE PARTIES BELOW. READ IT CAREFULLY. YOU MAY EMPLOY AN ATTORNEY TO DRAFT THIS FORM FOR YOU. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART, CONSULT YOUR ATTORNEY BEFORE SIGNING. REAL ESTATE AGENTS CANNOT GIVE YOU LEGAL ADVICE. THE PARTIES SIGNED BELOW WAIVE THEIR RIGHT TO HAVE AN ATTORNEY DRAFT THIS FORM AND HAVE AUTHORIZED THE REAL ESTATE AGENT(S) TO FILL IN THE BLANKS ON THIS FORM.

THIS FORM IS PRODUCED AND COPYRIGHTED BY THE ARKANSAS REALTORS ASSOCIATION. THE SERIAL NUMBER BELOW IS A UNIQUE NUMBER NOT USED ON ANY OTHER FORM. THE SERIAL NUMBER BELOW SHOULD BE AN ORIGINAL PRINTING, NOT MACHINE COPIED, OTHERWISE THE FORM MAY HAVE BEEN ALTERED. DO NOT SIGN THIS FORM IF IT WAS PREPARED AFTER DECEMBER 31, 2015.

FORM SERIAL NUMBER: 076473-100144-3039317

The above Non-Exclusive Buyer Representation Agreement is executed on

(month) September (day) 23, (year) 2015, at _____ (a.m.) (p.m.)

Lindsey and Associates

Selling Firm

Signature: Holly Daniels

9/24/2015 10:55 AM CDT

Signature: Emily Collins Board Chair

Printed Name: Holly Daniels
Principal or Executive Broker

Printed Name: Apple Seeds, Inc.
Buyer

Signature: Kathy Ball

9/23/2015 4:15 PM CDT

Signature: Amanda Warren Board secretary

Printed Name: Kathy Ball
Assigned Associate

Printed Name: Apple Seeds, Inc.
Buyer

Buyer's Address

City, State Zip

Buyer's Phone

Buyer's e-mail address

Buyer's e-mail address

Page 4 of 4

Serial#: 076473-100144-3039317

Prepared by Kathy Ball, Lindsey and Associates, kball@lindseyandassociates.com

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Apple Seeds Request for Consideration



Apple Seeds would like to request that the city of Fayetteville consider our request to enhance the park system with teaching gardens.

1. Apple Seeds would like to purchase 2648 Old Wire property.
2. Apple Seeds would like to lease (\$1/year) 2 acres of the new Gulley Park Acquisition for Teaching Gardens. Apple Seeds would be responsible for all upkeep and utilities.

Apple Seeds currently operates a Teaching Farm on land owned by a community supporter. We are in need of a sustainable location with adjacent property that the organization owns for infrastructure, offices, teaching kitchen, and storage.

Mission Statement:

Apple Seeds inspires healthy living through garden-based education.



Apple Seeds is a non-profit organization based in Fayetteville, AR that works to educate and excite children about healthy food while increasing access to healthy food in schools. Our mission is to inspire healthy living through garden-based education. Apple Seeds offers experiential learning activities through **school garden** programs, **farm to table** cooking classes, **student-run farmer's markets**, and **Farm Lab** (field trips) at our Teaching Farm. Apple Seeds also integrates a nutrition-based curriculum into all of its activities and materials. Our program increases exposure to healthy foods in a positive atmosphere, empowers students with knowledge about healthy foods, and inspires students to try new fruits and vegetables. By starting at the school level, students are equipped with tools and knowledge to make healthy decisions now, which lead to healthy decisions as adults. The overarching goal is to enable and empower students to actively choose life-long healthy eating habits.

The Need in Fayetteville:

Northwest Arkansas faces both hunger and obesity. Children in food insecure families are especially vulnerable to obesity due to the additional risk factors associated with poverty, including limited access to healthy and affordable foods.

49% of Arkansas adolescents report consuming fruits/vegetables less than one time a day. (*CDC-State indicator report on fruits and vegetables, 2013*).

There is a clear need to reconnect our young students and families with fresh fruits and vegetables. There is strong evidence that gardens increase participating children's vegetable consumption and willingness to try new vegetables (*Langellotto 2012, Scherr 2013, Ratcliffe 2011, Parmer 2009, McAleese 2007, Murphy 2003*).

Among students who participate in our programs, we have seen an increase in positive attitudes toward healthy food. **Recent data shows that 41% of Apple Seeds students replicated a healthy snack at home after attending our student-run market program.**

Goals:

Apple Seeds currently reaches around 4,000 students a year. We reach 1,000 students through Farm Lab and we host 25 student-run farmers markets a year at 3 sites. We provide fresh food to the Fayetteville Public School System. We assist 20 schools a year in supporting and sustaining their school gardens. Our goal is to reach all of the towns of Northwest Arkansas reaching 10,000 students a year. Our goal is for students to have access to healthy food as well as the skills to prepare their own healthy snacks and meals.

Benefits to the City of Fayetteville:

Apple Seeds' mission reinforces the City of Fayetteville's Be Active initiative by encouraging a healthy and active lifestyle. The Teaching Farm Project also supports

the Parks and Recreation's mission for a diversified park system – this project is the only of its kind in Northwest Arkansas. Our current Teaching Farm is a beautiful evidence of our visionary planning and our high degree of importance placed on aesthetics.

Additional benefits to the City of Fayetteville include:

- Increase the beauty of Gulley Park
- Open tours to residents during designated hours
- 2 Garden Workshops/year open to community
- Unique park feature that displays the values of Fayetteville.

APPLE SEEDS, INC. LAND LEASE AGREEMENT

This Agreement to lease a two acre portion of land adjacent to Gulley Park to Apple Seeds, Inc. as shown on the map attached to this Agreement as Exhibit "A" is entered into by and between the **City of Fayetteville** (hereinafter the "City") as landlord and **Apple Seeds, Inc.** (hereinafter "Apple Seeds") as tenant on this _____ day of October, 2015.

WHEREAS, the City is the owner of property located at 2648 Old Wire Road which has been listed for sale and for which Apple Seeds has made an offer to purchase for the purpose with the condition that the City agree to lease a two acre portion of land adjacent to the property and Gulley Park for the purpose of operating the Apple Seeds Teaching Farm; and

WHEREAS, Apple Seeds, Inc. is an Arkansas 501(c)(3) non-profit corporation whose mission is "Apple Seeds inspires healthy living through garden-based education" which reinforces the City's Parks & Recreation "Be Active" initiative by encouraging a healthy and active lifestyle and furthers the City's mission of a diversified parks system; and

WHEREAS, Apple Seeds has agreed, as part of the consideration for this contract, to conduct at least two free public Garden-Based Educational Workshops each year and conduct free public Teaching Farm tours at specified hours at least one day per week during the garden's growing season; and

WHEREAS, the Gulley Park Master Plan has not been updated with the newly acquired 10 acres and a specific use for the two acres Apple Seeds desires to lease has not been designated nor required for any corporate purpose at this time; and

WHEREAS, this agreement is contingent upon Apple Seeds obtaining a conditional use permit from the Fayetteville Planning Commission to operate a teaching farm and the purchase of the property at 2648 Old Wire Road.

NOW, THEREFORE, the **City of Fayetteville** and **Apple Seeds, Inc.** hereby mutually covenant and agree as follows:

1. Leased Premises

The City of Fayetteville agrees to Lease the land shown on the map attached hereto as Exhibit A, which is approximately two acres, to Apple Seeds, Inc. which agrees to accept such leased premises to be used for the purposes normally

associated with a teaching farm and as set forth in later provisions of this lease. If the parties desire a survey, this Agreement may be amended by the parties to adopt the legal description contained in the survey.

2. Use of Leased Premises

Apple Seeds agrees that it will, as a nonprofit charitable corporation, operate, maintain, improve, and promote a teaching farm on the leased property.

3. Consideration for the Lease

In consideration of the twenty year lease and any extensions thereof of about two acres of City of Fayetteville parkland to Apple Seeds, Apple Seeds agrees to:

- A. Provide free access to the teaching farm for all Fayetteville residents on Saturdays from 9:00 a.m. until 12:00 a.m. during the months of March through October. Apple Seeds shall publicly post the times the teaching farm is accessible at no cost to Fayetteville residents on its premises and on its website and social media pages. Free access to Fayetteville residents does not have to include Apple Seeds buildings, but must include all displays, areas and gardens. Public access will begin when the gardens are being planted in the spring of 2016.
- B. Conduct at least two public garden-based educational workshops per year at no cost to Fayetteville residents. The workshops shall be held on a date approved by the Parks and Recreational Director during the spring, summer, or fall seasons and shall be no less than three hours in length.
- C. Construct and maintain a fence around the two acre leased property as shown on the map attached as Exhibit "A" and install a gate for access between Apple Seeds' property at 2648 Old Wire Road and the leased property. Any improvements, including fences, water lines, buildings or other structures, located on City property shall be approved by the Parks and Recreation Director prior to installation and shall comply with all applicable City ordinances and building regulations. Apple Seeds is solely responsible for the upkeep and maintenance of the fences, buildings or other structures it erects on the leased premises. Apple Seeds shall also install a gate for access to the leased premises from Gulley Park and the gate shall remain unlocked and accessible to the public during the times the teaching garden is open to Fayetteville public residents and any other times approved by the Parks and Recreation Director.

- D. Be responsible for all costs associated with constructing and maintaining water lines and irrigation equipment on the leased property and shall be responsible for paying all utility bills and fees associated with this development.
- E. Submit an annual progress report to Parks and Recreation staff and the Parks and Recreation Advisory Board and meet at least annually with Parks and Recreation staff to review Apple Seeds' upcoming program goals.
- F. Operate, maintain, improve and promote a tidy and attractive teaching garden located on the premises leased from the City. Apple Seeds will reach these milestones within the stated timeframe: the preparation of garden grounds to begin by spring of 2016, fence construction will be completed by summer of 2016, and educational programming will begin by spring of 2016.
- G. Comply with any conditions set forth by the Fayetteville Planning Commission or Planning staff as a part of a Conditional Use Permit or other development permits required for its operations.

4. Lease Term

This lease term shall commence upon the approval and execution by both Apple Seeds and the City. It shall continue for twenty years, unless sooner terminated pursuant to this Agreement or by mutual consent of the parties.

5. Teaching Farm Operating Policies

Apple Seeds shall ensure nondiscriminatory operating policies for the teaching garden for all Fayetteville residents. These policies will be designed to preserve and maintain the integrity of all buildings, grounds and improvements on the property although Apple Seeds may alter or remove buildings and improvements when needed for further improvements, construction or for safety reasons.

6. Teaching Farm Rules and Regulations

Apple Seeds may establish and enforce any reasonable rules and regulations regarding behavior of visitors to assure the well-being of the plants and gardens, as well as the safety, comfort and quality of experience for visitors to the premises and shall provide copies of these rules and regulations to the City. To the extent permitted by law, either the City or Apple Seeds may exclude objectionable uses, or abusive or offensive persons from all premises subject to this agreement.

7. Teaching Farm Operation and Supervision

Apple Seeds shall exercise sole operational and supervisory authority over all grounds, buildings and personnel of the Apple Seeds Teaching Farm and over all such matters, including but not limited to, safety, insurance, planning, plant acquisitions, displays and gardens, and the purchase, exchange, or acquisition of additional items to be added to the collection, except as otherwise provided in this agreement. Apple Seeds at its expense will be responsible for all maintenance and security associated with the operation of the teaching farm, including equipment, parking lots, and other improvements. Apple Seeds may not sublet any portion of the leased property without the express written consent of the City Council.

8. Apple Seeds, Inc. is an independent entity

The parties agree that Apple Seeds, Inc. is an independent entity and nonprofit 501(c)(3) Arkansas corporation and will maintain that status and remain in good standing throughout the lease term. The City of Fayetteville has no authority to hire, fire or supervise any Apple Seeds employee. Apple Seeds has the sole authority for selecting, engaging, terminating, fixing compensation, supervising and otherwise directing all of its personnel, contractors and volunteers.

9. Operations and Development must comply with Federal, State and City requirements and restrictions

Apple Seeds agrees to always be in full compliance with all applicable Federal, State or City requirements and restrictions. Specifically Apple Seeds agrees to always use best management practices including obeying all State and City laws and regulations governing the use of pesticides, herbicides and fertilizers. Apple Seeds shall obtain the approval of the Parks and Recreation Director prior to the use of any public parking areas for buses or large passenger vans.

10. Insurance

Apple Seeds agrees to obtain and maintain through the duration of the lease at its own expense, Commercial General Liability Insurance covering public liability, bodily injuries, death, products liability and property damage for damages and expenses arising out of the operation of the teaching farm.

11. Defense and Indemnification

Apple Seeds agrees to defend, indemnify and hold the City, its officers, employees, agents and representatives harmless against all damages, expenses, loss or liability from any claim or suit arising or alleged to have arisen from any act or omission of Apple Seeds, its officers, employees, agents or representatives by reason of the operation of the Teaching Garden under this agreement, including, but not limited to, damage to or destruction of property or injuries to or death of a person or persons.

12. Nonprofit Corporate Status

Apple Seeds shall file a true and correct copy of its corporate charter, with amendments, if any, and an accurate and complete copy of its Bylaws and any amendments thereto, and a copy of the I.R.S. Letter of Determination of I.R.C. Sec. 501(c)(3) status with the City to be maintained as a public record. In the event of subsequent amendments to such charter or bylaws, true and correct copies of the same shall be timely filed with the City Clerk. If the IRS revokes Apple Seeds' 501(c)(3) status, Apple Seeds shall immediately notify the City of this occurrence and such revocation shall be grounds for termination of this lease agreement

13. Financial Reports

Apple Seeds shall provide the City a copy of its annual Form 990 every year. The form will be provided within thirty (30) days of its filing.

14. Rent, Fees, Concessions and Taxes

Apple Seeds shall have the right to set admission fees to the teaching farm, with the exception of the times that are free to Fayetteville residents, as well as fees for optional services such as programs, space rental, etc. Fees shall be reasonable and in line with similar services available in the tourism or educational market place.

Apple Seeds shall pay promptly all taxes and license fees of whatever nature applicable under municipal, state, and federal law. In addition, the parties agree that Apple Seeds shall indemnify and save the City harmless from and against any liens or similar liabilities claimed or charges against Apple Seeds pursuant to Apple Seeds' operation of the teaching farm.

15. Remedies for Breach or Bankruptcy

A. *Termination of Agreement.* The parties agree that if either party materially breaches or fails to perform its obligations under this agreement, the other

party may give notice in writing of intent to terminate. If the breaching or non-performing party fails to commence and effect cure in good faith to the satisfaction of the other party within six months of such notice or such longer period, if agreed in writing by the parties, the agreement shall be deemed terminated at the expiration of the sixth month period or other agreed period. Any request of extension shall not be unreasonably withheld.

B. *Bankruptcy.* In the event Apple Seeds shall be adjudicated bankrupt or insolvent or take the benefit of any reorganization of composition proceedings or insolvency law, or make an assignment for the benefit of creditors, or if Apple Seeds' interest under this agreement shall be levied upon or attempted to be attached or sold under any process of law, or if a receiver shall be appointed for Apple Seeds, then and thereafter the City shall have the right and option to terminate this agreement irrespective of whether or not default exists hereunder, said determination to be effective immediately upon City's exercise of such option by giving written notice to Apple Seeds.

C. *Acts of God.* The parties agree that neither party shall be liable or responsible to the other for delays or impossibilities of performance caused by force majeure occurrences beyond the control of the parties including, but not limited to, civil disorder, fires, floods, or acts of God.

16. Conditions Precedent

This agreement is conditioned upon the occurrence of the following and if any condition fails for any reason, this agreement shall be null and void:

- A. Fayetteville City Council approval of Apple Seeds offer to purchase the property located at 2648 Old Wire Road and Apple Seeds actual purchase of the property.
- B. Apple Seeds shall obtain a conditional use permit for the operation of the teaching farm and associated activities for the property located at 2648 Old Wire Road and the leased property.

17. Authorization

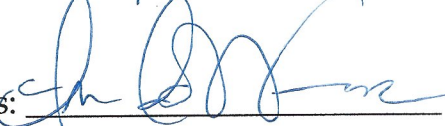
Emily Collins, Board Chair of Apple Seeds, Inc., is authorized by corporate resolution, attached hereto as Exhibit "B", passed by the Board of Directors of Apple Seeds, Inc. on 9/25/15, 2015 to sign the foregoing lease agreement on behalf of Apple Seeds, Inc.

In agreement with all the terms, conditions and promises set forth above, we sign our names below:

APPLE SEEDS, INC.

By: 
Emily Collins, Board Chair

Date: 9/26/15

Witness: 

CITY OF FAYETTEVILLE

APPROVED:

By: _____
Lioneld Jordan, Mayor

Date: _____

ATTEST:

By: _____
Sondra E. Smith, City Clerk/Treasurer



Board of Directors

Travis Brooks
Brittany Corn
Carolyn Dux
Deborah Keazer
Emily Collins Kell
Reed Luhtanen
Mandy Warren

Advisory Board

Jeanette Balleza
Scribe Marketing
Mark Cain
Dripping Springs Garden
Allison Curtis
Parent
Jerrmy Gawthrop
Greenhouse Grille
Christine Haller
Parent, Leverett Elementary
Michele Halsell
Walton College of Business
Dr. Tara Hickmann
NWA Natural Health
Rachel Huff
Parent
Alysen Land
Ozark Natural Foods Coop
Betony Maringer
LaLeche League
Rachel Martin
Parent, Shaw Elementary
Martha Melendez
Parent, Butterfield School
Aimee Papazian
Fayetteville City Schools
Keaton Smith
Iberia Bank

On Line Meeting Minutes

Friday, September 25, 2015
Via Email Communications

- 1. MOTION ON THE FLOOR :** To authorize the chair of the board of Apple Seeds to sign the foregoing lease agreement with the City of Fayetteville on behalf of Apple Seeds Inc.

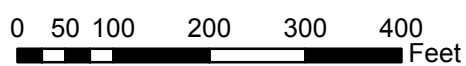
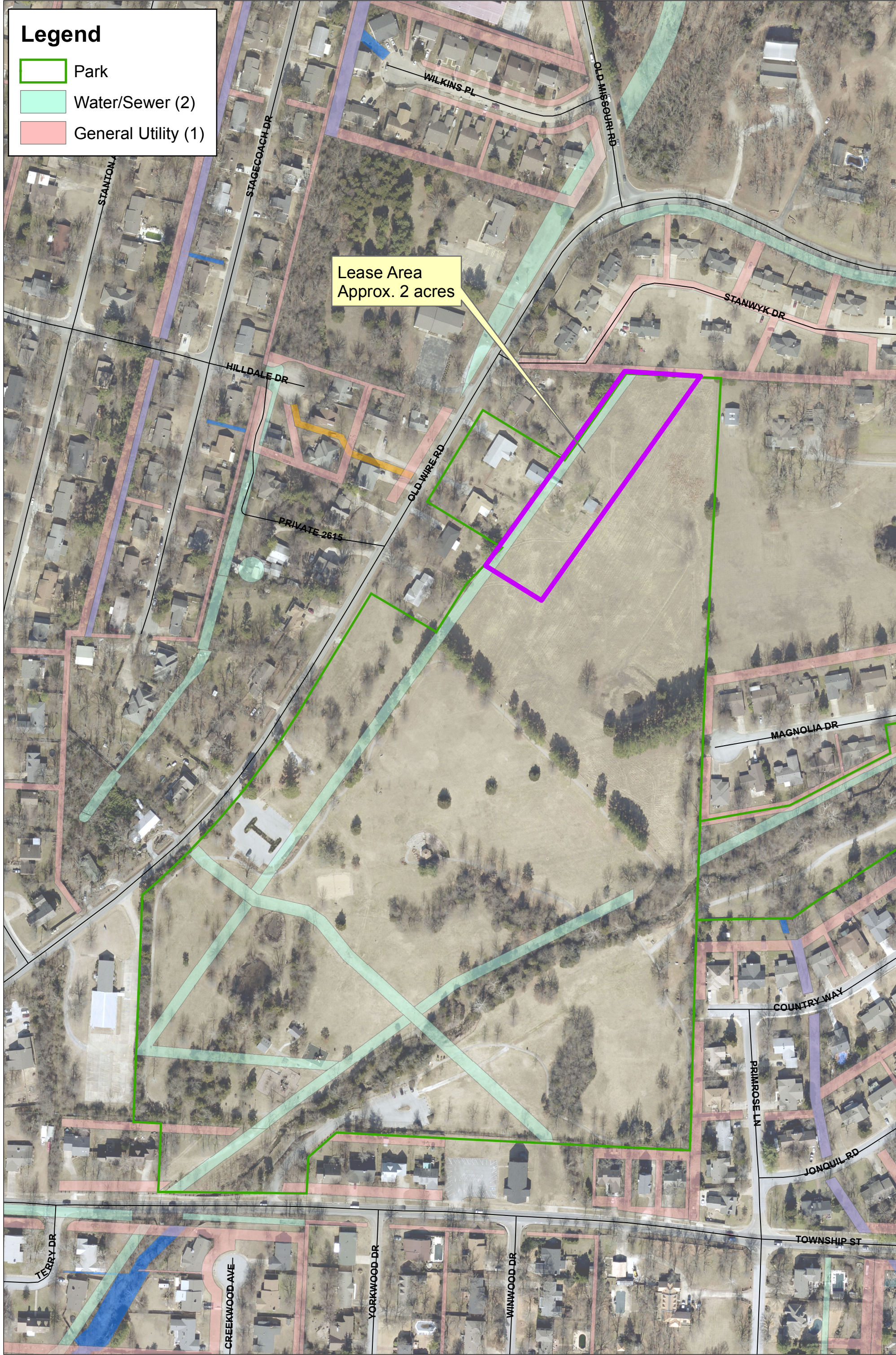
Moved by Carolyn Dux
Seconded by Travis Brooks

Passed with no objections.

Legend

- Park
- Water/Sewer (2)
- General Utility (1)

Lease Area
Approx. 2 acres





113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Resolution: 165-15

File Number: 2015-0408

REAL ASSETS, INC.:

A RESOLUTION TO AUTHORIZE A CONTRACT WITH REAL ASSETS, INC. TO REPRESENT THE CITY IN SELLING APPROXIMATELY 1.25 ACRES OF CITY-OWNED REAL PROPERTY ON OLD WIRE ROAD NEAR GULLEY PARK FOR A SIX PERCENT (6%) COMMISSION

WHEREAS, Fayetteville City Code § 34.27(E) authorizes the use of a realtor to assist the City in selling the two houses owned by the City near Gulley Park; and

WHEREAS, Real Assets, Inc. submitted the only qualified proposal in response to RFP 15-06.

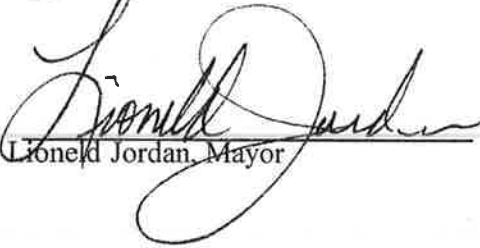
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby authorizes a contract with Real Assets, Inc. to represent the City in selling the two houses near Gulley Park for a six percent (6%) commission.


Section 2: That the City Council of the City of Fayetteville, Arkansas hereby sets the listing price for 2634 Old Wire Road at \$111,500.00 and for 2648 Old Wire Road at \$218,500.00 based on their appraised values.

PASSED and APPROVED on 9/15/2015

Approved:


Lionel Jordan, Mayor

Attest:


Sondra E. Smith, City Clerk Treasurer

