

REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT (this “**Contract**”) is made and executed as of the ___ day of _____, 2021, by and between **CITY OF FAYETTEVILLE, ARKANSAS** (“**Buyer**”), and **THE FARMERS AND MERCHANTS BANK**, an Arkansas state bank (“**Seller**”).

For and in consideration of the mutual covenants stated herein, Buyer and Seller hereby agree as follows:

1. THE PROPERTY

For the price and upon and subject to the terms, conditions and provisions herein set forth, Seller shall sell and convey to Buyer and Buyer shall purchase from Seller that certain real estate and improvements owned by Seller located at 325 N. West Street, Fayetteville, Washington County, Arkansas, also described as parcel number 765-12876-000 and a portion of parcel number 765-18687-000 (the “**Property**”), and as more particularly described on Exhibit A, together with all Seller’s rights, title and interest all public and private streets, roads, avenues, alleys and passageways, and all and singular the estates, rights, privileges, easements and appurtenances belonging or in any way appertaining to the Property.

2. PURCHASE PRICE

Purchase Price. The purchase price for the Property (“**Purchase Price**”) shall be One Hundred Thousand Dollars (\$100,000.00) to be paid in cash at Closing.

3. DEED

On the Closing Date, Seller shall execute a deed to sell and convey to Buyer good and marketable title to the Property by special warranty deed in the form reasonably prescribed by Buyer (the “**Deed**”), subject to no liens, charges, claims, actions, impact fees, development fees, encumbrances or title exceptions of any kind whatsoever (“**Encumbrances**”), except those title exceptions approved in writing by Buyer after Buyer’s review of the Commitment (as hereinafter defined) and legible copies of all title exception documents identified on the Commitment (the “**Permitted Exceptions**”). Title to the Real Property as aforesaid shall be insured by the Title Company as provided in Section 5.

4. SURVEY

Seller has no obligation to provide a survey. Buyer may obtain a current survey at Buyer’s cost.

5. TITLE INSURANCE

Commitment and Title Policy. Within five (5) business days after the date of this Contract, Buyer will order a title insurance commitment (the “**Commitment**”) from Bronson Abstract Company, Fayetteville, Arkansas (the “**Title Company**”) pursuant to which the Title Company shall agree to issue to Buyer, an ATLA owner’s policy of title insurance (the “**Title**”).

Policy”) in the amount of the Purchase Price, insuring marketable fee simple title to the Real Property in Buyer upon recording of the Deed.

Seller’s Title Documents. Seller shall, at Seller’s sole expense, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered to the Title Company, on or before the Closing Date, such affidavits and other documents, to the extent reasonably available to Seller, as the Title Company shall require as a condition to issuance of the Title Policy in the form herein provided (collectively, “**Seller’s Title Documents**”).

6. TITLE DEFECTS

Buyer shall have ten (10) days from the receipt of the Title Commitment and copies of documents constituting exceptions to title to examine the same and to specify to Seller in writing any matters which Buyer finds objectionable, in Buyer’s reasonable discretion (the “Encumbrances”). Any exceptions to title to which Buyer shall not provide an objection within the time frame set forth in this paragraph shall be deemed to be “Permitted Encumbrances”.

Seller shall have thirty (30) days to cure or remove all Encumbrances at its cost and expense. If Seller fails to cause all of the Encumbrances to be removed within such 30-day period or if Seller notifies Buyer of its decision not to cure or remove some or all of the Encumbrances, Buyer’s remedy shall be to:

- (i) Terminate this Contract by giving Seller written notice thereof; or
- (ii) Agree to extend additional time to Seller to cure or remove all Encumbrances; or
- (iii) Elect to purchase the Property subject to the Encumbrances and the Encumbrances not so removed or cured, in which event the Encumbrances not removed or cured shall be deemed “Permitted Encumbrances” and the Purchase Price shall not be reduced by any amount.

7. INVESTIGATION BY BUYER

Buyer has the right to conduct such due diligence as Buyer deems necessary in Buyer’s sole discretion from the date of the execution of this Contract and continuing through five (5) business days prior to Closing. If Buyer, in its sole discretion is not satisfied with the results of its due diligence, Buyer may terminate this Contract at any time prior to Closing by providing written notice to Seller, whereupon this Contract shall be terminated and neither party shall have any further obligation to the other party.

8. REPRESENTATIONS AND WARRANTIES OF SELLER AND BUYER

Seller represents and warrants to Buyer the following through the date hereof and as of the Closing Date to the best of Seller’s knowledge:

- 8.1 Except as disclosed to Purchaser in writing (which disclosure expressly includes without limitation the existence of that certain Option to Purchase Agreement between Seller and Greg House and Ted Belden, dated as of September 1, 2020),

- there are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way.
- 8.2 Seller represents and warrants that at the time of acceptance hereof and at Closing, Seller is not a "foreign person" as such term is defined in Section 1445(f) of the Internal Revenue Code of 1954.
 - 8.3 There are no actions, suits, lawsuits, proceedings, or claims affecting any part of the Property, or affecting Seller with respect to the ownership, occupancy, use, or operation of any part of the Property pending in or before any court, agency, commission, or board.
 - 8.4 No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against Seller.
 - 8.5 Seller has not received notice from any governmental authority, stating that the Property is currently in violation of any zoning, environmental, or other land use regulations or in violation of any required licenses, registrations, certificates, permits, approvals, or other governmental authorizations relating to the use and operation of the Property. If Seller receives such a notice prior to Closing, Seller shall promptly notify Buyer of such a notice and deliver a copy thereof to Buyer.
 - 8.6 Seller has not received any notice that the Property is in violation of any applicable governmental law, regulation, or requirement relating to environmental or occupational health and safety matters or Hazardous Substances ("Environmental Laws"). As used in this Contract, the term "Hazardous Substances" means any and all substances, materials, and wastes which are regulated as hazardous or toxic under applicable local, state, or federal law or which are classified as hazardous or toxic under applicable Environmental Laws.
 - 8.7 Seller has not stored, processed, or disposed of hazardous or toxic substances on the Property.
 - 8.8 no underground storage tanks are located on the Property.

Buyer represents, warrants and covenants to Seller the following through the date hereof and as of the Closing Date:

(i) Buyer has all requisite capacity and legal authority required by law to enter into, legally bind and consummate the transaction contemplated by this Contract;

(iii) No consent or approval is required to be obtained from and no action needed to be taken by or document filed with any judicial, governmental or self-regulatory agency or instrumentality in connection with the execution, delivery and performance of this Contract, including without limitation any consents or approvals required by the Fayetteville, Arkansas City Council, or if any such action is required, the same has been or will be duly taken prior to the Closing Date and at the Closing will be in full force and effect and will constitute valid and sufficient consent or approval therefor.

9. TAXES AND ASSESSMENTS

Seller shall pay all real estate taxes and current installments of assessments, if any, for the year 2020. All real estate taxes and assessments, if any, levied against the Property for the year 2021, shall be prorated between Buyer and Seller as of the Closing Date based upon the latest available information.

10. CLOSING COSTS AND ADJUSTMENTS

Seller's Costs. Seller shall pay the cost of (1) one-half of the documentary stamps; (2) the cost of the owner's title insurance policy; (3) one-half the Title Company's closing fee and document preparation fee; (4) the Title Company's title search fee; (5) all certificates, instruments and documents which Seller is required to deliver or cause to be delivered; and (6) its legal fees and expenses.

Buyer's Costs. Buyer shall pay the cost of (1) one-half of the documentary stamps; (2) one-half the Title Company's closing fee and document preparation fees; (3) any endorsements to the owner's title insurance policy, as well as the cost of a lender's title insurance policy, if applicable; (4) all certificates, instruments and documents which Buyer is required to deliver or cause to be delivered; (5) Buyer's legal fees and expenses; and (6) the survey, if Buyer chooses to obtain one.

Closing Adjustments. The following adjustments shall be made at the Closing:

Taxes and assessments as set forth in Section 9 of this Contract.

If at any time any of the amounts to be apportioned under this Section 10 hereof cannot be calculated with complete precision because the amount or amounts of one or more items included in such calculation are not then known, such calculations shall be made on the basis of a reasonable estimate by Seller and Buyer of the amount or amounts of the item or items in question, based upon the previous amounts paid with respect to the Property, if any.

11. CONDEMNATION AND CASUALTY

If, prior to the Closing Date, all or any part of the Property shall be condemned by governmental or other lawful authority, Buyer shall have the option, exercised by delivery to Seller of written notice of such election on or before the fifteenth (15th) business day following the date on which Buyer receives from Seller written notice of such condemnation, or the Closing Date, whichever last occurs, of either (a) completing this transaction, in which event (i) there shall be no reduction of the Purchase Price, (ii) Seller shall have no duty to repair or restore, (iii) Seller shall pay to Buyer all condemnation proceeds received by Seller with respect to such condemnation, and (iv) Seller shall assign to Buyer all rights of Seller in and to such condemnation proceeds, or (b) cancelling this Contract.

If the Property, or any portion thereof, is damaged or destroyed by fire or other casualty prior to Closing, then, at the option of Buyer, exercised by delivery to Seller of written notice of such election on or before the fifteenth (15th) business day following the date on which Buyer receives from Seller written notice of such damage or destruction, or the Closing Date, whichever last occurs, this Contract shall terminate. In the event Buyer does not elect to terminate the Contract, this Contract shall remain in full force and effect without abatement of

the Purchase Price except that Seller, at Closing, shall transfer and assign to Buyer all of Seller's right, title and interest in and to the insurance proceeds when, as, and if received by Seller by reason of such damage or destruction, and shall convey the Property to Buyer subject to such casualty. Seller shall furnish to Buyer such documents, reasonable cooperation and assistance as Buyer requires in order for Buyer to process any insurance claim.

12. LEASES AND OTHER AGREEMENTS

During the period from the date of this Contract to and including the Closing Date, Seller shall not, without the prior consent of Buyer enter into any lease of the Property without Buyer's prior written consent.

13. CLOSING

Closing Date. Provided all conditions to closing set forth in this Contract have been satisfied or waived by Buyer and Seller, and this Contract has not been terminated by either party in accordance with provisions herein set forth, the transaction contemplated herein is estimated to close by April 1, 2021 or such other date as is mutually agreeable to Seller and Buyer. Such date for the closing of title is herein called the "**Closing Date**" or such occurrence is called the "**Closing**" or "**closing**".

Seller's Deliverables. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company the following items, to the extent in Seller's possession and to the extent not previously provided to Buyer: (a) all keys for all entrance doors and spaces which may be locked (whether occupied or not); (b) Warranty Deed; and (c) Seller's Closing Statement and such other documents as Title Company may require at Closing.

Buyer's Deliverables. On or before the Closing Date, Buyer shall deliver or cause to be delivered to the Title Company the following: (a) by federal wire transfer of funds to the Title Company's escrow account an amount equal to (i) the balance of the Purchase Price due at closing, adjusted as herein provided, plus (ii) the aggregate amount of closing costs for which Buyer is responsible as provided herein, all as shown on Buyer's closing statement; (b) and Buyer's Closing Statement and such other documents as Title Company may require at Closing.

14. POSSESSION

Exclusive possession of the Property shall be delivered to Buyer on the Closing Date.¹

15. BROKERAGE

Seller hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction.

¹ Do we need any agreement to occupy or use the property after closing for any reason? Parking for example?

Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction.

16. SURVIVAL

All warranties, representations, covenants, obligations and agreements contained in this Contract shall survive the closing hereunder and the transfer and conveyance of the Property and any and all performances hereunder.

17. TIME

Time is of the essence of this Contract.

18. NO WAIVER

Except as herein expressly provided, no waiver by a party of any breach of this Contract or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by the other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Contract or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Contract or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

19. INSTRUMENTS IN WRITING

No agreement, consent, approval, notice, amendment, modification, understanding, or waiver of or with respect to this Contract or any agreement, instrument, or document entered into pursuant to or with respect to this Contract, or any term, provision, covenant, or condition hereof or thereof, nor any approval or consent given under or with respect to any of the foregoing, shall be effective for any purpose unless contained in a writing signed by the party against which such agreement, amendment, modification, understanding, waiver, approval or consent is asserted.

20. SUCCESSORS AND ASSIGNS

This Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties.

21. NOTICES

Any and all notices, requests, demands, or other communications hereunder shall be deemed to have been duly given if in writing and if transmitted by hand delivery with receipt therefor, by facsimile delivery (with confirmation by hard copy), by overnight courier, or by registered or certified mail, return receipt requested, first class postage prepaid addressed as follows (or to such new address as the addressee of such a communication may have notified the

sender thereof) (the date of such notice shall be the date of actual delivery to the recipient thereof):

If to Buyer: City of Fayetteville
Attn: Mayor's Office
113 W. Mountain Street
Fayetteville, Arkansas 72701
Mayor@fayetteville-ar.gov

If to Seller: The Farmers And Merchants Bank
Attn: Blake Holzauer
One South Block Avenue
Fayetteville, Arkansas 72701
bholzauer@mebanking.com

Either party may designate a different address or addresses for itself by notice similarly given. Any notice given by registered or certified mail shall be deemed to have been given on the third day after the same is deposited in the mail, and any notice not so given shall be deemed to have been given upon receipt of the same by the party to whom the same is to be given.

22. ENTIRE AGREEMENT

This Contract contains the entire agreement with respect to the transactions contemplated herein, and there are no other terms, conditions, promises, understandings, statements, or representations, express or implied, concerning the same.

23. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Arkansas.

24. ESTOPPEL

Each party confirms and agrees that (a) it has read and understood all of the provisions of this Contract; (b) it has negotiated with the other party at arm's length with equal bargaining power; and (c) it has been advised by competent legal counsel of its own choosing.

25. JOINT PREPARATION

This Contract is deemed to have been jointly prepared by the parties hereto, and any uncertainty or ambiguity existing herein, if any, shall not be interpreted against any party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

26. ASSIGNMENT

Neither party may assign this contract without the prior written consent of the other party, which consent may be provided or withheld in such party's sole discretion.

27. WAIVER OF JURY TRIAL

EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS CONTRACT.

28. ATTORNEYS FEES

If either party is required to bring litigation to enforce its rights under this contract, the prevailing party shall be entitled to recover its attorney's fees and costs, including expert witness fees.

29. DEFAULT

If Buyer shall default under this Contract, including without limitation the breach of any warranty or representation of Buyer set forth in Section 8 of this Contract, Seller shall be immediately entitled to terminate this Contract, as the sole and exclusive remedy of Seller, all other remedies being expressly waived. If Seller shall default under this Contract, Buyer shall be immediately entitled to terminate this Contract, as the sole and exclusive remedy of Buyer, all other remedies being expressly waived.

30. CONTINGENCIES

This Contract is explicitly contingent upon Buyer successfully entering into and closing on a contract with Fayetteville Depot, LLC for the purchase of certain real estate which is adjacent to the Property and owned by Fayetteville Depot, LLC. Closing on this Contract is to occur simultaneously with Buyer closing on the adjacent real estate.

[Remainder of this page is left intentionally blank.]

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

BUYER:

CITY OF FAYETTEVILLE, ARKANSAS

By:

Lioneld Jordon, Mayor

Date: _____

ATTEST:

By: _____

Kara Paxton, City Clerk-Treasurer

SELLER:

THE FARMERS AND MERCHANTS BANK,
an Arkansas state bank

By: Blake Holzauer
Name: Blake Holzauer
Title: SVP / Chief Commercial Lending Officer
Date: 3/12/2021

EXHIBIT A

Legal Description of Property