R-21-162

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE REAL ESTATE CONTRACT TO SELL CERTAIN REAL PROPERTY LOCATED NEAR RIVERFRONT DRIVE AND SMARTHOUSE WAY IN THE CITY OF NORTH LITTLE ROCK, ARKANSAS TO JCDD, LLC; AND FOR OTHER PURPOSES.

WHEREAS, Arkansas Code Ann. § 14-54-302 authorizes the City to sell its real property when authorized by a resolution approved by a majority vote of the City Council present and participating; and

WHEREAS, on August 23, 2021, the City Council adopted Resolution No. 10091, authorizing the Mayor and City Clerk to enter into an Exclusive Right-to-Sell-/Lease Agreement with iRealty Arkansas Sherwood for certain real property located near Riverfront Drive and Smarthouse Way in the City of North Little Rock, identified in the attached proposed Real Estate Contract (Commercial) and Seller's Counter to the Real Estate Contract attached hereto collectively as Exhibit A, containing approximately 1.18 acres of land; and

WHEREAS, JCDD, LLC has offered to pay the sum of $450,000.00 for the Property; and

WHEREAS, JCDD, LLC has submitted a proposed development plan with estimated time line attached hereto as Exhibit B; and

WHEREAS, it is in the best interest of the City and its residents to sell the Property to JCDD, LLC and/or its assigns and to approve the proposed development plan and estimated timelines.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a Real Estate Contract (substantially similar to Exhibit A attached hereto) and to sell JCDD, LLC the Property located near Rivertfront Drive and Smarthouse Way, subject to the terms contained in the Counter Offer.

SECTION 2: That the proposed development plan and estimated timelines set out in Exhibit B is hereby approved.

SECTION 3: That the Mayor and City Clerk are hereby authorized to execute all documents necessary to effect the completion of the herein stated sale; with all contracts/agreements to be reviewed and approved by the City Attorney prior to execution.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

Terry C. Hartwick by AF

Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 10:35 A.M. _____ P.M.

By A. Fields

DATE 10-19-21

Diane Whitbey, City Clerk and Collector
North Little Rock, Arkansas

RECEIVED BY S. Usserg

Real Estate Contract (Commercial)

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FORM SERIAL NUMBER: *012450-400163-0351405*

1. PARTIES: *JCDD, LLC and/or its Assigns*

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

2. ADDRESS AND LEGAL DESCRIPTION:

A. ADDRESS: *Smarthouse Way, North Little Rock, AR*

B. FULL LEGAL DESCRIPTION: *A portion of Parcel #33N2680003500 consisting of approximately +/- 1.18 acres of land, which is further described on attached Exhibit "A".*

A legal description shall be determined by Survey, as provided for in Section 8 hereof; whereby both parties shall use reasonable efforts to agree to the Survey within 90 days following execution hereof.

Furthermore, the Parties agree that any portion of the Property south of the "Flood Wall Line" shall not be included in the purchase, but is subject to an Access Easement as provided for in Exhibit "C".

3. PURCHASE PRICE: Buyer shall pay the following to Seller for the Property (the "Purchase Price") $*392,000.00* payable as follows:

The Purchase Price shall be Three Hundred, Ninety-Two Thousand and No/100 Dollars ($392,000.00), payable as follows; all cash or equivalent at Closing.

EXHIBIT A

Serial#: 012450-400163-0351405
Prepared by: Joseph Jenkins | Newmark Moses Tucker Partners | ajenkins@grubbellisar.com |
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FORM SERIAL NUMBER: *012450-400163-0351405*

4. CONVEYANCE: Unless otherwise specified, conveyance of the Property shall be made to Buyer by [X] general warranty deed [ ] special 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 17. 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 that 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.

5. TITLE INSURANCE: Buyer and Seller understand that 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. Regardless of the policy chosen, Buyer and Seller shall have the right to choose their Closing Agent(s). Within ___30___ days of acceptance, Seller shall furnish to Buyer a commitment for an American Land Title Association (ALTA) owner's title insurance policy in the amount of the Purchase Price issued by a company of Seller's choice authorized to insure title to real property in the State of Arkansas and which company is reasonably acceptable to Buyer.

Where the title commitment shows special exceptions to title other than those standard exceptions contained in the ALTA commitment form, and where such special exceptions relate to restrictions, conditions, defects or other matters that would interfere with Buyer's use or adversely affect the value of the Property, then within ___10___ days of delivery of the title commitment, Buyer shall deliver written notice thereof to Seller. Such notice shall state specifically those exceptions to which Buyer objects. All objections not specifically enumerated within such a timely delivered notice shall be deemed to be waived by Buyer.

Within ___10___ days of Buyer's delivery of notice of objections to Seller, Seller may cure such objections or have the exceptions waived or removed by the title company issuing the commitment. If, within such ___10___ day period, Seller fails to cure and/or waive such objections and exceptions, or within that period, Seller delivers written notice to Buyer that it will not so cure, then within ___10___ days from delivery of such notice from Seller or the end of the period within which Seller may cure (whichever is applicable), Buyer shall have the option to:

A. Terminate this Real Estate Contract by delivering written notice thereof to Seller, in which event all sums paid or deposited by Buyer shall be returned to Buyer; or

B. Agree to purchase the Property as scheduled subject to such objections and exceptions with no reduction in the Purchase Price; or

C. Agree to extend the Closing date for ___30___ days to give Seller additional time to cure such objections. If Buyer fails to deliver notice of termination or grant an extension of the Closing date within that period, the objections shall be deemed to be waived and the transaction shall close as scheduled.

Seller shall furnish the committed owner's title insurance policy as soon as practicable after Closing, and shall pay all expenses related to the owner's title insurance policy.

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6. NON-REFUNDABLE DEPOSIT: The Non-Refundable Deposit (hereinafter referred to as "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 transaction. 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 the 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. Paragraphs that constitute exclusive fault of the Seller include, but are not limited to, Paragraphs 5, 8, 11, 13B, 15B, 17, 18 or 20, as a termination pursuant to each of the listed paragraphs would cause Seller to forfeit the Deposit back to Buyer. The Deposit will be credited to Buyer at Closing. Buyer shall hold Listing Firm and Selling Firm harmless of any dispute regarding the 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.

☐ **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 following agreement to repairs on Inspection Repair & Survey Addendum; or
- ☐ iii. Other: _____

7. EARNEST MONEY: Earnest money is in the amount of $*0.00* ("Earnest Money"), which shall apply toward Buyer's Purchase Price or Closing Costs. If at least one or more of the conditions of Paragraphs 5, 13B, and 20 (if any) have not been fulfilled, performed or removed, Earnest Money shall be promptly refunded to Buyer. If Buyer fails to fulfill his obligations under this Real Estate Contract, or if after all conditions have been met Buyer fails to close this transaction, Earnest Money may, at the sole and exclusive option of Seller, be retained by Seller as liquidated damages. Alternatively, Seller may return Earnest Money and assert all legal or equitable rights that may exist as a result of Buyer breaching this Real Estate Contract. Buyer warrants, represents and acknowledges that the check tendered will be honored upon presentation to Buyer's bank, and that Buyer shall be in default of this Real Estate Contract if the check is not honored upon first presentation to Buyer's bank. Buyer understands that failure to tender Earnest Money as required by this Paragraph 7 shall constitute a breach of this Real Estate Contract. Buyer and Seller agree that in the event of any dispute concerning entitlement to Earnest Money, Listing Firm may interplead Earnest Money into a court of competent jurisdiction, and upon such interpleading of Earnest Money, both Listing Firm and Selling Firm shall be released from liability to Buyer and Seller. Listing Firm shall be reimbursed for all costs and attorney's fees from the funds entered for interpleading.

☐ **A.** Earnest Money is tendered by Buyer in the form of ☐ cash ☐ check. If Earnest Money is tendered by check, it will be made payable to ☐ Listing Firm, ☐ Closing Agent _____ ☐ Other _____. Earnest Money will be deposited by Listing Firm no later than three (3) business days following the date this Real Estate Contract has been signed by Buyer and Seller.

☐ **B.** Earnest Money will be tendered by Buyer in the form of ☐ cash ☐ check. If Earnest Money is tendered by check, it will be made payable to ☐ Listing Firm, ☐ Closing Agent _____ ☐ Other _____. Earnest Money will be deposited within three (3) business days following the date this Real Estate Contract has been signed by Buyer and Seller. (If Earnest Money is not to be tendered within three (3) business days after this Real Estate Contract has been signed by Buyer and Seller, see Paragraph 17.)

☒ **C.** No Earnest Money will be tendered. References to Earnest Money in this Real Estate Contract shall not be applicable and are deemed deleted.

The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties.

Serial#: 012450-400163-0351405
Prepared by: Joseph Jenkins | Newmark Moses Tucker Partners | ajenkins@grubbellisar.com |

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8. SURVEY: Buyer has been given the opportunity to obtain a new certified survey. Should Buyer decline to obtain a survey as offered in Paragraph 8A 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 ☒ ALTA Certified Survey

☐ 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 _____

Specific Survey Requirements: ***ALTA, which shall be certified at Closing in favor of Buyer (or it's designee, Buyer's mortgage lender and the title company. Buyer shall have 5 days to approve or disapprove of Sellers selected Surveyor.***

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.

9. 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 and special assessments, rental payments and interest on any assumed loans shall be prorated as of Closing, unless otherwise specified herein.

10. FIXTURES AND ATTACHED EQUIPMENT: Unless specifically excluded herein, all fixtures and attached equipment, if any, are included in the Purchase Price. If any personal property is included in the Purchase Price it will be described in a separate exhibit attached hereto and incorporated by reference herein (hereinafter referred to as the "Personal Property"). The Personal Property does not include any software or related materials that Seller does not have the legal right to transfer or license to Buyer, and does not include any items leased to Seller under any operating contract. Seller agrees to execute a Bill of Sale at Closing transferring ownership of the Personal Property to Buyer.

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11. CLOSING: Closing is the date and time at which Seller delivers the executed and acknowledged deed. Buyer and Seller agree the Closing date will be (month) ***See Sec 17*** (day) ***See Se***, (year) ***See Sec 17***. The Closing date may be changed by written agreement of Buyer and Seller. If the sale is not consummated by Closing date (or any written extension thereof) the parties shall have the remedies available to them in equity or at law, including the remedies available to them in Paragraph 7.

Buyer and Seller shall have the right to choose their Closing Agent(s) and are not relying on Listing Firm or Selling Firm to choose a Closing Agent. Should Buyer or Seller choose the services of a Closing Agent(s) other than Selling Firm or Listing Firm, then Buyer and Seller each jointly and severally agree to indemnify and hold Listing Firm and Selling Firm harmless for all intentional misconduct and negligent acts (including acts of omission) of the Closing Agent(s).

This Real Estate Contract shall serve as written closing instructions to the Closing Agent on behalf of the Buyer and Seller. The Closing Agent(s) is/are authorized to provide Seller's settlement statement to Listing Firm (in addition to Seller) and Buyer's settlement statement to Selling Firm (in addition to Buyer) prior to settlement so that Buyer, Seller, Listing Firm and Selling Firm shall have a reasonable opportunity to review prior to Closing.

Buyer and Seller shall each have the right to request 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). Listing Firm and Selling Firm strongly advise Buyer and Seller to inquire of the Closing Agent(s) about the availability and benefits of closing protection.

Unless otherwise agreed by Buyer and Seller, transaction costs will be paid by the party indicated below.

Seller	Buyer
Title Examination or search fees	Recording fees
Premium for owner's title insurance policy	Premium for mortgagee's title insurance policy
Preparation of conveyance documents	Preparation of loan documents
One-half of escrow fees	One-half of escrow fees
One-half of documentary stamps	One-half of documentary stamps
Other charges as customarily paid by Seller	Other charges customarily paid by Buyer
IRS Notification form	

This Real Estate Contract shall, unless otherwise specified in Paragraph 17 of this Real Estate Contract, constitute express written permission and authorization to Listing Firm and Selling Firm to disclose the terms of this Real Estate Contract (and all Addenda), including without limitation concessions provided by Buyer or Seller or other non-public personal information of Buyer and Seller regarding the purchase and sale of the Property, to any of the following: (i) an Arkansas licensed appraiser; (ii) multiple listing services for use by the members thereof; and (iii) any other person or entity which Listing Firm or Selling Firm determines, using sole discretion, may have a legitimate basis to request and obtain such information. The authorization and permissions granted in this Paragraph 11 shall not create any obligation or duty upon Listing Firm or Selling Firm to make any disclosure to any person or entity.

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12. POSSESSION: Possession of the Property shall be delivered to Buyer: (Check one)

☒ **A.** Upon the Closing (Seller's delivery of executed and acknowledged Deed).

☐ **B.** Other, as follows:_____

13. SELLER PROPERTY DISCLOSURE: (Check one)

☐ **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 16 of this Real Estate Contract. 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 16 of this Real Estate Contract.

☒ **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 16 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.

☐ **D.** Buyer understands no disclosure form is available and will not be provided by Seller. BUYER IS STRONGLY URGED BY SELLING FIRM AND LISTING FIRM TO MAKE ALL INDEPENDENT INSPECTIONS DEEMED NECESSARY PRIOR TO SIGNING THIS REAL ESTATE CONTRACT.

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14. ENVIRONMENTAL REPRESENTATION: Seller hereby represents to Buyer that to Seller's knowledge (unless otherwise disclosed herein):

A. The Property is not the subject of any judicial or administrative notice or action relating to hazardous waste or environmental contamination;

B. Seller has received no notice of any claim or violation of any law or regulation having to do with environmental protection;

C. No hazardous or toxic substances have been stored, processed, or disposed of on the Property during the period that Seller has owned the Property; and

D. No underground storage tanks are located on the Property.

15. TERMITE CONTROL REQUIREMENTS: (Check one)

[X] **A.** None

[ ] **B.** Seller shall provide prior to Closing, at Seller's expense, a current termite control policy issued by a licensed operator, satisfactory to Buyer.

16. 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, 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. IN THE EVENT THAT THE INSPECTION, REPAIR AND SURVEY ADDENDUM IS USED, 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.

17. OTHER:

Seller agrees to pay Newmark Moses Tucker Partners Three (3%) percent of the gross amount of this accepted Real Estate Contract.

Section 11 - Closing: The parties shall set a Closing date following removal of the Contingencies, which shall be on or before thirty (30) days following said removal.

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18. CONTINGENCIES: Buyer's offer to purchase the Property is expressly contingent upon Buyer's satisfaction of the contingencies checked below within the deadline indicated for each contingency. Buyer shall notify Seller in writing when the contingencies are satisfied. If Buyer fails to provide such written notice before the indicated deadline that a contingency checked below has been satisfied, then this Real Estate Contract shall be terminated with Buyer and Seller both agreeing to sign the Termination of Contract, with Buyer to receive a refund of the Earnest Money and Buyer and Seller shall have no further obligation to each other unless otherwise provided in this Real Estate Contract.

Contingencies (check all that apply):

☒ **A.** Obtain satisfactory financing, in Buyer's sole discretion, within ***180*** days after acceptance.

☒ **B.** Obtain satisfactory results of a feasibility study, in Buyer's sole discretion, within ***180*** days after acceptance.

☒ **C.** Obtain satisfactory results of a Property inspection, in Buyer's sole discretion, within ***180*** days after acceptance.

☒ **D.** Obtain satisfactory results of an environmental report, in Buyer's sole discretion, within ***180*** days after acceptance.

☒ **E.** Obtain satisfactory rezoning, platting, re-platting, or zoning verification, in Buyer's sole discretion, within ***180*** days after acceptance.

☐ **F.** _____
within _____ days after acceptance.

☐ **G.** _____
within _____ days after acceptance.

☐ **H.** _____
within _____ days after acceptance.

Additional requirements related to any of above contingencies:

Additional Contingencies requirements are provided for in attached Exhibit "C".

Seller agrees to have all utilities connected and turned on to Property.

Sellers hereby grant to Buyer, its agents and contractors, the right to enter upon the Property to make tests and/or inspections. If the Property is damaged by Buyer or Buyer's agents or contractors during Buyer's inspections or test of the Property, Buyer shall repair and restore the Property to substantially the same condition as existed prior to conducting the inspection and test. Buyer shall indemnify Seller and its agents and hold them harmless from any and all liability, damages, claims, expenses, including reasonable attorney's fees, judgments, proceedings and causes of action of any kind to the extent caused by Buyer's inspection and testing activities with such indemnity obligation expressly surviving Closing or termination of the Real Estate Contract for any reason.

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19. AGENCY: (Check all that apply)

☐ **A. LISTING FIRM AND SELLING FIRM REPRESENT SELLER:** Buyer acknowledges that Listing Firm and Selling Firm and all licensees associated with those entities are the agents of Seller and that 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 that 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 that Listing Firm represents Seller. Seller acknowledges Listing Firm verbally disclosed that 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 that 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 that 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 19C, Buyer and Seller acknowledge that 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 that 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 that Selling Firm and all licensees associated with Selling Firm are the agents of Buyer and that 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 attached Non-Representation Disclosure Addendum. If item E is checked it should be accompanied by a corresponding entry to Paragraph 32 B or C.

20. RISK OF LOSS: Risk of loss or damage to the Property by fire or other casualty occurring prior to the time Seller delivers an executed and acknowledged deed to Buyer is expressly assumed by Seller. Should the Property be damaged or destroyed prior to Closing, Buyer shall have the option to: (i) enter into a separate written agreement with Seller whereby Seller will agree to restore the Property to its condition at the time this Real Estate Contract was accepted, (ii) accept all insurance proceeds (in an amount not more than the Purchase Price with any proceeds in excess of the Purchase Price to remain the property of Seller) and the Property in its existing condition, or (iii) terminate this Real Estate Contract and recover the Earnest Money. Buyer and Seller agree any written agreement concerning option (i) or (ii) above shall be prepared only by licensed attorneys separately representing Buyer and Seller. Notwithstanding the choice selected in Paragraph 16, Buyer shall have the right prior to Closing to inspect the Property to ascertain any damage that may have occurred due to fire, flood, hail, windstorm or other acts of nature, vandalism or theft.

Serial#: 012450-400163-0351405
Prepared by: Joseph Jenkins | Newmark Moses Tucker Partners | ajenkins@grubbellisar.com |
Form Simplicity
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FORM SERIAL NUMBER: *012450-400163-0351405*

21. GOVERNING LAW: This Real Estate Contract shall be governed by the laws of the State of Arkansas.

22. SEVERABILITY: The invalidity or unenforceability of any provisions of this Real Estate Contract shall not affect the validity or enforceability of any other provision of this Real Estate Contract, which shall remain in full force and effect.

23. 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.

24. ASSIGNMENT: This Real Estate Contract may not be assigned by Buyer unless written consent of Seller is obtained, such consent not to be unreasonably withheld. It shall not be unreasonable for Seller to withhold consent if Seller is to provide financing for Buyer in any amount.

25. ACCEPTANCE: The term "acceptance" as used herein shall mean the later of the two dates on which this Real Estate Contract is signed by Seller or Buyer, as indicated by their signatures below, which later date shall be the date of final execution and agreement by the parties hereto. If any date or deadline provided for herein falls on Saturday, Sunday, or a holiday, the applicable date shall be the next business day.

26. TIME: Buyer and Seller agree time is of the essence with regard to all times and dates set forth in this Real Estate Contract. Unless otherwise specified, days as it appears in this Real Estate Contract shall mean calendar days. Further, all times and dates set forth in this Real Estate Contract refer to Arkansas Central time and date.

27. 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 27) that all prevailing parties shall be entitled to an award of all costs and attorney's fees incurred in defense of such initiated action against the non-prevailing party.

28. 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. Electronic signatures shall be deemed original signatures and shall be binding upon the parties.

29. 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 that 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 Real Estate Contract 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.

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FORM SERIAL NUMBER: *012450-400163-0351405*

30. NOTICE: All notices, requests and other communications under this Agreement shall be in writing and shall be delivered in person, or sent by overnight courier or certified mail, return receipt requested, addressed as follows:

If to Seller: *City of North Little Rock, Attn: Mayor Terry Hartwick, 300 Main Street, North Little Rock, AR 72114*

With a copy to: *Robert Birch, 300 Main Street, North Little Rock, AR 72114, rbirch@nlr.ar.gov*

If to Buyer: *JCDD, LLC - Newmark Moses Tucker Partners, c/o: Chris Moses, 200 River Market Ave, Suite 501, Little Rock, AR 72201, (501) 376-6555, CMoses@newmarkmtp.com*

With a copy to: *Newmark Moses Tucker Partners, c/o Fletcher Hanson, 200 River Market Ave, Suite 501, Little Rock, AR 72201, (501) 993-8462, ajenkins@newmarkmtp.com*

Or at such other address, and to the attention of such person, of which the parties shall have given notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof on the second day after the date of the mailing thereof or the first day after being sent by overnight courier.

31. TAX DEFERRED EXCHANGE: Each party agrees to cooperate with the other, if requested in writing, to effect a tax deferred exchange under the provisions of the Internal Revenue Code of 1986, as amended, provided such exchange is without cost or expense to cooperating party, and the requesting party shall indemnify and hold the other harmless from and against any cost or expense or other liability, tax or action which may be incurred in connection with such exchange.

32. 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.

33. EXPIRATION: This Real Estate Contract expires if not accepted in writing by Seller on or before (month) *September* (day) *3*, (year) *2021*, at *4:00* ☐ (a.m.) ☒ (p.m.).

Serial#: 012450-400163-0351405
Prepared by: Joseph Jenkins | Newmark Moses Tucker Partners | ajenkins@grubbellisar.com |

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Real Estate Contract (Commercial)

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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, 2021.

FORM SERIAL NUMBER: *012450-400163-0351405*

The above Real Estate Contract is executed by Buyer on
(month) _____ (day) _____, (year) _____, at _____ ☐ (a.m.) ☐ (p.m.).

Newmark Moses Tucker Partners
Selling Firm

Signature: Fletcher Hanson Signature: Chris Moses

Printed Name: *J Fletcher Hanson*
Principal or Executive Broker

Printed Name: _____
Buyer

Signature: Adam Jenkins Signature: _____

Printed Name: *Adam Jenkins*
Selling Agent

Printed Name: _____
Buyer

The above Real Estate Contract is executed by Seller on
(month) _____ (day) _____, (year) _____, at _____ ☐ (a.m.) ☐ (p.m.).

_____
Listing Firm

Signature: _____ Signature: _____

Printed Name: _____
Principal or Executive Broker

Printed Name: *City of North Little Rock*
Seller

Signature: _____ Signature: _____

Printed Name: _____
Listing Agent

Printed Name: _____
Seller

The above offer was ☐ rejected ☑ counter offered (Form Serial Number *062146-400163-1208225*)

☐ Buyer informed of Notification of Existing Real Estate Contract Addendum
(Form Serial Number _____)

on (month) *Sep 10, 2021* (day)_____, (year)_____, at *9* ☑ (a.m.) ☐ (p.m.).

_____
Seller's Initials

_____
Seller's Initials

Serial#: 012450-400163-0351405
Prepared by: Joseph Jenkins | Newmark Moses Tucker Partners | ajenkins@grubbellisar.com |
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Exhibit "A"

PARCEL_ID 33N2680003500

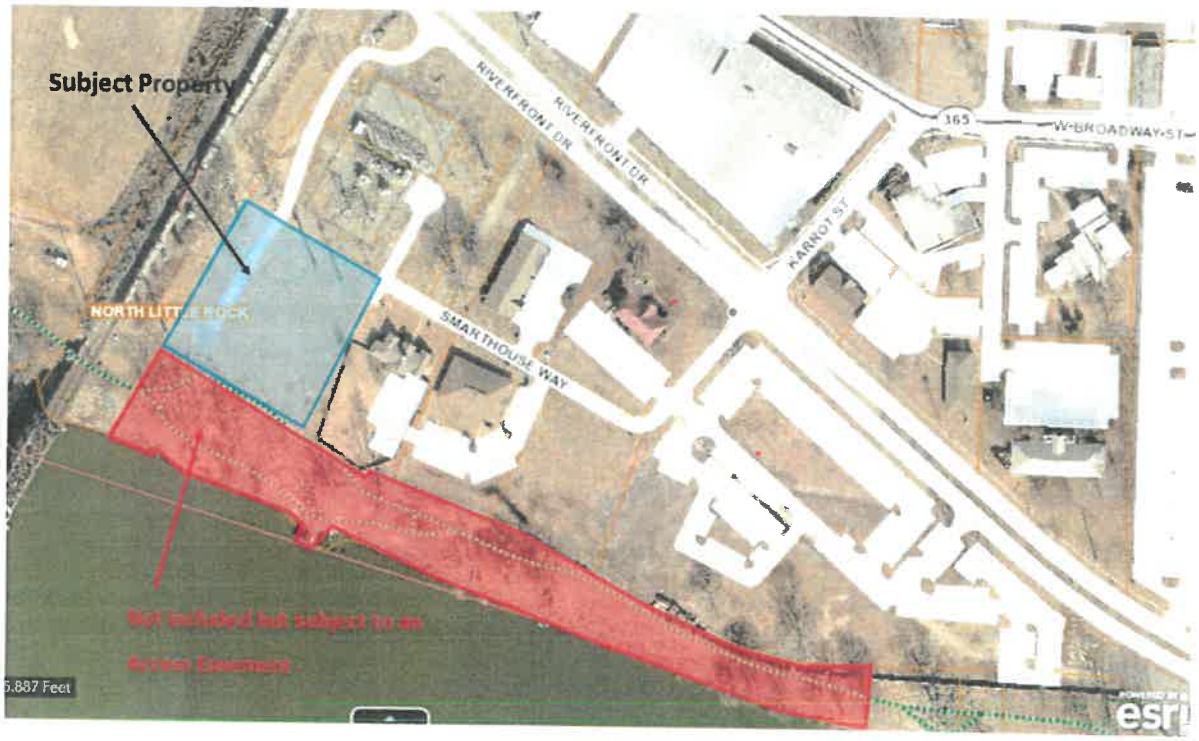

Exhibit "B"

Access Easement

To be determined per Exhibit "C" – Section 4

Exhibit "C"

Additional Contingencies

1. **Seller's Approval/ Contingency:** This Real Estate Contact is subject to approval by the North Little Rock City Council (the "Council") on or before September 31, 2021.

2. **Delivery of Seller's Documents:** Seller agrees to deliver to Buyer all (1) lease information, (2) service and maintenance agreements, (3) warranties, (4) other contracts incidental to the operation of the Property, and (5) engineering, environmental or other studies with regard to the Property in Seller's possession within 30 days after the date ofacceptance.

3. **Buyer's Extended Contingencies Period(s):** Buyer may, at its option, extend the Contingencies period, provided for in Section 18, for two additional periods of 180 days each ("Extended Contingencies Period", or "Second Extended Contingencies Period, as the case may be) by giving notice to Seller before the end of the Contingencies Period or any Extended Contingency Period and increasing its Earnest Money deposit by $10,000 (as "Non-Refundable Earnest Money") per extension, which shall become non-refundable; provided, any Non-Refundable Earnest Money shall apply toward Buyer's Purchase Price or Closing Cost.

4. **Access Easement:** Seller agrees to provide Buyer with an Access Easement within ninety (90) days of acceptance, South of the Sea Wall line, which shall be attached hereto as Exhibit "B" upon acceptance by the Parties.

Seller's Counter to the Real Estate Contract

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FORM SERIAL NUMBER: *024513-400163-2767933*

The Real Estate Contract (Form Serial Number *012450-400163-0351405*), dated (month) _____ (day)_____, (year) _____, between Buyer, *JCDD, LLC and/or it's assigns*, and Seller, *City of North Little Rock*, covering the real property known as *Approximately 1.18+/- acres located near Riverfront Dr. and Smarthouse Way(subject t*

(the "Property"), is not accepted in its present form; therefore, the following counter offer is hereby submitted:
Purchase price to be $450,000.

Contingent upon approval by city council of a written plan including development timeframes for the property.

Expiration of the Real Estate contract to be September 10th 2021 at 5pm.

OTHER TERMS: All other terms as provided in the initial Real Estate Contract are incorporated herein by reference and shall remain exactly as set forth therein, solely except those amended above.

RIGHT TO ACCEPT OTHER OFFERS: Seller reserves the right to accept any other offer prior to actual receipt by Listing Firm of an executed and accepted copy of this Seller's Counter to the Real Estate Contract.

COUNTERPARTS: This Seller's Counter Offer to the 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. Electronic signatures shall be deemed original signatures and shall be binding upon the parties.

Seller's Counter to the Real Estate Contract

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EXPIRATION OF COUNTER: This Seller's Counter Offer to the Real Estate Contract expires if not accepted on or before (month) *October* (day) *8*, (year) *2021*, at *10* ☐(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.

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FORM SERIAL NUMBER: *024513-400163-2767933*

The above Seller's Counter to the Real Estate Contract is executed on (month) *September* **(day)** *22*, **(year)** *2021*, **at** *11* ☒ *(a.m.)* ☐ *(p.m.)*

iRealty Arkansas Sherwood
Listing Firm

Signature: _____ Signature: _____

Printed Name: *Kristen Kennon* Printed Name: *City of North Little Rock*

Principal or Executive Broker (AREC License # *EB00074834* **)** **Seller**

(Broker email: *kristen@irealtyarkansas.com* **)**

Signature: _____ Signature: _____

Printed Name: *Jon Kennon* Printed Name: _____

Listing Agent (AREC License # *SA00082753* **)** **Seller**

(Agent email: *Jon@irealtyarkansas.com* **)**

(Agent cell number: *5013505321* **)**

The above Seller's Counter to the Real Estate Contract is executed on (month) _____ **(day)** _____, **(year)** _____, **at** _____ ☐ *(a.m.)* ☐ *(p.m.)*

Newmark Moses Tucker Partners
Selling Firm

Signature: _____ Signature: _____

Printed Name: *Fletcher Hanson* Printed Name: *Chris Moses*

Principal or Executive Broker **Buyer**

Signature: _____ Signature: _____

Printed Name: *Adam Jenkins* Printed Name: _____

Selling Agent **Buyer**

THIS COUNTER WAS REJECTED BY BUYER ON
(month) _____ (day) _____, (year) _____, at _____ ☐(a.m.) ☐(p.m.)

_____ _____
Buyer's Initials **Buyer's Initials**

Serial#: 024513-400163-2767933
Prepared by: Jon Kennon | iRealty Arkansas - Sherwood | jon@irealtyarkansas.com |

Form Simplicity

EXHIBIT B

tabbies

ESTIMATED TRANSACTION & PROJECT TIMELINE

SMARTHOUSE WAY
NORTH LITTLE ROCK, AR

Newmark
Moses Tucker Partners

ESTIMATED PROJECT SCHEDULE

PROJECT SCHEDULE

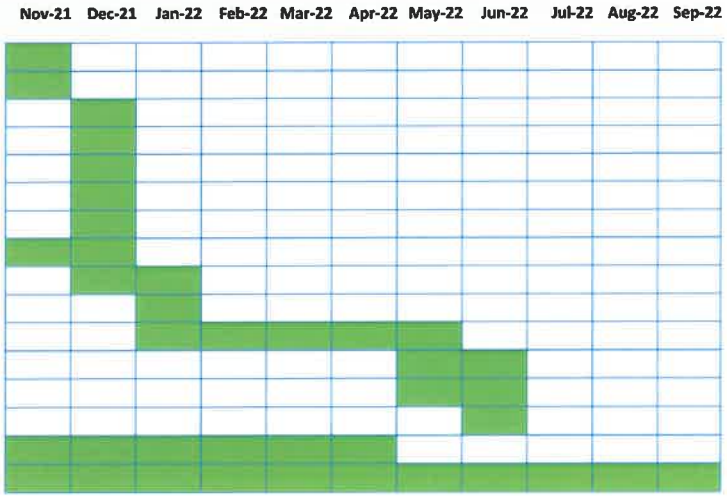
OVERVIEW

Project	Smarthouse Way
City, State	North Little Rock, AR
Property Type	TBD
Start Date	11/1/2021

Preliminary Timeline	Status	Start Date	Due from Start	Due Date	Elapsed Days
Sign Real Estate Contract	In Progress	11/1/2021	0	11/1/2021	0
Initiate Title Work	Not Started	11/1/2021	30	12/1/2021	30
Review Seller Deliverables	Not Started	12/1/2021	15	12/16/2021	45
Environmental Study	Not Started	12/1/2021	30	12/31/2021	60
Survey (new or update)	Not Started	12/1/2021	21	12/22/2021	51
Utility Locate	Not Started	12/1/2021	21	12/22/2021	51
Zoning Certification	Not Started	12/1/2021	21	12/22/2021	51
Preliminary Site Plan & Design	Not Started	11/1/2021	40	12/11/2021	40
Feasibility Study	Not Started	12/1/2021	40	1/10/2022	70
Engage Architects & Engineers	Not Started	1/15/2022	5	1/20/2022	80
Construction & Civil Drawings	Not Started	1/20/2022	120	5/20/2022	200
Municipal Approvals/Permits	Not Started	5/20/2022	30	6/19/2022	230
Engage Contractor	Not Started	5/20/2022	20	6/9/2022	220
Closing	Not Started	6/19/2022	3	6/22/2022	233
Due Diligence Period	Not Started	11/1/2021	180	4/30/2022	180
Extended Due Diligence (if needed)	Not Started	4/30/2022	180	10/27/2022	360

PROJECT TIMELINE

Newmark
Moses Tucker Partners



Newmark Moses Tucker Partners represents the proposed Buyer of the property represented herein. Although all information furnished regarding property for sale is from sources deemed reliable, such information has not been verified and no express representation is made nor is any to be implied as to the accuracy thereof and it is submitted subject to errors, other conditions, without notice and to any special conditions imposed by our principal.

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CONCEPTUAL PROJECT VISUALS

Commercial uses may or may not be included as part of the project.

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Moses Tucker Partners

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