R-22- 265

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A REAL ESTATE CONTRACT TO SELL CERTAIN REAL PROPERTY LOCATED ON EAST 12TH STREET IN THE CITY OF NORTH LITTLE ROCK, ARKANSAS TO STEPHEN E. WHITWELL; 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, the City of North Little Rock ("the City") owns and desires to sell real property located on East 12th Street, more particularly described in the Real Estate Contract attached hereto as Exhibit A (see maps attached hereto as Exhibit B); and

WHEREAS, Stephen E. Whitwell has offered to pay the sum of Three Thousand and 00/100 Dollars ($3,000.00) for the Property.

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 the property to Steven E. Whitwell and/or his assigns.

SECTION 2: 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 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED: APPROVED:

_____ _____

Mayor Terry C. Hartwick

SPONSOR: ATTEST:

Terry C Hartwick

Mayor Terry C. Hartwick By AT Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 10:30 A.M. _____ P.M.

By 12-6-22 A. Fields

DATE 12-6-22

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

RECEIVED BY S. Ussery

Real Estate Contract (Lots and Acreage)

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Form Serial Number: *067929-500166-9754565*

1. **PARTIES:** *STEPHEN E. WHITWELL, SR. AND/OR ASSIGNS* (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. **ADDRESS AND LEGAL DESCRIPTION:** Buyer is not relying on Seller, Listing Firm or Selling Firm regarding location of the Property, Buyer having sole responsibility to engage surveyors, engineers, attorneys or other professionals to determine the location, size, slope and boundaries of the Property. If Buyer is dissatisfied with the results of such determination, Buyer, without further obligation, may declare this Real Estate Contract terminated with both parties agreeing to sign a Termination of Contract Addendum and Buyer to recover Earnest Money.

A. ADDRESS: *E 12TH STREET, NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS*

B. FULL LEGAL DESCRIPTION: *LOT 29, BLOCK 3, CENTRAL, NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS. TAX PARCEL NUMBER 33N2900006400*

3. **PURCHASE PRICE:** Subject to the following conditions Buyer shall pay the following to Seller for the Property (the "Purchase Price"): *(select **one** of the following four options)*

[x] total purchase price, ... $ *3,000.00*

or;

[ ] price per acre, ... $

or;

[ ] price per square foot, ... $

or;

[ ] price per front foot ..... $

[ ] **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,

Down payment, loan amount, interest rate and other terms of financing to be negotiated between Buyer and creditor.

[ ] **OTHER: Subject to Buyer's ability to obtain financing as follows:**

[x] **B. PURCHASE PURSUANT TO CASH:**

Buyer and Seller will each independently verify quantities as set forth above and agree neither are relying upon a representation from Selling Firm or Listing Firm concerning quantities of land or front feet.

EXHIBIT A

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4. **LOAN AND CLOSING COSTS:** Unless otherwise specified, all Buyer's Closing costs, including origination fee, assumption fees, loan costs, prepaid items and loan discount points, closing fee, and all other financing fees and costs charged by Buyer's creditor or any additional fee charged by Closing Agent(s) are to be paid by Buyer. Seller to pay Seller's Closing costs.

   Closing will be at office of TWS TITLE.

5. **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 5, Buyer agrees to provide creditor 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 consummated or assumed, Buyer agrees to pay for loan costs incurred, including appraisal(s) and credit report(s), unless failure to consummate 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 that failure to make a complete loan application as defined above may constitute a breach of this Real Estate Contract.

6. **EARNEST MONEY:**

   ☐ **A.** Yes, see Earnest Money Addendum.

   ☒ **B.** No.

7. **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 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. 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 co-mingled with other monies of Seller, such sum not being held in an escrow, trust or similar account.

Buyer will pay to Seller the Deposit in the amount of:

☒ **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. Other: _____

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8. **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 20. 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 the 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.

9. **SOIL TESTING FOR SEPTIC OR SEWAGE SYSTEM:** Buyer has been given the opportunity to obtain a soil percolation, soil morphology test or sewage system permit meeting the Arkansas Department of Health regulations concerning septic systems or other sewage treatment systems. Should Buyer decline to obtain any of the above, Buyer agrees to hold Seller, Listing Firm and Selling Firm involved in this Real Estate Contract harmless of any matters relative to obtaining such test, permit or the ability to construct an improvement on the described Property that may exist or be discovered (or occur) after Closing.

   [x] **A.** No soil percolation or soil morphology test or septic system permit shall be provided.

   [ ] **B.** A soil percolation or soil morphology test will be conducted by a Designated Representative of the Arkansas Department of Health and certified to Buyer within _____ days prior to Closing. A satisfactory soil percolation or soil morphology test does not guarantee a septic system permit will be issued in the future. Test to be provided and paid for by:
   [ ] Buyer [ ] Seller.

   [ ] **C.** A septic system permit will be issued by the Arkansas Department of Health for a _____ Bedroom Standard System certified within _____ days prior to Closing. Buyer, or Buyer's Representative, to mark location of home or be present when test is conducted. Both the tests and permit will be provided and paid for by:
   [ ] Buyer [ ] Seller.

   [ ] **D.** Seller will provide Buyer with a copy of the existing valid septic system permit within three (3) business days of acceptance of this Real Estate Contract after which Buyer is to have ten (10) business days to review and accept the permit. If permit issuance date is greater than six (6) months or if the permit date will expire prior to Closing date, Seller shall have the permit revalidated by the Arkansas Department of Health.

   Should Buyer not be satisfied, acting with sole discretion, with any test or permit that may be required by Paragraph 9B, 9C or 9D, Buyer shall have all rights provided by Earnest Money Addendum of this Real Estate Contract.

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10. SURVEY: Buyer has been given the opportunity to obtain a new certified survey. Should Buyer decline to obtain a survey as offered in Paragraph 10A 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.** 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: _____

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.

11. TITLE REQUIREMENTS: As per RESPA AND CONSUMER FEDERAL PROTECTION BUREAU (CFPB) requirements, Buyer and Buyer's Lender have the right to determine where Buyer or Buyer's Lender will purchase title insurance and other settlement services.

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, 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 costs in excess of the cost of a standard owner's title policy.

☐ **B.** Buyer and Seller to 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); however, if Buyer and Seller choose to close at different title companies, and/or if Buyer pays cash, subparagraph (A) above would control as to the allocation of title insurance costs. In the event the Loan Amount exceeds the Purchase Price, Buyer agrees to pay any additional title insurance premium in excess of Purchase Price.

☐ **C.** 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).

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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.

13. CLOSING: Closing is the date and time at which Seller delivers the executed and acknowledged deed and Buyer's completion, signing and delivery to Seller (or Closing Agent agreed to by Buyer & Seller) of all loan, closing documents, and Purchase Price funds required to be executed or delivered by Buyer (the "Closing"). Buyer and Seller agree the Closing date will be (month) ***January*** (day) ***4***, (year) ***2023***. The Closing date may be changed by written agreement of Buyer and Seller. If the sale is not consummated by the 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 Earnest Money Addendum.

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 closing disclosure or other settlement statement(s) to Listing Firm (in addition to Seller) and Buyer's closing disclosure or other settlement statement(s) to Selling Firm (in addition to Buyer) so 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.

This Real Estate Contract shall, unless otherwise specified in Paragraph 20 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 13 shall not create any obligation or duty upon Listing Firm or Selling Firm to make any disclosure to any person or entity.

14. FIXTURES AND ATTACHED EQUIPMENT: Unless specifically excluded herein, all fixtures and attached equipment, if any, are included in the Purchase Price.

15. POSSESSION: Possession of the Property shall be delivered to Buyer:

- [x] **A.** Upon the Closing.
- [ ] **B.** Delayed Possession. (See Delayed Occupancy Addendum attached)
- [ ] **C.** Prior to Closing. (See Early Occupancy Addendum attached)

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16. OTHER CONTINGENCY:

☒ **A.** No Other Contingency. (Except for those conditions listed elsewhere in this Real Estate Contract.) It is understood and agreed that 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) two (2) 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 the Notice, in a manner ensuring actual receipt, to Seller or Listing Firm. Time is of the essence. In the event Buyer removes this 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, then 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 5, 9, 10, 18, and 21B 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 other Real Estate Contracts shall not affect this Real Estate Contract.

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Form Serial Number: *067929-500166-9754565*

17. 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. 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.

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 17 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 17 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 17 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. This fact neither limits nor restricts in any way the Buyer's Disclaimer of Reliance set forth in Paragraph 17 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.

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Form Serial Number: *067929-500166-9754565*

19. 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 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 19C, 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 attached Non-Representation Disclosure Addendum. If item E is checked it should be accompanied by a corresponding entry to Paragraph 31 B or C.

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Form Serial Number: *067929-500166-9754565*

20. OTHER:

Stephen E. Whitwell, Sr., is an Arkansas Real Estate Broker and Stephen E. Whitwell, Jr., is an Arkansas Real Estate Agent and both have an interest in Buyer.

21. LEAD-BASED PAINT RISK ASSESSMENT/INSPECTION:

[X] **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 all Earnest Money returned to Buyer and, neither Buyer nor Seller having further obligation to the other thereafter. 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 21.

22. 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. 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.

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

24. 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.

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25. 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.

26. 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.

27. 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.

28. 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 28) that all prevailing party (or parties if more than one) shall be entitled to an award of all costs and attorney's fees incurred in prosecution or defense of such initiated action against the non-prevailing party (or parties if more than one).

29. 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.

30. 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 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 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.

31. 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.

32. EXPIRATION: This Real Estate Contract expires if not accepted on or before (month) ***December*** (day) ***9***, (year) ***2022***, at ***4:30*** ☐ (a.m.) ☒ (p.m.).

Real Estate Contract (Lots and Acreage)

Copyright 2022 Arkansas REALTORS® Association

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, 2022.

FORM SERIAL NUMBER: *067929-500166-9754565*

REAL ESTATE LICENSEES ARE REGULATED BY THE ARKANSAS REAL ESTATE COMMISSION. IF A LICENSEE HAS NOT PROPERLY REPRESENTED YOU, YOU MAY FILE A COMPLAINT AT AREC.ARKANSAS.GOV.

The above Real Estate Contract is executed on:

(month) November (day) 29, (year) 2022, at 2:50 ☐(a.m.) ☑(p.m.).

WHITWELL & RYLES REAL ESTATE
Selling Firm

Signature: _____ Signature: _____

Printed Name: *Stephen Whitwell* Printed Name: *STEPHEN E. WHITWELL, SR.*
Buyer

Principal or Executive Broker (AREC License # *PB00008515*)
(Broker email: *swhitwell@hwpllc.com*)

Signature: _____ Signature: _____

Printed Name: *Stephen Whitwell* Printed Name: *AND/OR ASSIGNS*
Buyer

Selling Agent (AREC License # *PB00008515*)
(Agent email: *swhitwell@hwpllc.com*)
(Agent cell number: *5018374854*)

The above Real Estate Contract is executed on:

(month) _____ (day) _____, (year) _____, at _____ ☐(a.m.) ☐(p.m.).

_____
Listing Firm

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____
Seller

Principal or Executive Broker (AREC License # _____)
(Broker email: _____)

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____
Seller

Listing Agent (AREC License # _____)
(Agent email: _____)
(Agent cell number: _____)

The above offer was ☐ rejected ☐ counteroffered (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**

Frequently Asked

QUESTIONS...

1. ***As a licensee, am I required to use this Arkansas Real Estate Commission (AREC) Agency Representation pamphlet and / or disclosure form?***

- No. The AREC *Agency Representation* pamphlet and disclosure form is a tool that Real Estate Agents may use to ensure their compliance with Commission Regulations 8.1, 8.2 and 8.3. An agent may certainly use alternative forms and / or procedures to comply with these regulations.

2. ***Can I distribute the brochure for informational purposes only?***

- Yes. If you have other methods of disclosing your agency representation but would like to distribute the *Agency Representation* information displayed on the first two panels, discard the disclosure portion and distribute the *Agency Representation* information only.

3. ***What's the best way to use the disclosure form?***

- When Option 1 of the disclosure form is applicable, the person that you do not represent should sign as receiving the agency disclosure.

- When Option 2 of the disclosure form is applicable, all persons receiving the disclosure should each sign a form.

Reminder: Regulations 8.1 and 8.2 require you to disclose to the other party who you represent in the transaction. These regulations allow you to verbally disclose, and require that you confirm in writing that you verbally disclosed, your agency relationship before the party signs the real estate contract or lease.

Serial#: 059262-200166-9754668
Prepared by: Stephen Whitwell | WHITWELL & RYLES REAL ESTATE | swhitwell@hwpllc.com |

Arkansas Real Estate Commission

612 South Summit Street
Little Rock, AR 72201-4740
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Website: www.arec.arkansas.gov

Commission Staff

Andrea S. Alford
Executive Director

Heather Garrett
AREC Supervisor

Published February 2020

AGENCY REPRESENTATION

Form Simplicity

WHO DO REAL ESTATE AGENTS REPRESENT?

ARKANSAS DEPARTMENT OF LABOR AND LICENSING

REAL ESTATE COMMISSION

FEBRUARY 2020

Agency Representation Information

Who Do Real Estate Agents Represent in a Real Estate Transaction?

Arkansas law requires every Real Estate Agent to clearly disclose to all parties in a real estate transaction which party(ies) he or she is representing. Real Estate Agents typically represent Sellers but can also represent Buyers as well as both Buyers and Sellers.

What Does It Mean to Represent a Seller?

A Real Estate Agent who enters into an agreement to sell property for an owner is known as the "Listing Agent" or "Agent for the Seller." A Listing or Seller's Agent represents the Seller in the transaction. That means that the Listing or Seller's Agent's primary duty is to protect and promote the interests of the Seller. As a Buyer not represented by a Real Estate Agent, you should keep any information that may place you at a disadvantage in negotiations confidential and undisclosed to the Seller or the Seller's Agent since that Seller's Agent has a duty to pass that information on to the Seller. Confidential information may include the Buyer's real estate needs or motivations, the highest price the Buyer is willing to offer, negotiating strategies or tactics, or financial situation.

What Does It Mean to Represent a Buyer?

A Real Estate Agent who enters into an agreement to only represent the Buyer in a real estate transaction is known as the "Buyer's Agent." A Buyer's Agent represents the Buyer in the transaction. That means that the Buyer's Agent may assist the Seller who is not represented in selling the property, or deal with the Seller's Agent, but the Buyer's Agent's primary duty is to protect and promote the interests of the Buyer. As a Seller not represented by a Real Estate Agent, you should keep any information that may place you at a disadvantage in negotiations confidential and undisclosed to the Buyer or the Buyer's Agent since that Buyer's Agent has a duty to pass that information on to the Buyer. Confidential information may include the Seller's reason or motivation for selling, the lowest price the Seller will accept, negotiating strategies or tactics, or financial situation.

What Does It Mean to Represent Both Seller and Buyer?

A Real Estate Agent who enters into an agreement to represent the Seller and also enters into an agreement to represent the Buyer in the same transaction is known as a "Dual Agent." A Dual Agent most frequently occurs when a Real Estate Agent, or agents within the same real estate firm, represent both Seller and Buyer in the same transaction. Both Seller and Buyer must have given their written consent to such dual representation prior to or at the time of execution of any Agency Agreement, Listing Agreement or Real Estate Contract. Both Seller and Buyer should be aware that a possible conflict of interest may exist in this type of representation. A Dual Agent limits the duties described above in representing the Seller and Buyer by written agreements found in the Agency Agreement, Listing Agreement or Real Estate Contract. For instance, when representing both Seller and Buyer the Dual Agent would not disclose to one party confidential information obtained from the other party.

Serial#: 059262-200166-9754668
Prepared by: Stephen Whitwell | WHITWELL & RYLES REAL ESTATE | swhitwell@hwpllc.com |

AGENCY REPRESENTATION DISCLOSURE FORM

Stephen E. Whitwell, Sr.
Real Estate Agent

Whitwell & Ryles Real Estate Investments, LLC
Real Estate Firm

E 12TH STREET
Real Estate Transaction Address

NORTH LITTLE ROCK AR 72119
City, State, Zip Code

The Real Estate Agent named above:
(Please initial the appropriate response below.)

1) _____ Does not represent me in this real estate transaction but represents only the

☑ Buyer or ☐ Seller

OR

2) _____ Represents all parties to this real estate transaction to which I previously consented through a separate written agency agreement.

_____
Name of Party Receiving Agency Disclosure

I acknowledge that I am aware of and understand the disclosure information presented above.

_____
Signature of Party Receiving Agency Disclosure

_____
Date

THIS IS NOT A CONTRACT OR AGENCY AGREEMENT

Agency Representation

Form Simplicity

CITY OF I

EXHIBIT

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