

**CITY OF SPRINGDALE**  
**Committee Agendas**  
**Monday, June 14<sup>th</sup>, 2021**  
**City Council Chambers**  
**City Administration Building**  
**Meetings begin at 5:30 P.M.**

**Police and Fire Committee by Chairman Brian Powell**

1. A. **A Resolution** authorizing a change in staffing of the fire department (5<sup>th</sup> ambulance).Pg. 2  
  
B. **A Resolution** authorizing a change in staffing of the fire department (battalion chiefs).Pgs. 3 - 5

**Committee of the Whole**

2. A. **An Ordinance** releasing, vacating, and abandoning a portion of a dedicated street, pursuant to ARK. Code Ann. §14-54-104(2), in Henson Heights 2<sup>nd</sup> subdivision to the City of Springdale, Washington County, Arkansas, and declaring an emergency. Presented by Ernest Cate, City Attorney. Pgs. 6 - 10  
  
B. **A Resolution** authorizing the grant of a conservation easement on property owned by the City of Springdale, Arkansas, pursuant to the Arkansas Conservation Easement Act, ARK. Code Ann. §15-20-401, *et seq.* Presented by Ernest Cate, City Attorney. Pgs. 11 - 38

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING A CHANGE IN  
STAFFING OF THE FIRE DEPARTMENT**

**WHEREAS**, the Fire Chief would like to add an additional 5<sup>th</sup> ambulance to serve the citizens of Springdale; and

**WHEREAS**, staffing an additional ambulance would require six additional firefighters at an annual cost of \$358,958 for salaries and benefits;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the City Council supports increasing the current authorization of 72 firefighters to 78, effective August 1, 2021, for the addition of a 5<sup>th</sup> ambulance and hereby approves this change.

**PASSED AND APPROVED** this 22<sup>nd</sup> day of June, 2021.

ATTEST:

\_\_\_\_\_  
Doug Sprouse, Mayor

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING A CHANGE IN  
STAFFING OF THE FIRE DEPARTMENT**

**WHEREAS**, the Fire Chief would like to add three additional Battalion Chiefs increasing the number from three to six; and

**WHEREAS**, the Fire Chief's memo is attached explaining the need for these positions;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the City Council supports increasing the current authorization of three battalion chiefs to 6, effective August 1, 2021.

**PASSED AND APPROVED** this 22<sup>nd</sup> day of June, 2021.

ATTEST:

\_\_\_\_\_  
Doug Sprouse, Mayor

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Post Office Box 1521  
417 Holcomb Street  
Springdale, AR 72765-1521  
Phone (479) 751-4510  
Fax (479) 750-8104

# Springdale Fire Department

June 11, 2021

To Mayor Sprouse and Fire and Police Committee Chair Brian Powell;

As both of you are aware, we laid out our needs for additional staffing during the 2021 budget hearings. With everyone still uncertain about the impact that the pandemic would have on the revenues and expenditures of the city, we did not push hard for the additional personnel, but did ask that we leave the possibility of adding personnel mid-year as an option.

I am coming to you requesting that we add the 3(three) additional Battalion Chief's to shift, as well as add an additional 6(six) personnel to staff the 5<sup>th</sup> ambulance. All total I am requesting the addition of 9(nine) personnel with promotions to take place adding 3 battalion chiefs.

With the opening of station 9, we have far exceed the span of control for one Battalion Chief on shift to handle the overall day to day operations. Besides extending beyond that span of control, we have seen a large shift in our department with newer members both in the firefighter role, but less experienced supervisors due to promotions and the retirement of several seasoned and experienced personnel. Those combinations simply make it imperative that we add supervision in order to keep our citizens and our personnel safe.

Our department has many individuals with 10 years or less experience and that includes our Captains in who are the front-line supervisors. We currently have about 9 years of experience in our captain's ranks, and if all of those that are eligible to retire leave, we drop that to just over 7 years. With our young department as a whole, that serves as a true exposure to our organization with many of these individuals not getting the experience with real fire that many before them did. As we all know, the number of fires within our community is less than it was 5 years ago! Experience comes in training, and an extra set of eyes is critical not only to our success, but also our safety and the safety of our citizens.

The other request is to hire an additional 6 personnel to staff the 5<sup>th</sup> ambulance. While we have not seen our calls for service climb at the level we expected, we are seeing a longer time that our units are out on calls. Each call is taking longer due to decontamination requirements that we have stepped up, but also the documentation and



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## Springdale Fire Department

follow-up that is required on our calls. It will also allow us to put an ambulance on the west side of town, west of I-49 which currently has no ambulance located on that side of town, and we continue to see an increase in housing and population grown in that area. We are simply trying to stay ahead of the curve so that all of our citizens get the type of response they need.

The cost of these additional personnel will not take effect until August 01, 2021 if you approve the request. We will have to hire for the next academy and that will not begin until August, so there is no need to hire any sooner. The promotions would take place on August 01 as well. This is the financial request and adjustment to our 2021 budget that we would request.

Promotional Costs for the 3 Battalion Chiefs: \$7,000  
Addition of the 9 personnel for above and 5<sup>th</sup> ambulance: \$170,000

Total request for 2021 budget increase in payroll: \$177,000.

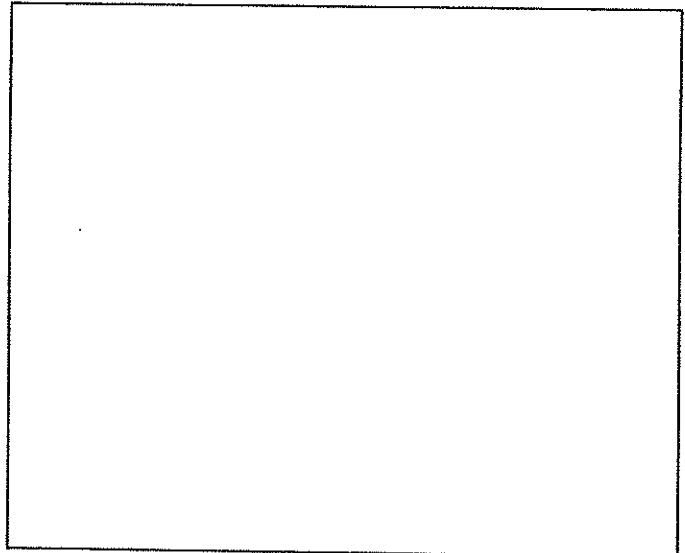
*Michael J. Irwin*  
Fire Chief  
Springdale Fire Department



*"To Save Lives, Property, and Minimize the effects of all emergencies in the City of Springdale"*

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE RELEASING,  
VACATING, AND ABANDONING A  
PORTION OF A DEDICATED PUBLIC  
STREET, PURSUANT TO ARK. CODE  
ANN. §14-54-104(2), IN HENSON  
HEIGHTS 2<sup>ND</sup> SUBDIVISION TO THE  
CITY OF SPRINGDALE,  
WASHINGTON COUNTY, ARKANSAS,  
AND DECLARING AN EMERGENCY.**



**WHEREAS**, on April 10, 1964, the subdivision plat for Henson Heights 2<sup>nd</sup> Subdivision was filed for record in the Washington County land records;

**WHEREAS**, the aforementioned plat contained a fifty (50) foot wide street dedication (originally known as Evans Avenue, but now known as Annie Laurie Avenue) along the northern boundary of the Subdivision;

**WHEREAS**, the above-described street has never been constructed east of Lot 19 of the Subdivision, has not been used as a public street, and it is not practicable for the City to build this street;

**WHEREAS**, Ark. Code Ann. §14-54-104(2) gives cities of the first class the authority to alter or change the width or extent of streets, and to vacate portions thereof;

**WHEREAS**, after taking into consideration all the facts and circumstances associated with this matter, it is in the best interests of the City to vacate that portion of "Evans Avenue" located east of Lot 19 of Henson Heights 2<sup>nd</sup> Subdivision:

Commencing at the NE corner of Lot 19, Henson Heights 2<sup>nd</sup> Subdivision, and running thence East 695.00 feet; thence North 50.00 feet; thence West 695.00 feet; thence South 50 feet to the POINT OF BEGINNING; containing 34,750 square feet or 0.80 acres, more or less. And as shown on the attached Exhibit "A".

**WHEREAS**, the portion of the dedicated public street vacated herein shall become the property of the adjoining property owners as is provided by Ark. Code Ann. §14-301-306;

**WHEREAS**, public interest and welfare will not be adversely affected by the releasing, vacating, and abandoning of the dedicated public street herein described.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that:**

**Section 1:** For the reasons stated herein, the City of Springdale, Arkansas, hereby releases, vacates and abandons its interests, with the rights of the public generally, in and to that portion of a fifty (50) foot wide street, originally platted as Evans Avenue, as previously described herein;

**Section 2:** A copy of this Ordinance, duly certified by the City Clerk, shall be filed in the office of the Recorder of Washington County, Arkansas, and recorded in the Deed records of the County.

**Section 3:** Upon abandonment of the dedicated public street described herein, the ownership of the property shall vest in the owners of the real estate abutting thereon, with each such abutting owner taking title to the center line of the street so abandoned, and the ownership shall be free from that portion of the previously dedicated city street.

**Section 4: Emergency Clause.** It is hereby declared that an emergency exists and this ordinance, being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be in effect immediately upon its passage and approval.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, CITY CLERK

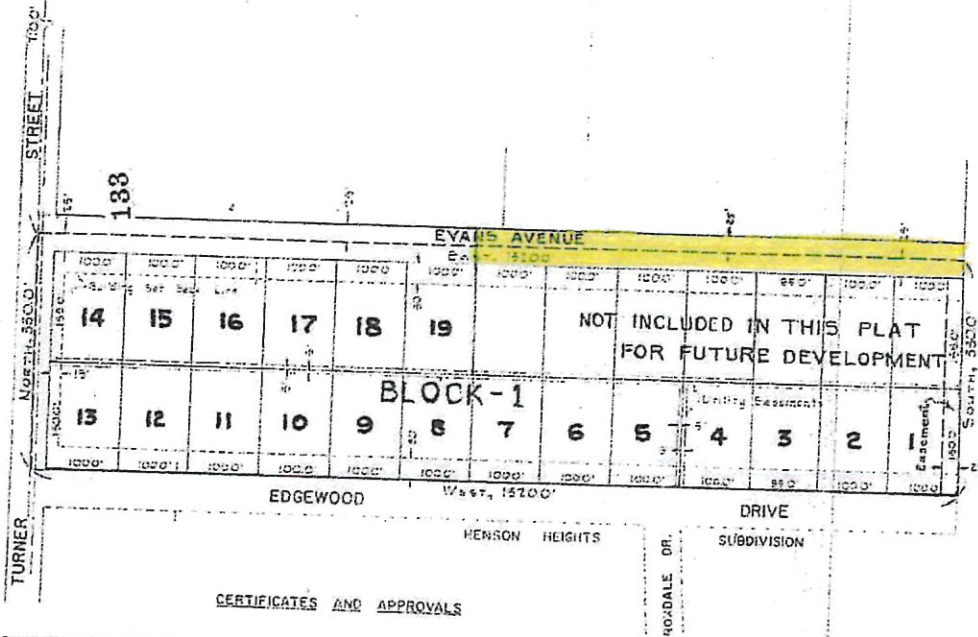
APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, CITY ATTORNEY

NW Corner of NE 1/4, NW 1/4,  
Sec. 15, T-17-N, R-50-W

Dated April 10, 1964, 5:19 P.M.

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**LEGAL DESCRIPTION**  
A part of the NE 1/4 of NW 1/4 of Sec. 15, T-17-N, R-50-W, Beginning 710' South of NW Corner of said NE 1/4 of NW 1/4, Sec. 15, T-17-N, R-50-W, Running thence East 1510', thence South 550', thence West 1510', thence North 550' to the point of beginning.

**LEGAL DESCRIPTION**

A part of the NE 1/4 of NW 1/4 of Sec. 15, T-17-N, R-50-W, Beginning 710' South of NW Corner of said NE 1/4 of NW 1/4, Sec. 15, T-17-N, R-50-W, Running thence East 1510', thence South 550', thence West 1510', thence North 550' to the point of beginning.



SCALE 1"=100'

SUBSCRIBED AND SWORN TO BEFORE ME ON

NOTARY PUBLIC  
MY COMMISSION EXPIRES

**CERTIFICATES AND APPROVALS**

**a. Certificate of Ownership and Dedication**

I hereby certify that I am the owner of the property shown and described hereon and that I do hereby dedicate all streets, alleys, easements to public use as noted. I further certify that the platting as filed cannot be changed unless vacated pursuant to applicable laws.

Subscribed and sworn to before me this 11th day of October, 1964.  
My Comm. Exp. 12-31-67  
Date \_\_\_\_\_  
Owners \_\_\_\_\_

**b. Certificate of Approval of Water and Sewer Systems**

I hereby certify that the proposed water supply and sewage disposal systems in this subdivision fully meet the requirements of the Arkansas State Board of Health and are hereby approved.

Date \_\_\_\_\_  
Water Superintendent \_\_\_\_\_

**c. Certificate of Accuracy**

I hereby certify that the plan shown and described hereon is a true and correct survey and that the monuments have been placed as stated hereon as required by the subdivision regulations of the City of Springdale, Arkansas.

Date \_\_\_\_\_  
Surveyor \_\_\_\_\_

**d. Certificate of Approval for Recording**

This plat was approved by the Springdale Planning Commission at a meeting held on Dec. 3, 1963.

Date \_\_\_\_\_  
Ed. Foster  
Sec. Planning Commission

**e. Certificate of Acceptance of Land for Public Use**

The land dedicated for streets and other public uses in this Plat was accepted by the Springdale City Council at a meeting held on February 11, 1964.

Date \_\_\_\_\_  
H. L. Bracken  
City Clerk  
Mayor \_\_\_\_\_

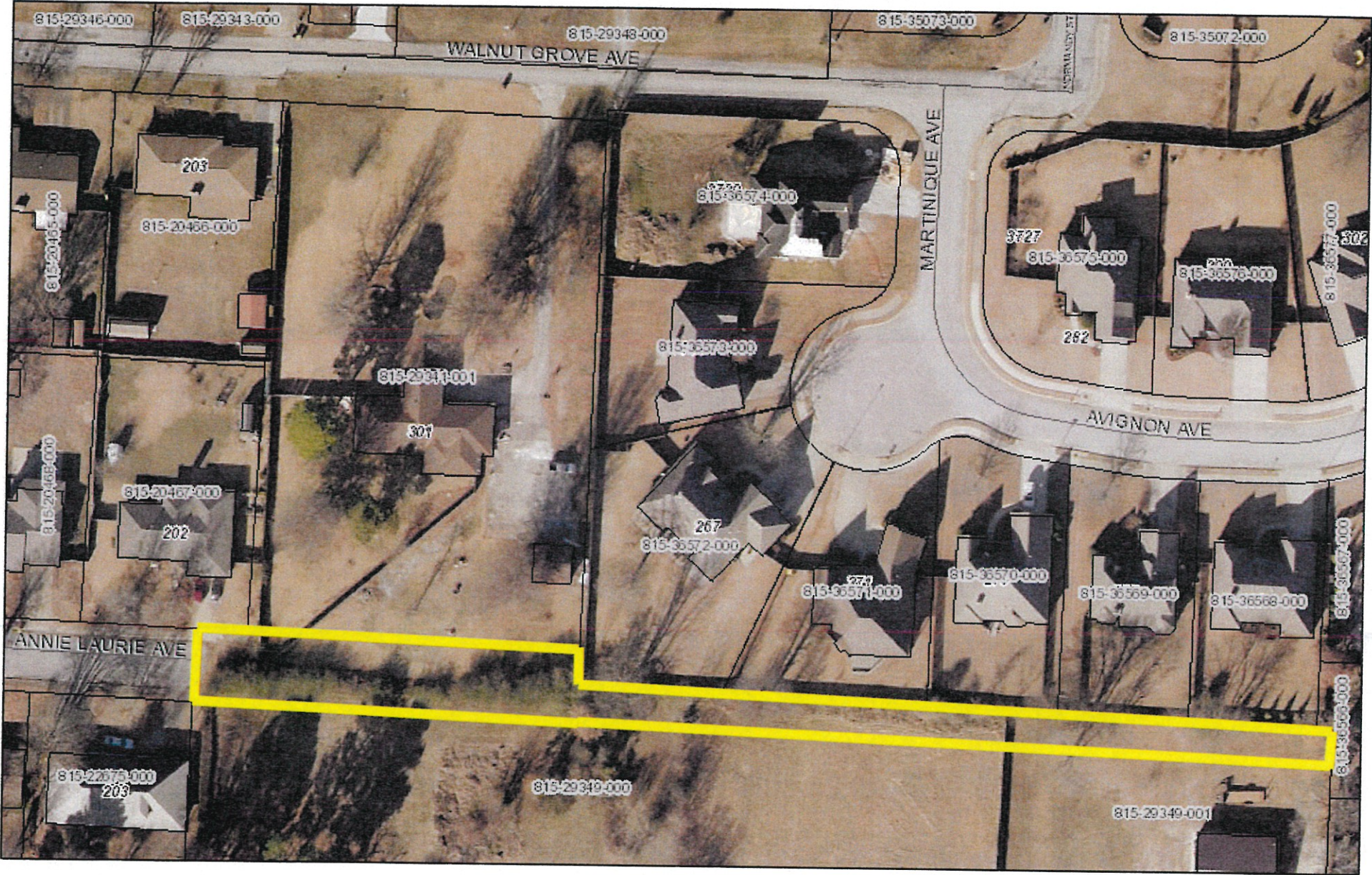
**f. Restrictions**

Routes restricted to living area of 1000 ft<sup>2</sup>

A PROPOSED PLAT OF	
HENSEN HEIGHTS 2ND SUBDIVISION	
Springdale	Arkansas
DRAWN BY	DATE
CHWD BY	Oct. 1963
SCALE	SHEET NO.
1"=100'	OF
	BOOK NO. (P.D.)



City of Springdale Zoning Map



June 8, 2021

- Form-Based Code District Overlay

S.E.E.D. Overlay District - Outline

P.9

Washington Co. Parcels
- Benton Co. Parcels

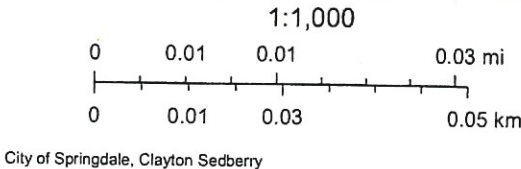
SCHOOLS
- STREAMS

MAIN CHANNEL

TRIBUTARY
- LAKES

Buildings

RAILROAD
















# City of Springdale Zoning Map

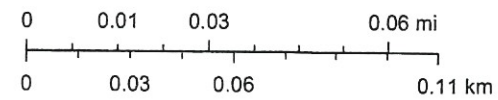


June 8, 2021

-  Form-Based Code District Overlay
  Benton Co. Parcels
  STREAMS
  LAKES
-  S.E.E.D. Overlay District - Outline
  SCHOOLS
  MAIN CHANNEL
  Buildings
-  Washington Co. Parcels
  TRIBUTARY
  RAILROAD

P.10

1:2,000



City of Springdale, Clayton Sedberry



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE GRANT OF A  
CONSERVATION EASEMENT ON PROPERTY OWNED  
BY THE CITY OF SPRINGDALE, ARKANSAS, PURSUANT  
TO THE ARKANSAS CONSERVATION EASEMENT ACT,  
ARK. CODE ANN. §15-20-401, *et seq.***

**WHEREAS**, the City of Springdale, Arkansas, owns property known as Parcel No. 815-29767-200 and Parcel No. 815-29767-211, Washington County, Arkansas; and Parcel No. 21-00172-010 Benton County, Arkansas (collectively "the Property");

**WHEREAS**, the City of Springdale, Arkansas, wishes to avail itself of the provisions of the Arkansas Conservation Easement Act, Ark. Code Ann. §15-20-401, *et seq.*, (the "Act"), for the purposes of retaining or protecting natural, scenic, or open-space values of the Property; assuring the Property's availability for agricultural, forest, recreational, or open-space use; protecting natural resources; and, maintaining or enhancing air or water quality of the Property;

**WHEREAS**, in order to comply with the provisions of the Act with regard to the Property, the City wishes to grant to the Northwest Arkansas Land Trust a Conservation Easement on the Property, as shown on the attached Exhibit "A", which will be filed for record with land records of Washington County, Arkansas, and Benton County, Arkansas;

**WHEREAS**, the Conservation Easement is necessary in preserving and maintaining the Property consistent with the purposes of the Act; and

**WHEREAS**, both the Act and Ark. Code Ann. §14-54-302 provides that the Mayor and City Clerk may execute the attached easement document when authorized to do so by Resolution approved by the City Council.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS** that the Mayor and City Clerk are hereby authorized to execute the attached Grant of Conservation Easement and Declaration of Covenants document granting a conservation easement to the Northwest Arkansas Land Trust on the Property pursuant to the Act.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

**Upon recording return to:**  
Northwest Arkansas Land Trust  
1725 Smokehouse Trail  
Fayetteville, Arkansas 72701  
479-966-4666

**GRANT OF CONSERVATION EASEMENT  
AND DECLARATION OF COVENANTS**

**THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS** (“Easement”) dated this this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “Easement Date”) by and between **CITY OF SPRINGDALE, ARKANSAS**, an Arkansas municipal corporation (“Owner”), which shall include any successor in interest to the Owner executing this Easement, and the **NORTHWEST ARKANSAS LAND TRUST**, an Arkansas non-profit corporation (“Holder”), for the purpose of forever conserving the Conservation Values of the Property (both hereinafter defined).

**ARTICLE I  
BACKGROUND**

**1.01 Defined Terms.** Initially capitalized terms not defined in this Article I are defined in Article VII.

**1.02 Protected Property.** Owner owns in fee simple certain real property, more particularly described in Exhibit “A” attached hereto (the “Property”), and desires to grant and convey to Holder an unconditional and perpetual easement upon the Property for the purposes described in Section 1.03.

**1.03 Easement; Covenants.**

(a) **Easement.** By this Easement, Owner grants and conveys to Holder an unconditional and perpetual easement upon the Property for the purpose of advancing the Conservation Purposes described below (the “**Conservation Purposes**”). The Easement empowers Holder to prevent and terminate activities, uses, and Improvements inconsistent with the Conservation Purposes. Article IV more fully describes the rights this Easement vests in Holder. It is the purpose of the Owner and Holder to avail themselves of the provisions of the Arkansas Conservation Easement Act, Ark. Code Ann. § 15-20-401 *et seq.*, without intending that the existence of this Easement be dependent on the continuing existence of that law.

(b) **Owner Covenants.** By this Easement, Owner, in furtherance of the Conservation Purposes, establishes covenants binding upon Owner’s interest in the Property, which are set forth in Articles II through Article III. Article V addresses potential violation of these covenants and remedies.

(c) **Holder Covenants.** By this Easement, Holder accepts the Easement and, in furtherance of the Conservation Purposes, establishes covenants binding upon Holder's easement interest in the Property, which are set forth in Article IV.

**1.04 Easement Plan.** Attached as Exhibit "B" is a graphic depiction of the Property subject to the Easement (the "**Easement Plan**").

**1.05 Conservation Purposes.** The Conservation Purposes of this Easement are (i) to protect the "**Conservation Values**" (hereinafter defined and described), and other significant conservation interests (except to the extent it is necessary to impair such other conservation interests to protect the Conservation Values); and (ii) to limit the use of the Property to those uses and activities that are consistent with such Conservation Values and interests.

More specifically, the Conservation Values and related Conservation Purposes, include the following, and are further detailed in the Baseline Documentation Report described in Article I, Section 1.06.

(a) **Water Resources.** The Property is located in the Illinois River watershed. Protection of the Illinois River is a multi-state priority. The Property is also adjacent to Lake Springdale, a waterbody used for recreational fishing. It is among the Conservation Purposes to maintain and improve the quality of water resources, both surface and groundwater, within, around, and downstream from the Property.

(b) **Biological Resources.** The purpose of the addition of this Property to existing greenspace owned by Owner, namely JB Hunt Park, is to further ensure habitat for wildlife and improve the long-term viability of biodiversity in the region. It is among the Conservation Purposes to protect the quality of relatively natural habitat for fish, wildlife, and plants, or similar ecosystems, including animals, fungi, other organisms, and particularly Native Species.

(c) **Scenic Resources.** The general public enjoys scenic views of the pasture from the Razorback Greenway Trail. It is among the Conservation Purposes to further the preservation of open space by protecting the scenic views of the Property visible from public rights-of-way.

(d) **Open Space.** To preserve Open Space pursuant to the regional Northwest Arkansas Open Space Plan, and to maintain the Property as a nature park facility for the enjoyment of the general public.

(e) **Ecosystem Services.** To contribute to the resiliency and functioning of natural processes important to human systems; to retain, detain, and disperse storm water runoff, thus mitigating erosion and flooding downstream of the Property; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels.

**1.06 Baseline Documentation.** The specific Conservation Values of the Property and its current use and state of Improvement are further documented in a Baseline Documentation Report (the "**Baseline Documentation Report**" or "**Report**") prepared by Holder and to be kept at the principal office of Holder. As of the Easement Date, Owner and Holder have signed and



acknowledged the Report to be complete and accurate as of the Easement Date. The Report includes reports, maps, photographs, and other documentation, to be used by Holder to assure that any future changes in the use of the Property will be consistent with the terms of this Easement. Notwithstanding the foregoing, the Report shall not be used to preclude the use of other evidence to establish additional Conservation Purposes of the Property now or in the future. The Report is incorporated by reference herein as if restated in full.

**1.07 Consideration.** Owner acknowledges receipt, as of the Easement Date, of good and valuable consideration for this Easement, including, but in no way limited to, the public benefit obtained, the covenants set forth in Article IV, and perpetual satisfaction of the Conservation Purposes. Notwithstanding the foregoing, Owner has received no monetary or other tangible economic benefit from Holder in exchange for the donation of this Easement.

**1.08 Superior to all Liens.** Owner warrants to Holder that the Property is, as of the Easement Date, free and clear of Liens or, if it is not, that Owner has obtained and recorded in the Public Records the legally binding subordination of the Liens affecting the Property as of the Easement Date.

## **ARTICLE II TRANSFER; SUBDIVISION**

**2.01 Prohibitions.** Owner is prohibited from taking the following actions, except as may be specifically set forth in Section 2.02. Owner may not:

(a) **Transfer of Portion of Property.** Transfer ownership, possession, control of land by lease, or use of a portion of the Property, including subsurface portions of the Property, independent of the remainder of the Property;

(b) **Subdivision.** Create any Subdivision of the Property;

(c) **Transfer of Density.** Use the acreage protected under this Easement to increase allowable density or intensity of development within other portions of the Property or outside the Property; or

(d) **Transfer of Rights.** Transfer development rights or other rights granted, allocated to or inherent in the Property in support of development outside the Property.

**2.02 Permitted Uses and Activities.** Owner is permitted to make the following uses of, and undertake the following activities on, the Property:

(a) **Lots within Property.** Merge two (2) or more Lots into one (1) Lot; or subject to Review, reconfigure one (1) or more of the boundaries of such Lots, as long as the boundary of the Property as described in Exhibit "A" remains unchanged;

(b) **Transfer to Qualified Organization.** Subject to Review, creation and transfer of a Lot to a Qualified Organization for park, nature preserve, public trail, or other conservation purposes approved by Holder; and

(c) **Transfer of Rights of Possession or Use.** Subject to Review, transfer of possession or use (but not ownership) of one or more portions of the Property for purposes permitted under, and subject to compliance with, the terms of this Easement. Leases of space within Improvements are not subject to Review.

### **2.03 Requirements.**

(a) **Establishment of Lots; Allocations.** Prior to transfer of a Lot following a Subdivision, Owner must (i) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of each Lot created or reconfigured by the Subdivision; (ii) mark the boundaries of each Lot with permanent markers; and (iii) allocate in a document recorded in the Public Records those limitations applicable to more than one Lot under this Easement. This information will become part of the Baseline Documentation Report incorporated into this Easement.

(b) **Amendment.** Holder may require Owner to execute an Amendment of this Easement to reflect a change to the description of the Property set forth in Exhibit "A," or other changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

## **ARTICLE III RESERVED USES AND ACTIVITIES**

**3.01 Improvements.** Improvements are prohibited on the Property except as expressly reserved in this Section 3.01.

(a) **Existing Improvement.** The following applies to Existing Improvements:

(i) The existing unpaved Access Drive, underground spring-fed water line, and the storage shed may be maintained, repaired, and replaced in their existing locations. The unpaved Access Drive may not be maintained or replaced with impervious surface, including concrete, asphalt or compact gravel.

(ii) The existing Brown Barn and Old Milk Barn, as documented in the Baseline Documentation Report, may be removed, but not replaced.

(b) **Existing Servitudes.** Improvements that Owner is required to allow because of an Existing Servitude are permitted.

(c) **Additional Improvements.** The following Additional Improvements are permitted:

(i) **Fences.** New fences may be built on the Property for purposes of reasonable and customary access control and protection of resources, provided that any

such fencing does not substantially diminish or impair the Conservation Purposes, including aesthetic and scenic values of the Property, and does not exclude or restrict wildlife movement on or off of the Property.

(ii) **Trails.** The following trails are permitted:

(1) Subject to Review and approval, one (1) soft surface or paved trail connecting the Razorback Greenway Trail and Rabbit Foot Lodge Historic Site.

(2) (a) Walking trails constructed of native, mowed grasses; and (b) trails covered, if at all, by wood chips, gravel or other highly porous natural, noninvasive material. The location and density of trails shall be planned in a manner consistent with preservation of the natural integrity of the Property, with special consideration given to the preservation of ecologically significant areas and species of special conservation concern.

(iii) **Trail Signage.** Trails may include signs to mark the trail, to provide information regarding restrictions, and for interpretive purposes. Signage shall be unobtrusive in nature and planned with the express goal of minimizing impact to the vistas and Open Space nature of the Property.

(iv) **Trail Facilities.** Trails may include benches, picnic tables, wastebaskets and bicycle racks, as may be deemed necessary. All other facilities are subject to Review and approval. The design, location and density of trail facilities shall be architecturally consistent with the natural setting of the Property and planned with the express goal of minimizing impact to ecologically significant areas and species of special concern, as well as the vistas and Open Space nature of the Property.

(v) **Disk Golf Facilities.** Low impact infrastructure for an 18-hole disk golf course, including disk golf baskets and launch pads, in accordance with a disk golf course plan approved by the Holder after Review.

(vi) **Structures.** Subject to Review, the Holder may construct, maintain, repair, remove or replace any of the following, provided that the structure is of a reasonably limited footprint, is architecturally consistent with the natural setting of the Property, does not pose a threat to sensitive species or ecologically sensitive habitats, and is in accordance with local, state, and federal laws:

(1) **Public Restroom.** Subject to Review, one (1) public restroom facility.

(2) **Pavilion.** One (1) open-air pavilion or gazebo.

(3) **Wildlife Viewing and Habitat Structures.** A reasonable and necessary number of raised walkways, wildlife viewing platforms, bird blinds, and habitat enhancement devices such as bat boxes or bird houses.

Any area of the Property disturbed in the process of Construction must be restored to a natural condition promptly after completion to ensure the activity does not substantially diminish the Conservation Purposes.

(vii) **Utility Improvements within Property.** Utility Improvements to service Improvements within the Property, but only if there is no other reasonably feasible means to provide access and utility services to the Property.

(viii) **Utility Improvements outside of Property.** Utility Improvements servicing activities, uses, or Improvements not within the Property that Holder, without any obligation to do so, approves after Review.

**3.02 Activities and Uses.** Activities and uses are prohibited except as permitted below in this Section 3.02 and provided in any case that: (i) the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Purposes, and (ii) no Invasive Species are introduced.

(a) **Existing Servitudes.** Activities and uses that Owner is required to allow because of an Existing Servitude are permitted.

(b) **Resource Management and Disturbance.** The following activities and uses are permitted:

(i) Construction or other disturbance of resources, including cutting of trees, only to the extent reasonably prudent to remove, mitigate, or warn against an unreasonable risk of harm to Persons, their belongings, or health of Native Species on or about the Property. Owner must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review. Removal of Invasive Species is permitted.

(ii) Planting, replanting, and maintaining Native Species.

(iii) Construction of permitted Improvements with prompt restoration of soil and vegetation disturbed by such activity.

(iv) Owner may use, or permit the use of, service vehicles and motorized equipment on the Property provided that:

(1) The use of such vehicles is reasonable and necessary for maintenance and/or emergency access to the Property, or for providing access to people with disabilities.

(2) The permission afforded by Owner is limited to a short-term license and is not a right-of-way, easement, or other permanent legal interest.

(3) Vehicles take care to avoid ecologically significant areas and species of special conservation concern on the Property.

(v) Application of manure and plant material, both well composted, and, subject to compliance with manufacturer's recommendations, other substances to promote the health and growth of vegetation. These permitted substances do not include sewage or industrial sludge, biosolids, septic system effluent, and related substances.

(vi) Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or permitted uses.

(vii) Mowing or otherwise maintaining existing pasture.

(viii) Subject to Review, and pursuant to a city permit, the Owner may permit or host special events of short duration by specific groups within the Property, so long as such events do not substantially diminish or impair the Conservation Purposes of the Property. Special Events may include the temporary use of service vehicles, cooking grills, temporary tents, shade structures, and toilet and refreshment areas.

(viii) Owner reserves the right to conduct habitat management activities, subject to federal, state and local regulations, and the specific terms and conditions of the Easement. All habitat management activities shall be conducted in accordance with a written Habitat Management Plan subject to Review and approval by Holder. The Habitat Management Plan should, if possible, be reviewed and updated at least every ten (10) years. The Habitat Management Plan shall include, at a minimum, the following:

(1) Goals and objectives of the Owner, consistent with the purposes and terms of the Easement.

(2) Identification and mapped location of significant habitat types, species of special conservation concern, and natural and physical features of the Property.

(3) A description of the current and desired natural condition and threats to each habitat type.

(4) A description of contemplated management plans and proposed access plan for each habitat type.

(5) A description of foreseeable situations in which chemical application will be recommended, including the type, amount, method of



application, and recommended limitations to protect water quality and sensitive species.

(ix) Owner reserves the right to allow public access and use of the Property subject to the restrictions outlined by this Easement for the purpose of permitted outdoor recreational activities and educational outreach to enhance the quality of life.

(x) Other activities that Holder, in its sole discretion, determines are consistent with the Conservation Purposes and are conducted in accordance with a management plan or other plan approved for that activity after Review.

(c) **Other Activities.** Activities are permitted that do not require Improvements and do not materially or adversely affect maintenance or attainment of Conservation Purposes such as the following: (i) walking, bird watching, and nature study; and (ii) educational or scientific activities consistent with the Conservation Purposes.

#### **ARTICLE IV RIGHTS AND DUTIES OF HOLDER AND BENEFICIARIES**

**4.01 Holder Covenants.** In support of the Conservation Purposes, Holder declares the following covenants binding upon its easement interest in the Property:

(a) **Exercise of Powers.** Holder must exercise the powers granted to it by this Easement to prevent and terminate activities and uses of, and Improvements within, the Property that are inconsistent with the Conservation Purposes.

(b) **Must be Qualified Organization.** Holder must be and remain at all times a Qualified Organization and must not transfer this Easement or otherwise assign its rights or responsibilities under this Easement to a Person other than a Qualified Organization committed to upholding the Conservation Purposes.

(c) **Proceeds Used for Conservation Purposes.** Holder must use any funds received on account of the release, termination or extinguishment of the Easement in whole or in part in furtherance of its charitable conservation purposes.

**4.02 Rights and Duties of Holder.** The items set forth below are both rights and duties vested in Holder by this Easement:

(a) **Protect in Perpetuity.** To protect the Conservation Purposes of the Property in perpetuity.

(b) **Enforcement.** To enter the Property to investigate a suspected, alleged or threatened violation of the provisions of this Easement and, if found, to enforce the terms of this Easement by exercising Holder's remedies in this Easement.

(c) **Inspection.** To enter and inspect the Property for compliance with the requirements of this Easement in a reasonable manner and at reasonable times.

(d) **Review.** To exercise rights of Review in accordance with the requirements of this section.

(e) **Interpretation.** To interpret the terms of this Easement and, at the request of Owner, furnish Holder's explanation of the application of such terms to then-existing, proposed, or reasonably foreseeable conditions within the Property.

**4.03 Amendment and Holder's Discretionary Approval Background.** Owner and Holder have determined, in good faith, the limitations of any permissible modifications hereto. Owner and Holder recognize that natural conditions, landscapes, uses and technologies change over time. Holder and Owner recognize that unforeseen or changed future circumstances may arise which makes it beneficial or necessary to take certain action in order to ensure the continued protection of the Conservation Purposes of the Property and to guaranty the perpetual nature of this Easement. Additional proposed activities may require the exercise of discretion by Holder, as further described below. This Section, therefore, ensures that the Holder protects the Conservation Purposes of the Property in perpetuity.

(a) **Purpose.** To this end, if approved by the Holder in its sole discretion, Owner and Holder have the right to modify this Easement. Holder may exercise its discretion in accordance with the provisions and limitations of this Section. Holder has no obligation to agree to any modification of this Easement. No modification shall adversely affect the perpetual duration of this Easement or the perpetual protection of its Purposes.

(b) **Amendment Requirements.** Holder shall not consent to any amendment of this Easement unless Owner submits a written request for Amendment pursuant to Holder's existing amendment policy and such proposed Amendment qualifies under Holder's policy then in effect respecting conservation easement amendments. The effect of such Amendment shall enhance, or at least be neutral with respect to, the Conservation Purposes of this Easement. Owner and Holder may amend this Easement to be more restrictive to comply with the provisions of Code Section 2031(c). Holder may require subordination of any Lien as a condition of permitting any substantive amendment to this Easement.

(c) **General.** Holder and Owner shall have no power or right to agree to any activity, use or structure that would (i) result in the extinguishment in full of this Easement; (ii) adversely affect the perpetual nature of this Easement; (iii) adversely affect the qualification of this Easement or the status of Holder under any applicable laws, including Code Sections 170(h), 501(c)(3), and the laws of the State of Arkansas; or (iv) result in either impermissible private benefit or inurement to any party. For purposes of this Section, the terms impermissible private benefit and inurement shall have the same meanings ascribed to them in Code Section 501(c)(3) and associated Treasury Regulations. Any modification that results in a partial extinguishment with the exception of corrections and clarifications of boundary disputes, legal descriptions and internal use demarcations, and any other de minimis modification.

(d) **Discretionary Acts.** Subject to the conditions and circumstances set forth below, Holder may consent to activities, structures or uses, issue waivers or licenses or otherwise exercise discretion where the Easement is silent or ambiguous. Because of unforeseen or changed circumstances, if an activity, structure or use that is not expressly permitted under this Easement is deemed beneficial or necessary by Owner, Owner may request, and Holder may, in its sole discretion, grant permission for such activity, structure or use without resorting to the formalities of Holder's amendment policy and process, subject to the following limitations: (i) such request for Holder's consent shall be made in writing and shall describe the proposed activity or use in sufficient detail to allow Holder to evaluate the consistency of the proposed activity with the preservation and protection of the Conservation Purposes; (ii) Holder may grant its consent only if it determines, in its sole discretion, that (A) the performance of such activity is, in fact, beneficial or necessary; and (B) such activity (x) shall not result in private inurement or confer impermissible private benefit, (y) results in neutral or enhanced Conservation Purposes of this Easement, and (z) does not violate the terms of this Easement. Owner shall not engage in the proposed activity or use unless and until Owner receive Holder's approval in writing.

(e) **Costs.** If Owner is the party requesting an Amendment of, or discretionary approval pursuant to, this Easement, Owner shall be responsible for all reasonable and customary fees and costs related to Holder's evaluation of said request and an Amendment's execution, including reasonable attorney's fees and costs, staff, contractor, legal, expert, consultant fees and costs, and any costs associated with any updated Baseline Documentation Report prepared pursuant to the provisions of this Section.

(f) **Updated Baseline Documentation.** In the event Owner and Holder agree to an Amendment or discretionary approval pursuant to this Section that results in alterations to the Property, then the Baseline Documentation Report shall be supplemented appropriately to reflect the scope, scale and intensity of the alterations. The supplement shall be acknowledged by Owner and Holder to memorialize the condition of the Property as of the date of the amendment or discretionary approval.

(g) **Recording.** Owner and the Holder shall execute any Amendment approved after following the procedures in this Section, and the revised document shall be recorded in the Public Records.

(h) **Form.** Any modification that Holder determines, in its sole discretion, to be beneficial or necessary shall be in the form of either (i) an Amendment, in the case of a permanent modification of this Easement, including but not by way of limitation, a clerical or technical correction or modification of a reserved right; or (ii) a discretionary approval, waiver or consent in the case of a temporary activity or impact relating to the maintenance or management of the Property which does not require a permanent modification of the Easement. All Amendments and discretionary actions shall be subject to this section. Nothing in this section, however, shall require Owner or Holder to agree to any Amendment or discretionary approval, consent, or waiver.

**4.04 Other Rights of Holder.** The items set forth below are also rights vested in Holder by this Easement. However, Holder, in its discretion, may or may not exercise them:

(a) **Signs.** To install one or more signs within the Property identifying the interest of Holder in the Easement. However, such signs will not reduce the number or size of signs permitted to Owner under this Easement. Signs are to be of the customary size installed by Holder and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owner.

(b) **Proceedings.** To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (1) pertains to the impairment of Conservation Values; or (2) may result in a transfer, Improvement or use that violates the terms of this Easement.

**4.05 Review.** The following provisions are incorporated into any provision of this Easement providing for any activity or use that is subject to Review:

(a) **Notice to Holder.** At least 30 days before Owner intends to begin or allow an Improvement, activity, or use that is subject to Review, Owner must (1) Notify Holder of the proposed activity or use, including with the Notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the proposal and its potential impact on the Conservation Purposes and (2) receive Holder's approval therefor.

(b) **Notice to Owner.** Within 30 days after receipt of Owner's Notice, Holder must review the proposed activity or use, and Notify Owner of Holder's determination to (i) accept Owner's proposal in whole or in part; (ii) reject Owner's proposal in whole or in part; (iii) accept Owner's proposal conditioned upon compliance with conditions imposed by Holder; (iv) reject Owner's proposal for insufficient information upon which to base a determination; or (v) or reject Owner's proposal for inconsistency with the Conservation Purposes. If Holder gives conditional acceptance under clause (iii), commencement of the proposed Improvement, activity, or use constitutes acceptance by Owner of all conditions set forth in Holder's Notice.

(c) **Failure to Notify.** If Holder fails to notify Owner as required in the preceding subsection, the proposal set forth in Owner's notice is deemed disapproved. Because such disapproval is not a decision on the merits by the Holder, it is not final or binding on the Holder and the Owner can re-submit the same or a similar request for approval. Nevertheless, Owner may not undertake any activity or use for which approval has been requested until approval pursuant to this Section 4.05 has been granted by Holder.

(d) **Standard of Review.** Upon review, the phrase "unless Holder, without any obligation to do so," in relation to an approval or determination by Holder, means that, in that particular case, Holder's approval is wholly discretionary. Holder's approval is not to be unreasonably withheld. It is reasonable for Holder to disapprove a proposal that may adversely affect natural resources described in the Conservation Purposes or that is otherwise inconsistent with maintenance or attainment of Conservation Purposes. Owner and Holder shall act in good faith; shall follow a reasonableness standard; shall use their best efforts to act in a timely manner in any determinations that are necessary or are contemplated to be made (either separately or

jointly) under this Easement; shall cooperate with one another; and shall take all other reasonable action suitable to these ends.

**4.06 Costs and Expenses.** Owner must pay or reimburse Holder's costs and expenses (including Losses, Litigation Expenses, allocated personnel costs, and reasonably incurred liabilities) in connection with: (a) enforcement (including exercise of remedies) under the terms of this Easement; and (b) response to requests by Owner for Review, Waiver, or Amendment of this Easement. Owner may, before commencement of Holder's services, request an estimate of the costs and expenses Holder anticipates to incur in responding to Owner's request for any Amendment of this Easement. Owner is not responsible to reimburse costs and expenses arising from Holder's response to an inquiry or request by a Person other than Owner without Owner's approval.

## **ARTICLE V VIOLATION; REMEDIES**

**5.01 Violation.** If Holder determines that the terms of this Easement are violated or that a violation is threatened or imminent, then the provisions of this section apply:

(a) **Notice.** Holder must notify Owner of the violation or threatened violation of which it is aware. Holder's notice may include its recommendation of measures Owner must take to cure or prevent the violation and restore features of the Property damaged or altered as a result of the violation.

(b) **Opportunity to Cure.** Owner's cure period expires thirty (30) days after the date of Holder's Notice to Owner subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

(i) Owner ceases the activity constituting the violation or threatened violation promptly upon receipt of Holder's Notice;

(ii) Owner and Holder agree, within the initial 30-day period, upon the measures Owner will take to cure the violation;

(iii) Owner commences to cure within the initial 30-day period; and

(iv) Owner continues thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) **Imminent Harm.** No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm to, or alteration of any of the Conservation Values.

**5.02 Remedies.** Upon expiration of the cure period (if any) described in the preceding Section 5.01, and failing correction of the violation by Owner as provided above, Holder may do one or more of the following:



(a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations of the terms of this Easement, and/or to compel restoration of resources destroyed or altered as a result of the violation.

(b) **Civil Action.** Recover from Owner or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.

(c) **Statutory.** Bring a private right of action pursuant to the Arkansas Conservation Easement enforcement provision found at Ark. Code Ann. § 15-20-409, including all remedies available pursuant to that law.

**5.03 Modification or Termination.** If the Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder, the following provisions apply:

(a) **Compensatory Damages.** Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred. In the event of an extinguishment of the Easement, Holder is entitled to the greater of the compensation provided under this section or the compensation provided under any other provision of this Easement.

(b) **Restitution.** Holder is entitled to recover from the Person seeking the modification or termination: (i) restitution of amounts paid for this Easement (if any) and any other sums invested in the Property for the benefit of the public as a result of rights vested by this Easement, plus (ii) reimbursement of Litigation Expenses.

**5.04 Remedies Cumulative.** The description of Holder's remedies in this Article V does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article V or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise one or more of the other rights or remedies available to Holder at the same time or at any other time.

**5.05 Waivers.** Holder in its discretion may provide a Waiver if Holder determines that the Waiver will have no material effect on the Conservation Purposes. If Holder does not exercise a right or remedy when it is available to Holder, that is not to be interpreted as a Waiver of any non-compliance with the terms of this Easement or a Waiver of Holder's rights to exercise its rights or remedies at another time.

**5.06 No Fault of Owner.** Holder may waive its right to reimbursement under this Article V as to Owner (but not other Persons who may be responsible for the violation) if Holder is

reasonably satisfied that the violation was not the fault of Owner, and could not have been anticipated or prevented by Owner by reasonable means.

#### **5.07 Multiple Owners.**

(a) **Liability of Owners of Different Portions of the Property.** If different Persons own portions of the Property, only Owners of the portion with respect to which a violation has occurred, or is threatened, will be held responsible for the violation or threatened violation.

(b) **Liability of Owners of a Single Portion of the Property.** If more than one Person owns a portion of the Property with respect to which a violation has occurred, or is threatened, all of the Persons who are Owners of such portion may be held jointly and severally liable for the violation regardless of the form of ownership.

### **ARTICLE VI MISCELLANEOUS**

#### **6.01 Notices.**

(a) **Requirements.** Each Person giving any notice pursuant to this Easement (each a “Notice”) must give the Notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid. Each time the term “Notify” is used herein, it shall be deemed to refer to sending a Notice in accordance with this article.

(b) **Address for Notices.** Each Person giving a Notice must address the Notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by Notice to the other Person:

**If to Owner:** City of Springdale  
Attn: Mayor’s Office  
201 N. Spring St.  
Springdale, AR 72764

**If to Holder:** Northwest Arkansas Land Trust  
1725 S. Smokehouse Trail  
Fayetteville, Arkansas 72701

**6.02 Duty to update.** Owner and Holder shall provide Notice to the other within thirty (30) days of a change in address specifying a new address for Notices.

**6.03 Governing Law.** The laws of the State of Arkansas, and the United States, govern this Easement.

**6.04 Assignment and Transfer.** Neither Owner nor Holder may assign or otherwise transfer any of their respective rights or duties under this Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except pursuant to the provisions of this Section 6.04. Any purported assignment or transfer in violation of this Section 6.04 is void.

(a) **Notice Required.** Not less than thirty (30) days prior to transfer of the Property or a Lot, Owner must Notify Holder of the name(s) and address for Notice purposes of the Person who will become Owner following the transfer. At the time Holder is Notified of the transfer, Owner shall pay a \$10 transfer fee to Holder.

(b) **Prior to Transfer.** Owner authorizes Holder to (i) contact the Persons to whom the Property, portion thereof, or interest therein will be transferred, and other Persons representing Owner or the prospective transferees to discuss with them this Easement and, if applicable, other pertinent documents; and (ii) enter the Property to assess compliance with this Easement.

(c) **Ending Continuing Liability.** If Holder is not Notified as required by this Section 6.04, it is not the obligation of Holder to determine whether a violation first occurred before or after the date of the transfer. The pre-transfer Owner continues to be liable on a joint and several basis with the post-transfer Owner for the correction of violations under this Easement until such time as Holder is given the opportunity to inspect and all violations noted in Holder's resulting inspection report are cured.

**6.05 Burdens; Benefits.** This Easement binds and benefits Owner, and its successors and assigns in title to the Property, any portion thereof, or interest therein, and Holder and its successors, and assigns in title to this Easement.

(a) **Binding on All Owners.** This Easement imposes a servitude on the Property, running with the land and binding upon the Owner and, upon recordation in the Public Records, all subsequent Owners of the Property or any portion of the Property are bound by its terms whether or not Owners had actual knowledge of this Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Easement.

(b) **Rights Exclusive to Holder.** Only Holder has the right to enforce the terms of this Easement and exercise other rights of Holder. No Owner of any portion of, or interest in, the Property has the right to enforce the terms of this Conservation Easement against other Owners of other portions of the Property or interests therein. Only Owners of the portion of the Property that is the subject of a request for Review, Waiver, Amendment, interpretation, or other decision by Holder have a right to Notice of, or other participation in, such decision.

**6.06 Documentation Requirements.**

(a) **Between Holder and Owner.** No Amendment, Waiver, approval after Review, interpretation, or other decision by Holder is valid or effective unless it is in writing and signed

by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance or with respect to any portion of the Property does not imply that an Amendment or Waiver will be granted in any other instance.

(b) **Between Holder and Assignee.** Any assignment of Holder's rights under this Easement, if otherwise permitted under this Easement, must be in a document signed by both the assigning Holder and the assignee Holder. The assignment document must include a covenant by which the assignee Holder assumes the covenants and other obligations of Holder under this Easement. The assigning Holder must deliver the Baseline Documentation Report and such other documentation in Holder's possession reasonably needed to uphold the Conservation Purposes.

**6.07 Severability.** If any provision of this Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Easement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Easement invalid, illegal or unenforceable in any respect.

**6.08 Counterparts.** This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one document.

**6.09 Indemnity.** By agreeing to this provision, Owner is not waiving its right to assert sovereign tort immunity as provided in Ark. Code Ann. §21-9-301. Owner must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to:

- (a) A breach or violation of this Easement;
- (b) A violation or alleged violation of Applicable Law;
- (c) Personal injury (including death) and on or about the Property if and to the extent not caused by the negligent or intentional acts or omissions of an Indemnified Party;
- (d) Loss of personal property or belongings occurring on the Property not caused by the negligent or intentional acts or omissions of an Indemnified Party;
- (e) Damage to real property, including any deposit, release, remediation, or removal of any substances regulated by Environmental Laws on the Property. Owner acknowledges that, under no circumstance, shall this Easement be construed or otherwise interpreted to qualify Holder as an owner or operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or any successor, related, or similar law, or any corresponding state statute, and Owner indemnifies Holder against any Losses or Litigation Expenses resulting from a finding to the contrary.

**6.10 Guides to Interpretation.**

(a) **Captions.** Except for the identification of defined terms in the Glossary, the descriptive headings of this Easement are for convenience only and do not constitute a part of this Easement.

(b) **Glossary.** If any term defined in the Glossary is not used in this Easement, the defined term is to be disregarded as surplus material.

(c) **Other Terms.**

(i) The word “including” means “including but not limited to”.

(ii) The words “must” and “shall” are obligatory; the word “may” is permissive and does not imply any obligation.

(d) **Conservation Easement Act.** This Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a Holder of a conservation easement under the Arkansas Conservation Easement Act, Ark. Code. Ann. § 15-20-401 *et seq.*, and any amendments, replacements, or successors to that law.

(e) **Restatement (Third) of the Law of Property: Servitudes.** This Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a Holder of a conservation servitude under the Restatement (Third) of the Law of Property, to the extent that Arkansas law or other Applicable Law does not provide sufficient guidance.

**6.11 Entire Agreement.** This document, and the exhibits attached hereto and made a part hereof, and the Baseline Documentation Report constitute the entire agreement of Owner, Holder, and Beneficiaries (if any) pertaining to this Easement. The terms of this Easement supersede in full all negotiations, agreements, statements and writings between Owner, Holder and others pertaining to this transaction.

**6.12 Incorporation by Reference.** Each exhibit attached to this Easement is incorporated herein by this reference. The Baseline Documentation Report (whether or not attached to this Easement) is incorporated herein by this reference.

**6.13 Jurisdiction; Venue.** Holder and Owner submit to the exclusive jurisdiction of the courts of the State of Arkansas located in Washington County and agree that any legal action or proceeding relating to this Easement may be brought only in the courts located in such county.

## ARTICLE VII. GLOSSARY

As used herein, the following terms will have the meanings set out in this article.

**Access Drive(s).** Roads, drives or lanes providing vehicular access to or located within the Property.



**Additional Improvements.** All buildings, structures, facilities and other Improvements within the Property, whether temporary or permanent, other than Existing Improvements.

**Amendment.** An amendment, modification or supplement to this Easement signed by Owner and Holder and recorded in the Public Records. The term "Amendment" includes an amendment and restatement of this Easement.

**Applicable Law.** Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Property, this Easement as amended through the applicable date of reference. If this Easement is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

**Best Management Practices.** A series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state, and/or county resource management agencies for farming and Forestry operations; for preventing and reducing pollution of water resources and other disturbances of soil, water, and vegetative resources; and for protecting wildlife habitats.

**Code.** The Internal Revenue Code of 1986, as amended through the applicable date of reference.

**Conservation Easement Act.** The Arkansas Conservation Easements Act (Ark. Code Ann. § 15-20-401 et seq.) as amended through the applicable date of reference.

**Construction.** Any demolition, construction, re-construction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements. This term does not include dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

**Default Rate.** An annual rate of interest equal at all times to two percent (2.0%) above the "prime rate" announced from time to time in The Wall Street Journal; provided, however, that the Default Rate shall never exceed the maximum rate allowed under Applicable Law.

**Environmental Laws.** Any and all federal, state, local, or administrative agency statutes, regulations, rules, codes, ordinances or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) regarding air, water, solid waste, hazardous materials, petroleum products, worker and community right-to-know, hazard communication, radioactive material, resource protection, wetlands and watercourses, health protection and similar environmental health, safety, building and land use laws and regulations as may now or at any time hereafter be in effect.

**Existing Servitude.** Easements and other servitudes affecting title to the Property (other than a Lien) accorded priority to the Easement by notice in the Public Records.

**Existing Improvements.** All buildings, structures, facilities and other improvements, whether temporary or permanent, located on, above or under the Property as of the Easement Date as identified in the Baseline Documentation Report.

**Forestry.** Planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat and other Conservation Purposes.

**Habitat Management Plan.** A record of the decisions and intentions of Owner prepared by a qualified resource management professional for the purpose of protecting natural resources that the Conservation Purposes aim to protect during certain operations potentially affecting those resources. It includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate), and projects a multi-year description of planned activities for operations to be conducted in accordance with the plan.

**Improvement.** Any Existing Improvements or Additional Improvements.

**Invasive Species.** A plant species that is (a) Non-Native Species to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, published atlases are to be used to identify Invasive Species.

**Lien.** Any mortgage, lien or other encumbrance securing the payment of money.

**Litigation Expense.** Any filing fee or cost associated with any court or administrative review body, arbitration fee or cost, witness fee and every other fee and cost of investigating, defending, appealing, or asserting any claim of violation or for indemnification under this Easement including in each case, attorneys' fees, other professionals' fees, and disbursements.

**Losses.** Any liability, loss, claim, settlement payment, cost, expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

**Lot.** A unit, lot, or parcel of real property separated or transferable for separate ownership or lease under Applicable Law.

**Market Value.** The fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with 26 C.F.R. §1.170A-13.

**Native Species.** A plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases are to be used to establish whether or not a species is native.

**Non-Native Species.** A plant or animal that is not indigenous (alien) to the locality under consideration. In cases of uncertainty, published atlases are to be used to establish whether or not a species is non-native.

**Open Space.** Open Space is any open piece of land that is undeveloped and helps enhance the beauty and environmental quality of a community for the benefit of the general public.

**Open Space Plan.** The Open Space Plan is a coordinated, voluntary program developed by the Northwest Arkansas Regional Planning Commission to protect and promote Northwest Arkansas's most valued natural landscapes and open spaces.

**Owner/Ownership.** Owner and all Persons after them who hold an interest in the Property.

**Person.** An individual, organization, trust, government or other entity.

**Public Records.** The public records of the office for the recording of deeds in and for the county in which the Property is located.

**Qualified Organization.** A governmental or non-profit entity that (a) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (b) meets the criteria of a qualified organization under the Regulations; and (c) is duly authorized to acquire and hold conservation easements under Applicable Law.

**Regulations.** The provisions of 26 C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

**Review.** Review and approval of Holder under the procedure described in Article IV.

**Review Requirements.** Collectively, any plans, specifications or information required for approval of the activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Easement either as an exhibit or as part of the Baseline Documentation Report or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

**Subdivision.** Any division of the Property or any Lot within the Property; and any creation of a unit, Lot or parcel of real property, including subsurface portions of the Property, for separate use or Ownership by any means including by lease or by implementing the condominium form of Ownership.

**Utility Improvement.** Improvement for the reception, storage, or transmission of potable water, storm water, sewage, electricity, gas and telecommunications or other sources of power.

**Waiver.** A written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances if Holder is satisfied that the accommodation will have no material effect on Conservation Purposes.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

INTENDING TO BE LEGALLY BOUND, each of Owner and Holder, by its duly authorized representative, have signed and delivered this Easement as of the Easement Date.

**OWNER:**

**CITY OF SPRINGDALE, ARKANSAS**, an  
Arkansas municipal corporation

By: \_\_\_\_\_  
Doug Sprouse, Mayor

ACKNOWLEDGEMENT

STATE OF ARKANSAS                    )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_ 2021, before me, \_\_\_\_\_, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named **DOUG SPROUSE** (being the person or persons authorized by said entity, to execute such instrument, stating their respective capacities in that behalf), to me personally well known (or satisfactorily proven to be such person), who stated that they were the Mayor of the **CITY OF SPRINGDALE, ARKANSAS**, a duly constituted municipality under the laws of the State of Arkansas, and were duly authorized in such capacity to execute the foregoing instrument for and in the name and behalf of said entity, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal, this the \_\_\_\_ day of \_\_\_\_\_, 2021.

My Commission Expires:

Notary Public

INTENDING TO BE LEGALLY BOUND, each of Owner and Holder, by its duly authorized representative, have signed and delivered this Easement as of the Easement Date.

**WITNESS:**

**HOLDER:**

**NORTHWEST ARKANSAS LAND TRUST,**  
an Arkansas non-profit corporation

_____	By: _____
Jason Evins, Secretary/Treasurer	Eileen Jennings, President

ACKNOWLEDGEMENT

STATE OF ARKANSAS                    )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_ 2021, before me, \_\_\_\_\_, a Notary Public within and for the County and State aforesaid, duly commissioned, qualified and acting, appeared the within named **EILEEN JENNINGS** and **JASON EVINS**, to me personally well known (or satisfactorily proven to be such persons), who stated and acknowledged that they were the President and Secretary/Treasurer, respectively, of **NORTHWEST ARKANSAS LAND TRUST**, an Arkansas non-profit corporation, duly authorized as such officers to execute the foregoing instrument for and in the name and behalf of said corporation and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as such Notary Public on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

My Commission Expires:  

Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Municipality: Springdale  
County: Washington and Benton  
State: Arkansas  
Portions of Tax Parcels: 815-29767-200, 815-29767-211 and 21-00172-010.

A part of the SE ¼ of Section 22, Township 18 North, Range 30 West, Benton County, Arkansas and a part of the NE ¼ of the NE ¼ of Section 27, Township 18 North, Range 30 West, Washington County, Arkansas, more particularly described as follows: Beginning at the railroad spike that marks the Southwest corner of said SE ¼ of the SE ¼ of Section 22, and run thence along the West line of said SE ¼ of the SE ¼ N 1°49'35" E 662.35 feet to a steel rebar pin; thence S 87°05'31" E 422.22 feet to a steel rebar pin; thence S 04°30'00" E 181.69 feet to a steel rebar pin; thence S 13°00'00" W 163.19 feet to a steel rebar pin; thence S 20°30'00" W 132.18 feet to a steel pin; thence S 10°30'00" W 197.54 feet to a steel rebar pin; thence N 87°01'22" E 16.64 feet to a steel rebar pin; thence N 10°30'00" E 193.91 feet to a steel rebar pin; thence N 20°30'00" E 131.82 feet to a steel rebar pin; thence N 13°00'00" E 166.81 feet to a steel rebar pin; thence N 04°30'00" W 182.09 feet to a steel rebar pin; thence S 87°05'31" E 530.69 feet to a steel rebar pin; thence S 25°53'49" E 225.14 feet to a steel rebar pin; thence S 63°50'27" E 277.51 feet to a steel rebar pin on the East line of said SE ¼ of the SE ¼; thence along said East line S 1°39'39" W 357.09 feet to a four way fence corner at the Southeast corner of said SE ¼ of the SE ¼; thence S 2°29'09" W along the East line of said NE ¼ of the NE ¼ of Section 27, 959.63 feet to a steel rebar pin; thence N 87°34'59" W 1330.30 feet to a steel rebar pin on the West line of said NE ¼ of the NE ¼; thence N 2°36'30" E 164.93 feet to a steel rebar pin; thence S 87°02'36" E 16.50 to the centerline of Silent Grove Rd; thence along said centerline N 00°15'33" E 55.44 feet; thence along said centerline N 01°46'26" E 154.73 feet; thence along said centerline N 3°30'02" E 428.32 feet; thence along said centerline N 00°48'49" E 100.39 feet; thence along said centerline N 2°17'31" W 69.28 feet to the North line of said NE ¼ of the NE ¼; thence along said North line N 87°01'22" W 9.5 feet to the point of beginning, containing 47.456 acres more or less. Subject to the right-of-way of Silent Grove Road and all easements of record.

**LESS AND EXCEPT (#1):**

One acre (1 acre) taken squarely out of the Northwest corner of the above-described tract of land.

**ALSO LESS AND EXCEPT (#2):**

A part of the SE ¼ of Section 22, Township 18 North, Range 30 West, Benton County, Arkansas, more particularly described as follows: Commencing at the railroad spike that marks the Southwest corner of said SE ¼ of the SE ¼ of Section 22, and run thence N 1°49'35" E 662.35 feet; thence S 87°5'31" E 208.71 feet to the point of beginning; thence continuing S 87°5'31" E 313.07 feet; thence S 1°49'35" W 208.71 feet; thence N 87°5'31" W 313.07 feet; thence N 1°49'35" E 208.71 feet to the point of beginning containing 1.5 acres more or less.

**ALSO LESS AND EXCEPT (#3):**

A part of the SE ¼ of Section 22, Township 18 North, Range 30 West, Benton County, Arkansas, more particularly described as follows: Commencing at the railroad spike that marks the Southwest corner of said SE ¼ of the SE ¼ of Section 22, and run thence N 1°49'35" E 453.64 feet to the point of beginning; thence S 87°5'31" E 521.78 feet; thence S 1°49'35" W 83.48 feet; thence N 87°5'31" W 521.78 feet; thence N 1°49'35" E 83.48 feet to the point of beginning, containing 1 acre more or less.

**ALSO LESS AND EXCEPT (#4):**

*Exhibit A*



Beginning at a point 280 feet North of the Southwest Corner of the SE ¼ of the SE ¼ of Section 22, Township 18 North, Range 30 West, thence North to a point which is S 1°49'35" W 292.19 feet from the Northwest Corner of the S ½ of the SE ¼ of the SE ¼ of Section 22, Township 18 North, Range 30 West, thence S 87°5'31" E 521.78 feet, thence South to the South line of an easement for a sewer transmission line as described by an easement document filed in Benton County, Arkansas, at Book 423, Page 414, thence Northwesterly along said easement to the point of beginning, containing 1.93 acres more or less.

**ALSO LESS AND EXCEPT (AHPP Easement):**

A part of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of Section 27, Township 18 North, Range 30 West, Washington County, Arkansas, and being more particularly described as follows: Commencing at a found railroad spike, said spike accepted and used as the Northwest corner of the NE ¼ of said NE 1/4, thence South 87 degrees 01 minutes 22 seconds East a distance of 9.50 feet; thence South 02 degrees 17 minutes 31 seconds East a distance of 69.28 feet; thence South 00 degrees 48 minutes 49 seconds West a distance of 100.39 feet; thence South 03 degrees 30 minutes 02 seconds West a distance of 13.31 feet; thence South 89 degrees 37 minutes 22 seconds East a distance of 12.41 feet to the POINT OF BEGINNING (P.O.B.); thence continue South 89 degrees 37 minutes 22 seconds East a distance of 609.02 feet; thence South 00 degrees 22 minutes 38 seconds West a distance of 654.46 feet; thence North 89 degrees 37 minutes 22 seconds West a distance of 636.99 feet; thence North 02 degrees 49 minutes 29 seconds East a distance of 655.06 feet; the POINT OF BEGINNING (P.O.B.), containing 407,732 square feet, or 9.36 acres.

**EXHIBIT B  
EASEMENT PLAN  
[SEE ATTACHED]**

