

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

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO SELL CERTAIN VACANT PROPERTY GENERALLY LOCATED WEST OF PIKE AVENUE AND SOUTH OF THE INTERSECTION OF ROCKWATER BOULEVARD AND ROCKWATER ROUNDABOUT IN THE CITY OF NORTH LITTLE ROCK; AND FOR OTHER PURPOSES.**

WHEREAS, Arkansas Code Ann. § 15-54-302 authorizes the City to sell its real property when authorized by a resolution approved by a majority vote of the City Council presenting and participating; and

WHEREAS, the City of North Little Rock (the "City") owns two parcels of vacant property, consisting of approximately 98,384 sq. ft. and generally located west of Pike Avenue and south of the intersection of Rockwater Boulevard and the Rockwater Roundabout, and desires to sell the same; and

WHEREAS, Shoreline at Rockwater, LLC ("Shoreline") has offered to pay a fair market value of \$379,805.00 for the property, and it is in the best interests of the City and its residents to sell said property to Shoreline.

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 enter into a contract (substantially similar to Exhibit "A" attached hereto) to sell two parcels of vacant property depicted on zoning map included in Exhibit "A" and generally located west of Pike Avenue and south of the intersection of Rockwater Boulevard and the Rockwater Roundabout in the City of North Little Rock to Shoreline at Rockwater, LLC for the sum of \$379,805.00, said property being more particularly described as follows:

Lots 1-6, Block 14, Giles Addition to the City of North Little Rock,  
Pulaski County, Arkansas.

*And*

Lots 1-8, Block 15, Giles Addition to the City of North Little Rock,  
Pulaski County, Arkansas.

SECTION 2: That the City Attorney shall review and approve all agreements and documents necessary to effectuate the sale and conveyance of the herein described property.

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

PASSED:

APPROVED:

\_\_\_\_\_

\_\_\_\_\_  
Mayor Joe A. Smith

SPONSOR:

ATTEST:

Joe A. Smith

\_\_\_\_\_  
Mayor Joe A. Smith

by ABF

\_\_\_\_\_  
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter

\_\_\_\_\_  
C. Jason Carter, City Attorney

by ABF

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	11:40	A.M.	_____	P.M.
By	<u>J. Carter, City Atty</u>			
DATE	<u>7/18/19</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>B. Taylor</u>			

**CONTRACT TO BUY AND SELL REAL ESTATE  
BETWEEN THE CITY OF NORTH LITTLE ROCK AND SHORELINE AT  
ROCKWATER, LLC**

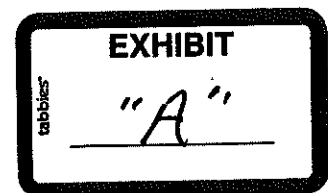
**1. PARTIES AND PROPERTY.** SHORELINE AT ROCKWATER, LLC, an Arkansas LLC ("**Buyer**"), agrees to buy and the **City of North Little Rock**, a city duly incorporated in Arkansas ("**City**"), agrees to sell, on the terms and conditions set forth in this Contract ("**Contract**"), the following described real estate in North Little Rock, Arkansas:

Two Parcels of land located west of Pike Avenue and south of the intersection of Rockwater and the Rockwater Roundabout in North Little Rock, Arkansas consisting of approximately 98,384 Square Feet as described in the attached **Exhibit A**, together with all mineral rights owned by City, all improvements thereon and all attached fixtures thereon, except as herein excluded, and collectively called the "**Property**".

**2. PURCHASE PRICE AND TERMS.** The total Purchase Price shall be: Three hundred and seventy nine and eight hundred and five dollars (\$379,805) payable as follows:

- (a) **Earnest Money.** \$10,000 to be paid by Buyer to the City upon exercise of the extended inspection/review period option as explained in paragraph 3. The earnest money is non-refundable but will be applied to the purchase price at closing.
- (b) **Cash at Closing.** The balance of the Purchase Price (as described herein) to be paid by Buyer at closing in electronic transfer funds, certified check or cashier's check.

**3. INSPECTION/REVIEW PERIOD.** City hereby grants the Buyer and Buyer's agents the right to enter upon the Property during the term of this Contract to make such surface and subsurface inspections of the Property, at Buyer's expense, as the Buyer determines necessary, including but not limited to environmental and engineering studies (which may include Phase I and, if necessary, Phase II testing); provided, however, that Buyer shall reasonably repair any significant damage made to the Property as a result of said inspections and that Buyer shall give reasonable notice to City of intent to enter upon the Property. City shall disclose to Buyer any information known to City concerning past, present, or potential environmental contamination of the Property. Buyer shall have one hundred eighty-three (183) days from execution of this Contract to conduct any such inspections, studies and feasibility analyses and to determine if the Property is suitable, both physically and economically, for development or use as envisioned by Buyer (the "**Initial Review Period**").



If a Phase 1 reveals the presence of environmental contamination, City and Buyer agree to work through the Pulaski County Brownfield's Program to seek financial assistance with testing and, if necessary, remediation and recovery of the Property. City and Buyer agree to work closely with each other in pursuing funding from the Pulaski County Brownfield's Program. The City specifically does not commit to providing funding or other resources to the testing or remediation of the property. The parties specifically agree that no time periods established by this Contract shall be extended by virtue of funding requests made to the Pulaski County Brownfield's Program.

In the event the Buyer has not completed its due diligence or otherwise is engaged in having the Property inspected during the Initial Review Period, as provided above, the Buyer shall have the option, in the Buyer's sole discretion, to extend the term of the review period for one (1) additional *one hundred eighty* (180) day period (**Extended Review Period**) to allow additional time for additional due diligence or any remediation to be further completed or studied. The Buyer shall exercise such option to extend through written notification and non-refundable payment of \$10,000 earnest money to the City no later than ten (10) business days prior to the expiration of the Initial Review Period.

The City shall, within thirty (30) calendar days after execution of this Contract, make available to Buyer any existing building design drawings, surveys, environmental reports, plans and specifications, maintenance contracts, leases and any other existing documents and/or contracts relating to the Property and its operation and maintenance and any layout drawings related to the Property. Buyer and its agents shall have also have the right from time to time to examine and review any and all of City's books and records relating to the operation and ownership of the Property, including without limitation, final plans and specifications for all improvements, permits and licenses, zoning information, tax bills, utility bills, insurance coverage, supply and maintenance contracts and all other information Buyer deems necessary or desirable to familiarize itself with the Property. City agrees to cooperate in connection with the foregoing and agrees that Buyer, its agents, employees, representatives or contractors shall be made available promptly, upon request, such information as shall be necessary to examine the Property and the condition thereof and as shall be in the possession of the City.

If the Buyer determines, in the Buyer's sole and absolute discretion, for any reason whatsoever or for no reason at all, that the Property is not suitable for the Buyer's purpose or use, then the Buyer has the unrestricted and absolute right to terminate this Contract, without liability to Buyer other than the loss of the Earnest Money if the Extended Review Period option has been exercised. In the event that no notice to accept the Property is given to City by Buyer by **3:00 P.M.** on the last day of the Initial Review Period, or the last day of the Extended Review Period if

Buyer has exercised the Extended Review Period option, then this Contract will be considered to be terminated by the Buyer.

**4. DEVELOPMENT CONTROL.** Buyer shall not construct, or allow to be constructed, any structure, building or other improvement on the Property without the express approval of the North Little Rock City Council, which shall not be unreasonably withheld. Buyer shall present a satisfactory development plan to City Council, receive a building permit for construction in accordance with the plan, and commence work within two years of the closing date set by Paragraph 7 of this Contract.

**5. EVIDENCE OF TITLE.** City warrants that it owns fee simple title to the Property. City shall furnish to Buyer, at City's expense, a current commitment for owner's title insurance policy in an amount equal to the Purchase Price from American Abstract Company. The commitment shall agree to issue to Buyer, upon the closing of this transaction, a title insurance policy in the full amount of the Purchase Price, without exception for any matters other than the following permitted exceptions: *(i)* all real estate and ad valorem taxes and assessments for the year of closing, provided the same are not due and payable, *(ii)* zoning ordinances, provided the same are acceptable to Buyer in its sole discretion, and *(iii)* any exceptions, easements or restrictions which are waived by Buyer. City shall have the title insurance policy delivered to Buyer at Closing and pay the premium at Closing. Additionally, City shall furnish to Buyer, within thirty (30) days following acceptance of this Contract, and at City's expense, a recent ALTA survey of the property, sufficient to remove the standard survey exception from the referenced title commitment.

**6. TITLE.** **(a) Title Review.** Buyer shall have the right to inspect the title commitment. Written notice by Buyer of unmerchantability of title, defects or of any other unsatisfactory title condition shown by the title commitment shall be delivered by or on behalf of Buyer to City.

**(b) Matters Not Shown by Public Records.** City shall deliver to Buyer within thirty (30) calendar days after acceptance of this Contract true copies of any and all lease(s) and survey(s) in City's possession pertaining to the Property and shall disclose to Buyer all easements, liens, discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any other instruments or items which a survey and inspection of the Property may or may not disclose and which are not shown by the public records of which City has actual or constructive knowledge. City shall disclose to Buyer within thirty (30) calendar days after acceptance of this Contract, any information known to City that might reasonably have an effect on the value of the Property including but not limited to threatened, potential, or pending litigation, environmental contamination, building restrictions, zoning, soil conditions, environmental studies, flood plain or floodway existence, and any other conditions. Buyer shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such

as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by City or revealed by such inspection shall be delivered by or on behalf of Buyer to City.

**(c) Right to Cure.** If City receives notice of unmerchantability of title, defects or any other unsatisfactory title condition(s) as provided in subsection (a) or (b) above, City shall use immediate and reasonable efforts to correct said unsatisfactory conditions(s) within thirty (30) days of such notice or prior to Closing. If City fails to correct said unsatisfactory condition(s), Buyer may waive objection to said unsatisfactory condition(s) or Buyer may terminate this Contract without liability whatsoever to City and be promptly refunded all Earnest Money even if the Initial Review Period or any extension thereof has expired.

**(d) End of Objection to Title.** Buyer shall have until thirty (30) days prior to expiration of the Initial Review Period, or the extended option period if applicable, in which to object to unmerchantability of title, defects or any other unsatisfactory title condition. Upon expiration of such period, any and all past, present and future objections to title will be deemed to have been waived. This paragraph in no way affects or limits the provisions of Paragraph 3 above.

**7. CLOSING.** The closing of the transactions contemplated under this contract ("**Closing**") shall take place at the offices of a mutually agreed upon title company **(i)** no later than thirty (30) days after expiration of the Initial Review Period, or the extended option period if applicable, **(ii)** within thirty (30) days of the removal of all contingencies to this Contract or **(iii)** on such other earlier date as the Buyer may select prior to the expiration of the Initial Review Period or the extended option period. Closing costs will be paid by Buyer and City as customary in North Little Rock, Arkansas, as determined by American Abstract Title Company or other mutually agreed upon title company.

**8. RIGHT OF REPURCHASE.** After closing, should Buyer fail to meet any of the requirements set forth in Paragraph 4 of this Contract, City shall have the right to repurchase the Property from Buyer at the purchase price, less five percent (5%).

**9. TRANSFER OF TITLE.** Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, City shall execute and deliver a general Warranty Deed to Buyer at Closing.

**10. PAYMENT OF ENCUMBRANCES.** Any encumbrance required to be paid by City shall be paid at or before Closing from the proceeds of this transaction or from any other source.

**11. CLOSING DOCUMENTS AND SERVICES.** At Closing the parties shall execute and deliver a memorandum of the Closing to acknowledge delivery and acceptance of the items required, the satisfaction of the conditions precedent to

Closing and the closing and the status of performance of other provisions of this Contract.

**12. PRORATIONS.** General real estate taxes for the year of Closing, based on the most recent levy and the most recent assessment, prepaid contracts, rents, water and sewer charges, and other charges, if any, shall be prorated to the date of Closing.

**13. POSSESSION.** Possession of the Property shall be delivered to Buyer at Closing.

**14. CITY'S REPRESENTATIONS AND WARRANTIES.** City expressly covenants, warrants and represents the following matters:

(a) **Adverse Information.** City has no knowledge of nor has it received any notice of any change pending or contemplated in any applicable laws, ordinances or restrictions, or of any judicial or administrative action or of any action by adjacent landowners, or any natural or artificial condition upon or affecting the Property, or any portion thereof, which would result in any material adverse change in the condition of the Property or would prevent, limit, impede or render more costly Buyer's contemplated use of the Property.

(b) **Compliance with Laws.** City and the Property are in compliance with all applicable laws, ordinances, regulations, statutes, rules, conditions, agreements, declarations and restrictions, including without limitation, all zoning, subdivision, building, health, fire, safety or other laws pertaining to and affecting the Property, or any portion thereof, including without limitation, any improvements located thereon.

(c) **Litigation.** There are no disputes, legal actions, suits or other legal or administrative proceedings, including condemnation or similar cases or proceedings, pending or, to the best of City's knowledge, threatened, against the Property, or against City and affecting the Property or against any third party known to City affecting the Property and City is not aware of any facts which might result in any such action, suit or other proceedings.

(d) **No Assessments.** No assessments have been made against the Property that are unpaid (except real estate and ad valorem taxes for the current year), whether or not they have become liens, and if, at the time of Closing, the Property or any part thereof shall be or shall have been affected by any assessments they shall be paid in full by City.

(e) **Miscellaneous.**

(i) No zoning, building or other law, ordinance, regulation or restriction is, or as of the Closing will be, violated by the continued maintenance, operation or use of the Property. There is not, and as of the Closing, there will not be, anything that would constitute any uncured violation of Federal, state or municipal laws, ordinances, orders, regulations or requirements affecting any portion of the Property.



(ii) The execution by City of this Contract and the consummation by City of the transaction contemplated hereby do not, and will not, constitute a violation of any order, rule or regulation of any court or any federal, state or municipal regulatory body or administrative agency or any other governmental body having jurisdiction over City or any portion of the Property. No approval or consents by third parties, or governmental authorities, are required in order for City to consummate the transactions contemplated hereby.

**15. TIME OF ESSENCE/REMEDIES.** Time is of the essence. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, in addition to City's right to repurchase set forth in Paragraph 8, there shall be the following remedies:

(a) **If Buyer is in Default.** City shall give written notice to Buyer that Buyer is in default. If Buyer fails to cure said default within ten (10) business days of such notice, or otherwise make reasonable efforts to work at curing said default within such time, City may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be forfeited by Buyer and retained by City and both parties shall thereafter be released from all obligations hereunder or City may elect to treat this Contract as being in full force and effect and City shall have the right to specific performance. City expressly waives remedies of additional damages.

(b) **If City is in Default.** Buyer shall give written notice to City that City is in default. If City fails to cure said default within ten (10) business days of such notice, or otherwise make reasonable efforts to work at curing said default within such time, Buyer may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be returned from City to Buyer or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance. Buyer expressly waives remedies of additional damages.

**16. FORCE MAJEURE.** If Buyer is delayed at any time in presenting a development plan to the City Council, receiving a building permit for construction in accordance with the plan, or commencing work within two (2) years of the execution of this Contract by labor disputes, fire, flood, abnormal adverse weather conditions that affect the commencement of construction which were not reasonably anticipatable, unavoidable casualties, or any causes or acts of third parties not within control of Buyer, then any time period under this Agreement for the performance of certain obligations shall be extended by the same number of days which Buyer is delayed by such acts which are not under Buyer's control.



**17. ADVICE OF LEGAL COUNSEL.** By signing this document, Buyer and City acknowledges that Buyer and City have obtained the advice of their own legal counsel regarding the Contract.

**18. TERMINATION.** In the event this Contract is terminated as provided herein, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations, except as herein noted.

**19. NOTICE OF ACCEPTANCE.** If this Contract is accepted by City in writing and Buyer receives actual notice of such acceptance on or before 5:00 p.m. on September 1, 2017, this document shall become an enforceable Contract between City and Buyer.

**20. OTHER NOTICE REQUIREMENTS.** Except as provided in Paragraph 17, any notices, demands, and other communications required or permitted hereunder shall be in writing and either *(i)* delivered in person, *(ii)* delivered by mail or *(iii)* sent by facsimile transmission. Any such notice, demand or communication, if properly given or made in accordance with the terms hereof, shall be deemed to have been made at the time of delivery if delivered in person, or at the time received if mailed, or at the time of transmission if sent by facsimile. Notice to each party shall be sufficient if addressed to the party at the address provided below with each signature. Each party may change the address for notice by giving notice of such change in accordance with the provisions of this section.

**21. ORGANIZATION IN GOOD STANDING.** Each party represents and warrants that it is duly organized, existing and in good standing under the law of the State of Arkansas. Each party represents and warrants that it has full power and authority to carry on its business as presently conducted and to execute and enter into this Contract.

**22. ASSIGNABLE.** This Contract shall be assignable by Buyer with the Mayor's consent, which shall not be unreasonably withheld..

**23. ENTIRE AGREEMENT.** This Contract embodies and constitutes the entire understanding among the parties with respect to the transaction contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

**24. APPLICABLE LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of Arkansas. The parties hereby consent to jurisdiction and venue in Pulaski County, Arkansas, and agree that such

jurisdiction and venue shall be sole and exclusive for any and all actions or disputes related to this Agreement or any related instruments.

**25. HEADINGS.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Contract.

**26. BINDING EFFECT.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

**27. COUNTERPARTS.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

**28. INTERPRETATION.** Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and neuter and vice versa. This Contract and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Contract and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Contract and all related instruments.

**29. SEVERABILITY.** In case any one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had

**30. FURTHER ASSURANCES.** In addition to the obligations required to be performed hereunder by City and Buyer at Closing, City and Buyer shall perform such other acts, and execute, acknowledge and deliver subsequent to Closing such other instruments, documents and other materials as the other may reasonably request in order to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Buyer.

**31. NO WAIVER.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**32. OTHER PROVISIONS.** BUYER AND CITY AGREE THAT ALL PROPERTY TO BE PURCHASED THAT IS SITUATED WITHIN THE 100-YEAR FLOOD PLAIN AS DEFINED BY THE U.S. CORPS OF ENGINEERS, THE CITY

OF NORTH LITTLE ROCK, THE STATE OF ARKANSAS OR ANY OTHER GOVERNMENT ENTITY OR REGULATORY AGENCY MAY EITHER BE (1) SOLD AT A REDUCED PURCHASE PRICE PER SQUARE FOOT; OR (2) UPON ELECTION OF EITHER PARTY, EXCLUDED FROM THE CONTRACT. A CERTIFIED LAND SURVEYOR LICENSED IN THE STATE OF ARKANSAS SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT SQUARE FOOTAGE (IF ANY) OF THE PROPERTY LYING IN THE FLOOD PLAIN, AS A PART OF THE SURVEY DESCRIBED IN PARAGRAPHS THREE (3) AND FIVE (5) HEREIN.

IN WITNESS WHEREOF, the Buyer and City have executed this Agreement this \_\_\_\_\_ day of July , 2017.

**BUYER:**

Shoreline at Rockwater, LLC

Date: July 11; 2017 By *Shane L. Lueck*

Address: Shoreline at Rockwater, LLC  
58 Carmel Drive  
Little Rock, AR 72212-4401  
(501) 221-3730

**CITY:**

City of North Little Rock, Arkansas

Date: July \_\_\_\_\_, 2017 By \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 300 Main Street  
North Little Rock, AR 72114

**Exhibit A**  
**"CONTRACT TO BUY AND SELL REAL ESTATE"**

Subject Property:

Lots 1-6, Block 14, Giles Addition to the City of North Little Rock, Pulaski County, Arkansas.

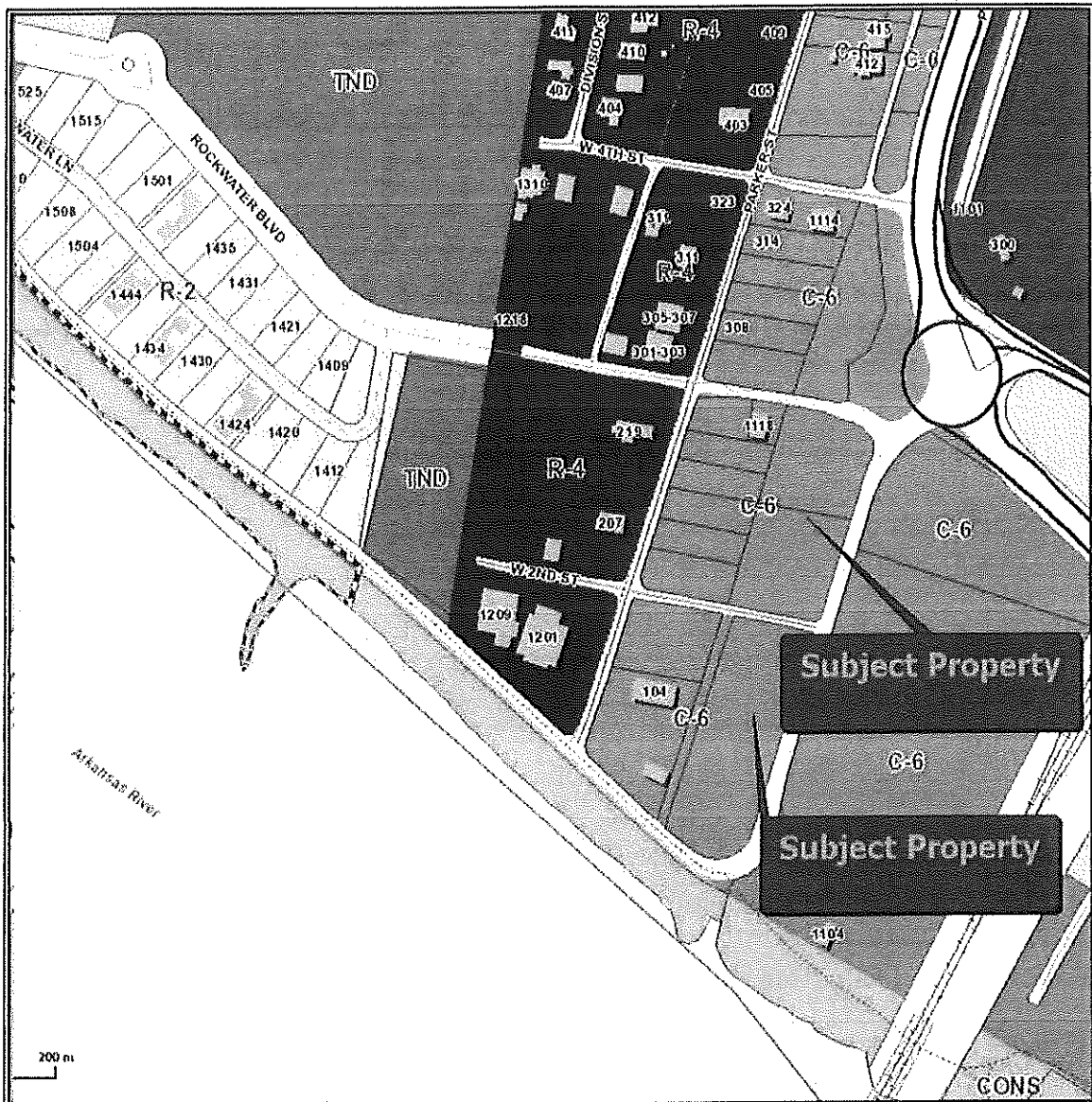
And

Lots 1-8, Block 15, Giles Addition to the City of North Little Rock, Pulaski County, Arkansas.

(See attached Subject Property)

LEGAL DESCRIPTION: To Be Provided By Survey

## ZONING MAP



Current Zoning Map