IN THE CIRCUIT COURT OF SHARP COUNTY, ARKANSAS
CIVIL DIVISION

MARK A. KRONKOSKY AND CYNTHIA A. KRONKOSKY **PLAINTIFFS**
On behalf of themselves and all other taxpayers similarly situated

vs. Case No. CV: 68CV-18-225

CHEROKEE VILLAGE SUBURBAN IMPROVEMENT DISTRICT #1 OF SHARP AND FULTON COUNTIES, ARKANSAS; JOHN DOE #1, JOEL WAGGONER, RONALD PATTERSON IN THEIR CAPACITY AS COMMISSIONERS OF THE DISTRICT; DAVID WEBB AS GENERAL MANAGER OF THE DISTRICT; THE CITY OF CHEROKEE VILLAGE; RUSS STOKES IN HIS CAPACITY AS MAYOR OF THE CITY OF CHEROKEE VILLAGE; AMERICAN LAND COMPANY, LLC; MICHALLE WATKINS, IN HER OFFICIAL CAPACITY AS FULTON COUNTY COLLECTOR; CHARLOTTE RATLIFF, IN HER OFFICIAL CAPACITY AS SHARP COUNTY COLLECTOR; VICKIE BISHOP, IN HER OFFICIAL CAPACITY AS FULTON COUNTY CLERK; ALISA BLACK, IN HER OFFICIAL CAPACITY AS SHARP COUNTY CLERK **DEFENDANTS**

AMENDED COMPLAINT

Comes now Plaintiffs, Mark Kronkosky and Cynthia Kronkosky (collectively, the "Kronkoskys"), on behalf of themselves and other taxpayers similarly situated, by and through counsel, and for their Amended Complaint against Defendants, Cherokee Village Suburban Improvement District #1 (hereinafter referred to as "District"); John Doe #1, Joel Waggoner ("Mr. Waggoner") and Ronald Patterson ("Mr. Patterson"), in their capacity as commissioners of the District (collectively, the "Commissioners"); David Webb, in his capacity as General Manager of the District ("Mr. Webb"); the City of Cherokee Village (the "City"); Russ Stokes, in his capacity as Mayor of Cherokee Village ("Mr. Stokes"); American Land Company, LLC ("ALC"); Michalle Watkins, in her official capacity as Fulton County Collector ("Ms. Watkins"); Charlotte Ratliff, in her official capacity as Sharp County Collector ("Ms. Ratliff"); Vickie Bishop, in her official capacity as Fulton County Clerk ("Ms. Bishop"); and Alisa

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Black, in her official capacity as Sharp County Clerk ("Ms. Black"), states the following:

I. THE PARTIES

1. The Kronkoskys are property owners/members of the District, owning three lots located in Fulton County, Arkansas, Section 22 of Township 19 North, Range 6 West, platted in the Teton Addition Subdivision, further described as improved lots #12 and #13 and an unimproved lot #3, all of Block 4. The Kronkoskys' primary residence is located at 4 Chilloco Trace, Cherokee Village, Arkansas 79529, legally described as lot #12, Block 4, of the Teton Addition Subdivision.

2. The Kronkoskys are residents and citizens of Arkansas and therefore pay county *ad valorem* taxes and entitled to receive the benefit of *ad valorem* taxes that are dedicated to Fulton County and Sharp County, as well as that portion dedicated to the City. In addition, the Kronkoskys are residents of the Highland School District, a school district that receives a significant portion of its funding from county *ad valorem* taxes.

3. The Kronkoskys have paid the annual levies assessed by the District that are the subject of this litigation. Further, the Kronkoskys have paid all the other charges/levies that are the subject of this lawsuit, including *ad valorem* taxes. Thus, the Kronkoskys have standing to challenge the illegal levy against the assessment of benefit pursuant to Article 16, Section 13 of the Arkansas Constitution on behalf of themselves and all other interested taxpayers. Further, as taxpayers who have paid the levies assessed by the District, the Kronkoskys have standing to challenge the illegal expenditures of the levied funds. Finally, as taxpayers that pay *ad valorem* taxes for the support of the counties, the City, and the Highland School District, the Kronkoskys have standing to challenge the District's arrangement with the American Land Company which was designed and implemented to avoid the payment of *ad valorem* taxes and levies assessed by the District.

4. The District does not have general taxing authority, but only the limited authority permitted by statute. *Holiday Island Suburban Imp. Dist. No. 1 of Carroll County v. Williams,* 295 Ark. 442, 444, 749 S.W.2d 314, 315 (1988). The District has, therefore, assumed the status of a *de jure*

governmental agency. *Cherokee Vill. Homeowners Protective Ass'n v. Cherokee Hill. Rd. St. Imp. Dist. No. 1,* 248 Ark. 1055, 1058, 455 S.W.2d 93, 95 (1970).

5. The District headquarters are physically located at 249 Iroquois Drive, Cherokee Village, AR 72529 and the District has a primary mailing address of P.O. Box 840, Cherokee Village, AR 72529. The District is capable of being sued as a separate entity pursuant to Ark. Code Ann. § 14-92-221.

6. The District consists of lands located both in Fulton County, Arkansas and Sharp County, Arkansas and located entirely within the Highland School District.

7. Mr. Waggoner, and Mr. Patterson are the duly appointed Commissioners of the District and approved the levies assessed by the District for 2019 and 2020, a process more particularly described herein.

8. Greg Prenger ("Mr. Prenger") was originally named in this action. Mr. Prenger was a commissioner until his recent death. It is expected that another individual will be named to replace Mr. Prenger as commissioner. The replacement commissioner is not known at this time but is included herein as a Defendant and referred to as "John Doe #1." By the filing of this Amended Complaint, neither Mr. Prenger nor his estate is a current party in this action.

9. Mr. Webb is the appointed General Manager for the District whose duties include enforcing the levies and expenditures described herein.

10. Pursuant to Ark. Code Ann. § 14-37-105, the City is a city of the first class, whose boundaries extend into both Sharp and Fulton County, Arkansas.

11. Mr. Stokes is the duly elected Mayor of Cherokee Village and therefore the chief executive officer for the City.

12. ALC is an Arkansas limited liability company d/b/a Cherokee Village Community Developer and can be served through its registered agent, Jonathan Rhodes, 249 Iroquois Drive, Cherokee Village, AR 72529.

13. Ms. Watkins is the duly elected Collector for Fulton County, Arkansas. As the Collector, Ms. Watkins is tasked with collecting the annual levy assessed by the District described herein. *See* Ark. Code Ann. §14-92-230.

14. Ms. Ratliff is the duly elected Collector for Sharp County, Arkansas. As the Collector, Ms. Ratliff is tasked with collecting the annual levy assessed by the District described herein. *See* Ark. Code Ann. §14-92-230.

15. Ms. Bishop is the duly elected Clerk for Fulton County, Arkansas. As the Clerk, Ms. Bishop is tasked with extending the levy assessed by the District annually upon the books of the county until the levy is exhausted. *See* Ark. Code Ann. §14-92-230.

16. Ms. Black is the duly elected Clerk for Sharp County, Arkansas. As the Clerk, Ms. Black is tasked with extending the levy assessed by the District annually upon the books of the county until the levy is exhausted. *See* Ark. Code Ann. §14-92-230. Tommie Estes served in this role until his retirement on December 31, 2018 when he was replaced by Ms. Black. Tommie Estes was originally named in this action, but with the filing of this Amended Complaint, is no longer a party to this action.

17. This court has jurisdiction to hear this case pursuant to Article 16, Section 13 of the Arkansas Constitution as well as Ark. R. Civ. P. 57, Ark. Code Ann. § 16-11-101, *et seq.,* Ark. Code Ann. § 14-92-226 and Ark. Code Ann. § 14-92-228.

18. This Court has personal jurisdiction over the parties to this action and venue properly lies before this Court. Because the District's boundaries encompass parts of Fulton County and Sharp County, the Kronkoskys are filing this action in both counties but have sought to consolidate the two actions.

19. The class of taxpayers that make up this illegal exaction action consist of: (1) all taxpayers that have paid the levy assessed by the District from the date the assessment of benefits was depleted (described below), (2) all taxpayers who have paid the levy assessed by the District , (3) all current and former property owners who were made subject to the 2018 reassessment of benefits through levies

approved by the Commissioners for the years 2019 and 2020, and (4) all taxpayers subject to *ad valorem* taxes who reside within Fulton and Sharp Counties and within the Highland School District.

20. As an illegal exaction suit under Article 16, Section 13 of the Arkansas Constitution, this class of taxpayers is automatically certified as a class and "because all citizens are parties to the constitutionally created class, the right to opt out as developed under Ark. R. Civ. P. 23 is not applicable." *Worth v. City of Rogers,* 351 Ark. 183, 188 (2002).

II. FACTS COMMON TO ALL CAUSES OF ACTION

A. Cherokee Village Suburban Improvement District No. 1:

21. The District was created by operation of Arkansas law on July 30, 1969 upon the issuance of an Order by the Sharp County Circuit Court Judge (the "Order").

22. The District was formed for the limited purposes set forth in the Order and was granted the general authority provided in Ark. Code Ann. §14-92-101 *et. seq.*

23. As a suburban improvement district under Ark. Code Ann. §14-92-101 *et. seq.*, the District, through its three appointed commissioners, is authorized to construct or accept as gifts certain improvements or facilities on behalf of the property owners within the district.

24. Upon deciding to construct improvements, or accept them as gifts, the District is authorized to appoint an assessor who shall assess the benefits that will accrue to the land owners as a result of the improvements.

25. On April 9, 1973 the Sharp County Circuit Court authorized the acceptance of the gifts. The Circuit Court further ordered, *"The District shall file copies of minutes of all Commissioners meetings at which action is taken pursuant to the authority conferred by this Order, together with such other documents and instruments as are necessary to a reasonable understanding of the action taken, with the Clerk of this Court."*

26. The District was gifted amenities such as golf courses, lakes, community centers, parks and other amenities. However, the District was never gifted nor purchased or constructed the roads,

which were public roads and maintained by Sharp and Fulton Counties.

B. The Assessment of Benefits:

27. To accomplish an assessment of benefit, the assessor is to assess the value of the property prior to the improvement and then assess the value of the land, again, after the improvement is completed. If the assessed value of land after the improvement is greater than the assessed value of land before improvements, the difference between the two shall be the determined "Assessment of Benefits."

28. An Assessment of Benefits shall be performed for each parcel of land within the suburban improvement district. *See* Ark. Code Ann. § 14-92-225. As an example for illustrative purposes only, if Parcel #1234 was worth $100.00 prior to improvement being constructed by the District, but would be worth $2,100.00 after having access to these improvements, the assessed benefit to Parcel #1234 would be $2,000.00.

29. Upon receipt of the Assessment of Benefits, the suburban improvement district is required by Arkansas law to file the Assessment of Benefits with the County Clerk in the county wherein the district resides.

30. After filing the Assessment of Benefits with the County Clerk, the suburban improvement district is required to provide notice by publication in a local newspaper and by mailing notice to each landowner within the suburban improvement district.

31. The notice is required to inform the landowners that the Assessment of Benefits was filed with the County Clerk and that it is open for inspection. The notice further sets a hearing date so that landowners who object to the Assessment of Benefits on their land may petition the Commissioners to adjust and/or equalize the assessment. *See* Ark. Code Ann. § 14-92-226.

32. Upon finalizing the Assessment of Benefits for each parcel of land, the Commissioners for the suburban improvement district can levy a tax on each parcel of land equal to the assessed benefit. Using the illustrative example, Parcel #1234 could have an amount up to $2,000.00 levied against it.

33. On or about August 10, 1973, the initial Assessment of Benefits (the "1973 Assessment") was made by the District's assessor, Mr. George Lyford, of the Universal Land & Appraisal Co., Inc, Little Rock, Arkansas, and filed of record.

34. The 1973 Assessment reflects the Assessor's opinion as to the benefits to the property within the District resulting from the District's acceptance of the Gift Proposal as approved and Ordered by the Circuit Court. The 1973 Assessment also reflects the Assessor's opinion as to the benefits to the property within the District for the streets within the District.

35. Until the 2018 reassessment of benefit was completed, the District utilized the 1973 Assessment as the basis for the levies of tax pursuant to Ark. Code Ann. § 14-92-228(a). Under the 1973 Assessment, for a typical 90-foot lot on a single street, the assessed benefit was $1,325.00. For the same lot on a golf course, the assessed benefit would be $1,475.00. For the same lot on a lake the assessed benefit would vary from $1,375.00 to $1,475.00 depending on which lake it adjoined.

C. Annual Levy against the Assessed Benefit:

36. The levy on the Assessment of Benefits is to be collected as part of the property tax in annual installments not to exceed 10% of the total levy for any one (1) year. Continuing our example, Parcel #1234 could have to pay up to $200.00 per year for the Assessment of Benefits levied against it with the amount being due at the same time the property taxes for said property are due. *See* Ark Code Ann. § 14-92-232. Of course, the Commissioners could choose to levy less than the maximum 10% levy against the Assessment of Benefits.

37. The levy is collected by the County Collector until the levy is exhausted. *See* Ark. Code Ann. §14-92-230.

38. The levy immediately becomes a lien on the real property and is entitled to preference over all other encumbrances, regardless of when they were filed. *See* Ark. Code Ann. § 14-92-228. As a result, a land owner's failure to pay the levy results in an immediate cloud on the title to said land and

could lead to foreclosure and loss of the property. As such, the payment of the levy against the Assessment of Benefits is mandatory and not voluntarily paid.

39. Upon the filing of the Assessment of Benefits, the Commissioners are authorized to incur debt secured by the levy for the construction and/or maintenance costs of any improvements. The levy against the Assessment of Benefits shall be pledged to pay for any such indebtedness. *See* Ark. Code Ann. § 14-92-234.

40. **Importantly, however, the amount of the total levies against a particular parcel may not exceed the assessed benefit and interest thereon.** In fact, at no time shall the amount levied be in excess of the assessed benefit and interest. *See* Ark. Code Ann. § 14-92-231.

41. The two components that make up the allowable maximum levy are defined as follows: 1) the assessed benefit is set by the Assessment of Benefit filed with the County Clerk, and 2) the allowable interest is set forth in Ark. Code Ann. § 14-92-229, which reads in whole:

> The assessment of the benefits shall bear interest at a rate or rates from the time it is equalized, not to exceed that required to service the bonds, or at the maximum interest rate allowed by law if no bonds issue. However, the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

Ark. Code Ann. § 14-92-229.

42. Under this definition, if there is indebtedness, a suburban improvement district may charge an interest rate equal to the interest rate charged on the district's indebtedness. If there is no indebtedness in place, it may charge an interest rate up to the amount authorized by law (Arkansas' applicable usury rate). Between 1973 and today, the usury rate allowed by Arkansas law has fluctuated with amendments to the Arkansas Constitution.[6] During most of the District's existence, the maximum interest rate was 5% over the Federal Reserve's Discount Rate which also fluctuated wildly. The law requires that the interest be calculated in order to avoid exceeding the total amount of benefits and

[6] Prior to 1982, the cap was either 6% or 10%. In 1982, Amendment 60 was passed which put the cap at 5% over the federal discount rate. In 2011, the maximum interest rate was increased to 17% through the passage of Amendment 89.

interest that can be charged.

43. Therefore, as an example, if a hypothetical suburban improvement district is paying an indebtedness with an interest rate of 4%, it may assess that interest against the Assessment of Benefits and require that the interest be paid first. Using hypothetical Parcel #1234 as an example, the calculation would be as follows:

Year	Parcel #	Total AOB	Levy	Applied Interest (4%)	Applied AOB	Total Applied AOB	Remaining AOB
1	1234	$2,000.00	$200.00	$80.00	$120.00	$120.00	$1,880.00
2	1234	$2,000.00	$200.00	$75.00	$125.00	$245.00	$1,755.00
3	1234	$2,000.00	$200.00	$70.00	$130.00	$375.00	$1,625.00

Note: The example as provided would allow for approximately 14 years of tax levies before the Assessment of Benefits would be exhausted.

44. In summary, the only way a suburban improvement district may continue on in perpetuity is for it to annually levy a percentage amount below or equal to that year's allowable interest rate. To wit, if the suburban improvement district levies an amount that is greater than the allowable interest rate for that year, the suburban improvement district will be depleting the principal amount of the assessed benefit for each particular parcel. This concept can be analogized to a typical interest-bearing loan amortized over a period of time. If a borrower only makes interest payments on the loan, the principal will never be reduced. However, in the case of a suburban improvement district, the borrower is the property owner who pays back the cost of the benefit resulting from the improvement through a levy applied against that property owner's land. If a suburban improvement district only collects the interest on an annual basis, the assessed benefit itself is not touched; but, if the levy is more than the interest, than the assessed benefit is reduced. If the levy is more than the interest for a number of years, the assessed benefit will eventually be exhausted, **and the suburban improvement district is prohibited from any further levies**.

45. Since its inception and until 2018, the District has always utilized the 1973 Assessment to determine the District's annual levy of tax.

46. In or about 1974, and continuing thereafter, the District has annually levied a tax against the 1973 Assessment of Benefits. The amount of the levy applied over the forty-four year period was not limited simply to interest payments. The District has applied a 10% annual tax rate levy since at least 1995.

47. On September 12, 2005 the District issued improvement bonds in an amount of $1,700,000.00 to construct and install certain irrigation systems for the benefit of the District's two golf courses. First National Banking Company purchased the bonds under a loan agreement dated October 1, 2005 subject to an original interest rate of 4.50% with an original maturity of May 1, 2016. On July 15, 2011, the loan agreement was modified to lower the interest rate to 4.00% and reduce the semi-annual payment to $39,940 over a 20-year term with a 7 year balloon changing the maturity date to July 15, 2018 date. On July 26, 2018, the loan agreement was modified to increase the interest rate to 4.50% and increase the semi-annual payment to $40,583 over a 5-year term with a balloon payment of $230,110.97, changing the maturity date to July 15, 2023. Throughout the life of the District, there were very few years in which the District was not paying on some kind of debt obligation.

48. The amount of the levy applied over the forty-five-year period was not limited simply to interest payments. As an example, applying an interest rate of 4% for the year 2017, the District would had to levy less than the amounts shown below to avoid eating into the Kronkoskys Assessment of Benefit. The District levied much more than the amount of interest shown below.

Year	Parcel #	Total AOB	Applied Interest
2017	370-20294-000	$1,285.00	$51.40
2017	370-20303-000	$1,375.00	$55.00
2017	370-20304-000	$1,525.00	$61.00

49. Between the years 1974 and 2018, the District has levied in excess of the allowable interest for that year. Thus, over time, the District has depleted the Assessment of Benefit (principal) and has been collecting levies without the authority to do so.

D. 2018 Reassessment of Benefits:

50. In April of 2018, the District authorized a reassessment of benefits ("2018 Reassessment"). During the District's Special Commissioner's Meeting, Resolution 2018-1 was presented to the District's Commissioners for acceptance the appraisal report (as filed with the Sharp County, Arkansas Clerk, 2018-06425, Inst# 1801667, Pages 06425 through 07149) of Mahan Real Estate Appraisal, Inc. and Reed and Associates, Inc. The 2018 Reassessment report is voluminous and is of public record. The report is incorporated herein by reference as if set forth in full, and is summarized below"

Zoning	Before Improvement	After Improvement	Assessment of Benefit
Unimproved Lot	$600.00	$4,000.00	$3,400.00
Improved Lot	$600.00	$8,000.00	$7,400.00
Commercial	$600.00	$5,000.00	$4,400.00

51. On September 10, 2018, the Commissioners unanimously adopted a 4.5% levy against the 2018 Reassessment (which was significantly higher than the 1973 Assessment). Based on the 2018 Reassessment, the District levied an annual tax amount between $153.00 and $333.00 (depending on the parcels classification - unimproved vs. improved). Even though the levy percentage (4.5%) was lower than years past (10%), because of the significant increase in the reassessed benefits, the actual amount levied ($153.00 and $333.00) is greater than years past.

52. On October 17, 2018, the first publication of the notice as prescribed in Ark. Code Ann. § 14-92-228(d)(1) was published in the Village Journal, a publication of general circulation in Sharp and Fulton Counties, Arkansas. To contest the levy, suit must be brought within thirty (30) days of the first publication. This original action challenging the 2018 Reassessment was timely filed.

53. Between 1997 and 1998, the citizens of the District took the necessary steps to incorporate, creating the City of Cherokee Village. By law, the City assumed responsibility of maintaining the roads within its city limits, including the roads that traversed the District. *See* Ark. Code. Ann. §14-

301-101.

54. As a municipality, the City receives street turnback funds from the State of Arkansas as well as general funds which can be used for the protection of public health and safety (police and fire). *See* Ark. Code. Ann. §19-5-601.

55. Despite street maintenance, repair and improvements and fire protection being a municipal obligation, the District provides the City 34% of all the moneys it collects from its levy against the Assessment of Benefit for street maintenance and police/fire protection. The District should have instead used said monies for the operation and maintenance of the District's recreational facilities, which it owns and oversees.

56. As noted above, the City of Cherokee Village, not the District, owns the roads. Nevertheless, the 2018 Reassessment determined through the cost approach analysis that the roads within the District provide a benefit value of $64,587,600.00 of the total assessed benefit value of $82,863,133.50 (or 78% of the District's improvement value). Said differently, out of the total assessed benefit of $3,400 for each unimproved lot, the roads account for $2,652.00 of that total.

57. As such, the 2018 Reassessment assesses on each parcel within the District a significant sum for roads that are not owned by, nor the responsibility of, the District. Said differently, in its 2018 Reassessment, the District seeks to charge residents for an improvement and/or benefit that it does not provide. In fact, residents would be able to utilize the very roads even if the District did not exist.

58. The 2018 Reassessment's methodology was to simply determine the total amount of benefits (district wide) and then divide those benefits by the number of parcels based on how the parcel is zoned. The 2018 Reassessment failed to appraise the actual value that certain improvements bring to a particular parcel, taking into account the unique characteristics of each parcel. In so doing, the 2018 Reassessment was arbitrary and not in conformance with Ark. Code Ann. § 14-92-225.

59. For these and other reasons, the 2018 Reassessment's methodology is fundamentally flawed.

E. Ad Valorem (Property) Taxes:

60. The City of Cherokee Village, Fulton County, Sharp County and the Highland School District levy taxes on the real property existing within the District. As such, owners of property within the District pay property taxes which go to fund city, county, and school district operations.

61. The Highland School District currently maintains a 30.0 millage rate. On August 13, 2019, the voters rejected a proposal to increase the school district millage to 34.0. As such, only two school districts in the State of Arkansas have a lower millage rate than the Highland School District. The other 229 school districts in the State of Arkansas have a higher millage rate.

F. American Land Company's arrangement with Cherokee Village Suburban Improvement District:

62. If a property owner fails to pay the annual levy, the District may foreclose on the delinquent property and pay off any outstanding *ad valorem* taxes. Or, the District could foreclose on the lot without paying the outstanding *ad valorem* taxes. If the *ad valorem* taxes are not paid, the lot is certified to the Commissioner of State Lands for failure to pay *ad valorem* taxes. For lots turned over to the Commissioner of State Lands that fail to sell at a public auction, the District can redeem those lots by paying the delinquent amount of *ad valorem* taxes. It is in the interest of the District to see delinquent lots sold to individuals who can pay the annual levy against the Assessment of Benefit. To wit, the more people paying the annual levy, the more revenue for the District.

63. In order to ensure delinquent lots are being marketed and sold to individuals, the District entered into a contract with ALC on November 5, 2002 (the "Contract"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference as if set forth in full. The Contract allows ALC to obtain, market and sell delinquent properties to third parties. A portion of ALC's sales proceeds are intended to cover the marketing of said lots to prospective third-party buyers.

64. The Contract, which was subsequently amended, called for the District to initiate a foreclosure action against all lots within the district that were delinquent in the payment of levies on the

Assessment of Benefits. ALC covered the costs associated with the foreclosure action. Upon obtaining the lots at the foreclosure sale, the District was required to, upon request, quit claim the foreclosed lots to ALC. ALC would then market the lots and, upon sale to a third party, would receive 95% of the sales price. The District would receive the remaining 5% of the sales price.

65. ALC was to be responsible for payment of the levies against the Assessment of Benefits and *ad valorem* taxes for any lot conveyed to ALC and held until sold by ALC.

66. Despite this contractual obligation, the District and ALC devised a scheme to allow ALC to avoid the payment of (1) the majority of delinquent *ad valorem* taxes; (2) any annual levy against the assessed benefit; and (3) the majority of continuing *ad valorem* taxes – all to the detriment of taxpayers. The scheme worked as follows:

67. When the District foreclosed on the delinquent lots, it took those lots subject to any tax lien resulting from the failure to pay *ad valorem* taxes (also known as "property tax"). Because levies against the Assessment of Benefits and *ad valorem* taxes were billed and collected together, most lots were delinquent in both.

68. Before the delinquent lots would be marketable to a third party, the property tax lien had to be extinguished. While the tax lien could have been extinguished by simply paying the delinquent *ad valorem* taxes, neither the District nor the ALC wanted to pay the delinquent property taxes in full. As such, the District and ALC would allow the foreclosed lots to be forfeited or certified to the Arkansas Commissioner of State Lands to be auctioned at a public tax sale.

69. Once the lots had been certified with the Commissioner of State Lands, the District could redeem said lots. But to do so, the District would be required to pay the full redemption amount (full sum of delinquent taxes). Again, neither the District nor ALC wanted to pay the full amount of delinquent property taxes. Without payment of the delinquency, the Commissioner of State Lands placed the delinquent lots up for auction at a public tax sale.

70. To keep potential purchasers from bidding on the lots at the tax sale, ALC and the

District would ensure that the following notice was read at the tax sale: "Cherokee Village lots included in today's tax sale were recently foreclosed on by the Cherokee Village Suburban Improvement District #1 and as such is now owned by the [CVSID]. In the event any person wishes to bid on a Cherokee Village lot, please be advised the [CVSID] will exercise its right of redemption." Again, neither the District nor ALC had any desire to redeem the lots but used the notice to discourage anyone from buying the lots at the tax sale so that ALC could obtain the lots later for a significantly discounted rate.

71. Once the lots did not sell at a tax sale, the Commissioner of State Lands would negotiate the purchase of delinquent lots at a reduced price for ALC (the District could not negotiate a reduced price because, by law, it must pay the redemption price to obtain title to the property). ALC would, as a "third-party," approach the Commissioner of State Lands and negotiate a remarkably reduced sales price. For example, in December of 2015, ALC negotiated the purchase of 7,367 lots located in the District that had a combined property tax liability of $1,429,526.72 for only $114,719.50. As such, taxpayers saw $1,314,807.22 vanish from the tax rolls.

72. To expedite this process, the District would provide a letter to the Commissioner of State Lands stating that the District did not intend to redeem the lots. Once ALC received the delinquent lots from the Land Commissioner via a limited warranty deed, ALC would deed those same lots to the District within mere days.

73. ALC would deed the lots to the District because, when held in the District's name, there would be no levy against the Assessment of Benefits on those lots and no property taxes paid on those lots.[7]

74. However, under the Contract, the District could not do anything with those lots without approval from ALC. The District could not sell or develop the lots on its own. Instead, ALC had an

[7] Sharp County has ruled that property owned by the District is exempted from the payment of *ad valorem* taxes under the public-use/public-ownership exemption. There is a legal challenge to Fulton County's determination to tax the District and while the legal challenge is pending, no ad valorem taxes are being paid by the District.

exclusive right to market the lots for sale to a third party. Further, ALC had complete and unfettered discretion to set the sales price for the lots. In sum, while the property was in the name of the District, the lots were entirely controlled by ALC. While the lots were being marketed by ALC and controlled by ALC, there was no Assessment of Benefits levied against the lots or property taxes paid on the lots (because the lots were technically owned by the District).

75. When ALC found a buyer for the lots, the District would deed the lots to the third party and the sales price for the lots would be divided between ALC and the District. ALC would receive 95% of the sales price and the District would receive 5%. Using a fictitious parcel, a diagram of this process is provided below:

76. By using this process, the District and ALC were able to circumvent Arkansas law and gain control of delinquent properties by paying only a small fraction of the delinquent amount.

77. After gaining control of the property, ALC and the District were able to avoid paying the levies of the Assessment of Benefits or any property tax by titling the property in the name of the District, even though ALC maintained actual control of the lot. This scheme was operated even though the Contract specifically makes ALC responsible for payment of any taxes associated with property

conveyed to ALC.

78. The above-described scheme denied the residents of Cherokee Village Suburban Improvement District, the City of Cherokee Village, Highland School District, Fulton County and Sharp County the proper collection of delinquent levies on the Assessment of Benefits and/or *ad valorem* taxes that would, if collected, be used to fund schools, roads, and other services.

79. Since entering into this contractual relationship with ALC, the total lot sales made by ALC is $14,877,139.60 of which ALC received 95% and the District received 5%.

80. Further, as referenced above, the Contract allows ALC the unfettered right to purchase foreclosed lots at a price set by ALC. On July 7, 2017, nine days after the District foreclosed on eleven improved lots, ALC purchased those eleven lots for a total purchase price of $107.14 (Sharp County's assessed value for those eleven lots was $381,900).

81. On the same day, ALC conveyed these same eleven lots to RWR Investments, LLC (ALC's sister company) for $2,142.84. ALC did not engage in any marketing efforts associated with these eleven lots. From the proceeds of this sale ALC received $2,035.70 and the District received 107.14.

82. Even though these eleven properties were owned by RWR, LLC the District did not levy assessment of benefits against these eleven lots while under the ownership of RWR Investments, LLC.[8]

83. To date, RWR Investments, LLC has sold ten of the eleven lots to third parties for approximately $130,000 from which the District has received no portion.

84. The contract provides that ALC shall indemnify the District from all liabilities, losses, damages, cost and expenditures (including attorney's fees, litigation and court costs) connected with the

[8] ALC owns forty lots and various acreage tracts within the District boundaries of Sharp County, Arkansas, that were assessed District benefits within the 2018 Reassessment report. However, for the District's 2019 tax levy year, these properties do not have annual assessed benefits associated with these properties per Sharp County's collection records/data.

resale or attempted resale of District properties.

III. CAUSES OF ACTION

A. ILLEGAL LEVY

85. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

86. Arkansas law prohibits a suburban improvement district from levying an amount in excess of the assessed benefits and interest. *See* Ark. Code Ann. § 14-92-231.

87. The Assessment of Benefit applied to the Kronkoskys' property and all other similarly situated properties was exhausted by previous levies against the Assessment of Benefit.

88. Any levy enacted since the depletion of the 1973 Assessment is contrary to Arkansas statutory law and is in violation of the "Takings Clause" of the U.S. Constitution. *See USCA CONST Amend. V and XIV*.

89. The Fulton and Sharp County Clerk and County Collector should be ordered to immediately cease extending and collecting the annual levy.

90. Further, all moneys collected on any levy charged after the Assessment of Benefit was depleted should be declared void and contrary to Arkansas law; and all moneys collected after the Assessment of Benefit for that parcel of property was depleted should be returned to the person who was forced to pay this illegal levy or risk losing their property.

B. ILLEGAL EXPENDITURE

I. *MONEYS PAID TO THE CITY OF CHEROKEE VILLAGE*

91. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

92. The moneys collected from the District's levy against the Assessment of Benefits may only be expended on the District's improvements and on the continued operation and maintenance thereof. *See* Ark. Code Ann. §§ 14-92-219 and 14-92-220.

93. The contract entered into between the District and the City of Cherokee Village wherein the District pays the City approximately 1/3 of the annual Assessment of Benefits violates Arkansas law.

94. The contract calls for the moneys paid by the District to the City to pay for, in part, police protection, a service that cannot be paid for with Assessment of Benefits under Arkansas law.

95. The contract further provides Assessment of Benefits money to be used by the City in maintaining/repairing roads dedicated to the City and for which the City receives state turn back funds for maintenance and improvement. The payment of money to the City does not benefit the District's property owners. As such, the Assessment of Benefits moneys used by the City for maintenance/repair of City roads is not authorized by Arkansas law.

96. The above described moneys should be refunded to the District's property owners under Article 16, Section 13 of the Arkansas Constitution.

II. *MONEYS PAID TO AMERICAN LAND COMPANY FOR MARKETING EXPENSES.*

97. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

98. The moneys collected from the District's levy against the Assessment of Benefits may only be expended on the purchase or construction of improvements and on the continued operations and maintenance of said improvements should those improvements benefit the property within the District. *See* Ark. Code Ann. §§ 14-92-219 and 14-92-220.

99. The Contract calls for the District to direct money obtained at closing, and for which otherwise it would be entitled, to ALC in consideration for, in part, the marketing efforts performed by ALC in marketing District parcels to third party buyers.

100. Arkansas law does not permit the District to expend money on the marketing of

delinquent lots. As such, the money provided to ALC for its marketing efforts should be refunded to the District's property owners pursuant to Article 16, Section 13 of the Arkansas Constitution.

C. JUDICIAL REVIEW OF THE DISTRICT'S LEVY UNDER THE 2018 REASSESSMENT

101. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

102. As noted above, the City, not the District, owns the roads located within the District.

103. The 2018 Reassessment determined that the streets within the District provide a benefit value of $64,587,600.00 of the total assessed benefit value of $85,000,000.00 (or 76% of the District's improvement value). The 2018 Reassessment should not include improvements that are not owned by the District.

104. As described above, the 2018 Reassessment's methodology for the determination of assessed benefits for improved lots is without merit and fundamentally flawed.

105. In addition, the 2018 Reassessment of Benefits ignored actual sales within the district, instead choosing to use irrelevant data for the sole purpose of artificially increasing the assessment of benefit on each lot.

106. This Court should review the District's levy against 2018 Reassessment to ensure that it accurately reflects the benefits received by the District's property owners and, if not, declare the same void in part or in whole.

D. CHALLENGE OF ANNUAL LEVIES AGAINST THE 2018 REASSESSMENT OF BENEFITS

107. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

108. Since the 2018 Reassessment, the Commissioners have, on two separate occasions, entered an Order levying upon the real property within the District a tax equal to 4.5% of the 2018

Reassessment. The most recent Order was entered on September 16, 2019.

109. These Orders are not authorized by Arkansas law because the 2018 Reassessment is invalid and there remains no additional Assessment of Benefit against which the District can levy (the 1973 Assessment has been paid off by the property owners through the payment of previous levies.)

E. BREACH OF FIDUCIARY DUTY:

110. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

111. Property owners within the District placed their trust and confidence in the Commissioners with the understanding that the Commissioners will use the District's property and money in a way that benefits the property owners.

112. The Commissioners accepted the trust and confidence placed in them by the District's property owners.

113. As a result of that placement of trust in the Commissioners, the Commissioners acquired a superior influence over the property and funds belonging collectively to the District's property owners.

114. As such, the Commissioners had a fiduciary obligation of loyalty requiring that they act solely in the interests of the property owners.

115. Further, the Commissioners had a duty to exercise the utmost degree of care in carrying out their obligations to the property owners.

116. The Commissioners breached their fiduciary duties to the property owners by agreeing to a scheme that allowed ALC to avoid its contractual duty to pay Assessment of Benefits and *ad valorem* taxes on land it controlled.

117. The Commissioners allowed ALC to reap significant profits at the expense of the District's property owners.

118. The Commissioners' agreement to facilitate a scheme designed to avoid the payment of

assessment of benefits and/or *ad valorem* taxes was the proximate cause of damages equal to the amount of assessed benefits and/or *ad valorem* taxes ALC should have paid for lots it purchased from the Commissioner of State Lands.

119. Further, the Commissioners have failed to levy annual assessment of benefits against lots owned by ALC and/or its sister company, RWR Investments, LLC.

F. CONSTRUCTIVE FRAUD

120. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

121. The District, its Commissioners, and ALC made material misrepresentations of fact that were relied upon by the District's property owners.

122. These statements include but are not limited to:

a) The Notice given at the public tax sale stating that the District would redeem any lot purchased by an individual at the tax sale.

b) Statements that ALC would be purchasing delinquent lots from the Arkansas State Land Commissioner in a negotiated sale when ALC always intended to immediately deed those lots to the District.

c) Contractual terms that stated that ALC would pay the Assessment of Benefits and property taxes on the lots it controlled and marketed for resale. This statement was part of the justification for giving ALC 95% of the sales price for each such lot. This contractual term was never intended to be enforced and was not enforced.

d) Statements and documents indicating that ALC transferred all its rights in the lots purchased from the Commissioner of State Lands to the District. In fact, ALC maintained all rights to those properties and the purported transfer of rights was done solely to avoid the payment of Assessment of Benefits and/or *ad valorem* taxes.

e) Statements made to county officials claiming that these properties were owned by

the District and fell under the public-use/public-ownership property tax exemption. In fact, these delinquent properties were being held by the District in trust for ALC who would receive 95% of the sales price when the properties sold.

123. These material misrepresentations were the proximate cause for the loss of assessment of benefits and/or ad valorem taxes that would otherwise have been collected and used for the benefit of the District, the City, Sharp County, Fulton County, and the Highland School District.

124. Because ALC primarily benefitted financially from these material misrepresentations of fact, ALC should be ordered to pay the appropriate taxing entities the amount of Assessed Benefits and *ad valorem* taxes it would have paid without these material misrepresentations.

G. CIVIL CONSPIRACY

125. The Kronkoskys restate and incorporate by this reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

126. The District, its commissioners, and ALC entered into a conspiracy to avoid paying rightfully owed levies on the Assessment of Benefits and *ad valorem* taxes. The conspiracy required the District and its Commissioners to breach their fiduciary duty by placing the interest of ALC above the interest of taxpayers.

127. The District, its Commissioners, and ALC committed overt acts in furtherance of this conspiracy by executing documents that concealed which party actually controlled the delinquent lots for the sole purpose of avoiding tax and assessment liability.

128. The conspiracy was entered with the specific purpose of denying taxing entities that provide services to the class members their proper tax receipts.

129. The conspiracy proximately caused damage to the class members by denying them access to said funds for their collective use.

IV. RELIEF SOUGHT

130. As a proximate cause of District's actions, the Kronkoskys and all similarly situated taxpayers have suffered the following damages and are entitled to the following relief:

a.) An Order declaring the District's levy against the Assessment of Benefits completely exhausted and prohibiting the Fulton County and Sharp County Clerks and Collectors from any further extension and/or collection of a levy against the Assessment of Benefits.

b.) An Order finding that the Kronkoskys and all similarly situated taxpayers are further entitled to a declaratory judgment declaring the 2018 Reassessment to be in violation of Arkansas law and enjoin the District from levying against the 2018 Reassessment.

c.) An Order declaring that the District may only expend moneys collected as part of the levy on the Assessment of Benefits on the construction and maintenance of District improvements and related activities and enjoining the District from spending money in a manner for which this Court deems to be contrary to Arkansas law.

d.) A refund of all moneys collected on any levy charged after the Assessment of Benefit for any particular parcel was already exhausted; and

e.) A refund of any District expenditures not related to the purchase or construction of improvements and on the continued operations and maintenance of said improvements, including, but not limited to, the specific expenditures identified in the paragraphs above.

f.) The disgorgement of any profits earned by ALC under the scheme identified above.

131. The Kronkoskys and all similarly situated taxpayers are further entitled to an award of reasonable attorney fees and costs of collection as allowed for under Arkansas law.

JURY TRIAL REQUESTED

132. The Plaintiff hereby requests a jury trial on all issues of fact.

WHEREFORE, the Plaintiffs, Mark and Cynthia Kronkosky, on behalf of themselves and all other similarly situated taxpayers, prays for judgment in their favor and against the Defendants for all damages incurred as alleged in this Complaint, for pre- and post-judgment interest, plus costs and attorneys' fees herein expended, and for such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

Mark and Cynthia Kronkosky,
on behalf of themselves and
other taxpayers similarly situated

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Attorneys for Plaintiffs, and all
similarly situated taxpayers

CERTIFICATE OF SERVICE

I, Tim Hutchinson, herby certify that on this 7th day of January, 2020, I served a true and correct copy of the foregoing by electronic mail upon the attorneys of record listed below:

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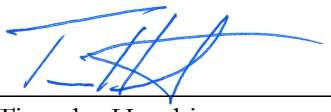

Timothy Hutchinson

#1

CONTRACT

This Contract is made November 5th, 2002, between Cherokee Village Road and Street, Recreational and Fire Department, Suburban Improvement District No. 1, a suburban improvement district organized and existing under Subchapter 2 of Chapter 92, Title 14, Arkansas Code of 1987 Annotated (hereinafter referred to as "SID"), and American Land Company, an Arkansas limited liability company (hereinafter referred to as "ALC").

WHEREAS, the SID is located in Sharp and Fulton Counties, Arkansas and contains over 13,000 acres of land, including approximately 25,000 residential lots and various other real properties; and

WHEREAS, under authority granted by Arkansas Code §§ 14-92-225, 226 and 227 the SID has assessed benefits (the "Assessed Benefits") against taxable real property in the SID, and the SID levies an annual tax (the "Improvement District Tax") against such property, apportioned on the basis of Assessed Benefits as authorized by Arkansas Code § 14-92-228; and

WHEREAS, the Improvement District Tax is collected by the County Collectors of Sharp and Fulton Counties, along with general taxes against the same property; and

WHEREAS, taxable property upon which general taxes and/or the Improvement District Tax are unpaid for two years from due date is certified to the Commissioner of State Lands (the "Land Commissioner") for collection or sale, but upon its effective date (August 13, 1993), Act 782 of the Acts of Arkansas of 1993 amended Arkansas Code § 14-92-232 by adding a new subsection [c] to read as follows:

> [c] A suburban improvement district may enforce collection of delinquent suburban improvement district assessments by chancery proceedings in the chancery court of the county, in the manner as provided for municipal property owners' improvement districts under § 14-94-122;

and

WHEREAS, the SID and ALC interpret the amended Section 14-92-232 to give suburban improvement districts the option of either (1) allowing delinquent Improvement District Taxes to be certified to the Land Commissioner, or (2) collecting delinquent Improvement District Taxes through foreclosure proceedings; and

WHEREAS, the owners of more than 10,000 of the approximately 25,000 residential lots located in the SID and several other tracts located in the SID (lots and tracts hereinafter referred to as "Properties") are delinquent in the payment of the Improvement District Tax for one or more years; and

WHEREAS, those Properties upon which the Improvement District Tax has not been paid as due and those Properties on which the Improvement District Tax is not paid on or before a future due date will, during the continuation of the delinquency, be referred to herein as "Delinquent Properties";

EXHIBIT A

and

WHEREAS, many or all of the Delinquent Properties are also delinquent for nonpayment of general taxes and many have been certified to the Land Commissioner; and

WHEREAS, the total Assessed Benefits against Delinquent Properties exceeds $13,250,000.00 and the delinquencies result in an approximate annual revenue loss to SID (based on the current Improvement District Tax rate of 10% and a 3% collection fee charged by the Counties) of $927,500.00; and

WHEREAS, this revenue loss seriously threatens the financial stability of the SID and the large number of Properties in the SID which are being forfeited for nonpayment of taxes inflates the supply of Properties in the market, depresses prices and is detrimental to the state of the economy in the area; and

WHEREAS, ALC is in the real estate marketing business in the area of the SID; and

WHEREAS, the SID desires to enter into this Contract for the purpose of preserving and enhancing the Assessed Benefits tax base of the SID; and

WHEREAS, obtaining a large supply of Delinquent Properties which can be sold as provided herein will enable ALC to advertise and carry out an extensive and expensive marketing plan for the Properties;

NOW, THEREFORE, the SID and ALC agree as follows:

1. Promptly after the effective date of this Contract, the SID will notify the County Collectors of Sharp County and Fulton County that the SID has elected to enforce collection of delinquent installments of the Improvement District Tax by chancery proceeding under Act 782. The SID shall give the same notice to each Collector on or before October 10 of each year that this contract remains in effect.

2. Promptly after the effective date of this Contract, the SID shall employ one or more attorneys acceptable to ALC and SID to enforce collection, by chancery proceedings pursuant to Act 782, of delinquent installments of the Improvement District Tax which are due. As soon as practicable after October 10th of each year, but in no event later than the following February 28th, the SID shall employ one or more attorneys acceptable to ALC to enforce collection, by chancery proceedings pursuant to Act 782, of delinquent installments of the Improvement District Taxes which were due the said October 10th. In order that the daily operations of the SID will be disrupted as little as possible, ALC will hire staff and do all things necessary to compile all records, lists, etc. required by the attorneys retained by the SID. ALC is solely responsible for the payment of all legal fees and costs associated with the legal proceedings to enforce collection of delinquent installments of the Improvement District Tax. The attorneys retained by SID shall submit statements for legal services rendered and costs incurred on a monthly basis directly to ALC to be paid by ALC upon receipt.

EXHIBIT A

3. ALC shall have the exclusive right and option during the term of this Contract to purchase the interest of the SID in all or some of the Delinquent Properties. Upon receiving written notice of the description of the Delinquent Properties to which ALC desires to acquire title, the SID will convey such properties to ALC by quitclaim deed, without warranty of title, and afford ALC, its successors or assigns, the privileges of a SID property owner as to use of SID facilities for the remainder of the calendar year in which the purchase is made. ALC will purchase properties from the SID on the following terms:

A. **Lots**: ALC will pay at closing to the SID five percent (5%) of the gross selling price when a lot sold to a third party closes.

B. **Acquired Acreage**: ALC will pay at closing to the SID fifteen percent (15%) of the gross selling price when the acreage sold to a third party closes.

C. **Replatted Acreage**: It is contemplated by the parties that it may be possible and desirable for ALC to obtain all of the lots in certain subdivisions. In that instance ALC may wish to convert the entire subdivision into acreage. In order to accomplish such conversion the SID agrees to retain legal counsel acceptable to SID and ALC for the purpose of attempting to acquire all municipal and/or county approvals for the conversion to acreage, including the abandonment of any dedicated streets and roadways. ALC shall be responsible for the payment of all legal fees and costs, whether or not the conversion of lots to acreage is successful, in the same manner as described in Paragraph 2 hereof. In the event any subdivision is converted into acreage ALC will pay at closing to the SID thirty percent (30%) of the gross selling price when the property, or any portion thereof, sold to a third party closes.

As security for the payment of the purchase price to be paid by ALC to SID for real property sold by SID to ALC, a Certificate of Deposit in the amount of $5,000.00 issued by a bank reasonably satisfactory to SID will be pledged by ALC to SID. The execution of a Pledge Agreement in form and substance satisfactory to SID and the delivery of the Certificate of Deposit shall occur on the date of the initial conveyance of any real property from SID to ALC.

4. The SID will, from time to time, at the request of ALC, attempt to negotiate the purchase from the Land Commissioner of Properties (or the Land Commissioner's interest therein) which the Land Commissioner offers for sale, upon terms and conditions acceptable to the SID. The amount of property to be purchased by the SID shall be determined by SID and ALC after consultation. The purchase price and related costs, including, but not limited to attorneys' fees, incurred by the SID in the acquisition of any real property from the Land Commissioner shall be paid by ALC to the SID contemporaneously with the closing of the purchase and sale with the Land Commissioner.

5. ALC will pay the following additional costs:

A. All recording fees relating to the Tax Deeds from the Land Commissioner to the SID.

EXHIBIT A

B. All documentary tax stamps, if any, required on any Tax Deed from the Land Commissioner to the SID.

C. All real estate taxes on any property acquired by the SID from the Land Commissioner or through court foreclosure proceedings from the date of the acquisition of title by the SID and thereafter. It is the intent of the parties that the SID shall have no obligation to pay general real estate taxes on Delinquent Properties it acquires. All general real estate taxes, including any taxes not certified to the Land Commissioner but then owing to the County Tax Collector, shall be paid by ALC.

D. ALC is responsible for the payment of Improvement District Taxes on any Properties conveyed to ALC from the date of such conveyance as long as such Properties are owned by ALC.

6. ALC shall maintain adequate records of all transactions relating to this Contract so that the SID auditor can satisfy the SID Commissioners as to the amount of Delinquent Properties acquired by the SID, the amount of payments to the SID for the purchase of the Delinquent Properties, the payments to the SID under the provisions of Paragraph 5 of this Contract, the amount of funds spent directly by ALC in carrying out the provisions of this Contract, and any other items the SID auditor may from time to time require. ALC will make the records available to the SID auditor at the auditor's convenience.

7. The parties agree that the success of the marketing effort of ALC will be of great benefit to the SID and to that end the SID agrees to cooperate with ALC in every reasonable way possible including, but not limited to, giving ALC access to the SID property owner files and working with ALC to develop programs to enhance the benefits of owning property in the SID.

8. The parties each represent that they are entering into this Contract in good faith and in accordance with their interpretation of the laws in regard to collection and enforcement of delinquent Improvement District Taxes and delinquent general taxes. Except as otherwise provided in this Contract, neither party will have any responsibility to the other for their interpretation of the law.

9. Nothing herein shall be construed as or is intended to make ALC the agent of the SID. The SID shall have no responsibility or control over the activities of ALC in marketing the Property which is sold by SID to ALC. ALC will pay, and will protect, indemnify and save the SID and the Commissioners and the employees of the SID, harmless from and against, any and all liabilities, losses, damages, costs and expenses (including attorney's fees, litigation and court costs), claims, demands and judgments of whatsoever kind and nature arising from or in any manner directly or indirectly growing out of or connected with the resale of or attempt to resell any Properties, including any activities in connection with ALC's marketing plans.

10. This Contract shall have an initial term of five (5) years, automatically renewing annually, unless written notice of intent to terminate the Contract is given by either party. It being agreed by the parties that each party shall have five (5) years notice prior to a termination of this

EXHIBIT A

Contract. It is agreed that five (5) years is reasonable for ALC because of the great expense ALC is going to fund without any guarantee of repayment and five (5) years is reasonable for the SID because of the difficulty of finding someone to undertake the marketing of the Delinquent Properties.

11. The SID and ALC further agree as follows:

A. In the event either party to this Contract shall employ legal counsel to protect its rights under this Contract or to enforce any term or provision of this Contract, each party shall pay its own attorney's fee. This Contract shall be governed, construed and interpreted according to the laws of the State of Arkansas.

B. This Contract, together with all exhibits and the documents referred to herein contains all the terms and conditions agreed upon by the parties hereto with respect to the transaction contemplated hereby, and shall not be amended or modified except by written instrument signed by all the parties.

C. This Contract shall be binding upon and inure to the benefit of the representatives, heirs, estates, successors and assigns of the parties hereto.

D. Time is of the essence of this Contract.

E Captions in this Contract are inserted for convenience and shall not be construed as affecting any substantive right or obligation of the parties.

EXHIBIT A

IN WITNESS WHEREOF, we have signed this Contract on the date first above mentioned.

CHEROKEE VILLAGE ROAD AND STREET, RECREATIONAL AND FIRE DEPARTMENT, SUBURBAN IMPROVEMENT DISTRICT NO. 1

BY: Grey Grenger
Commissioner

BY: Lloyd B Hannon
Commissioner

BY: _____
Commissioner

AMERICAN LAND COMPANY

BY: Charles Daggett

Title: Partner

ATTEST:

BY: Lue R. Rhodes

Title: PARTNER

EXHIBIT A

AMENDMENT TO CONTRACT

THIS AMENDMENT TO CONTRACT (the "Amendment") is entered into this 6th day of January, 2004, by and between Cherokee Village Road and Street, Recreational and Fire Department, Suburban Improvement District No. 1 ("SID"), and American Land Company ("ALC").

WHEREAS, the parties hereto have entered into a contract (the "Contract") dated as of November 5, 2002; and

WHEREAS, the parties desire to make an Amendment to the Contract.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, one to the other, it is agreed:

1. The following is substituted and is in place of Paragraph 3 of the Contract:

3. ALC shall have the exclusive right and option during the term of this Contract to purchase the interest of the SID in all or some of the Delinquent Properties. Upon receiving written notice of the description of the Delinquent Properties to which ALC desires to acquire title, the SID will convey such properties to ALC by quitclaim deed, without warranty of title, and afford ALC, its successors or assigns, the privileges of a SID property owner as to use of SID facilities for the remainder of the calendar year in which the purchase is made. ALC will purchase properties from the SID on the following terms.

A. **Lots**: ALC will pay to SID five percent (5%) of the gross selling price when a lot is conveyed by SID to ALC.

B. **Acquired Acreage**: ALC will pay to the SID fifteen percent (15%) of the gross selling price when the acreage is conveyed by SID to ALC.

C. It is contemplated by the parties that it may be possible and desirable for ALC to obtain all of the lots in certain subdivisions. In that instance ALC may wish to convert the entire subdivision into acreage. In order to accomplish such conversion the SID agrees to retain legal counsel acceptable to SID and ALC for the purpose of attempting to acquire all municipal and/or county approvals for the conversion to acreage, including the abandonment of any dedicated streets and roadways. ALC shall be responsible for the payment of all legal fees and costs, whether or not the conversion of lots to acreage is successful, in the same manner as described in Paragraph 2 hereof.

EXHIBIT A

In the event any subdivision is converted into acreage ALC will pay to SID thirty percent (30%) of the gross selling price when the property, or any portion thereof, is conveyed by SID to ALC.

2. Except as specifically amended by this Amendment, the terms and conditions of the Contract shall remain in full force and effect.

Executed on the date first mentioned above.

CHEROKEE VILLAGE ROAD AND STREET,
RECREATIONAL AND FIRE DEPARTMENT,
SUBURBAN IMPROVEMENT DISTRICT NO. 1

BY: _____
Commissioner

BY: _____
Commissioner

BY: _____
Commissioner

AMERICAN LAND COMPANY

BY: _____

Title: _____

ATTEST:

BY: _____

Title: DIRECTOR PROPERTY OWNER SERVICES

EXHIBIT A