

# ARKANSAS BUILDING AUTHORITY

MIKE BEEBE, GOVERNOR

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ANNE W. LAIDLAW, DIRECTOR

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501 WOODLANE • SUITE 101N • LITTLE ROCK, AR • 72201 • (501) 682-1833 • FAX (501) 682-5589 • TDD (501) 682-1487

March 28, 2012

David Ferguson, Director  
Bureau of Legislative Research  
State Capitol, Room 315  
Little Rock, AR 72201

Re: Lease Agreement #04-630-P2047/DFA Revenue  
Disclosure for Jonathon Barnett Enterprises, Inc.

Dear Mr. Ferguson:

Please find enclosed a copy of the lease amendment agreement between Jonathan Barnett, as Lessor, and the DFA-Revenue as Lessee. Since Representative Barnett is currently serving a term as the Representative for District 97, the following law is applicable.

Ark. Code Ann. § 21-1-403 provides certain restrictions on state agency leases, agreements, contracts, and grants. Subsection (a)(2) mandates that:

(a) No constitutional officer may enter into any lease agreement, contract, or grant with any state agency unless:

(2) If competitive bidding or a request for proposal was not required by law, it has received the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor.

This document is being presented to you for placement on the agenda for review and approval by Legislative Council. A similar request has been provided to the Office of the Governor pursuant to the above referenced law. Additionally a request for approval has been sent to Tim Leathers, Arkansas Department of Finance and Revenue, pursuant to disclosure rules of EO98-04. As you know, real estate lease transactions are exempt from state procurement competitive bid laws. Additionally, no mandate exists in law or regulation that leases such as the one referenced above must competitively bid or placed out for proposals. In fact, negotiations for such transactions are clearly contemplated in Ark. Code Ann. §22-2-114. The initial lease was transacted prior to Representative Barnett becoming a member of the House of Representative. The lease renewal term is to begin on June 1, 2012 and expire on May 31, 2016. Once the requisite approvals have been provided, I will execute the lease amendment.

Should you have any questions please do not hesitate to contact me.

Sincerely,



Anne W. Laidlaw, Director

Attachment (1)

Cc: Honorable Governor Beebe  
Representative Barnett  
Tim Leathers, Deputy Director/Commissioner of Revenue

Arkansas Building Authority  
STATE OF ARKANSAS  
COUNTY OF PULASKI

Lease Term: 06/01/12 to 05/31/16  
Annual Rent: \$34,320.00  
Square Feet: 2,400 Rate: \$14.30  
Type: Renewal  
Worked By: Darlene Moore  
County: 04 Agency: 630  
Lease #: P2047

**STATE OF ARKANSAS  
FIRST LEASE AMENDMENT**

This Agreement is made and entered into as of the 8<sup>th</sup> day of March, 2012, by and between JONATHAN BARNETT ENTERPRISES, INC, hereinafter referred to as "Lessor", and DEPARTMENT OF FINANCE AND ADMINISTRATION - REVENUE DIVISION, hereinafter referred to as "Lessee".

**WITNESSETH**

Whereas, by Lease Agreement dated April 13, 2010, Lessor leased to Lessee approximately 2,400 square feet of office space and adequate automobile parking space located at 707 South Lincoln; all situated in the City of Siloam Springs, Arkansas, County of Benton (the "Lease"); and

Whereas, the parties hereto have hereby agreed to extend the term of the Lease and to amend and modify the Lease as hereinafter set out.

Now, therefore, for and in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree that the term of the Lease is hereby extended for a period commencing on June 1, 2012 and continuing through May 31, 2016, upon the same terms and conditions as the original Lease Agreement except the Lease shall be amended and modified as follows:

1. Term. The LESSEE may elect to extend the term not more than ninety (90) days upon the same terms by written notice to LESSOR no less than thirty (30) days before the end of term stated in the above paragraph; and
2. Special Provisions. Special Provision 10 (e) of the original Lease Agreement dated April 13, 2010 is hereby deleted and replaced with the following:
  - (e) The LESSOR, LESSEE and ABA agree that should the Lease and any applicable amendments expire prior to the execution of this amendment agreement, the parties agree that the Lease and any applicable previous amendments are hereby reinstated and ratified upon this Amendment Agreement being fully executed by the parties. The provisions, terms, and conditions of this Amendment Agreement shall govern in the event of conflict or inconsistencies, or both.

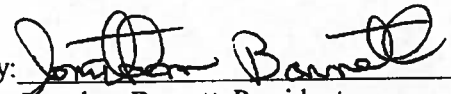
The Lease Agreement as hereby extended, amended and modified is hereby ratified and confirmed by the parties hereto as being in full force and effect.

This agreement shall be binding on the parties hereto and their respective heirs, successors and assigns.

Executed as of the date first hereinabove set out.

LESSOR:

JONATHAN BARNETT ENTERPRISES, INC.

By:   
Jonathan Barnett, President

Date: 3-16-2012

LESSEE:

DEPARTMENT OF FINANCE AND  
ADMINISTRATION - REVENUE DIVISION

By: \_\_\_\_\_  
David Foster, Assistant Commissioner  
of Operations and Administration

Date: \_\_\_\_\_

ARKANSAS BUILDING AUTHORITY  
As Agent for Department of Finance and  
Administration - Revenue Division

By: \_\_\_\_\_  
Catherine Mulkey, Administrator of  
Real Estate Services

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Anne W. Laidlaw, Director

Date: \_\_\_\_\_

Arkansas Building Authority  
STATE OF ARKANSAS  
COUNTY OF PULASKI  
Standard Lease Form I  
Approved by Attorney General  
August 2008

Lease Term: 06/01/10 to 05/31/12  
Annual Rent: \$34,320.00  
Square Feet: 2,400 Rate: \$14.30  
Type: Renewal  
Worked By: Danny R. Lewis  
County: 04 Agency: 630  
Lease #: P2047

## STATE OF ARKANSAS LEASE AGREEMENT

This Lease is made this 13<sup>th</sup> day of April, 2010, by which Lessor leases the PREMISES to Lessee through ABA, Lessee's Leasing Agent.

For the purposes of this Lease Agreement the following definitions apply:

"LESSOR" means: JONATHAN BARNETT ENTERPRISES, INC., an Arkansas for profit corporation.

"LESSEE" means: DEPARTMENT OF FINANCE AND ADMINISTRATION – REVENUE DIVISION, P. O. Box 1272, Little Rock, Arkansas, 72203, an agency of the State of Arkansas.

"ABA" means the Real Estate Services Section of Arkansas Building Authority. By law ABA is the leasing agency for LESSEE. Arkansas Code Annotated §22-2-114. ABA is not an additional LESSEE and therefore shall not owe any rent.

"PREMISES" means the property which is the subject of this Lease which is further described in paragraph #1.

### 1. DESCRIPTION OF PREMISES:

Approximately 2,400 square feet of office space and adequate automobile parking spaces located at 707 South Lincoln; all situated in the City of Siloam Springs, County of Benton, Arkansas.

### 2. TERM:

The initial term will begin on June 1, 2010 and end on May 31, 2012. The LESSEE may elect to extend the term not more than ninety (90) days upon the same terms by written notice to LESSOR, not less than thirty (30) days before the end of the initial term.

### 3. RENT:

The LESSEE agrees to pay \$2,860.00 per calendar month on or before the tenth (10) day of each such period, upon invoice from the LESSOR, apportionable on a daily basis at \$94.03, such amount to be paid to LESSOR at: 1980 West U.S. 412, Siloam Springs, Arkansas, 72761.

4. UTILITIES AND SERVICES:

The LESSOR will furnish the following utilities and services:

Yes - Electricity	N/A - Elevator Service
Yes - Gas	Yes - Trash Removal
Yes - Water and Sewer	No - Janitorial Services and Supplies
Yes - Ballast and replacements	

5. MAINTENANCE, REPAIR AND REPLACEMENT:

The LESSOR shall maintain the leased PREMISES, including the building and all equipment, fixtures, and appurtenances furnished by the LESSOR under this Lease, in good repair and tenantable condition, except in case of damages arising from the acts of the LESSEE'S agents or employees. For the purpose of so maintaining said PREMISES and property, the LESSOR may at reasonable times, and with the approval of the authorized LESSEE representative in charge, enter and inspect the same and make any necessary repairs hereto. The LESSOR shall be responsible for maintaining all structural supports and exterior walls of the building, including windows, doors, and passageways from the lobby, street and parking areas leading to the leased property, and the adjacent sidewalks and entrance lobby, in good order and repair, and free of snow, ice, rubbish and other obstructions. LESSOR shall provide lawn and plant maintenance and shall provide monthly pest control service. LESSOR shall maintain in good working order and repair all plumbing, toilet facilities and other fixtures and equipment installed for the general supply of hot and cold water, heat, air-conditioning (including monthly maintenance and filters).

6. FAILURE TO PERFORM:

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this Lease are dependent. If the LESSOR shall breach any of the conditions required to be performed by it under this Lease, LESSEE may cure such breach and deduct the cost thereof from rent subsequently becoming due hereunder. If LESSOR fails to correct a deficiency within thirty (30) days after written notice from ABA and LESSEE, or within an appropriate shorter period stated in the notice, in the event of a deficiency constituting a hazard to the health and safety of the LESSEE'S employees, property, or any other person, ABA and LESSEE may elect to terminate this Lease.

7. DAMAGE BY FIRE OR OTHER CASUALTY:

LESSOR shall bear the risk of loss by fire or other casualty and shall maintain fire and extended coverage insurance to the full replacement value of the PREMISES. If the PREMISES are destroyed by fire or other casualty, this Lease will immediately terminate. In case of partial destruction or damage, so as to render the PREMISES unsuitable for the purposes for which they are leased, as determined by LESSEE and ABA, the LESSEE, may terminate the Lease by giving written notice to the LESSOR through ABA, within fifteen (15) calendar days thereafter; if so terminated, no rent will accrue to the LESSOR after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

8. ALTERATIONS:

The LESSEE may attach fixtures and install signs in or to the PREMISES with LESSOR'S approval, which shall not be unreasonably withheld. Such fixtures and signs shall remain the property of LESSEE and may be removed from the PREMISES within a reasonable time after the termination of this Lease provided the LESSEE shall restore the PREMISES to a condition as good as at the beginning of this Lease, ordinary wear and tear excepted.

ABA, acting as agent for LESSEE, may during the course of this Lease negotiate with LESSOR for other improvements to be made in the PREMISES. No additional cost or fee for services or work will be charged by LESSOR without the prior written authorization of ABA.

9. TERMINATION:

In addition to other remedies provided herein, the LESSEE may terminate this Lease by thirty (30) days written notice to LESSOR by ABA if the LESSEE'S funds are insufficient for it to continue the operations for which the PREMISES are being used.

10. SPECIAL PROVISIONS:

(a) LESSOR shall be responsible that this facility conforms to the Arkansas Fire Prevention Code, as amended, Arkansas State Plumbing Code, The National Electrical Code, and any other state and local laws, codes, authorities, etc., applicable to the leased facility including the Arkansas adopted Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).

(b) Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of terms of this contract. Any LESSOR, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the LESSEE.

(1) The LESSOR shall prior to assigning this Lease with any person or entity, for which the total consideration is greater than \$25,000, requires the assignee to complete a Contract and Grant Disclosure and Certification Form. The LESSOR shall ensure that any contract agreement, current or future between the LESSOR and an assignee for which the total consideration is greater than \$25,000 shall contain the following:

*Failure to make any disclosure required by Governor Executive Order 98-04, or any violation of any rule, regulation or adopted pursuant to that Order, shall be a material breach of the term of this Sublease. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the LESSEE.*

(2) The LESSOR shall transmit to the agency a copy of the Contract and Grant Disclosure and Certification Form completed and signed by the assignee and a statement containing the dollar amount of the Sublease. The LESSOR shall transmit to ABA a copy of the disclosure form within ten (10) days of entering into any agreement with assignee.

- (3) The terms and conditions regarding the failure to disclose and conditions which constitutes material breach of contract and rights of termination and remedies under the Executive Order 98-04 are hereby incorporated within.
- (c) LESSOR asserts that the corporation is the true owner of the PREMISES and its rights to the PREMISES are not pursuant to a lease or sublease.
- (d) The State shall not be responsible for the payment of any taxes or assessments for the PREMISES.
- (e) The LESSOR, LESSEE and ABA agree that should the Lease expire prior to the execution of any proposed amendment agreement, the parties agree that the Lease is hereby reinstated and ratified upon the Amendment Agreement being fully executed by the parties. The provisions, terms, and conditions of any subsequent Amendment Agreement shall govern in the event of conflict or inconsistencies, or both. This paragraph should not be construed between the parties as an agreement that the Lease will be extended for additional terms, but rather as an option between the parties to enter into future negotiations for additional terms should they so desire.
- (f) LESSEE shall have the option to terminate this Lease without cause by providing ninety (90) days notice in writing to LESSOR through ABA.

11. MISCELLANEOUS:

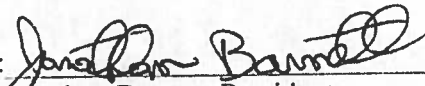
- (a) The Lease and any modifications or amendments to it will not be valid without the written approval of ABA.
- (b) This Lease shall benefit and bind the parties hereto and their heirs, personal representatives, successors and assigns.
- (c) This Lease contains the entire agreement of the parties
- (d) The LESSEE may terminate this Lease by written notice from ABA to LESSOR upon the taking by eminent domain of any part of the PREMISES. This provision does not prevent the LESSEE from claiming or recovering from the condemning authority the value of LESSEE'S leasehold interests.
- (e) Nothing in this Lease shall be construed to waive the sovereign immunity of the STATE OF ARKANSAS or any entities thereof.



Executed by the parties who individually represent that each has the authority to enter into this Lease.

LESSOR:

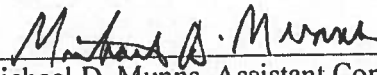
JOHNATHAN BARNETT  
ENTERPRISES, INC.

By:   
Jonathan Barnett, President

Date: 4-22-2010

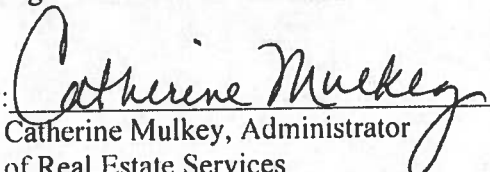
LESSEE:

DEPARTMENT OF FINANCE AND  
ADMINISTRATION – REVENUE DIVISION

By:   
Michael D. Munns, Assistant Commissioner

Date: 4/28/10

ARKANSAS BUILDING AUTHORITY  
As Agent for DF& A – Revenue

By:   
Catherine Mulkey, Administrator  
of Real Estate Services

Date: 7/22/10

By:   
Anne W. Laidlaw, Director

Date: 7/22/10