R-20- 142

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A FIRST AMENDMENT TO REAL ESTATE DEVELOPMENT AND OPTION TO PURCHASE WITH J. CHANDLER & COMPANY FOR PROPERTY LOCATED ON MAIN AND 6TH STREETS; AND FOR OTHER PURPOSES.

WHEREAS, on August 27, 2018, the North Little Rock City Council passed Resolution No. 9501, authorizing the Mayor and City Clerk to explore development of certain property ("Property") with J. Chandler & Company ("Chandler") located on Main and 6th Streets (see Resolution attached hereto as Exhibit A); and

WHEREAS, on or about September of 2019, Chandler expressed desire to exercise the Option to Purchase the Property from the City; and

WHEREAS, the COVID-19 pandemic, together with Executive Orders issued by the Governor of the State of Arkansas to take action to prevent the spread of COVID-19, has resulted in the disruption of development; and

WHEREAS, the City and Chandler have agreed to an Extension Term of twelve (12) months, during which time Chandler will develop or purchase the Property and the City will landscape the area; and

WHEREAS, the City will be reimbursed up to Thirty Thousand Dollars and 00/100 cents ($30,000.00) if Chandler purchases the Property; and

WHEREAS, it is in the best interests of the City and its residents to enter into a First Amendment to Real Estate Development Agreement to landscape the Property until Chandler exercises or forfeits the Option to Purchase.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and the City Clerk are hereby authorized to enter into a First Amendment to Real Estate Development and Option to Purchase Agreement (substantially similar to Exhibit B, attached hereto) with the J. Chandler Company & Company to landscape certain property located at Main and 6th Streets.

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

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

Mayor Joe A. Smith

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 10:45 A.M. _____ P.M.

By CA Amy Fields

DATE 9-28-20

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

RECEIVED BY

EXHIBIT

A

R-18-166

RESOLUTION NO. 9501

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A REAL ESTATE DEVELOPMENT AND OPTION TO PURCHASE AGREEMENT, FOR PROPERTY LOCATED ON MAIN AND 6TH STREETS, WITH J. CHANDLER & COMPANY, INC.; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock ("the City") owns property located on Main and 6th Streets adjacent to the planned Argenta Plaza that is suitable for development consistent with the historic appearance of the area and which would attract visitors and employment opportunities; and

WHEREAS, J. Chandler & Company, Inc. ("Chandler"), an Arkansas corporation experienced in real estate development, is interested in exploring a development plan for the subject property that would be advantageous to the City and enhance the downtown area; and

WHEREAS, Chandler has requested a due diligence period to conduct a feasibility study with an option to purchase the property, and the City believes that the due diligence period to explore development plans with an option to purchase would be favorable and beneficial to the City.

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 Real Estate Development and Option to Purchase Agreement, substantially similar to Exhibit A, between the City and J. Chandler & Company, Inc.to explore development of, with an option to purchase, certain property located on Main Street and 6th Streets, said property being more particularly described as follows:

PART OF LOT C1 AND LOT B, P & R PROPERTIES ADDITION IN THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT C1;
THENCE S 02° 25' 31" W ALONG THE EASTERLY RIGTH-OF-WAY LINE OF MAIN STREET (70' ROW) FOR 1.00 FEET;
THENCE S 88° 44' 39" E ALONG THE SOUTHERLY LINE OF A 61 FOOT UTILITY AND ACCESS EASEMENT FOR 6.00 FEET TO THE POINT OF BEGINNING;

THENCE S 88° 44' 39" E ALONG SAID EASEMENT FOR 138.03 FEET TO THE WESTERLY LINE OF A 25 FOOT ACCESS EASEMENT;
THENCE S 02° 25' 31" W ALONG SAID WESTERLY LINE FOR 50.00 FEET;
THENCE N 88° 44' 39" W FOR 144.03 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;
THENCE N 02° 25' 31" E ALONG SAID RIGHT-OF-WAY LINE FOR 44.00 FEET;
THENCE S 88° 44' 39" E FOR 6.00 FEET;
THENCE N 02° 25' 31" E FOR 6.00 FEET TO THE POINT OF BEGINNING, CONTAINING 7,164 SQUARE FEET OR 0.164 ACRES, MORE OR LESS.

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

PASSED:

8/27/18

APPROVED:

Joe A. Smith

Mayor Joe A. Smith

SPONSOR:

Joe A. Smith

Mayor Joe A. Smith by AF

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/ABF

FILED 11:15 A.M. _____ P.M.
By A Fields
DATE 8-21-18
Diane Whitbey, City Clerk & Collector
North Little Rock, Arkansas
RECEIVED BY S. Usser

REAL ESTATE DEVELOPMENT AND OPTION TO PURCHASE AGREEMENT

BETWEEN

CITY OF NORTH LITTLE ROCK, ARKANSAS

AND

J. CHANDLER & COMPANY, INC.

THIS REAL ESTATE DEVELOPMENT AND OPTION AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2018, by and between the **CITY OF NORTH LITTLE ROCK, ARKANSAS**, a municipal corporation of the State of Arkansas acting by and through its Mayor and City Clerk (hereinafter referred to as the "City"), and **J. CHANDLER AND COMPANY, INC.**, a corporation organized under the laws of the State of Arkansas, or assignee thereof (hereinafter referred to as "Developer") (City and Developer herein referred to individually as a "Party" and collectively as "Parties").

RECITALS

WHEREAS, the City owns certain property in its downtown corridor that is suitable for development for uses that attract visitors and employment opportunities;

WHEREAS, Developer is experienced in real estate development and is interested in potentially developing said property in a manner which the City finds to be advantageous and would enhance the downtown area;

WHEREAS, City and Developer previously executed that certain Real Estate Development and Option to Purchase Agreement ("Previous Option") with regards to said property;

WHEREAS, the Previous Option has expired, and the Parties wish to enter into this Agreement with regards to an option to purchase and develop said property;

WHEREAS, Developer has performed certain diligence and created certain plans for the development of said property and has incurred costs and expenses for the development of such plans which the City recognizes and acknowledges;

WHEREAS, the City has reviewed the development plans prepared by the Developer;

WHEREAS, the City has found and determined that the plans of Developer and the option to be granted by this Agreement are favorable to the City.

NOW, THEREFORE, in consideration of the sum of One Hundred and No/100 United States Dollars ($100.00) (the "Option Fee"), the mutual covenants and promises set forth herein, and other good and valuable consideration, it is agreed by and between the Parties as follows:

EXHIBIT
A

1. **Incorporation of Recitals**. The statements set forth above are true and correct constituting an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.

2. **Rules of Construction**. The rules of construction set forth in this Section 2 shall apply to this Agreement.

a. All Section, Subsection, and Exhibit references used in this Agreement are to the Sections, Subsections and Exhibits to this Agreement unless otherwise specified. The Exhibits attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes. The Section and Subsection headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

b. If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, and all words in the plural number shall extend to and include the singular. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "includes" or "including" mean "including without limitation," "shall" and "will" have equal force and effect, the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Section or Subsection in which such words appear and any reference to a law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced in this Agreement are in U.S. Dollars.

c. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

d. Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party or any similar rule operating against the draft of an agreement shall not be applicable to the construction or interpretation of this Agreement.

3. **Property**. Throughout this document, "Property" shall refer to certain real property located on Main Street at 6th Street, North Little Rock, Arkansas, and more particularly described as follows (see depiction attached hereto as **EXHIBIT A**):

> PART OF LOT C1 AND LOT B, P & R PROPERTIES ADDITION IN THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT C1;
THENCE S 02° 25' 31" W ALONG THE EASTERLY RIGTH-OF-WAY LINE OF MAIN STREET (70' ROW) FOR 1.00 FEET;
THENCE S 88° 44' 39" E ALONG THE SOUTHERLY LINE OF A 61 FOOT UTILITY AND ACCESS EASEMENT FOR 6.00 FEET TO THE POINT OF BEGINNING;
THENCE S 88° 44' 39" E ALONG SAID EASEMENT FOR 138.03 FEET TO THE WESTERLY LINE OF A 25 FOOT ACCESS EASEMENT;
THENCE S 02° 25' 31" W ALONG SAID WESTERLY LINE FOR 50.00 FEET;
THENCE N 88° 44' 39" W FOR 144.03 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;
THENCE N 02° 25' 31" E ALONG SAID RIGHT-OF-WAY LINE FOR 44.00 FEET;
THENCE S 88° 44' 39" E FOR 6.00 FEET;
THENCE N 02° 25' 31" E FOR 6.00 FEET TO THE POINT OF BEGINNING, CONTAINING 7,164 SQUARE FEET OR 0.164 ACRES, MORE OR LESS.

4. **Option to Purchase**. The City hereby grants Developer the right, privilege and option to purchase (the "Option") the Property at a price of $11.00 per square foot at any time on or before the expiration of the Term (as defined below) according to the terms hereinafter set forth. This Option is granted for the purpose of granting the Developer the right to acquire Property and develop a restaurant and residential development currently known as the POWER + ICE BUILDING as shown in the depictions on **EXHIBIT B** which are attached hereto (the "Development"). This Option may only be exercised by notifying the North Little Rock Mayor in writing by ordinary mail or personal delivery at 300 Main Street, North Little Rock, Arkansas 72114.

5. **Term**. The term of this Agreement shall be that period of time commencing on the day after this Agreement is approved by the North Little Rock City Council (the "Commencement Date") and concluding at midnight on the last day of the Sixth (6th) month following the Commencement Date (the "Original Term"). Developer may extend the Original Term for a period of six (6) additional months (the "Extension Term") by providing written notice of said extension and tendering payment of Five Thousand and No/100 United States Dollars ($5,000.00) to the North Little Rock Mayor at least ten (10) days prior to the conclusion of the Original Term (the "Extension Fee"). The Option Fee and the Extension Fee contemplated in this Agreement shall not be refunded unless otherwise expressly provided for in this Agreement but may be credited against the purchase price of the Subject Property. The Original Term and the Extension Term shall collectively be referred to herein as the "Term."

6. **Agreement to Sell and Purchase**. If Developer exercises this Option, the City shall sell to Developer and the Developer shall purchase from the City, the Property along with all of the following (which shall all be considered as part of the Property):

All right, title and interest in and to the Property, less and except any items identified in the Title Commitment to which Developer has not objected.

7. **Construction of the Sitework**. Prior to Developer's exercise of the Option granted by this Agreement, the City shall undertake and complete the construction of each element of work described on **EXHIBIT C** (the "Plans and Specs") attached hereto and made a part hereof (collectively, the "Sitework"). The Sitework shall be performed and completed in a manner as agreed by the Developer and the City at the City's sole cost and expense. However, in the event Developer exercises the Option and completes the purchase of the Property, Developer will reimburse City for its prorata share of the Sitework with relation to the Property and the entire development contemplated by the City (the "Plaza"). Developer, however, will not be obligated for any such expense or reimbursement unless it closes on the purchase of the Property. Each and every element of the Sitework shall be completed on or before the Term of this Agreement. In the event City shall fail to perform the Sitework in accordance with this Agreement, Developer shall have the option to either (i) terminate this Agreement or terminate the purchase of the Property if the Option has already been exercised and receive a refund of the Option Fee and Extension Fee, if applicable; or (ii) perform the Sitework in accordance with this Agreement. However, nothing herein shall be in any way construed as requiring Developer to undertake or complete any element of the Sitework. If Developer has exercised the Option, completion of the Sitework shall be a condition precedent to Closing. Further, the Option granted hereunder shall be extended without any cost to Developer for so long as it takes for City to complete the Sitework unless this Option is terminated by Developer, in its sole discretion. The parties specifically acknowledge that this section does not apply to geotechnical services that have already been completed on the Property. Developer acknowledges that the City has submitted a request for reimbursement for Developer's prorata share of this expense. Developer agrees that it will promptly reimburse the City for its prorata share of the expenses incurred for performance of the geotechnical services and that its obligation to reimburse the City for this expense is not dependent upon its exercise of the Option.

8. **City's Deliveries**.

a. **Due Diligence Materials**. Within thirty (30) days from the Commencement Date, the City shall (at the City's sole cost) deliver or make available to the Developer copies of the following documents, to the extent they are in the City's possession and control (all such documents being referred to as the "Due Diligence Materials"):

i. All tests, inspections, evaluations and/or reports relating to the Property, including but not limited to, environmental, structural, topographical and geological studies and reports, and any plans for the Sitework;

ii. All surveys, maps, site plans, architectural plans, specifications, and other drawings of the Subject Property;

iii. All notices, orders or other communications by or between the City, any county, state or federal governmental agency regarding the Property; and

iv. The most recent Preliminary Plat of the Property and most recent ALTA survey of the Land.

In the event information contained in the Due Diligence Materials materially changes at any time during the Term or prior to Closing, or in the event such documents require updating due to the passage of time, the City shall immediately update such information and provide revised documentation to the Developer. Likewise, if at any time prior to Closing, any additional Due Diligence Materials come into the City's possession or control, or otherwise become reasonably obtainable by the County or its agents, the City shall deliver same to Developer. All documents required to be provided under the foregoing provisions shall hereinafter be referred to as the "Additional Due Diligence Materials." If the City delivers any Additional Due Diligence materials after the Developer has exercised its Option hereunder, the Developer may, in its discretion, cancel the transaction and the fees paid for the option shall be returned to the Developer.

b. **Title Documents**. Upon the exercise of the Option, the City shall provide to the Developer, as promptly as possible, a title commitment reflecting fee simple title to the Land (the "**Title Commitment**"). From the day of delivery of the Title Commitment, Developer shall have ten (10) days within which to cause the Title Commitment to be examined by Developer's attorneys and to present in writing any material objections to the title. If any such material objections are presented in writing to the City, the City shall have ten (10) days within which to cure the same. In the event that the Developer does not assert any material defects in the title offered, or if the title is found to be acceptable to the Parties, a closing date shall be set for a time mutually agreeable to the Parties, but prior to the time set forth in this Agreement. In the event the title is not found to be marketable and the defect therein are not cured by the City within ten (10) days, the Developer shall have the right to cancel and terminate any obligation to purchase the Property and to be refunded the amounts, if any, paid under this Agreement, and at that time, all of the mutual rights of the Parties shall cease and terminate.

9. **Closing**. Provided that all of the conditions for closing hereunder have been satisfied, the closing ("Closing") shall occur within thirty (30) days from the date of the Developer's written statement to exercise the Option (the "Closing Date"), unless another date is agreed to by the parties in writing. The transaction shall be closed at the place designated by Developer. At any time after the Commencement Date, Developer shall have the right to inspect the Property at reasonable times upon reasonable notice to determine if there has been a significant change in the condition of the Property. If Developer reasonably determines there has been a significant change in the condition of the Property, excluding those changes noted in the Sitework, Developer may, in its discretion, terminate this Agreement and forfeit the amounts paid under this Agreement.

10. **Due Diligence.** Prior to the end of the Term or Closing:

a. Developer and/or Developer's agents and representatives shall have the right to conduct any soil, environmental or other assessment of the Property that Developer deems necessary including, without limitation, any geotechnical investigation, a Phase I and/or Phase II environmental assessment, or any procurement and testing of soil, groundwater, indoor air, or any other material located on the Property (collectively together the "Soil/Environmental Assessments"). Developer shall pay all costs associated with the Soil/Environmental Assessments

and promptly restore any portions of the Property damaged by such tests (i.e., soil borings) to substantially the same condition as existing just prior to such Assessment. Developer shall, and shall request that its agents, representatives, and independent contractors perform such work in a manner that does not unreasonably cause disturbance to the Property.

b. Before the end of the Term or Closing, Developer may, in its sole discretion, conduct any other test, inspection or review of the Property (or any information related to the Property) or seek to obtain any financing, approvals, or other information relating to the Project, including, but not limited to, (i) inspecting the Improvements, (ii) reviewing the Due Diligence Materials; and (iii) reviewing or seeking to obtain any permit, notice, approval, variance, review or other matter relating to any federal, state, municipal, local or governmental agency involving the Property or the Project (collectively, the "Due Diligence Review").

c. City hereby grants to Developer and the Developer's agents permission to enter onto and/or into the Property at reasonable times upon reasonable notice to conduct the activities set forth in this Section 10. The City shall also cooperate with the Developer with respect to Developer's activities set forth in this Section 10. Notwithstanding the provisions of this Section 10, before engaging in any Soil/Environmental Assessment or Due Diligence Review requiring the installation of soil borings on the Property, the Developer shall submit its contractor's proposed work plan to the Mayor for approval as to the location of the proposed borings (which approval shall not be unreasonably withheld, conditioned or delayed).

11. **Closing Deliveries**.

a. **Developer's Deliveries**. At Closing, or as otherwise provided herein, the Developer shall deliver the following:

i. The Purchase Price.

ii. An executed version of a Development Agreement ("Development Agreement"), the final version of which shall be negotiated by the Mayor and Developer, and approved by the City Council, but which shall incorporate the following provisions:

1. If Developer does not commence construction of the Development on the Property, within one (1) year of Closing, City shall have the right to compel Developer to reconvey the Property to the City, on ten (10) days written notice of the first (1st) anniversary of Closing, in exchange for payment to Developer of the Purchase Price, less five percent (5%).

2. The City shall have development control of the Property for a period of (three) 3 years following Closing which shall include control over architectural appearance, size, proposed use, external improvements and the like. Developer 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. Notwithstanding the foregoing, and by the execution of this Agreement and the approval of the North Little Rock City Council of this Agreement, the City hereby expressly approves the plans of the Development attached hereto as **EXHIBIT B**.

b. **City Deliveries**. At Closing, City shall:

i. Deliver a General Warranty Deed in recordable form warranting that title to the Property is free and clear of all liens and encumbrances except any items identified in the Title Commitment to which Developer has not objected;

ii. Deliver an owner's policy of title insurance (from the same insurer insuring the Title Commitment) in the amount of the purchase price on a current ALTA form (the "Title Policy"). The Title Policy shall be the evidence of the City's title. The Title Policy shall be subject only to those items shown in the Title Commitment which Developer has expressly accepted. Endorsements to the Title Policy not necessary for the removal of items objected to by Developer or the removal of the standard exceptions shall be issued at Developer's sole cost. Endorsements required for the removal of the standard exceptions shall be issued at City's sole cost. The City shall provide any affidavits or other documents required by the title company to issue the endorsements, to remove the standard exceptions to title and/or to issue any endorsements reasonably requested by Developer;

iii. Any other documents reasonably requested by Developer's lenders or otherwise required for the financing of the Project.

iv. Any other documents customarily associated with the sale of commercial real estate in downtown North Little Rock, Arkansas.

v. An executed copy of the Development Agreement;

12. **Additional Closing Terms**. Any fees paid for the Option shall be non-refundable except in the following instances (unless otherwise noted in this Agreement): (a) where the City is unable to deliver the Title Commitment; (b) the Developer cannot obtain its own Title Commitment for the full cost of development under a policy that also has no reference to and contains no indemnity requirements or other exceptions for restrictions regarding the use of the Property; (c) the City is unable to deliver the items set forth in Section 12 herein; (d) the City denies any request by the Developer to perform a test or inspection on the Property; (e) the findings of any Soil/Environmental Assessment or Due Diligence Review renders the Project economically infeasible, after reasonable efforts to develop a plan of remediation with all applicable federal, state and local authorities; and (f) if the Option is terminated by the Developer within 90 days of the Commencement Date. Further, it shall be a condition precedent for Closing that Developer has obtained a long-term parking lease agreement or an option to purchase a portion of the property with regards to the property depicted on **EXHIBIT D** ("Parking Site") to serve as parking for the Development on the Property. If Developer is unable to obtain such a long-term lease or an option to purchase a portion of the Parking Site, Developer may terminate its exercise of the Option.

13. **Assignment**. This Option may be assigned by Developer to any affiliate of Developer or any other entity in which John Chandler has an ownership interest and controlling managerial authority without the written consent of the City. Any assignment of the Option by the Developer

in violation of this Section shall result in termination of the Option by the City and retention of any Option Fee and Extension Fee as liquidated damages.

14. **Real Estate Proration**. General Real Estate taxes and private and municipal charges, if any, shall be prorated at Closing. Special assessments levied or attributable to work actually commenced prior to Closing shall be paid by City no later than Closing.

15. **City's Warranties and Representations**. City hereby makes the following warranties and representations with respect to the Property:

a. City has the full power and authority to enter into this Option and to close the transaction contemplated hereunder, pursuant to North Little Rock City Resolution _____.

b. To the best of City's current and actual knowledge, City has not received, and City has no knowledge of any predecessor receiving, notice of any violation of law, municipal ordinance or other governmental requirement affecting the Property. City has no knowledge that any governmental authority is contemplating issuing such notice or that any such violation exists.

c. Other than this Agreement, City is not a party to any agreement, contract or commitment to sell, convey, lease, assign, transfer, provide option rights, provide rights of first refusal, or otherwise given any third party any rights to use or occupy all or any part of the Property.

d. To the best of City's current actual knowledge, there are no condemnation or eminent domain proceedings, nor any negotiations in lieu of condemnation, pending against the Property, and City is not aware of any condemnation or eminent domain proceedings being contemplated or threatened against the Property.

e. City is not aware of any outstanding permits, certificates, licenses or other similar approvals or authorizations that are required (but have not been obtained) for the transfer of all or any part of the Property under any federal, state or local law, ordinance, rule or regulation, or by any governmental or quasi-governmental agency having jurisdiction over the Property.

f. City has not actual knowledge of any existing law, ordinance, governmental requirement or restriction that would prevent or limit the Development on the Property.

g. To the best of City's current and actual knowledge, there are no claims, actions, litigation, proceedings, inquiries, disputes, rulings, judgments, or orders that are (i) attached or pending against or relating to the Property or the transaction contemplated herein; or (ii) attached or pending that could affect the Property or the transaction contemplated herein.

h. To the best of City's current and actual knowledge, there are no attachments, executions, assignments for the benefit of creditors, receiverships, or voluntary or involuntary proceedings in bankruptcy, or pursuant to any other debtor relief laws which have been (i) filed by City; (ii) contemplated by City; (iii) threatened against City; or (iv) which are currently pending against City in any judicial or administrative proceeding.

i. To the best of City's current and actual knowledge, (i) the Property is not the subject of any judicial or administrative notice or action relating to Hazardous Materials, hazardous waste or environmental contamination; (ii) Seller has received no notice of any claim of violation of any law or regulation having to do with Hazardous Materials or environmental protection relating to the Property; (iii) no Hazardous Materials or toxic substances have been stored, processed, or disposed of on the Property during the period that Seller has owned the Property; and (iv) no underground storage tanks are located on the Property.

For purposes of this Agreement, "Hazardous Material" means, without limitation, any substance or materials defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "acutely hazardous waste," "restricted hazardous waste," "toxic substances," (including toxic mold) or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment, or natural resources. For purposes of this Subsection, laws and regulations shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. §2701, et seq.; the Occupation Safety and Health Act, 29 U.S.C. §651, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq.; and in the regulations adopted pursuant to such laws; and any substance or material which has been determined by a state, federal or local governmental authority with jurisdiction over the Property to be capable of posing a risk of injury to health or safety.

j. To the knowledge of City, no brokerage fee, commission or finder's fee of any type is due any person in connection with the transaction contemplated by this Option.

All such warranties and representations of City, together with any others made hereunder, shall be reaffirmed to be true and correct as of the Closing Date to the same extent as the date of this Agreement. If any of the foregoing warranties and representations becomes untrue in any respect after the execution of this Option and is not cured by City (at no cost to Developer) on or before Closing, then Developer may elect to terminate this Option, in which event the Option Fee and any Extension Fee shall be returned to Developer.

16. **Time is of the Essence**. It is understood that time is of the essence as to the provisions of this Option.

17. **Notices**. All notices and demands by either party to the other shall be given in writing and personally delivered or sent by United States certified mail, postage prepaid, and addressed to:

FOR THE CITY:	FOR CHANDLER:
City of North Little Rock, AR	J. Chandler & Company, Inc.
Attn: Mayor Joe A. Smith	Attn:
Address: 300 Main Street	Address:
North Little Rock, AR 72114	
Phone: (501) 975-8601	Phone: (501)

18. **Default**. A material failure to perform any obligation relating to the purchase or sale of the Property after the Developer's exercise of this Option shall be a default which may subject the defaulting party to liability for damages or other legal remedies. If the Developer defaults on the terms of the purchase of the Property after the Developer's exercise of this Option, the City's shall be entitled to retain the Option Fee and the Extension Fee and may, at its option (a) terminate this Agreement, and recover from Developer the reasonable expenses actually incurred by the City and paid to third parties in connection with the City's performance of its obligations under this Agreement, except for the Site Work performed by the City pursuant to Paragraph 7 of this Agreement; or (b) pursue a suit for specific performance. If the City defaults on the terms of the purchase of the Property after the Developer's exercise of this Option, the Developer may sue for specific performance or terminate this Agreement and sue for actual damages. In addition, either part may seek other remedies available in law or in equity.

19. **Force Majeure Delay**. If any party is delayed or prevented from the performance of any act required by this Option by reason or either (i) fire, earthquake, war, flood, riot, strikes, labor disputes, judicial orders, public emergency or regulations, or other causes beyond the reasonable control of the party obligated to perform, or (ii) ligation involving the title to Property ("Title Litigation") regardless of who files such Title Litigation, then performance of such act shall be excused for the period of such delay and the time for the performance of any such act shall be extended for a period equivalent to such delay. In all event, the Term (and any renewal thereof) shall be tolled and extended during any time there is Title Litigation until such Title Litigation is fully resolved through all applicable appeals.

20. **Freedom of Information**. The parties hereto acknowledge that this Agreement and all information produced by this Agreement is subject to public disclosure pursuant to the Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101, et seq.)

21. **Modification**. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify or vary the terms or conditions of the Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by the acknowledgment or acceptance of any forms containing terms or conditions or variances with or in addition to those set forth in this Agreement.

22. **Governing Law**. The parties hereto agree that this Agreement shall be construed under the laws of the State of Arkansas, and further agree that proper jurisdiction and venue for any cause of action arising from this Agreement shall be vested in the state courts of Arkansas.

23. **Non-Waiver**. No delay or failure to exercise any right under this Agreement shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing

signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion or otherwise.

24. **Authority**. The persons executing this document each represent that he or she is duly authorized by his or her respective organization to bind the same to the terms contained herein, provided that, this Agreement shall not be effective until approved by official public action of the North Little Rock City Council.

25. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

26. **Filing**. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either Party may additionally file this document or a memorandum of this document in any other governmental office deemed appropriate including the real estate records of Pulaski County, Arkansas.

27. **Further Assurance**. Each of the Parties hereto hereby agrees to execute and deliver such documents and to take such other actions at any time and from time to time hereafter as may be reasonably requested by the other party hereto to carry out the provisions or purposes of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

WITNESS our hands and seals this _____ day of _____, 2018.

CITY OF NORTH LITTLE ROCK, ARKANSAS

By _____
Joe A. Smith
Title: Mayor

ATTEST:

_____
Diane Whitbey, City Clerk

[SEAL]

J. CHANDLER & COMPANY, INC.

By _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF PULASKI)

On this _____ day of _____, 2018, before me, a Notary Public duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named Joe A. Smith and Diane Whitbey, Mayor and City Clerk, respectively, for the CITY OF NORTH LITTLE ROCK, ARKANSAS, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the City, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date first above written.

_____
Notary Public

My Commission Expires:

_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF PULASKI)

On this _____ day of _____, 2018, before me, a Notary Public duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named _____, as _____ of J. CHANDLER & COMPANY, INC., to me personally known, who stated that he was duly authorized in his official capacity to execute the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date first above written.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT
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FIRST AMENDMENT TO REAL ESTATE DEVELOPMENT AND OPTION TO PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO REAL ESTATE DEVELOPMENT AND OPTION TO PURCHASE AGREEMENT (the "First Amendment") is entered into and becomes effective as of _____ _____, 2020, by and between CITY OF NORTH LITTLE ROCK, ARKANSAS, a municipal corporation of the State of Arkansas acting by and through its Mayor and City Clerk (hereinafter referred to as the "City"), and J. CHANDLER AND COMPANY, INC., a corporation organized under the laws of the State of Arkansas, or assignee thereof (hereinafter referred to as "Developer") (City and Developer herein referred to individually as a "Party" and collectively as "Parties").

RECITALS:

WHEREAS, on or about August 28, 2018, the City and Developer entered into that certain Real Estate Development and Option to Purchase Agreement (the "Option Agreement"), a copy of which is attached hereto as **EXHIBIT A**, whereby the City granted the Developer the right, privilege and option to purchase (the "Option") certain real property owned by the City, more particularly described in the Option Agreement (the "Property");

WHEREAS, on or about February 25, 2019, the Developer exercised an extension of the term of the Option Agreement pursuant to the terms of the Option Agreement;

WHEREAS, on or about September of 2019, Developer notified City that it intended to exercise the Option, but needed to fulfill a condition precedent for Closing for obtaining a long-term parking lease agreement or an option to purchase a portion of the property with regards to the property depicted in the Option Agreement as described in Section 12 of the Option Agreement;

WHEREAS, by the time, Developer had obtained a viable solution for parking, the current crisis caused by the COVID-19 pandemic (the "Pandemic") had caused and continues to cause, substantial commercial disruption delaying closing and creating uncertainty with regards to the development of the Property; and

WHEREAS, in light of the Pandemic, City and Developer have agreed to reinstate the Option as if such election under the Option had not occurred and have agreed to extend the Option pursuant to the Option Agreement for a term of twelve (12) months subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of One Hundred and No/100 United States Dollars ($100.00) (the "Option Extension Fee") recognizing the previous amounts paid for by Developer as consideration for the Option, the mutual covenants and promises as set forth herein, and other good and valuable consideration, it is agreed by and between the Parties as follows:

1. **Incorporation of Recitals**. The statements set forth above are true and correct constituting an integral part of this First Amendment and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.

2. **Reinstatement of Option and Extension of Term of Option**. The Parties hereby acknowledge and agree that any election under the Option has been rescinded, and the Parties desire and agree to extend the Term of the Option of the Lease from the time the Option would have originally expired under the Terms of the Option Agreement until the date that is twelve (12) months from the effective date of this First Amendment (the "Extended Period Option Term"). To the extent that it may be deemed under operation of the Option Agreement or under law that the Option has expired, to the extent necessary, City grants a new option to Developer for the Extended Period Option Term to be exercised by the expiration of the Extended Period Option Term under the same terms (except for the term of the Option) as stated in the Option Agreement.

3. **Landscaping**. Developer acknowledges that the City plans to landscape the Property and will incur certain costs for such landscaping. In exchange for the Extended Period Option Term, in addition to the Option Extension Fee, Developer agrees that in the event Developer exercises the Option and closes on the Property, Developer shall reimburse the City for the costs of landscaping the Property up to the amount of Thirty Thousand and No/100s ($30,000.00) (the "Landscaping Cost Cap"). For purposes of clarity, should Developer exercise the Option and actually purchase the Property, Developer agrees to reimburse the City for landscaping costs associated with the Property such amount being the lesser of: (i) the actual costs for landscaping the Property or (ii) the Landscaping Cost Cap.

4. **Governing Law**. This First Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of Arkansas.

5. **Entire Agreement**. This First Amendment along with the Option Agreement constitutes the entire understanding and obligation of the Parties with respect to the subject matter hereof and shall supersede any prior expressions of intent or understanding with respect to this matter.

6. **Amendment**. Any amendment to the Option Agreement and this First Amendment shall be in writing and signed by the City and Developer.

7. **Severability**. In the event that any part or parts of this Amendment shall be held illegal or unenforceable by any court of administrative body of competent jurisdiction, such determination shall not affect the remaining provisions of this First Amendment which shall remain in full force and effect. If legally permitted, the unenforceable provision will be replaced with an enforceable provision that is nearly as possible givens effect to the Parties' intent.

8. **Headings**. The headings contained in this First Amendment are for reference purposes only and shall not affect the meaning and interpretation of this Agreement.

9. **Filing and Freedom of Information Act**. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either Party may additional file this document or a memorandum of this document in any other governmental office deemed

appropriate including the real estate records of Pulaski County, Arkansas. The Parties acknowledge that this First Amendment and all information produced pursuant to this First Amendment is subject to public disclosure pursuant to the Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101, et seq.).

10. **Further Assurance**. Each of the Parties hereto hereby agrees to execute and deliver such documents to take such other actions at any time and from time to time hereafter as may be reasonably requested by the other party hereto to carry out the provisions or purposes of this Agreement.

11. **Counterparts**. This First Amendment may be executed in two or more counterparts (including by facsimile or .pdf format), each of which shall be deemed an original and all of which together shall be considered one and the same agreement.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this First Amendment on the date first written above.

CITY OF NORTH LITTLE ROCK, ARKANSAS

By _____
Joe A. Smith
Title: Mayor

ATTEST:

_____
Diane Whitbey, City Clerk

[SEAL]

J. CHANDLER & COMPANY, INC.

By _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF PULASKI)

On this _____ day of _____, 2018, before me, a Notary Public duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named Joe A. Smith and Diane Whitbey, Mayor and City Clerk, respectively, for the CITY OF NORTH LITTLE ROCK, ARKANSAS, to me personally known, who stated that they were duly authorized in their respective capacities to execute the foregoing instrument for and in the name of the City, and further stated and acknowledged that they had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date first above written.

_____
Notary Public

My Commission Expires:

_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF PULASKI)

On this _____ day of _____, 2018, before me, a Notary Public duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named _____, as _____ of J. CHANDLER & COMPANY, INC., to me personally known, who stated that he was duly authorized in his official capacity to execute the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date first above written.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

OPTION AGREEMENT

[See Attached]