R-21- 132

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN EXCLUSIVE LISTING CONTRACT WITH HATHAWAY GROUP TO SELL APPROXIMATELY 1.37 ACRES OF PUBLIC LAND LOCATED ON BROADAY STREET BETWEEN NORTH REDWOOD STREET AND NORTH CLOVER STREET IN THE CITY OF NORTH LITTLE ROCK; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock ("the City") owns and desires to sell approximately 1.37 acres of real property located on Broadway Street between North Redwood Street and North Clover Street; and

WHEREAS, it would be in the City's best interest to market and sell this property in its entirety in order to attain the greatest economic and quality of life impact; and

WHEREAS, Hathaway Group, an Arkansas based private company with more than forty five years of experience in commercial real estate, has agreed to partner with the City to market the property.

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

SECTION 1: That the Mayor is hereby authorized to enter into an Exclusive Listing Contract (substantially similar to Exhibit A) with Hathaway Group to plan, market, and possibly develop the City-owned property identified in the attached document, more particularly described as:

LOTS 1, 2, 3 AND 4 OF BLOCK 14; AND LOTS A AND B OF JOHNSON'S REPLAT OF LOTS 5, 6, 7 OF THE CHOCKTAW ADDITION TO THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS; (PARCEL NOS 33N3180001400, 33N3180001500, AND 33N3180001600)

LOT 14, BLOCK 15 IN THE CHOCKTAW ADDITION TO THE CITY OF NORTH LITTLE ROCK, PULASKI COUNTY, ARKANSAS (PARCEL NO. 33N3180002900).

SECTION 2: That the listing price for Parcel Nos. 33N3180001400, 33N3180001500, and 33N3180001600 is Fifty Thousand and 00/100 Dollars and the listing price for Parcel No. 33N3180002900 is Five Thousand and 00/100 Dollars with any sale to be contingent upon approval of the City Council of North Little Rock, which may require approval of a written plan (including development time lines) for development of property.

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

PASSED:

APPROVED:

Mayor Terry C. Hartwick

SPONSOR:

Terry C. Hartwick by AF

Mayor Terry C. Hartwick

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED 11:00 A.M. _____ P.M.

By A. Fields

DATE 9-7-21

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

RECEIVED BY S. Usery

EXHIBIT

A

Hathaway

Exclusive Listing Agreement

1. **AUTHORITY:** In consideration of the services of Hathaway Group (hereafter called "Listing Agent Firm") and efforts on its part and at its expense while acting as agent for the property described in Paragraph 2 hereof (the "Property"), City of North Little Rock, being the sole owner(s) of the Property (hereafter called "Owner") agrees that the Listing Agent Firm shall have the exclusive right to ☒ sell ☐ lease the Property for the entire period described in Paragraph 4. Owner does hereby certify and represent that Owner has peaceable possession of the Property, including all improvements and fixtures thereon, and the legal authority and capacity to convey the Property by a good and sufficient warranty deed.
2. **LEGAL/OTHER DESCRIPTION:** Lots located at Broadway (Hwy 70) and North Clover Street, North Little Rock, Pulaski County, Arkansas, and shown on the attached Exhibit B.
3. **OFFERING:** The Listing Agent Firm agrees to use reasonable effort to solicit offers for the Property as follows: Parcels 33N3180001400, 33N3180001500, and 33N3180001600 are priced at $50,000 total. Parcel 33N3180002900 is priced at $5,000.
4. **LISTING PERIOD:** This listing begins at 12:01 AM on August 23, 2021 and expires at 11:59 PM on November 22, 2021, unless extended by mutual written agreement of Owner and Listing Agent Firm.
5. **CONVEYANCE:** In the case of a sale or exchange, unless otherwise specified, conveyance of the Property shall be made in fee simple absolute by warranty deed. Unless expressly reserved herein, Listing Agent Firm may represent to the public that the Property is to be sold inclusive of all mineral rights owned by Owner, if any. If the Property is not owned by an individual, the person signing this agreement on behalf of Owner warrants and represents that he/she has the authority to enter into this Exclusive Listing Agreement on behalf of the owning entity.
6. **TITLE INSURANCE:** In the case of a sale or exchange, Owner will furnish to the buyer title insurance in the amount of any agreed upon purchase price.
7. **LISTING AGENT FIRM'S FEE:** Regardless of the scope of the listing as set forth in Paragraph 1 of this agreement, if said property be sold, exchanged, leased, rented or otherwise disposed of by Listing Agent Firm or any other person, association, corporation or by Owner during the period of this contract, whether on terms set forth in this contract or on other terms acceptable to Owner, Owner agrees to pay Listing Agent Firm a professional fee as specified on the Schedule of Professional Fees (attached as Exhibit A and made a part of this agreement) or as such schedule may be modified in Paragraph 14 ("Special Conditions") of this agreement, based on the gross amount of the sale or of the value at which it may be exchanged for other property or on the rate at which the property may be leased or rented. Any modifications to the fee schedule shall be specified in Paragraph 14. Listing Agent Firm and Owner agree that the Property covered in this Agreement is ☐ Improved Property (Buildings) ☒Unimproved Property (Land) (check only one box). **Owner agrees to immediately refer to Listing Agent Firm all inquiries from prospective buyers or lessees or their agents during the term of this listing agreement. This immediate referral to Listing Agent Firm shall be made by Owner regardless of the manner in which Owner receives the inquiry and regardless of any prior or ongoing relationship Owner has with the person or entity making the inquiry, it being the intent of Owner and Listing Agent Firm that Listing Agent Firm handle ALL communications, discussions, or negotiations with any interested buyers or lessees during the term of this listing agreement.** In consideration for the Owner's promise contained within this paragraph 7, Listing Agent Firm promises to Owner that it will use reasonable effort to obtain an offer regarding the Property on terms and conditions acceptable to Owner. Owner agrees that Listing Agent Firm is not required to investigate the financial or other ability of a prospective buyer to consummate any proposed or accepted offer. Owner will not owe a fee to Listing Agent Firm if a buyer does not meet all the conditions of the Offer and Acceptance and is not contractually obligated to close.
8. **AGENCY: Owner authorizes Listing Agent Firm to market Property utilizing the agency relationships specified below. However, Listing Agent Firm will present to Owner all offers received regardless of agency relationships specified below. Throughout this paragraph, the term "Buyer/Lessee" shall refer to any potential purchaser or tenant that is considering a purchase or lease of the Property.**
   a. **SELLER AGENCY:** When the Buyer/Lessee is not represented, either by a separate agent or by Listing Agent Firm, the only agency in effect is that between Owner and Listing Agent Firm.

b. **BUYER AGENCY:** Owner authorizes Listing Agent Firm to pay from the Listing Agent Firm's fee agreed upon in the Listing a share deemed competitive by Listing Agent Firm to an agent representing a Buyer/Lessee.

c. **AGENT REPRESENTS BOTH:** Owner hereby consents that Listing Agent Firm may represent both a Buyer/Lessee and Owner in any transaction to sell or lease the Property to a Buyer/Lessee subject to a Buyer Agency Contract or similar representation agreement with this Listing Agent Firm. Should this situation arise, the Owner agrees to the following:

   i. The Listing Agent Firm shall not disclose to the Buyer/Lessee or Owner any personal, financial or other confidential information about the other party without that party's express written consent. This restriction excludes information related to material property information which is known to the Listing Agent Firm and other information which must, at Listing Agent Firm's discretion, be disclosed.

   ii. The Owner acknowledges notification that when the Listing Agent Firm represents both parties, a conflict of interest can arise; and under this agreement the Owner agrees to forfeit his/her/their right to receive the undivided loyalty of Listing Agent Firm, provided that Buyer/Lessee has also agreed, under its agreement with Listing Agent Firm, to forfeit his/her/their right to receive the undivided loyalty of Listing Agent Firm. It is understood, however, that Listing Agent Firm is obligated to treat each party fairly and equitably.

   iii. The Owner agrees to waive any claim now or hereafter arising out of any conflicts of interest from Listing Agent Firm's representing both parties.

9. **EXPIRED LISTING CONDITIONS:** Owner agrees to pay the fee set forth in Paragraph 7 to Listing Agent Firm if the Property is sold, exchanged, leased, rented, or otherwise disposed of directly or indirectly, or if the contract providing for such sale, exchange, lease, rental or disposition is executed, by any person including Owner during a period of twelve (12) months after expiration or termination of this contract (the "Extended Listing Period") when information given by or obtained through Listing Agent Firm during the period of the listing resulted in or contributed in any manner to such disposition of the Property, whether said Listing Agent Firm was the procuring cause of such disposition or not; provided, however, that Listing Agent Firm shall have delivered to Owner a notice in writing, on or before seven (7) days after the expiration of this agreement, containing a list of the names of all persons or entities (the "Registered Prospects") who have obtained information from the Listing Agent Firm during the period of the listing. If Owner employs another broker as exclusive agent for marketing the Property after expiration of this agreement, Owner shall pay only one brokerage fee. If the Extended Listing Period has expired, or if the disposition is not to a Registered Prospect, then the entire brokerage fee will be paid to the currently employed broker. However, if the disposition is to a Registered Prospect and the sales contract or lease is executed before the expiration of the Extended Listing Period, then Listing Agent Firm shall be entitled to a portion of the fee, as follows:

   a. 75% of the fee shall be payable to Listing Agent Firm if Registered Prospect's offer is submitted through Listing Agent Firm.

   b. 25% of the fee shall be payable to Listing Agent Firm if Registered Prospect's offer is not submitted through Listing Agent Firm.

10. **EARNEST MONEY:** Owner authorizes and instructs Listing Agent Firm to accept and deposit in Listing Agent Firm's trust account all earnest money received. Should a deposit of earnest money be forfeited, the money shall be divided one-half to Listing Agent Firm and one-half to Owner; but in no event shall Listing Agent Firm receive an amount in excess of the fee which would have been received if the sale had been consummated. If a dispute between Owner and any other person or entity arises concerning the earnest money, Owner authorizes Listing Agent Firm to interplead the disputed earnest money in a court of law or to an arbitrator and to have Listing Agent Firm's attorney's fees paid out of the funds which were interplead.

11. **OWNER AUTHORIZATION:** Unless otherwise specified, the Owner authorizes the Listing Agent Firm to take the following actions:

   a. display of an offering sign;

   b. use of a key for entry when appropriate;

   c. offer the property in a co-op brokerage, utilizing the agency relationships specified in Paragraph 8;

   d. acquire all complete loan information and all utilities information reasonably necessary to market the Property;

   e. add or change descriptive information when necessary to market the Property;

f. use reasonable effort to distribute any Owner's Disclosure Statement provided to all prospective purchasers or lessees.

12. **OWNER'S STATEMENT:** Owner warrants that all information furnished to Listing Agent Firm is complete and accurate to the best of Owner's knowledge and that no material facts have been withheld from Listing Agent Firm. Listing Agent Firm is instructed to use reasonable effort to disclose to any member of the public interested in the Property any information known or made known to Listing Agent Firm about the Property, including without limitation any defects or material information relating to the Property. Owner agrees to defend, indemnify, save and hold Listing Agent Firm harmless from all liability or claims arising from Owner's incorrect or undisclosed information.
13. **ENTIRE CONTRACT, MODIFICATION LIMITED:** This Agreement constitutes the entire agreement concerning the subject matter hereof between Owner and Listing Agent Firm and supersedes any previous oral or written agreement or understanding concerning the Property. This contract may not be modified except in a writing executed by both the Owner and by the Principal Broker of the Listing Agent Firm.
14. **SPECIAL CONDITIONS:** N/A

OWNER:
City of North Little Rock

_____

LISTING AGENT FIRM:
Hathaway Group

_____
Jeffrey R. Hathaway, Principal Broker

EXHIBIT B

33N3180002900
33N3180001400
33N3180001500
33n3180001600
N CLOVER ST
N REDWOOD ST
307
70

EXHIBIT A
HATHAWAY GROUP
SCHEDULE OF PROFESSIONAL FEES

SALES
Improved Property (Buildings) – 7% of total purchase price.
Unimproved Property (Land) – 10% of total purchase price.

LEASES
Fees for the leasing of property shall be paid in whole at the beginning of the lease in an amount equal to six percent (6%) of the total rent specified in the lease, with half of the fee due at lease execution and half of the fee due at lease commencement.

Fees for renewals or extensions shall be paid in whole at the commencement of the renewal or extension term in an amount equal to three percent (3%) of the total rent for the applicable term.

OTHER
Property Management, Consulting, and Development fees are determined for each individual assignment, and are only applicable when a specific contract or agreement is in effect and specifies such fees.