R-22- 17

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE LEASE AGREEMENT TO LEASE CERTAIN REAL PROPERTY LOCATED AT 800 MAIN STREET IN THE CITY OF NORTH LITTLE ROCK, ARKANSAS FROM HAYBAR PROPERTIES, LLC; AMENDING THE FY2022 BUDGET (RESOLUTION NO. 10174) AND FOR OTHER PURPOSES.

WHEREAS, Arkansas Code Ann. § 14-54-302 authorizes the City to enter into lease agreements when authorized by a resolution approved by a majority vote of the City Council present and participating; and

WHEREAS, on December 13, 2021, the City Council adopted Resolution No. 10170, authorizing the Mayor and City Clerk to enter into a Real Estate Contract to sell certain real property located at 800 Main Street in the City of North Little Rock to Haybar Properties, LLC ("Haybar") for the sum of $830,000.00; and

WHEREAS, the City's IT Department determined that the time frame for removal and relocation of fiber located in the building at 800 Main Street would extend beyond the early March 2022 closing date set out in the Real Estate Contract; and

WHEREAS, Haybar has offered to lease back the property to the City after closing until June 30, 2022 for $6,500.00 per month; and

WHEREAS, it is in the best interest of the City and its residents to enter into the Lease Agreement with Haybar and to amend the FY2022 budget (adopted pursuant to Resolution No. 10174 on December 13, 2021) to appropriate funds for the lease of the property.

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

SECTION 1: That upon closing of the sale of 800 Main Street from the City to Haybard, the Mayor and City Clerk are hereby authorized to execute a Lease Agreement (substantially similar to Exhibit A attached hereto) and to lease the premises at 800 Main Street from Haybar through June 30, 2022.

SECTION 2: That the FY2022 budget (Resolution No. 10174 adopted on December 13, 2021) is hereby amended to appropriate $26,000.00 from the General Fund fund balance for four months' rent of the property, said funds to be placed in GL 01-022-52143 – Real Estate Rental.

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:

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/ABF

FILED 10:15 A.M. __ P.M.

By A. Fields

DATE 1-18-22

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

RECEIVED BY S. Ussery

LEASE AGREEMENT

This Lease Agreement (the "**Lease**"), dated as of the ___ day of _____, 2022 (the "**Effective Date**"), is entered into by and between Haybar Properties, LLC, an Arkansas limited liability corporation ("**Landlord**"), and City of North Little Rock, a municipality organized and existing pursuant to Arkansas law (the "**Tenant**").

RECITALS:

A. Pursuant to that certain Real Estate Contract (Commercial) dated _____, 2021 (the "**Sale Agreement**"), between Landlord and Tenant, Tenant agreed to sell certain real property located at 800 Main Street, in North Little Rock, Pulaski County, Arkansas (the "**Property**") to Landlord, and Landlord agreed to lease back the Property to Tenant as set forth herein.

B. Pursuant to a Warranty Deed of even date herewith, Tenant conveyed the Property to Landlord (the "**Sale**").

C. Tenant desires to lease the Property, and Landlord is willing to lease the Property to Tenant, on the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreement set forth herein, and for other good and valuable consideration (including, without limitation, the Sale), the receipt and sufficiency of which consideration is hereby acknowledged and confessed by Landlord and Tenant, Landlord and Tenant hereby agree as follows:

1. **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all portions of the Property (collectively, the "**Leased Premises**").

2. **Term.** The term of this Lease (the "**Term**") shall commence on the date hereof and continue until June 30, 2022, unless Tenant elects to terminate this Lease by providing Landlord with not less than thirty (30) days' prior written notice thereof.

3. **Use.** Tenant shall use the Leased Premises for the purpose of removing Tenant's IT infrastructure, and for no unlawful purpose. Tenant may not make any other alterations, additions or improvements to the Leased Premises without the prior written consent of Landlord.

4. **Rent.** Tenant shall pay to Landlord rent in the sum of $6,500.00 ("**Monthly Rent**") on the first day of each calendar month during the Term. In the event the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then Monthly Rent shall be prorated for such fractional calendar month on a per-diem basis. If Tenant is owed a reimbursement of prepaid Monthly Rent as set forth herein, Landlord shall pay such amount to Tenant within ten (10) days after the expiration of this Lease. The obligations contained in this section will survive expiration or termination of this Lease.

EXHIBIT
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5. **Taxes**. Tenant shall pay to Landlord a pro rata portion of estimated ad valorem taxes and assessments of the Leased Premises during the Tenant's occupancy of the Leased Premises on a monthly basis, unless otherwise agreed in writing by the parties. Because the Leased Premises have previously been exempt from taxation, such estimated amounts shall be based on the purchase price of the Leased Premises and the current millage rate applicable to the Leased Premises. Landlord agrees to make payment of all ad valorem taxes and assessments of the Leased Premises to such applicable authority prior to delinquency. In no event shall Tenant be liable for any taxes and assessments invoiced to Tenant more than thirty (30) days after the expiration or earlier termination of the Term.

6. **Utilities**. During the term of the Lease, Tenant shall be responsible for and procure all the necessary utilities for the Leased Premises, including, but not limited to electricity, gas, water and sewer services.

7. **Maintenance.** Tenant shall be responsible for any maintenance or repairs of any type during the term of the Lease. Tenant shall provide janitorial services for the Leased Premises.

8. **Acceptance of Leased Premises.** TENANT HAS ACCEPTED THE LEASED PREMISES IN ITS **"AS-IS AND WITH ALL FAULTS"** CONDITION WITH ANY AND ALL FAULTS AND LATENT OR PATENT DEFECTS AND WITHOUT RELYING UPON ANY REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) OF LANDLORD OR ANY REPRESENTATIVE OF LANDLORD. LANDLORD HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LEASED PREMISES OR ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING QUALITY OF CONSTRUCTION, STATE OF REPAIR, WORKMANSHIP, MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).

9. **Casualty.** In the event that the Leased Premises or any portion thereof should be damaged or destroyed by casualty, Tenant, at its option, may terminate this Lease immediately upon written notice to Landlord, and the parties hereto shall have no further obligations under this Lease.

10. **Insurance.**

    A. **Coverage**. Landlord shall insure the Leased Premises during the Term against loss or damage due to fire and other casualties in an amount equal to the full replacement value and shall charge Tenant for the pro rata portion of the cost thereof. Such coverage shall be in such amounts, from such companies, and on such other terms and conditions, as Landlord may from time to time reasonably determine. Tenant shall, at Tenant's expense, comply with all reasonable and customary insurance company requirements pertaining to its use of the Leased Premises.

B. **Waiver of Subrogation.** Landlord, on behalf of itself and its insurers, hereby waives any claim or right of recovery from Tenant, for loss or damage to Landlord or its property or the property of others under Landlord's control, to the extent that such loss is covered by valid insurance policies. Landlord shall provide notice of this waiver of subrogation to its insurers.

11. **Liens.** Tenant hereby agrees to keep the Leased Premises, and the improvements thereon, free and clear of mechanics' liens and other liens for labor, services, equipment or materials caused by Tenant. In the event such a lien is filed or recorded, Tenant shall take all action required to remove the same within thirty (30) days after receipt of written notice from Landlord. In the event that Tenant fails to take such action to remove the lien, then Landlord may do so and all costs associated therewith shall be due to Landlord from Tenant upon demand.

12. **Condemnation.**

A. **Total Taking.** If during the term of this Lease or any extension or renewal thereof, all or a substantial part of the Leased Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate and the rent hereunder shall be abated during the unexpired portion of this Lease, effective from the date of taking of the Leased Premises by the condemning authority.

B. **Partial Taking.** If less than a substantial part of the Leased Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is sold to the condemning authority under threat of condemnation, Tenant, at its option, may by written notice terminate this Lease. The rent payable hereunder during the unexpired portion of this Lease shall be adjusted equitably.

C. **Awards.** Landlord shall receive the entire award from any taking or condemnation; however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemnor for the value of Tenant's personal property which Tenant is entitled to remove under this Lease, moving costs, loss of business, and other claims it may lawfully have.

13. **Defaults.** The occurrence of any of the following shall constitute a default by Tenant under this Lease:

A. Tenant fails to pay any sum as required hereunder and such failure continues for ten (10) days after receipt of written notice from Landlord; or

B. Tenant fails to observe and perform any other provision of this Lease, and such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided however, that if the default cannot reasonably be cured within said 30-day period, Tenant shall not be deemed to be in default if Tenant timely

commences to cure the default and thereafter diligently prosecute the same to completion.

14. **Remedies Upon Default.**

A. Upon the occurrence of an event of default hereunder, Landlord may

1. Terminate this Lease by written notice to Tenant, in which event this Lease shall be ended as to Tenant and all persons holding under Tenant, and all of Tenant's rights shall be forfeited and lapsed, as fully as if this Lease had expired by lapse of time. In such event, Tenant shall be required to vacate the Leased Premises immediately and surrender same to Landlord. If Tenant falls to surrender the Leased Premises immediately to Landlord, Landlord, without prejudice to any other remedy, may enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying the Leased Premises or any part thereof, without being liable for prosecution or any other claim of damages. In the event of termination in accordance with this provision, the rental or any other sums payable by Tenant pursuant to this Lease that have accrued hereunder but are unpaid shall be immediately due and payable by Tenant to Landlord. In addition, Tenant agrees to pay to Landlord upon demand the amount of all loss and damages which Landlord may suffer by reason of such termination, including, without limitation, all expenses incurred by Landlord, including court costs and attorney's fees, in recovering possession of the Leased Premises or enforcing Landlord's rights under this Lease;

2. Cure the default on the behalf of the Tenant, in which event the Tenant shall, upon demand by Landlord, pay all reasonable sums expended by Landlord in accomplishing such cure; and

3. Exercise any right available to Landlord in law or in equity; provided, however, in no event shall Tenant be liable under this lease for any special, punitive or consequential damages.

B. Upon the occurrence of an event of default hereunder, if Landlord fails to cure such default within thirty (30) days after receipt of written notice of such default from Tenant, Tenant may

1. withhold payment of Monthly Rent and additional rents or other amounts due and to accrue hereunder so long as the Landlord remains in default;

2. deduct expenses incurred by the Tenant therefore from the Monthly Rent and additional rents or payments due and to become due hereunder; or

3. terminate this Lease.

15. **Holding Over.** Should Tenant remain in possession of the Leased Premises, or any portion thereof, after the termination of this Lease (whether by expiration of the Term of this Lease or otherwise), without execution of a new Lease or an amendment to this Lease, such

holding over shall constitute and be construed as a tenancy at sufferance. Such tenancy shall be subject to all terms and conditions of this Lease, except that all Monthly Rent shall accrue at 1.25 times the Monthly Rent due during the last full month of the Term. This provision shall not be construed, however, as permission by Landlord for Tenant to holdover.

16. **Surrender of Leased Premises.** At the expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises to Landlord in broom-clean condition, reasonable wear and tear and damage by fire or other casualty excepted. On or before the expiration or earlier termination of this Lease, Tenant shall terminate all contracts entered into by Tenant affecting the Leased Premises. At any time during the Term of this Lease, Tenant may remove its signage, fixtures, supplies, movable furniture and equipment, and Seller's Personal Property placed on the Property by Tenant. Notwithstanding anything herein to the contrary, the parties hereby agree that nothing contained in this Lease shall alter or expand the "as-is" nature of the Sale or Tenant's obligations and representations with respect to Leased Premises, as contemplated by the Sale Agreement.

17. **Assignment and Lease.** Tenant shall not assign this Lease or any right hereunder or sublet the Leased Premises during the term of this Lease, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord's acceptance of rent from any person other than Tenant shall not be deemed to be a waiver of this provision. Consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Landlord may assign this Lease or any right hereunder without the consent of, but with notice to, Tenant.

18. **Attorney's Fees.** In the event that either party defaults in the performance of any of the terms, conditions or agreements contained in this Lease and the non-defaulting party places the enforcement of all or part of this Lease in the hands of an attorney for enforcement, including the filing of a suit upon the same, the defaulting party agrees to pay all of the non-defaulting party's reasonable attorney's fees and costs.

19. **Entire Agreement/Amendment.** This Lease constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of this Lease may be modified, amended or waived only by a written instrument, executed by Landlord and Tenant.

20. **Waiver.** A waiver by either party to this Lease of any breach of the covenants, conditions or agreements contained herein shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements.

21. **Severability.** If any provision or term of this Lease shall be determined to be illegal, invalid or unenforceable, the remainder of this Lease shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

22. **Notices.** Any notice required or sent hereunder shall be in writing and shall be sent as follows:

When to Tenant:

City of North Little Rock
300 Main Street
N. Little Rock, AR 72114
Attn: Mike Davis

with a copy to:

Office of the City Attorney
116 Main Street
N. Little Rock, AR 72114
Attn: Amy Fields

When to Landlord:

with a copy to:

Attn: Real Estate Department

Either party from time to time, may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery, overnight courier, or e-mail, or three days after deposit in the United States mail, first class, postage prepaid.

23. **Quiet Enjoyment.** Upon Tenant's payment of all sums due hereunder and provided that Tenant is not otherwise in default hereunder, Tenant shall peaceably and quietly hold, occupy and enjoy the Leased Premises for the term of this Lease without hindrance, ejection or interruption by Landlord, or persons lawfully claiming through Landlord.

24. **Binding Effect.** Subject to prohibitions against assignment, this Lease shall be binding upon the parties, their personal representatives, successors and assigns.

25. **Governing Law.** This Lease is governed by the laws of the State of Arkansas, and the exclusive venue for any action brought with respect hereto, will be in a court of competent jurisdiction in Pulaski County, Arkansas.

WITNESS the signatures of the parties as of the date first written above.

TENANT:

City of North Little Rock, a municipality organized and existing pursuant to Arkansas law

By: _____
Mayor Terry C. Hartwick

ATTEST:

_____
City Clerk

TENANT:

Haybar Properties, LLC
an Arkansas limited liability corporation

By:_____