

R-23- 99

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A REAL ESTATE CONTRACT TO SELL CERTAIN REAL PROPERTY LOCATED ON WASHINGTON AVENUE IN THE CITY OF NORTH LITTLE ROCK, ARKANSAS, TO KAL MAKAN; AND FOR OTHER PURPOSES.

WHEREAS, Arkansas Code Ann. § 14-54-302 authorizes the City to sell its real property when authorized by a resolution approved by a majority vote of the City Council present and participating; and

WHEREAS, the City of North Little Rock (“the City”) owns and desires to sell certain real property, more particularly described in the Real Estate Contract attached hereto as Exhibit A; and

WHEREAS, Kal Makan has offered to pay the sum of Six Hundred Twenty Thousand Six Hundred Fifty and 00/100 Dollars (\$620,650.00) for the property.

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 execute a Real Estate Contract (substantially similar to Exhibit A attached hereto) and to sell the property to Kal Makan.

SECTION 2: That the Mayor and City Clerk are hereby authorized to execute all documents necessary to effect the completion of the herein stated sale; with all contracts/agreements to be reviewed and approved by the City Attorney prior to execution.

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:

ATTEST:

TERRY C. Hartwick
Mayor Terry C. Hartwick

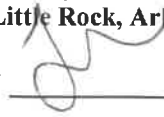
Diane Whitbey, City Clerk

APPROVED AS TO FORM:



Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED <u>10:30</u> A.M. _____ P.M.
By <u>Amy Fields CA</u>
DATE <u>5/21/23</u>
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas
RECEIVED BY  _____



REAL ESTATE DEVELOPMENT AND PURCHASE AGREEMENT
By and Between
CITY OF NORTH LITTLE ROCK, ARKANSAS
And
[NAME OF ENTITY]

This Real Estate Development and Purchase Agreement (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between the City of North Little Rock, a municipal corporation organized and existing pursuant to the laws of the State of Arkansas (“City”), and [Name of Entity], a _____ organized under the laws of the State of Arkansas (“Buyer”) (Seller and Buyer herein may be referred to collectively as “Parties”).

Recitals

WHEREAS, Seller owns certain property in its downtown corridor that is suitable for development of a high-end boutique-style brand hotel; and

WHEREAS, Buyer is experienced in hotel development and is interested in developing said property in a manner which Seller finds to be advantageous and would enhance the downtown area; and

WHEREAS, Seller has reviewed the conceptual plans presented by Buyer and has found and determined that said plans are favorable to Seller and in the best interest of the Seller and its citizens.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, it is agreed by and between the Parties as follows:

1. PARTIES AND PROPERTY. [Name of Entity], an Arkansas _____ (“Buyer”), agrees to buy and the City of North Little Rock, a city duly incorporated in Arkansas (“City”), agrees to sell, on the terms and conditions set forth in this Agreement (“Agreement”), the following described real estate in North Little Rock, Arkansas:

Lot C, Block 10, Original City of Argenta, now in the City of North Little Rock,
Pulaski County, Arkansas (Parcel # 33N3000004000)

and

Lots 11 & 12, Block 9, Except that part used for Riverfront Drive, Argenta Addition
to the City of North Little Rock, Pulaski County, Arkansas (Parcel #
33N3000004000)

2. PURCHASE PRICE AND TERMS. The total Purchase Price shall be: \$620,650.00 payable as follows:

(a) **Earnest Money.** \$40,000.00 to be paid by Buyer to the City upon execution of the Agreement. The earnest money is non-refundable, but will be applied to the purchase price at closing.

(b) **Additional Earnest Money.** If after the Initial Review Period (as explained in Paragraph 3 below), the Buyer in its discretion extends the review period for an Extended Review Period(s) (as explained in Paragraph 3 below), Buyer will pay the additional sum of \$25,000.00 for each sixty-day extension of the Initial Review Period. Said additional earnest money is non-refundable, but will be applied to the purchase price at closing.

(c) **Cash at Closing.** The balance of the Purchase Price (as described herein) to be paid by Buyer at closing in electronic transfer funds, certified check, or cashier's check.

3. INSPECTION/REVIEW PERIOD. City hereby grants the Buyer and Buyer's agents the right to enter upon the Property during the term of this Agreement to make such surface and subsurface inspections of the Property, at Buyer's expense, as the Buyer determines necessary, including but not limited to environmental and engineering studies (which may include Phase I and, if necessary, Phase II testing); provided, however, that Buyer shall reasonably repair any significant damage made to the Property as a result of said inspections and that Buyer shall give reasonable notice to City of intent to enter upon the Property. City shall disclose to Buyer any information known to City concerning past, present, or potential environmental contamination of the Property. Buyer shall have one hundred eighty (180) days from execution of this Agreement to conduct any such inspections, studies and feasibility analyses and to determine if the Property is suitable, both physically and economically, for development or use as envisioned by Buyer (the "Initial Review Period").

In the event the Buyer has not completed its due diligence or otherwise is engaged in having the Property inspected during the Initial Review Period, as provided above, the Buyer shall have the option, in the Buyer's sole discretion, to extend the term of the review period for two (2) additional 60-day period(s) (Extended Review Period(s)) to allow additional time for additional due diligence or any remediation to be further completed or studied. The Buyer shall exercise such option to extend through written notification and non-refundable payment of \$25,000.00 additional earnest money to the City no later than ten (10) business days prior to the expiration of the Initial Review Period, or the first Extended Review Period.

The City shall, within thirty (30) calendar days after execution of this Agreement, make available to Buyer any existing building design drawings, surveys, environmental reports, plans and specifications, maintenance Agreements, leases and any other existing documents and/or Agreements relating to the Property and its operation and maintenance and any layout drawings related to the Property. Buyer and its agents shall have also have the right from time to time to examine and review any and all of City's books and records relating to the operation and ownership of the Property, including, without limitation, final plans and specifications for all improvements, permits and licenses, zoning information, tax bills, utility bills, insurance coverage, supply and maintenance Agreements and all other information Buyer deems necessary or desirable to familiarize itself with the Property. City agrees to cooperate in connection with the foregoing and agrees that Buyer, its agents, employees, representatives or contractors shall be made available promptly, upon request, such information as shall be necessary to examine the Property and the condition thereof and as shall be in the possession of the City.

If the Buyer determines, in the Buyer's sole and absolute discretion, for any reason whatsoever or for no reason at all, that the Property is not suitable for the Buyer's purpose or use, then the Buyer has the unrestricted and absolute right to terminate this Agreement, without liability to Buyer other than the loss of the Earnest Money. In the event that no notice to accept the Property is given to City by Buyer by 3:00 P.M. on the last day of the Initial Review Period, or the last day of the first or second Extended Review Period if Buyer has exercised the Extended Review Period option, then this Agreement will be considered to be terminated by the Buyer.

4. **EVIDENCE OF TITLE.** City warrants that it owns fee simple title to the Property. City shall furnish to Buyer, at City's expense, a current commitment for owner's title insurance policy in an amount equal to the Purchase Price from American Abstract Company. The commitment shall agree to issue to Buyer, upon the closing of this transaction, a title insurance policy in the full amount of the Purchase Price, without exception for any matters other than the following permitted exceptions:

(a) all real estate and ad valorem taxes and assessments for the year of closing, provided the same are not due and payable;

(b) zoning ordinances, provided the same are acceptable to Buyer in its sole discretion; and

(c) any exceptions, easements or restrictions which are waived by Buyer. City shall have the title insurance policy delivered to Buyer at Closing and pay the premium at Closing.

5. **TITLE.**

(a) **Title Review.** Buyer shall have the right to inspect the title commitment. Written notice by Buyer of unmerchantability of title, defects or of any other unsatisfactory title condition shown by the title commitment shall be delivered by or on behalf of Buyer to City.

(b) **Matters Not Shown by Public Records.** City shall deliver to Buyer within thirty (30) calendar days after acceptance of this Agreement true copies of any and all lease(s) and survey(s) in City's possession pertaining to the Property and shall disclose to Buyer all easements, liens, discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any other instruments or items which a survey and inspection of the Property may or may not disclose and which are not shown by the public records of which City has actual or constructive knowledge. City shall disclose to Buyer within thirty (30) calendar days after acceptance of this Agreement, any information known to City that might reasonably have an effect on the value of the Property including but not limited to threatened, potential, or pending litigation, environmental contamination, building restrictions, zoning, soil conditions, environmental studies, flood plain or floodway existence, and any other conditions. Buyer shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by City or revealed by such inspection shall be delivered by or on behalf of Buyer to City.

(c) **Right to Cure.** If City receives notice of unmerchantability of title, defects or any other unsatisfactory title condition(s) as provided in subsection (a) or (b) above, City shall use immediate and reasonable efforts to correct said unsatisfactory conditions(s) within thirty (30) days of such notice or prior to Closing. If City fails to correct said unsatisfactory condition(s), Buyer may waive objection to said unsatisfactory condition(s) or Buyer may terminate this Agreement without liability whatsoever to City and be promptly refunded all Earnest Money even if the Initial Review Period or any extension thereof has expired.

(d) **End of Objection to Title.** Buyer shall have until thirty (30) days prior to expiration of the Initial Review Period, or the extended option period if applicable, in which to object to unmerchantability of title, defects or any other unsatisfactory title condition. Upon expiration of such period, any and all past, present and future objections to title will be deemed to have been waived. This paragraph in no way affects or limits the provisions of Paragraph 3 above.

6. **CLOSING.** The closing of the transactions contemplated under this Agreement ("Closing") shall take place at the offices of a mutually agreed upon title company (i) no later than thirty (30) days after expiration of the Initial Review Period, or the Extended Review Period(s) if applicable, (ii) within thirty (30) days of the removal of all contingencies to this Agreement, or (iii) on such other date as mutually agreed by the Parties. Closing costs will be paid by Buyer and City as customary in North Little Rock, Arkansas.

7. CLOSING DELIVERIES.

(a) **Buyer's Deliveries.** At Closing, or as otherwise provided herein, the Buyer 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 Buyer, and approved by the City Council; but which shall incorporate the following provisions:

1. Buyer's Development Plan will provide for the construction of a high-end boutique-style hotel, that will include a rooftop bar and high-end restaurant. The hotel will include apartment-style suites and two or three floors of luxury condominiums. The proposed hotel will comply with the C6 zoning height limit of 140 feet. The City will cooperate to the extent permitted by law for Buyer to secure permission to valet park on Poplar Street. The City and Buyer will negotiate a lease for additional parking for the hotel on the City-owned surface parking lot located at the corner of North Poplar and East Broadway.

2. If Buyer does not commence construction of the Development on the Property within one (1) year of closing, City shall have the right to compel Buyer to reconvey the Property to the City in exchange for payment to Buyer of the Purchase Price, less five percent (5%).

3. 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. Buyer shall not construct, or allow to be constructed, any structure, building or other improvement on the Property with the express approval of the North Little Rock City Council, which shall not be unreasonable withheld.

(b) **City's 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 Buyer has not objected.

(ii) Deliver an owner's policy of title insurance (from the same insuring issuing 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 Buyer.

(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.

8. **POSSESSION.** Possession of the Property shall be delivered to Buyer at Closing.

9. **CITY'S REPRESENTATIONS AND WARRANTIES.** City expressly covenants, warrants and represents the following matters:

(a) **Adverse Information.** City has no knowledge of nor has it received any notice of any change pending or contemplated in any applicable laws, ordinances or restrictions, or of any judicial or administrative action or of any action by adjacent landowners, or any natural or artificial condition upon or affecting the Property, or any portion thereof, which would result in any material adverse change in the condition of the Property or would prevent, limit, impede or render more costly Buyer's contemplated use of the Property.

(b) **Compliance with Laws.** City and the Property are in compliance with all applicable laws, ordinances, regulations, statutes, rules, conditions, agreements, declarations and restrictions, including without limitation, all zoning, subdivision, building, health, fire, safety or other laws pertaining to and affecting the Property, or any portion thereof, including without limitation, any improvements located thereon.

(c) **Litigation.** There are no disputes, legal actions, suits or other legal or administrative proceedings, including condemnation or similar cases or proceedings, pending or, to the best of City's knowledge, threatened, against the Property, or against City and affecting the Property or against any third party known to City affecting the Property and City is not aware of any facts which might result in any such action, suit or other proceedings.

(d) **No Assessments.** No assessments have been made against the Property that are unpaid (except real estate and ad valorem taxes for the current year), whether or not they have become liens, and if, at the time of Closing, the Property or any part thereof shall be or shall have been affected by any assessments they shall be paid in full by City.

(e) **Miscellaneous.**

(i) No zoning, building or other law, ordinance, regulation or restriction is, or as of the Closing will be, violated by the continued maintenance, operation or use of the Property. There is not, and as of the Closing, there will not be, anything that would constitute any uncured violation of Federal, state or municipal laws, ordinances, orders, regulations or requirements affecting any portion of the Property.

(ii) The execution by City of this Agreement and the consummation by City of the transaction contemplated hereby do not, and will not, constitute a violation of any order, rule or regulation of any court or any federal, state or municipal regulatory body or administrative agency or any other governmental body having jurisdiction over City or any portion of the Property. No approval or consents by third parties, or governmental authorities, are required in order for City to consummate the transactions contemplated hereby.

10. **TIME OF ESSENCE/REMEDIES.** It is understood that time is of the essence as to the provisions of this Agreement.

11. **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[Name of Entity]:
City of North Little Rock, AR	[Name of Entity]
Attn: Mayor Terry C. Hartwick	Attn:
Address: 300 Main Street	Address:
North Little Rock, AR 72114	
Phone: (501) 975-8601	Phone: (501)

12. **ADVICE OF LEGAL COUNSEL.** By signing this document, Buyer and City acknowledges that Buyer and City have obtained the advice of their own legal counsel regarding the Agreement.

13. **ORGANIZATION IN GOOD STANDING.** Each party represents and warrants that it is duly organized, existing and in good standing under the law of the State of Arkansas. Each party represents and warrants that it has full power and authority to carry on its business as presently conducted and to execute and enter into this Agreement.

14. **ASSIGNMENT.** This Agreement may be assigned by Buyer to any affiliate of Buyer or any other entity in which Kal Makan has an ownership interest and controlling managerial authority without the written consent of the City. Any assignment of the Agreement by the Buyer in violation of this Section shall result in termination of the Agreement by the City and retention of any Option Fee as liquidated damages.

15. **ENTIRE AGREEMENT.** This Agreement embodies and constitutes the entire understanding among the parties with respect to the transaction contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

16. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. The parties hereby consent to jurisdiction and venue in Pulaski County, Arkansas, and agree that such jurisdiction and venue shall be sole and exclusive for any and all actions or disputes related to this Agreement or any related instruments.

17. **HEADINGS.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

18. **BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument.

20. **INTERPRETATION.** Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and neuter and vice versa. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts were made and prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto and that both parties hereto have contributed substantially and materially to the final preparation of this Agreement and all related instruments.

21. **SEVERABILITY.** In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had

22. **FURTHER ASSURANCES.** In addition to the obligations required to be performed hereunder by City and Buyer at Closing, City and Buyer shall perform such other acts, and execute, acknowledge and deliver subsequent to Closing such other instruments, documents and other materials as the other may reasonably request in order to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Buyer.

23. **NO WAIVER.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

24. **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.

WITNESS our hands and seals this _____ day of _____, 2023.

CITY OF NORTH LITTLE ROCK, ARKANSAS **[Name of Entity]**

By _____
Terry C. Hartwick
Title: Mayor

By _____
Name: _____
Title: _____

ATTEST:

Diane Whitbey, City Clerk

[SEAL]