

R-17-194

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A MEMORANDUM OF INTENT WITH NORTH LITTLE ROCK DOWNTOWN DEVELOPMENT BOARD AND FIRST ORION CORPORATION FOR THE PURCHASE AND SALE OF REAL PROPERTY ADJACENT TO THE PROPOSED DOWNTOWN PLAZA; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock ("City") is currently proceeding with the construction of a Downtown Plaza to serve as a multi-faceted gathering place for a variety of activities; and

WHEREAS, the North Little Rock Downtown Development Board ("Downtown Board") is the owner of various properties in the downtown area and has been tasked to oversee the proper and orderly development thereof; and

WHEREAS, First Orion Corp. ("Developer") is a commercial enterprise that intends to construct a significant new building in downtown North Little Rock; and

WHEREAS, the City, Downtown Board and Developer desire to engage in their independent projects in a manner that will complement the use, value and aesthetic appearance of one another, and it is in the best interests of the City and its citizens that a Memorandum of Intent be entered into for current and future development of the downtown area of 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 an Memorandum of Intent (substantially similar to Exhibit A attached hereto) with the North Little Rock Downtown Development Board and First Orion for the purchase and sale of real property located adjacent to the eastern border of the proposed Downtown Plaza.

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:

ATTEST:



Mayor Joe A. Smith *by AF*

Diane Whitbey, City Clerk

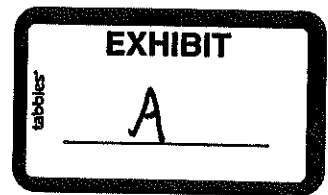
APPROVED AS TO FORM:



Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED <u>11:55</u> A.M. _____ P.M.
By <u>A. Fields</u>
DATE <u>11-21-17</u>
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas
RECEIVED BY <u>S. Ussery</u>



MEMORANDUM OF INTENT
FOR THE PURCHASE AND SALE OF REAL PROPERTY LOCATED
ADJACENT TO THE EASTERN BORDER OF THE PROPOSED DOWNTOWN PLAZA
AND MATTERS RELATED THERETO

BY AND AMONG

The City of North Little Rock, Arkansas ("City")

and

The North Little Rock Downtown Development Board ("Downtown Board")

and

First Orion Corp. ("Developer")

collectively referred to as "the Parties"

WHEREAS, the City is currently proceeding with the construction of a Downtown Plaza to serve as a multi-faceted gathering place for a variety of activities; and

WHEREAS, the Downtown Board is the owner of various properties in downtown North Little Rock and has been tasked to oversee the proper and orderly development of the area; and

WHEREAS, Developer is a commercial enterprise who intends to construct a significant new building in downtown North Little Rock; and

WHEREAS, the Parties desire to engage in their independent projects in a manner that complement the use, value, and aesthetic appearance of one another; and

WHEREAS, the planning process of each project is proceeding quickly and the Parties desire to reduce uncertainty in major terms of contracts to be approved at a later date.

NOW, THEREFORE, THE PARTIES SET FORTH THEIR INTENTIONS AS FOLLOWS:

1. Property Sale. That the City and/or Downtown Board will sell to Developer certain real property that is adjacent to the eastern border of the proposed Downtown Plaza according to the following terms, to be included in a definitive agreement for approval at a later date:

- a. The approximate size of the parcel is 16,000 square feet ("Parcel") (approximately as shown on the drawing attached to this Memorandum as Exhibit A).

- b. The approximate linear frontage of the Parcel that is adjacent to the eastern border of the Downtown Plaza is 150 feet.
- c. The parties will coordinate to determine the final dimensions and location of the Parcel and to determine ownership and use of the property adjacent to the north and south ends of the Parcel. When the final dimensions and location are determined by the Parties, the City will provide an ALTA survey of the Parcel, which sets forth the square footage of the portion of the Parcel which was property that was owned by the City and/or Downtown Board on October 30, 2017, and the square footage of the portion of the Parcel which was property that was acquired by the City and/or Downtown Board after October 30, 2017.
- d. Price:
 - i. For property that was owned by the City and/or Downtown Board on October 30, 2017, the price will be \$6 per square foot.
 - ii. For property acquired by City and/or Downtown Board after October 30, 2017, the price will be \$16 per square foot.
- e. The Parties anticipate closing within 90 days after this Memorandum of Intent is approved by official action of the respective governing bodies of the Parties.
- f. Standard prorations will be performed at closing.
- g. Sellers will pay no real estate commissions.

2. Parking. That the City and/or Downtown Board will construct a parking lot that will be adjacent to Developer's property and available for use by Developer upon such terms and conditions as are available to other entities in the Downtown area, provided that the City and/or Downtown Board will:

- a. Construct the parking lot with 250 to 300 parking spots.
- b. Coordinate with Developer the design of (i) the parking lot, (ii) the transition area from the parking lot to Developer's building entrance and (iii) the flow of pedestrians to and from the parking lot and plaza through the property adjacent to the north and south ends of the Parcel.
- c. Establish and preserve the right and first priority of Developer to obtain such licenses to park within the parking lot as Developer may need or desire for workers, customers and visitors at Developer's building.
 - i. The maximum license rate for the first three years will be \$300 per spot. License rates after the first three years will be set by agreement between

the Parties in a definitive agreement which shall not exceed the rates charged by the City for similar parking in the area.

- ii. Developer's right and priority to obtain parking licenses will endure perpetually from one year to the next for so long as Developer's building is in use.
- iii. Developer's right and priority to obtain parking licenses will be fully assignable to any subsequent owner of Developer's building, or to such other entity as may be agreed between the Parties or their assigns.
- iv. Developer may designate particular parking spots to be licensed.
- v. Developer's cost to license 100 spots for the first three years shall be deemed to be paid as a part of the purchase price identified in paragraph 1.d.

- d. Fence, landscape, and maintain the parking lot in an aesthetically pleasing manner, as coordinated and agreed by the Parties.
- e. Licenses will typically permit parking during normal business hours, but Developer may license, on a 24-hour reserved basis, a number of spots in the rows closest to Developer's property, as the Developer deems reasonably necessary for use by the occupants of the building.

3. Cooperation in Design. The Parties agree to cooperate in the design elements of their respective projects to create a sense of uniformity and continuity in the area.

4. Utilities.

(a) **Water and Sewer:** Developer will be responsible for the cost of the water and sewer connection to the Parcel, but City has conducted a study which conservatively estimates the cost of the water and sewer connection to the Parcel to be not more than \$75,000.

(b) **Electricity:** City will be responsible for the cost of all infrastructure necessary to deliver electricity to the Parcel.

5. Infrastructure. City will extend 5th and 6th Streets eastward from Main Street to Magnolia Street.

6. Zoning and Land Use. City will expeditiously process applications for approval, waiver or variance for the development of the Parcel, if the development of the Parcel is inconsistent with or non-conforming with the zoning, overlay, land use or other similar ordinances, laws or regulations applicable to the development of the Parcel. City represents that proposed uses

and conceptual designs are consistent with City's principles of compatibility and aesthetic appearance.

7. Environmental. City and Downtown Board will represent and warrant that there are no environmental issues or hazardous materials on the Parcel or on real property adjacent to the Parcel (including the parking lot and plaza). City and Downtown Board will indemnify, defend and hold harmless the Developer from any environmental liabilities associated with the Parcel or real property adjacent to the Parcel (including the parking lot and plaza). City and Downtown Board will provide a Phase 1 Environmental Site Assessment for the Parcel, and further assessments if warranted.

8. Financing and Incentives. Developer intends to investigate and seek available government economic development financing and other incentives, and the availability of such financing and incentives acceptable to the Developer are critical to the Developer's decision to proceed with the purchase of the Parcel. City and Downtown Board will cooperate with the Developer to structure the transaction in a manner that will allow development of the Developer's building to qualify for available government economic development financing and incentives, including PILOT financing, Bond Guaranty financing, payroll tax rebates or others.

9. Assignability. This memorandum or any definitive agreement among the Parties shall be assignable by the Developer to an affiliate of the Developer.

10. Definitive Agreement. This transaction is subject to the execution and delivery of a mutually acceptable definitive agreement which will include the terms set forth herein, and customary representations, warranties, covenants, indemnities and conditions typically found in agreements relating to transactions of this nature.

11. Expenses. Each party will pay its own legal costs and expenses incurred in connection with this transaction.

12. Public Disclosure. Any public disclosures of the transaction described herein, other than disclosures which are legally required to be made, shall be mutually agreed upon as to timing and content. In the event any party is legally required to make any such disclosure, it will provide the other parties with as much notice thereof as possible.

13. Termination. Any party shall have the right to terminate this Letter of Intent and any further negotiations in connection with this transaction, by written notice to the other parties, and without incurring any liability, penalty or other obligation, in the event (i) the definitive agreement has not been executed and delivered by each party on or before 120 days after the execution of this Memorandum by the Parties; (ii) the parties shall have been unable to obtain any material economic development financing and other incentives acceptable to the Developer; (iii)

Developer is no longer diligently proceeding to attempt to close the transaction contemplated hereby substantially in accordance with the terms of this Memorandum of Intent.

14. Exclusive Negotiations. The City and Downtown Board agree not to enter into negotiations with any other potential purchaser of the Parcel during the period of time that this Memorandum of Intent remains in effect.

15. Nature of Memorandum. Except for Sections 9, 10, 11, 12, 13, 14, 15, 16 and 17, this Memorandum of Intent is intended to be nonbinding, and is intended to serve as an outline of the terms upon which the Parties would be willing to negotiate for a possible transaction. It is not intended to constitute a binding offer or contract, or to create any other legally binding obligation or commitment on the part of the Parties.

16. Confidentiality. This Memorandum of Intent and the transaction set forth in the Memorandum of Intent shall be kept confidential by the Parties, unless publicized by mutual agreement or as required by law.

17. Approval. This memorandum will not be enforceable until approved by official action of the respective governing bodies of the Parties. Each Party will notify the others in written or electronic form when approval is obtained. This memorandum shall not be effective unless approved by all Parties on or before midnight on December 31, 2017.

DEVELOPER:

FIRST ORION CORP.

By: SAP
Name: Aaron Peeples
Title: Authorized Representative
Date: 11-15-17

DOWNTOWN BOARD:

THE NORTH LITTLE ROCK DOWNTOWN DEVELOPMENT BOARD

By: Murray K. Wither
Name: Murray K. Wither
Title: Vice Chairman
Date: 11-13-17

CITY:

CITY OF NORTH LITTLE ROCK

By: Joe A. Sonda
Name: Joe A. Sonda
Title: Mayor
Date: 11-13-17

E. 6th Street
(closed)

Exhibit A

143 - 11 5/8"
FUTURE RESTAURANT
7060SF
(MAX FOOTPRINT)

229'

PLAZA SITE

150'

92 - 7 3/4"

Handwritten:
149' x 150' x 92' x 150'

14,000SF
(MAX FOOTPRINT)

150'

25' ALG. SIDE WALK TO EAST SIDE
6" DIA. METAL
S 88°44'39" E

18'-0"

49' - 0 3/8"

228.70'

S 02°25'31" W
30.01'

14'-0"

28'-5"

26'-5"

24'-0"

S
87'

Main St

S 18°10' E
N 02°25'31" E

10-11