

REAL ESTATE TRANSFER AGREEMENT

This Real Estate Transfer Agreement (“Agreement”), made and entered into this _____ day of _____, 2021, by and between the City of Mitchell, a South Dakota municipal corporation of 612 N Main St, Mitchell, SD, hereinafter referred to as “City,” and the Mitchell Area Development Corporation, a South Dakota nonprofit corporation of 701 N Main St, Mitchell, SD, hereinafter referred to as “MADC.”

WITNESSETH:

WHEREAS, City is the owner of the real property commonly known as 223 N Main Street, Mitchell, SD, legally described as:

Lot 1 and Lot 2 Block 8, Original Town (now city) of Mitchell, Davison County, South Dakota;

which real property is hereinafter referred to as the “Property” and/or the “Building”; and

WHEREAS, City desires to transfer the Property to MADDC, and MADDC desires to take ownership of the Property from City for purposes of soliciting offers from interested third parties to renovate the Building as part of economic development for the City, upon the terms and conditions described herein, which solicitations have occurred.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do agree as follows:

1. Conveyance. On the terms and subject to the conditions set forth in this Agreement, City shall convey, transfer, warrant, and assign to MADDC, and MADDC shall accept, acquire, and assume from City, the Property and Building, together with all improvements thereon and all appurtenances attached thereto.
2. Transfer Consideration. In consideration of the conveyance of the Property by City to MADDC, MADDC agrees to pay City a total purchase price of One Dollar (\$1.00) (the “Purchase Price”). The Purchase Price will be paid by MADDC in cash at Closing.
3. Closing. Subject to Section 5 below, the “Closing” or “Closing Date” shall be held on or before October 31, 2021. However, MADDC shall have the option to set an earlier closing date by providing notice of the new closing date at least 5 business days in advance of the new closing date, or extend the Closing Date by an additional thirty (30) to sixty (60) days by providing notice of the extended Closing Date at least ten (10) days prior to October 31, 2021. At Closing, City shall transfer the Property to MADDC by good and sufficient Warranty Deed.
4. Special Terms of Transfer. The parties agree that the following additional terms shall apply to the transfer and will survive the closing:
 - a. MADDC has solicited bids from responsible bidders to purchase and renovate the Property and has accepted a proposal. As part of that process, MADDC agrees to

complete the south side and alley side windows of the Building at an estimated cost of \$40,650, part of which funds may come through a “City of Deadwood” grant for which City will assist MADC.

- b. MADC shall require the successful bidder to redevelop the first through fourth floors of the interior of the Building, use best efforts to ensure the Building is suitable for occupancy, and remove the property from property tax exempt status, on or before November 30, 2022.
- c. As part of the renovation project for the Building, City shall initiate and complete an 11.1 historical review with the South Dakota State Historical Preservation Office (SHPO) to the extent SHPO may require. City will make the final determination under the state’s 11.1 historical review process on whether a project will proceed. This Agreement shall not bind City into making any specific conclusion during that process and no decision during such historical review process by City shall serve to void this Agreement.
- d. MADC shall have the option to cancel this transaction if, in MADC’s discretion, MADC is unsuccessful in entering into an agreement with a third party to purchase the Property and Building and complete the renovation project. Such option shall terminate upon the transfer of the Property from MADC to a third party, and is subject to the terms of 5.f. below.

5. Conditions Precedent to Closing.

- a. Transfer of Funds. City shall transfer the sum of Nine Thousand Five Hundred Seventy-six Dollars (\$9576) to MADC as part of this transaction, to be used toward abating remaining nuisance conditions.
- b. Asbestos/Lead Paint Removal. City shall complete the required asbestos removal and lead paint dust removal from the Building at its cost.
- c. Title Insurance. An owner’s policy of title insurance will be furnished showing good and merchantable title in the City subject to easements and reservations of record, if any. In the event the title insurance policy discloses any defects in the title then City shall have a reasonable time in which to cure the same after receiving notice of said defect. The cost of said owner’s policy of title insurance shall be paid by MADC.
- d. Tax Increment District. MADC being approved by all appropriate government entities for a tax increment financing (TIF) district designation for the renovation project.
- e. Development Agreement. MADC entering into a Development Agreement with a third party developer.
- f. In the event MADC elects to close the transfer prior to October 31, 2021, for purposes of commencing renovation on the Building, but all conditions precedent as set forth within this Agreement, to include Sections 5.a. through e. above, have

not occurred by October 31, 2021, MADC has the option to transfer the Property/Building back to City so long as the Property/Building is in substantially the same or better condition as it was at the time of the initial transfer. In the event of such transfer, MADC shall be relieved of any further liability or obligation in regard to the Property/Building, and City shall accept the Property/Building in its "AS IS" condition as of the time of transfer.

6. City's Representations and Warranties. City represents and warrants the following to MADC, each of which representation and warranty shall be true and effective as of the date of Closing:

- a. Ownership. City has good and marketable fee simple title to the Property. At Closing, City shall sell, transfer, convey and assign to MADC fee simple ownership in the Property free and clear of any and all liens, mortgages, encumbrances, security interests, pledges and restrictions or other interest or obligations of whatever kind and nature, except as permitted pursuant to this Agreement.
- b. Ability to Contract. City has the full right, power and authority to enter into this Agreement to transfer and convey the Property to MADC and this Agreement shall be a valid and binding obligation of City, subject to the terms and conditions contained herein.
- c. Proceedings. To the best of City's knowledge, there is no action, litigation, investigation, condemnation proceeding, judgment, executions, bankruptcies, zoning changes or any other proceeding of any kind outstanding, pending, or threatened, against City or any portion of the Property.
- d. Liens. All work that has been performed or is in the process of being performed by City or at the direction of City, will not give rise to mechanic's, materialman's or other liens against the Property.

7. MADC's Representations and Warranties. MADC represents and warrants as follows:

- a. Ability to Contract. MADC, upon receiving approval from its Board, shall have the authority to enter into this Agreement and this Agreement shall be a valid and binding obligation on MADC, subject to the terms and conditions contained herein.
- b. Payment. Subject to the terms and conditions of this Agreement, upon closing of this Agreement, MADC agrees to pay City the Purchase Price.
- c. Familiarity with the Property. MADC is familiar with the physical condition of the Property, has inspected the same, and is taking the same in its "AS IS" condition without any warranty or guaranty by City, other than those made in this Agreement.
- d. Compliance with Preservation Restrictions. MADC shall comply, and upon transfer of the Property to a third party, cause such third party to comply as part of

the Development Agreement with such third party, with all the terms and conditions included in the Restrictive Covenant and Declaration of Preservation Restrictions dated January 25, 2021 which was filed with the Davison County Register of Deeds January 25, 2021 (Book MR81 Page 43). In the event that such conditions are violated, and SDSHS attempts to recover financial benefits relative to the Property as a result of such violation(s) from City, and MADC did not include such Compliance Preservation Restrictions in the Development Agreement with the third party, MADC shall indemnify and hold the City harmless to the full extent of such attempted recovery. In the event MADC did add the Compliance Preservation Restrictions in the Development Agreement with the third party, then MADC shall pursue such remedies as are available to recoup the amounts necessary to satisfy the amount SDSHS seeks to recover and pay such amount to SDSHS without liability to the City. In the event MADC pursues such action, and such third party is insolvent and unable to pay such claim, MADC agrees to reimburse City for fifty percent (50%) of the amount paid by City to SDSHS relative to such recovery of financial benefits.

8. Obligations at Closing. At Closing, the following shall occur:
 - a. City shall deliver to MADC, or its assigns, the following executed documents:
 - (i) A good and sufficient Warranty Deed(s) for the Property;
 - (ii) Certificate(s) of Real Estate Value;
 - (iii) Such other documents as deemed necessary by MADC or its counsel to transfer the Property to MADC or as may be required pursuant to this Agreement.
 - b. MADC shall deliver to City:
 - (i) The Purchase Price as described in paragraph 2 above; and
 - c. In addition to the items set forth above, MADC and City shall cause the following deliveries to be made at Closing:
 - (i) Any applicable Closing fees shall be paid equally by City and MADC;
 - (ii) Settlement statements showing the Purchase Price, and any adjustments thereto, if applicable; and
 - (iii) Any other documents as required effectuating the transfer of the Property, including any other documents required by the Title Company or closing agent.
9. Miscellaneous.

- a. Possession. MADC shall be entitled to sole, exclusive and immediate possession and the right to occupy the Property upon the Closing, except as may be provided herein.
- b. Governing Law. This Agreement is subject to and shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota without regard to conflict of laws principles.
- c. Survival of Representations and Warranties. The representations and warranties contained herein shall survive Closing and are and shall be deemed to be continuing representations and warranties.
- d. Counterparts/Facsimile/Electronic Signature. This Agreement may be executed by electronic signature, facsimile and in any number of counterparts as deemed appropriate by the parties, all of which taken together shall constitute one and the same instrument. Reproductions of original signature via pdf/scanned signatures shall be deemed an original for purposes of execution of this instrument.
- e. Time is of the Essence. It is expressly understood and agreed by the parties that time is of the essence in this Agreement.
- f. Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and also upon their respective heirs, representatives, successors and assigns.
- g. Severability. Should any provision in this Agreement be deemed unenforceable as to a particular circumstance or set of facts, the unenforceability shall be limited to such circumstance or set of facts and all remaining provisions of this Agreement shall remain fully binding and enforceable as between City and MADC.
- h. Further Assurances. Each party, upon the request of the other, agrees to perform any further acts, and to execute and deliver any other documents, which are reasonably necessary to carry out the provisions of this Agreement.
- i. Entire Agreement; Waiver. This Agreement contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. A waiver of any term or provision shall not be construed as waiver of any other term or provisions or as waiver of subsequent performance of the same provision of this Agreement.
- j. Drafting Presumption. MADC and City agree that they participated in the drafting of this Agreement and, in the event that any dispute arises in the interpretation or construction of this Agreement, no presumption shall arise that either one party or the other drafted this Agreement.
- k. Notices. All notices or demands given or required to be given hereunder shall be in writing and sent by United States registered or certified mail, postage prepaid,

to the last known address of the parties, or at any other address to which the parties designate notices shall be sent.

[signature page to follow]

IN WITNESS WHEREOF, MADC and City have hereunto executed this Agreement on the date and year first above written.

MADC:

MITCHELL AREA DEVELOPMENT CORPORATION

By:
Its:

CITY:

CITY OF MITCHELL, SOUTH DAKOTA

Robert B. Everson, Jr., Mayor

Attest:

Michelle Bathke, Finance Officer

(seal)