

REAL ESTATE EXCHANGE AGREEMENT (A2022-)

This Real Estate Exchange Agreement (“Agreement”), made and entered into this ____day of April, 2022, by and between Mitchell Area Chamber of Commerce, hereinafter referred to as “Chamber,” and the City of Mitchell, South Dakota, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the City is the owner of real property in the 500 block of North Main depicted on Exhibit A and legally described as:

Lots 14 and 15, Block 11, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota; (herein the “514 N Main Property”) and

The North 10’ of Lot 18, Block 11, except the West 2’ thereof, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota; (herein the “Plaza Strip 1 Property”) and

The West 2’ of Lots 16, 17, and 18, Block 11, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota. (herein the “Plaza Strip 2 Property”)

WHEREAS, Chamber is the owner of real property in the 500 block of North Main depicted on Exhibit A and legally described as:

Lots 16, 17, and 18, Block 11, except the West 2’ of Lots 16, 17, and 18, and except the North 10’ of Lot 18, all in Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota. (herein the “522 N Main Property”)

WHEREAS it is the intentions of the parties to exchange ownership of the above mentioned properties so that, upon completion of all the transfers, and as depicted on Exhibit B, the City will own:

All of Lots 17 and 18, Block 11, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota; and

Lot 16, Block 11, except the South 10’ thereof, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota

and the Chamber will own:

All of Lots 14 and 15, Block 11, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota; and

The South 10’ of Lot 16, Block 11, Rowley’s 1st Addition, City of Mitchell, Davison County, South Dakota.

WHEREAS the parties also wish to set forth supplemental provisions relating to the above property transfers.

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.

A. On the terms and subject to the conditions set forth in this Agreement, Chamber shall sell, convey, transfer, warrant, and assign to City, and City shall purchase, acquire, and assume from Chamber, the real property described below, together with all improvements thereon and all appurtenances attached thereto. Referencing the property descriptions described in the recitals above, the Chamber property to be transferred to the City is defined as:

The 522 N Main Property except the South 10' thereof.

On the terms and subject to the conditions set forth in this Agreement, City shall sell, convey, transfer, warrant, and assign to Chamber, and Chamber shall purchase, acquire, and assume from Chamber, the real property described below, together with all improvements thereon and all appurtenances attached thereto. Referencing the property descriptions described in the recitals above, the City property to be transferred to the Chamber is defined as:

The 514 N Main Property; and

The South 10' of the Plaza Strip 2 Property.

2. Purchase Price. In addition to the exchange of the real property as described in Section 1 and the recitals above, Chamber shall pay to City the amount of One Hundred Thousand Dollars (\$100,000.00), which shall be due and payable within one hundred eighty (180) days of the Closing.

3. Closing. At Closing (the "Closing"), each party shall provide a good and sufficient Warranty Deed for their respective Lots to the other party. However, the parties understand and agree that the recordation of these deeds may be staggered as follows:

- a. Chamber shall record the deed from the City immediately upon closing.
- b. City shall not be required to record the deed from the Chamber until such time as any existing leases relating to the 522 N Main Property expire or otherwise terminate, at which point the City shall record the deed from Chamber.

4. Special Terms of Transfer. The parties agree that the following additional terms shall apply to the transfer and will survive the closing:

- a. Existing Lease of 514 N Main Property: The parties understand and acknowledge that the 514 N Main Property is currently leased by the City to Mitchell Area Development Corporation. Chamber agrees to assume such lease as Lessor in the event that Mitchell Area Development Corporation does not agree to terminate the existing lease after the Closing.

- b. **Delayed Recordation of Deed for 522 N Main Property:** In consideration of the delayed recordation of the Chamber to City deed as discussed in Section 3b above, Chamber shall in all respects maintain its status as record owner of the 522 N Main Property, with all rights and duties appurtenant thereto, until such time as the Chamber to City deed is recorded. Chamber agrees to continue administering the existing lease in relation to the 522 N Main Property, however Chamber shall not allow such lease to be extended beyond its termination date and any renewal periods contained within such lease without written permission of the City. Chamber shall immediately notify City when the current Lessee vacates the premises and the Lease terminates, at which time City shall record the deed relating to the 522 N main Property. Chamber shall not permit any new mortgage, debt, obligation, or encumbrance to attach to the 522 N Main Property, nor allow any other lease or ownership interest to arise in the 522 N Main Property, between the time of entering this purchase agreement and the time that the Chamber to City Deed is recorded.
- c. For the Deed transferring City's interest in the properties to Chamber, such deed will contain substantially similar conditions for a Recurring Right of First Refusal and Fee Simple Determinable as was included in the deed from City to Mitchell Area Development Corporation for the transfer of 701 N Main.

5. Conditions Precedent to Closing.

- a. **Survey.** If either party elects, they may cause a survey of the lots to be prepared for the purpose of locating and identifying the boundaries and locations of improvements of the Property (the "Survey") and any encroachments into or out of the property boundaries. The cost of said Survey shall be borne solely by the requesting party.
- b. **Review of Title Commitment, Title Documents & Survey.** Each party shall examine title to the lots and determine that no issues which may serve to cloud title are known to them, determined in each party's sole discretion to be exercised in good faith.
- c. **Title Insurance.** An owner's policy of title insurance will be furnished showing good and merchantable title in the owners of the respective properties, subject to easements and reservations of record, if any. The cost of said owner's policy of title insurance shall be shared equally between the parties.

6. Due Diligence. Each party's obligation to exchange the lots is specifically subject to a satisfactory inspection, test, and review of the lots, including but not limited to, any feasibility studies, environmental assessments (including but not limited to a Phase I and/or Phase II or other environmental tests, studies or reports), zoning review, examinations, appraisals, boring, or other surveys or tests, and any other test, review or inspection deemed necessary by a party. The costs and expenses incurred in the due diligence review performed by a party shall be the requesting party's obligation. Such party shall complete the due diligence review prior to May 17, 2022 and agrees to promptly commence its due diligence review. Each party shall have reasonable access to the lots to conduct its inspections, tests, and due diligence review. To the extent the due diligence review is not acceptable to a party, then such party shall

have the option to terminate this Agreement. In such event, the parties hereto shall have no further rights, duties or obligations under this Agreement. Each party will provide the other party with copies of any due diligence reviews.

7. Representations and Warranties. The parties represent and warrant the following to each other, each of which representation and warranty shall be true and effective as of the date of Closing:

- a. Ownership. Except for any interest which may already be vested with City, Chamber has good and marketable fee simple title to the 522 N Main Property. The Chamber shall sell, transfer, convey and assign to City fee simple ownership in the 522 N Main Property (except the South 10' thereof) 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.
City has good and marketable fee simple title to the 514 N Main Property and to the South 10' of the Plaza Strip 2 Property. The City shall sell, transfer, convey and assign to Chamber fee simple ownership in the 514 N Main Property and to the South 10' of the Plaza Strip 2 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. Each party has the full right, power and authority to enter into this Agreement to sell and convey the respective lots to the other party and this Agreement shall be a valid and binding obligation of both parties, subject to the terms and conditions contained herein.
- c. Proceedings. To the best of each party'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 either party or any portion of the lots.
- d. Liens. No work has been performed or is in the process of being performed by either party or at the direction of either party, and no materials have been furnished to any of the lots or any portion thereof, which might give rise to mechanic's, materialman's or other liens against the lots.
- e. Familiarity with the Property. Subject to the completion of their due diligence investigations, each party is familiar with the physical condition of the lots, has inspected the same, and is taking the same in its "AS IS" condition without any warranty or guaranty by the other party, except as otherwise set forth in this Agreement.

8. Obligations at Closing. At Closing, the following shall occur:

- a. Chamber shall deliver to City, or its assigns, the following executed documents:

- (i) A good and sufficient Warranty Deed(s) for the 522 N Main Property (except the South 10' thereof);
 - (ii) Certificate(s) of Real Estate Value;
 - (iii) Such other documents as deemed necessary by City or its counsel to transfer the Property to City or as may be required pursuant to this Agreement.
- b. City shall deliver to Chamber:
 - (i) A good and sufficient Warranty Deed(s) for 514 N Main Property and to the South 10' of the Plaza Strip 2 Property;
 - (ii) Certificate(s) of Real Estate Value;
 - (iii) Such other documents as deemed necessary by City or its counsel to transfer the Property to City or as may be required pursuant to this Agreement.
- c. If the parties engage a title company for closing, title insurance, or other transfer related purposes, the parties agree to split the costs thereof with 50% paid by City and 50% paid by Chamber.

9. Miscellaneous.

- a. Possession. Each party 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 in relation to existing leases and/or delayed recordation.
- 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 Chamber and City.
- 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. City and Chamber 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.
- l. After closing, both parties shall cooperate in having the area formally re-platted if deemed necessary by City. The parties agree to split any applicable costs of such process equally.

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

CHAMBER:

Mitchell Area Chamber of Commerce

Geri Beck, CEO

Robert B. Everson, Jr., Mayor

Attest:

Michelle Bathke, Finance Officer

(seal)

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF DAVISON)

On this _____ day of April, 2022, before me, the undersigned officer, personally appeared Robert B. Everson, Jr. and Michelle Bathke, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Mitchell, a South Dakota municipal corporation, and that in their official capacities, being authorized to do so, executed the foregoing instrument for the purposes stated therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public – South Dakota
My Commission Expires:_____

(seal)