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## ACKNOWLEDGMENT AND WAIVER OF RIGHT OF FIRST REFUSAL

ACKNOWLEDGMENT AND WAIVER made this \_\_\_\_ day of July, 2022, by and between Mitchell Area Chamber of Commerce, Inc., a South Dakota nonprofit corporation, of 601 North Main Street, Mitchell, South Dakota 57301 (“Chamber”) and City of Mitchell, a South Dakota municipal corporation, of 612 North Main Street, Mitchell, South Dakota 57301 (“City”).

### RECITALS

A. Pursuant to Special Warranty Deed dated the \_\_\_\_ day of July, 2022, and recorded on the \_\_\_\_ day of \_\_\_\_\_, 2022, in Book \_\_\_\_, Page \_\_\_\_ thereof, City maintained a Recurring Right of First Refusal to repurchase the following described real property, to-wit:

Lots Fourteen (14) and Fifteen (15), Block Eleven (11), M.H. Rowley’s First Addition to the Town (now City) of Mitchell, Davison County, South Dakota; and

The South Ten Feet (S.10’) of the West Two Feet (W.2’) of Lot Sixteen (16), Block Eleven (11), M.H. Rowley’s Addition to the Town (now City) of Mitchell, Davison County, South Dakota (the “Property”),

pursuant to the terms and provisions set forth in said Special Warranty Deed.

B. Chamber has provided City with notice that it intends to sell the Property, together with the terms of purchase and for the purchase price of One Hundred Thousand Dollars (\$100,000).

C. City has waived its right to repurchase the Property, and the purpose of this Acknowledgment and Waiver is to provide for public notice thereof.

NOW, THEREFORE, in consideration of the facts and other consideration recited above, which are hereby made a part of this Acknowledgment and Waiver, and the following mutual promises, the parties hereto agree as follows:

1. **ACKNOWLEDGMENT AND WAIVER.** City hereby **ACKNOWLEDGES** that Chamber has provided City due and proper notice that it intends to sell the Property to Bradley Theme LLC for the purchase price of One Hundred Thousand Dollars (\$100,000). City further acknowledges that it has been provided with said purchase price and the other terms and provisions of the transaction. City hereby **WAIVES** its Recurring Right to First Refusal for said transaction and agrees that Chamber may sell the Property to Bradley Theme LLC upon such terms.

2. **RECURRING RIGHT OF FIRST REFUSAL.** City and Chamber further acknowledge and agree that the Recurring Right of First Refusal maintained by City shall survive in perpetuity and continue in full force and effect against all future successors in interest to the Property.

3. **GOVERNING LAW.** This Agreement shall be construed by and governed in accordance with the laws of the State of South Dakota.

4. **ENTIRE AGREEMENT.** The parties agree that this Agreement constitutes the sole and only agreement between them respecting the subject matter hereof and that it correctly sets forth their obligations to each other as of its date. It is further agreed that any modification of this Agreement shall be ineffective unless the same shall be in writing and signed by the parties hereto.

5. **TIME AND BINDING EFFECT.** Time is of the essence of each and every term of this Agreement. This Agreement shall extend to and be binding upon, the heirs, administrators, executors and assigns of the parties hereto.

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to accommodate signature page]

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and date first above written.

MITCHELL AREA CHAMBER OF  
COMMERCE, INC.

By \_\_\_\_\_  
Geri Beck, CEO

CITY OF MITCHELL, SOUTH DAKOTA

By \_\_\_\_\_  
Robert B. Everson, Jr., Mayor

ATTEST:

\_\_\_\_\_  
Michelle Bathke, City Finance Officer

STATE OF SOUTH DAKOTA  
SS  
COUNTY OF DAVISON

On this the \_\_\_\_ day of July, 2022, before me, the undersigned officer, personally appeared Geri Beck, who acknowledged herself to be the CEO of Mitchell Area Chamber of Commerce, Inc., a South Dakota nonprofit corporation, and that she as such CEO being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself as CEO.

In Witness Whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF SOUTH DAKOTA  
SS  
COUNTY OF DAVISON

On this the \_\_\_\_\_ day of July, 2022, before me, the undersigned officer, personally appeared Robert B. Everson, Jr. and Michelle Bathke, who acknowledged themselves to be the Mayor and City Finance Officer, respectively, of the City of Mitchell, a South Dakota, a municipal corporation, and that they as such Mayor and City Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Mitchell by themselves as Mayor and City Finance Officer, respectively.

In Witness Whereof I hereunto set my hand and official seal.

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Notary Public

My Commission Expires: