



City of Omaha  
Jean Stothert, Mayor

## Law Department

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Honorable President

and Members of the City Council,

The attached Ordinance approves the Redevelopment Agreement for a redevelopment project site located at 215 South 15<sup>th</sup> Street. The Redevelopment Agreement implements the Mutual of Omaha Tax Increment Financing Redevelopment Project Plan and sets forth the various obligations of the City, Mutual of Omaha and the Developer. The redevelopment project includes the construction of an approximately 800,000 square foot corporate office tower and an associated 2,200 stall parking facility. This Agreement outlines the manner in which the City will participate in, and otherwise support, the proposed redevelopment project, which includes, but is not limited to, the approval of the use of tax increment financing, the transfer and sale of city owned property, the acquisition, lease, and maintenance of various parking facilities, and the installation of a modern streetcar system. The Planning Board recommended the approval of this Redevelopment Project Plan at the March 2, 2022 public hearing.

Your favorable consideration of this Ordinance will be appreciated.

Respectfully submitted,

Jennifer J. Taylor  
Assistant City Attorney

4/27/2022

Date

Approved:

David K. Fanslau  
Planning Director

Date

Approved:

Robert G. Stubbe, P.E.  
Public Works Director

4-28-22

Date

Approved:

Stephen B. Curtiss  
Finance Director

4/28/22

Date

Referred to City Council for Consideration:

Mayor's Office

4/28/2022  
Date

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE approving a Redevelopment Agreement by and between the City of Omaha, Mutual of Omaha Insurance Company, Inc., Lanoha DT 1, LLC, and PB LREC, LLC for the sale by the City, and redevelopment by Mutual of Omaha, of the property generally located at 215 South 15<sup>th</sup> Street and additional property generally located between 13<sup>th</sup> and 14<sup>th</sup> Streets and Farnam and Harney Streets, in the City of Omaha, Douglas County, Nebraska, and all adjacent public rights-of-way; the acquisition, lease, and maintenance of various parking facilities in downtown and midtown Omaha; and which authorizes the use of up to \$68,614,696, plus accrued interest, in excess ad valorem taxes generated by the redevelopment project, and providing for an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. The Mayor is hereby authorized to execute, and the City Clerk to attest, the attached Redevelopment Agreement with Mutual of Omaha Insurance Company, Inc., Lanoha DT 1, LLC, and PB LREC, LLC, implementing the Mutual of Omaha Tax Increment Financing Redevelopment Plan for the construction of an 800,000 square foot corporate headquarters tower and associated 2,200 stall parking facility for the Mutual of Omaha corporate headquarters, to authorize the use of up to \$68,614,696, plus accrued interest, in excess ad valorem taxes generated by the redevelopment project to offset eligible expenses including, but not limited to, site preparation, special footings and foundations, architectural and engineering fees, and various public improvements, as required, for project with total estimated construction costs in excess of \$443,125,000; providing for the acquisition, lease, and maintenance of various parking facilities in downtown and midtown Omaha, and authorizing the sale and transfer of City property pursuant to the Nebraska Community Development Law and Omaha Municipal Code; including any other documents incorporated into or in connection with the Redevelopment Agreement as are necessary or appropriate to consummate the Agreement.

Section 2. Said Redevelopment Agreement contains obligations undertaken pursuant to the Nebraska Community Development Law in Sections 18-2147 through 18-2150.

Section 3. This Ordinance shall be in full force and take effect fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

\_\_\_\_\_

APPROVED BY:

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA    DATE

PASSED \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA    DATE

APPROVED AS TO FORM:

 4/27/2022  
\_\_\_\_\_  
ASSISTANT CITY ATTORNEY    DATE

**REDEVELOPMENT AGREEMENT**  
**BETWEEN**  
**THE CITY OF OMAHA, NEBRASKA,**  
**LANOHA DT 1, LLC, PB LREC, LLC AND**  
**MUTUAL OF OMAHA INSURANCE COMPANY**

**DATED \_\_\_\_\_, 2022**



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## **REDEVELOPMENT AGREEMENT**

This Redevelopment Agreement (“**Agreement**”) is entered into by and between the City of Omaha, Nebraska, a Nebraska municipal corporation (the “**City**”), Mutual of Omaha Insurance Company, a Nebraska corporation (“**Owner**”), Lanoha DT 1, LLC, a Nebraska limited liability company (“**Developer Parcel Owner**”), and PB LREC, LLC, a Nebraska limited liability company (“**Developer**”).

## **PRELIMINARY STATEMENT**

On March 29, 2022, the City Council of the City of Omaha approved the Mutual of Omaha Tax Increment Financing Redevelopment Plan (the “**Mutual Redevelopment Plan**”) which sets forth a proposal for the redevelopment of 215 South 15<sup>th</sup> Street, a site bordered by Farnam and Harney Streets on the north and south and 14<sup>th</sup> and 15<sup>th</sup> Streets on the east and west, and adjacent public rights-of-way, in the City of Omaha, Douglas County, Nebraska. The Mutual Redevelopment Plan proposes the redevelopment of the site with the construction of an approximately 800,000 square foot corporate headquarters office tower and 2,200 stalls of associated parking (the “**Redevelopment Project**”). On March 29, 2022, the City Council of the City of Omaha approved the Urban Core Housing and Mobility Redevelopment Plan (“**Urban Core Redevelopment Plan**”), which sets forth certain goals for redevelopment projects and the implantation of transportation and mobility strategies within the Urban Core.

## **RECITALS:**

WHEREAS, the City is the owner of an approximately 1.72 acre parcel of real property in Douglas County, Nebraska, identified herein as the “**WDC Parcel**” and legally described on Exhibit “F”, attached hereto and incorporated by this reference; and

WHEREAS, the Developer Parcel Owner is the owner of an approximately 1.46 acre parcel of real property in Douglas County, Nebraska, identified herein as the “**Developer Parcel**” and legally described on Exhibit “F”, attached hereto and incorporated by this reference; and

WHEREAS, the City will cause the demolition of the structure located upon the WDC Parcel, in preparation for and in anticipation of the Redevelopment Project, as set forth in the Mutual Redevelopment Plan; and

WHEREAS, the City desires to transfer ownership of the WDC Parcel to the Developer Parcel Owner for fair value pursuant to the Nebraska Community Development Law and the Developer Parcel Owner desires to transfer ownership of the Developer Parcel to the City as full and complete consideration for the WDC Parcel; and

WHEREAS, the Owner intends to acquire the WDC Parcel from Developer Parcel Owner and, in conjunction with the Developer, intends to construct the Redevelopment Project, which will be subject to a condominium regime to create separate parcels for the office tower and the parking

facility, such documents attached hereto as Exhibit “H” and incorporated herein by this reference; and

WHEREAS, the Owner desires to purchase certain real property from the City located immediately to the east of the WDC Parcel (herein referred to as the “**Park Frontage Block**”) to be used for staging during construction of the Redevelopment Project and for future expansion of its offices; and

WHEREAS, the City is willing to transfer ownership of the Park Frontage Block to the Owner for fair market value pursuant to Division 1 of Chapter 27 of the Omaha Municipal Code and as subject to certain covenants, conditions, and restrictions, as agreed upon by the parties; and

WHEREAS, the Mutual Redevelopment Plan authorizes up to \$68,614,696 in tax increment financing to offset eligible expenses, as allowed by the Community Development Law and including but not limited to, for site preparation, utility infrastructure, special foundations and drilled piers, architectural and engineering fees, geotechnical and environmental work, and public improvements, as required, for the construction of the Redevelopment Project; and

WHEREAS, in furtherance of the Mutual Redevelopment Plan and the Urban Core Redevelopment Plan, the City is pursuing the implementation of a parking and mobility strategy for the urban core that includes the construction and operation of a modern streetcar, in conjunction with a holistic plan for the use of existing and new parking facilities; and

WHEREAS, the City intends to purchase from the Owner the parking facility to be constructed as part of the Redevelopment Project (herein referred to as the “**Tower Garage**”), and certain existing parking facilities located at the Owner’s existing campus; and

WHEREAS, the Owner will lease parking stalls in the Tower Garage, pursuant to a lease agreement with the City; and

WHEREAS, the City intends to assume the responsibility and obligations for the operation and management of Turner Park from the Owner’s affiliate, East Campus Realty, LLC, a Nebraska limited liability company; and

WHEREAS, the purpose of this Agreement is to set forth the rights and obligations of each of the parties hereto with respect to the implementation of the Mutual Redevelopment Plan and the Urban Core Redevelopment Plan. This Agreement is a redevelopment agreement prepared pursuant to the Nebraska Community Development Law in order to implement the Mutual Redevelopment Plan and the Urban Core Redevelopment Plan.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings for purposes of this Agreement:

- A. “**Base Year**” and “**Base Year Valuation**” shall mean the year prior to the calendar year that the division of the property tax levied on the Redevelopment Site is to become effective. It is established by the Notice to Divide Tax for Community Redevelopment Project (“**Notice to Divide**”) form prepared by the City of Omaha, which establishes the valuation for the base amount and the calendar year that division of real property tax levied is to become effective. For purposes of this Agreement, the parties agree the Base Year and associated Base Year Valuation shall be established on January 1, 2023.

Prior to August 1st of the year of the Division Date, the Director, or Director’s designee, will file the Notice to Divide, as required by law and in accordance with the Division Date set forth below, with the Office of the Douglas County Assessor/Register of Deeds. Prior to July 1st of the year of the Division Date the Owner may request, in writing, to change the Base Year and the Division Date. A request for an extension of the Base Year and Division Date may be approved administratively by the Director through an addendum to this Agreement. This addendum shall be executed by the Owner and the Director.

- B. “**City**” shall mean the City of Omaha, Nebraska, a municipal corporation of the metropolitan class, or such successor entity lawfully established pursuant to the applicable provision of the Nebraska Community Development Law.
- C. “**City Excess Ad Valorem Taxes**” shall mean any ad valorem tax which is produced after the Division Date upon real property in the Redevelopment Project Area by the levy (at the rate fixed each year by or for each of the hereinafter defined public bodies) by or for the benefit of the State of Nebraska, the City, and any board, commission, authority, district or any other political subdivision or public body of the State of Nebraska (collectively “**public bodies**”) in excess of any ad valorem tax which is produced by such levy upon the Base Year Valuation, and which is obligated to the repayment of the City Redevelopment Promissory Note.
- D. “**City Redevelopment Promissory Note**” or “**City Note**” shall mean any obligation which shall be in the principal amount set forth in the City’s Redevelopment Promissory Note and which shall be repaid from and secured by the City Excess Ad Valorem Taxes generated by the real property within the Redevelopment Project Area.
- E. “**Closing Date**” shall mean the date, set forth below, or such later date as may be mutually agreed to by the parties hereto or provided elsewhere in this Agreement, on which date, among other things, City will convey the Redevelopment Project Area, defined below, to

Developer Parcel Owner.

- F. **“Developer”** shall mean PB LREC, LLC, a Nebraska limited liability company, and any successors and assigns.
- G. **“Developer Parcel”** shall mean 1441 Capitol Avenue, a parcel of real property of approximately 63,534 square feet and as legally described on Exhibit “F”.
- H. **“Developer Parcel Owner”** shall mean Lanoha DT 1, LLC, a Nebraska limited liability company.
- I. **“Development Approvals”** shall mean all such final, irrevocable and unappealable zoning, variances, authorizations, approvals, consents, curb cuts, environmental studies, permits and/or waivers from all governmental and/or quasi-governmental agencies having jurisdiction over the Redevelopment Plan Area and from all third parties holding consent prerogatives, (the **“Development Approvals”**) relating to or necessary for the development and commercial use of, and the construction of buildings and other improvements in the Redevelopment Project Area, as contemplated by this Agreement. Development Approvals shall include, but not be limited to, (i) City of Omaha approval of the replatting, zoning and final site plan layout and locations for ingress and egress of vehicular traffic to and from adjacent public streets, (ii) agreements with or approvals from, utility companies for utilities connections and service to the Redevelopment Project, and (iii) agreements, consents or approvals from all other third parties.
- J. **“Director”** shall mean the Director of the City of Omaha Planning Department.
- K. **“Division Date”** shall mean the agreed upon date after which any ad valorem real estate taxes levied upon the Redevelopment Project Area shall be divided by the Douglas County Assessor pursuant to the Community Redevelopment Law and the Notice to Divide. For purposes of this Agreement, the parties agree the Division Date shall be January 1, 2024, unless otherwise agreed by the parties in writing.
- L. **“Marketable Title”** shall mean fee simple absolute title, free and clear of all liens, encumbrances, claims, reversionary interests, easements, rights-of-way, covenants, restrictions, special assessments, delinquent taxes and party-wall and similar agreements, excepting only permitted exceptions.
- M. **“Mutual Redevelopment Plan”** shall mean the Mutual of Omaha Tax Increment Financing Redevelopment Project Plan adopted by the Omaha City Council on March 29, 2022, via Resolution No. 2022-0223 attached hereto as Exhibit “C” and incorporated herein by this reference, and shall include any amendment or replacement thereof by the parties as may be necessary or desirable to carry out the terms and provisions of this Agreement.
- N. **“Owner”** shall mean Mutual of Omaha Insurance Company, a Nebraska corporation.

- O. **“Owner Redevelopment Promissory Note”** or **“Owner Note”** shall mean any obligation issued by the City in the form of Exhibit “E” attached hereto and incorporated by this reference, which shall be in the principal amount set forth in such Exhibit (**“Owner Redevelopment Promissory Note”**) and which shall be repaid from and secured by the Project Excess Ad Valorem Taxes generated by the real property within the Redevelopment Project Area.
- P. **“Park Frontage Block”** shall mean the real property bounded by 13th and 14th Streets, Farnam and Douglas Streets, and as legally described on Exhibit “F”.
- Q. **“Project Excess Ad Valorem Taxes”** shall mean any ad valorem tax which is produced after the Division Date upon real property in the Redevelopment Project Area by the levy (at the rate fixed each year by or for each of the hereinafter defined public bodies) by or for the benefit of the State of Nebraska, the City, and any board, commission, authority, district or any other political subdivision or public body of the State of Nebraska (collectively **“public bodies”**) in excess of any ad valorem tax which is produced by such levy upon the Base Year Valuation, and which is obligated to the repayment of the Owner Redevelopment Promissory Note.
- R. **“Public Improvements”** shall mean those public improvements approved and agreed to by and between the City and the Owner and any other improvements permitted or required under the Community Development Law.
- S. **“Redevelopment Plan Area”** shall mean the approximately 1.7 acre area identified in the Mutual Redevelopment Plan. The Redevelopment Plan Area includes the Redevelopment Project Area, along with the public streets and rights-of-way and any adjacent property contemplated by the Mutual Redevelopment Plan, all as depicted on the Redevelopment Project Site Plan.
- T. **“Redevelopment Project”** shall mean the construction of an approximate 800,000 square feet office building with associated 2,200 stall garage, as set forth in the Mutual Redevelopment Plan and as shown on the Redevelopment Project Site Plan attached hereto as Exhibit “A” and incorporated by this reference, and which shall be subject to a condominium regime as further described herein.
- U. **“Redevelopment Project Area”** or **“WDC Parcel”** shall mean the real property located at 215 South 15<sup>th</sup> Street, a parcel of real property of approximately 74,976 square feet and as legally described on Exhibit “F”, attached hereto and incorporated by this reference.
- V. **“Redevelopment Project Site Plan”** shall mean the drawing attached hereto as Exhibit “A” showing various details of the proposed Redevelopment Project.
- W. **“Tower Garage”** shall mean the parking facility located within the Redevelopment Project consisting of approximately 2,200 stalls to be built by the Owner, or Developer as the construction manager for Owner, in accordance with the terms of the Tower Garage Purchase

and Sale Agreement, attached hereto as Exhibit “I” and incorporated by this reference, and which shall be subject to a condominium regime as further described herein.

Any reference herein to plans, contracts, or other instruments defined in Section 1 hereof shall mean, unless the context otherwise requires, such plans, contracts, or other instruments as amended, supplemented, or otherwise modified from time to time. In construing this Agreement, the singular tense shall include the plural and vice versa, as the context shall require.

The City acknowledges and understands that shortly after the Closing Date (as defined below) the Developer Parcel Owner will convey fee simple title to the WDC Parcel to the Owner. The Owner intends to engage the Developer to manage the construction of the Redevelopment Project. At any time or from time to time upon the request of any Party, the Parties hereby agree to execute all such additional documents, instruments and estoppel certificates and shall do all such additional acts and things reasonably requested by such Party in order to fully confer upon the Parties and any of the Party’s designees the intended benefits of this Agreement.

## **SECTION 2. OBLIGATIONS OF THE CITY.**

### **A. Redevelopment Project Area (“WDC Parcel”)**

1. **Site Preparation.** The City shall be responsible for and cause the demolition of the structures and all improvements, including deep foundations or foundation systems, as appropriate and agreed to by the City and Developer, on the WDC Parcel. The City’s selected contractor for the demolition of the structure shall coordinate with the Developer to maximize efficiencies and minimize extraneous work with regard to construction of the Redevelopment Project, including but not limited to site preparation that facilitates the Developer’s ability to immediately commence construction of the Redevelopment Project. The City will consult and coordinate with the Developer as to the nature and scope of the demolition work. The City will coordinate with the Developer regarding utility relocation prior to the transfer of the WDC Parcel, as necessary and appropriate. The Developer shall make all reasonable efforts to cooperate with and respond to City and the demolition contractor until such time as demolition is complete and the WDC Parcel has been conveyed as contemplated herein. The Developer and the City shall coordinate efforts and address the following issues prior to Closing:
  - a. The parties acknowledge and agree that the Park Frontage Block will be used for construction staging and lay down purposes for both demolition of the structure on the WDC Parcel and the construction of the Redevelopment Project. The City will work with the Developer to quickly transition the use of the above referenced parcels between the parties.
  - b. The City will make good faith efforts to assign any and all fencing contracts for the WDC Parcel and the Park Frontage Block to the Developer to ensure continued security and safety of the general public during and after Closing.



Should the City use jersey barriers as part of the site fencing, the City will lease those barriers to the Developer at minimal cost.

- c. The parties acknowledge and understand that the WDC Parcel will not be conveyed in a “shovel ready” condition and may not be backfilled in order to facilitate and maximize economies of demolition for the City and construction of the Redevelopment Project.
2. **Transfer of City Owned Property.** The City shall convey and transfer to Developer Parcel Owner at Closing Marketable Title to the WDC Parcel legally described in Exhibit “F”, pursuant to the terms of that certain purchase agreement entered into by and between the City and Developer Parcel Owner, attached hereto as Exhibit “G”, and incorporated by this reference (the “**WDC Parcel Purchase Agreement**”), and in conformance with terms set forth in this Agreement. The City shall convey the WDC Parcel by special warranty deed, by which the Developer Parcel Owner agrees to accept the WDC Parcel, in “as-is” condition.
3. **Fair Value.** Upon the Closing Date, the City shall receive Marketable Title to the Developer Parcel as consideration for the conveyance of the WDC Parcel, pursuant to the terms of the WDC Parcel Purchase Agreement, attached hereto as Exhibit “G”, and as further defined below. The City hereby finds and determines that the consideration received for the sale and transfer by the City of the WDC Parcel, pursuant to the WDC Parcel Purchase Agreement, is the fair value for the WDC Parcel, consistent with the provisions of the Nebraska Community Development Law.
4. **Closing Date.** Closing shall occur within fourteen (14) days of substantial completion of the demolition of the structure or December 31, 2022, whichever is earlier, or as otherwise agreed to by the parties in writing. The parties acknowledge and agree to cooperate to minimize the length of time the site is unoccupied for either demolition or construction activities, in order to protect the community and reduce any nuisance. For purposes of this Section, “substantial completion” shall be defined as seven (7) days from written notice by the City to the Developer that demolition is complete, and the Redevelopment Project Area is ready for transfer and sale (“**Notice to Close**”).
5. **Sewer Relocation and Connection.** The City shall cause the relocation of the sanitary sewer currently located within the Redevelopment Project Area, and cooperate with the Developer, prior to and after Closing, with regard to the sanitary sewer relocation. The City shall permit the Owner to connect and pump into the City’s sanitary sewer and storm sewer lines and mains to serve any building to be at any time hereafter constructed on the Redevelopment Project Area.
6. **Development Approvals.** The City agrees to review, process and otherwise cooperate with Developer to obtain all Development Approvals, so as to not unreasonably delay the construction of the Redevelopment Project in accordance with the Mutual Redevelopment Plan.

## B. Tax Increment Financing

1. **Borrow the Redevelopment Loan Proceeds.** The City shall borrow the Redevelopment Loan Proceeds in the amount of \$68,614,696 from Owner by way of offset and issue to the Owner or the Owner's designee or assignee the Owner Redevelopment Promissory Note in amount of the Redevelopment Loan. The Owner Redevelopment Promissory Note shall be repaid from Project Excess Ad Valorem Taxes.
2. **Redevelopment Loan Proceeds.** The City shall, simultaneously with the funding of the Redevelopment Loan Proceeds (which includes all capitalized interest), grant the full amount of the Redevelopment Loan Proceeds to the Owner for the eligible expenses set forth on Exhibit "D" ("**Approved Eligible Expenses**"), attached hereto and incorporated by this reference, including but not limited to, site preparation, utility infrastructure, special foundations and drilled piers, architectural and engineering fees, geotechnical and environmental work, and public improvements, as required, for the construction of the Redevelopment Project.
3. **Special Fund and Debt Retirement.** The City shall establish a special fund, as required under Section 18-2147(b) of the Nebraska Revised Statutes, for the Project Excess Ad Valorem Taxes, if any, generated by the Redevelopment Project and for the Redevelopment Project Area, which shall be allocated to and, when collected, paid into this special fund, and shall be used for no other purpose than to pay debt retirement principal and interest as required by the Owner Redevelopment Promissory Note. Interest on monies in the special fund shall accrue first to debt retirement interest and then to principal.
4. **Loan Payments.** The City shall make payments, as required by this Agreement and the Owner Redevelopment Promissory Note, of the Project Excess Ad Valorem Taxes, which shall be held in the special fund pursuant to Section 2(B)(3) above. The Project Excess Ad Valorem Taxes shall be allocated, and when collected, paid into the special fund for a period not to exceed twenty (20) calendar years after the Division Date. Under no circumstance shall the Owner receive payments from the special fund for more than twenty (20) years of Project Excess Ad Valorem Taxes (i.e., forty (40) semi-annual installments) or after such time as the Owner Redevelopment Promissory Note has been paid in full.

The City and Owner acknowledge and agree that the Owner shall receive the benefit of the Redevelopment Loan Proceeds, as limited to eligible expenses allowed by the Community Development Law, with the understanding that the Project Excess Ad Valorem Taxes and resulting Redevelopment Loan Proceeds may not be available for each and every installment or may not be sufficient to fully amortize the Owner Redevelopment Promissory Note issued by the City. The City and Owner understand and agree that certain eligible expenses attributable to the demolition of the Wallstreet Tower on the Developer Parcel may be attributed to the Redevelopment Project, as referenced in

that particular Amendment to The Townsend Investments LLC, Wallstreet Tower Omaha Tax Increment Financing Development Project Plan N/K/A Lanoha DT I, LLC Tax Increment Financing Redevelopment Project Plan 1416 Dodge Street/1441 Capitol Avenue.

5. **Redevelopment Promissory Note for Public Infrastructure.** It is anticipated that the total assessed valuation of the Redevelopment Project will generate Excess Ad Valorem Taxes sufficient to pay the Owner Redevelopment Promissory Note, in full, to reimburse the Owner for the Approved Eligible Expenses and to reimburse the City for approved eligible expenses for public infrastructure. The Owner Redevelopment Promissory Note shall be superior in priority to the City Redevelopment Promissory Note. The City's Excess Ad Valorem Taxes shall not begin to accrue until the Owner Redevelopment Promissory Note has been paid in full. After the Owner Redevelopment Promissory Note has been paid in full and Owner is no longer entitled to receive Project Excess Ad Valorem Taxes, the City shall make payments of the City Excess Ad Valorem Taxes, which shall be allocated, and when collected, paid into the special fund for a period not to exceed twenty (20) calendar years after the Division Date.

#### C. **Purchase of Tower Garage.**

1. **Condominium Regime.** The Redevelopment Project shall be subject to mutually acceptable condominium documents, which shall include a master deed and declaration of the condominium property regime, articles of incorporation of the condominium association, bylaws and any rules and regulations governing the condominium property regime, if any. In the event of conflict between the condominium documents and this Agreement, the condominium documents shall control.
2. **Purchase.** Upon substantial completion of the Redevelopment Project, the City shall purchase the Tower Garage from Owner in the amount of Forty-Five Thousand and No/100<sup>th</sup> (\$45,000.00) Dollars per parking stall located within the Tower Garage, which will consist of approximately 2,200 parking stalls, pursuant to the Tower Garage Purchase and Sale Agreement in substantially the form of Exhibit "I". The City shall finance the purchase of the Tower Garage via lease purchase, revenue, or redevelopment bonds, at the City's sole discretion. The parties acknowledge that the City is self-insured for purposes of any insurance obligations related to its ownership of the Tower Garage.
3. **Parking Lease, Maintenance and Management Agreement.** Upon the acquisition of the Tower Garage condominium unit the City and Owner will enter into the "Parking Lease Agreement for the Tower Garage" substantially set forth in Exhibit "M", attached hereto and incorporated by this reference (the "Tower Garage Parking Agreement"). The Tower Garage Parking Agreement sets forth the City's responsibilities with regard to the day-to-day management and operation of the Tower Garage, including provisions for the maintenance, operation, upkeep and security comparable with a first-class development. The Tower Garage Parking Agreement shall afford the Owner the right to undertake maintenance and operations of the Tower Garage, in the event the City fails to meet its

maintenance obligations, and only after written notice and opportunity to cure any such default. The standards for the garage maintenance, operation, upkeep and security shall be mutually agreeable to the parties.

4. **Right-of-First Refusal, Right-of-First Offer, and Option to Purchase.** The City shall grant Owner a right-of-first refusal, right-of-first offer, and an option to purchase, as set forth more specifically in the Right of First Refusal, Right of First Offer and Option Agreement as set forth on Exhibit “J”, attached hereto and incorporated by this reference. The Right-of-First Refusal, Right-of-First Offer and Option Agreement shall be entered into concurrently with the conveyance of the Tower Garage Unit to the City pursuant to the Purchase and Sale for the Tower Garage in substantially the same form attached hereto as Exhibit “I”, attached hereto and incorporated by this reference.

#### **D. Purchase of Midtown Garages**

1. **Purchase.** The City agrees to purchase the Midtown Garages from Owner or Owner’s affiliates, no later than the time a certificate of occupancy is issued on the Redevelopment Project. The Midtown Garages are as legally described on Exhibit “F”, and shall be purchased in accordance with and upon the terms and conditions of a mutually agreeable commercially reasonable purchase agreement, similar in form to the various purchase agreements incorporated into this Agreement. The purchase agreement contemplated in this Section will set forth a purchase price of approximately Fifteen Thousand and No/100<sup>th</sup> (\$15,000) Dollars per parking stall, which consists of approximately 3,552 parking stalls. The purchase of the parking stalls shall not include any stalls not owned by Owner or Owner’s affiliates, and will provide for the assignment and assumption of any lease agreements, as appropriate, and all as more specifically set forth the purchase agreement. Acceptance of an agreement by the necessary parties and the requisite approval of that agreement by the Omaha City Council shall be a condition of Closing, as further described in the WDC Parcel Purchase Agreement. The City shall finance the purchase of the Midtown Garages via lease purchase, revenue, or redevelopment bonds, at the City’s sole discretion.
2. **Midtown Garages Maintenance and Management Agreement.** As part of the purchase agreement for the Midtown Garages, the City and the Owner will enter into a maintenance and management agreement for the City’s maintenance, operation, upkeep and security of the Midtown Garages, in a manner comparable with a first-class development.
3. **Turner Park Maintenance Agreement.** As part of the purchase agreement for the Midtown Garages, the City and the Owner will enter into an agreement by which the City will be responsible for the maintenance, management, and operation of Turner Park, which agreement shall require the City to ensure Turner Park continues to be maintained, at a minimum, at the same level of service and condition as it exists as of the date of this Agreement.

4. **Leasing of Midtown Garages.** The City shall have the right to lease any and all parking stalls in the Midtown Garages, except those subject to private ownership, or pre-existing and assigned lease agreements, at market rate or as the City otherwise deems appropriate, in its sole discretion.

**E. Transfer and Sale of Park Frontage Block**

1. **Transfer and Sale of City Owned Property.** The City shall convey and transfer to Owner at Closing, pursuant to the terms of that certain Park Frontage Block Purchase Agreement entered into by and between the City and Owner, and in conformance with terms set forth in this Agreement, Marketable Title to the parcel legally described in Exhibit “K”, attached hereto and incorporated by this reference (the “**Park Frontage Block Purchase Agreement**”).
2. **Repurchase Agreement.** The Park Frontage Block Purchase Agreement shall grant the City with the option to repurchase the Park Frontage Block for its fair market value (the “**Repurchase Price**”) in the event the Park Frontage Block is not developed, as provided for in the City CCRs (as defined below). The right described herein may be effective as early January 1, 2051 but is predicated upon notice issued by the City to the Owner. The repurchase agreement shall be mutually agreed upon prior to the expiration of the Due Diligence Period defined in the Park Frontage Block Purchase Agreement and shall be pursuant to the terms of the Park Frontage Block Purchase Agreement. The Owner shall record a memorandum of the repurchase agreement with the Douglas County Register of Deeds.
3. **Fair Market Value.** The City shall receive fair market value as consideration for the transfer and sale of the Park Frontage Block, as determined by an appraisal and in accordance with Division 1 of Chapter 27 of the Omaha Municipal Code.
4. **Closing Date.** The Closing Date for the Park Frontage Block shall be within thirty (30) days of the Closing Date for the WDC Parcel, or as otherwise agreed to in writing by the City and Owner. In no event shall the Closing Date for the Park Frontage Block be prior to the Closing Date for the WDC Parcel or the recordation of the City CCRs.
5. **Use.** Developer shall use the Park Frontage Block for lay down, staging and support for the construction of the Redevelopment Project. The City will grant Owner a temporary construction easement for the Park Frontage Block, if necessary, after the Notice to Close and prior to the Closing Date for the Park Frontage Block. Upon completion of the Redevelopment Project, the Park Frontage Block shall be used and developed in accordance with the City CCRs, or as mutually agreed upon by and between the City and Owner.
6. **Covenants, Conditions and Restrictions.** The City shall record covenants, conditions and restrictions for the Park Frontage Block, attached hereto and incorporated herein by reference, as Exhibit “L” (“**City CCRs**”), or in similar form as may be modified by the

City and Mutual, for the mutual benefit of the City, the Developer and the Owner, prior to Closing. The transfer and sale of the Park Frontage Block shall be conditioned upon recording the City CCRs against the Park Frontage Block.

#### **F. General Obligations**

1. **Temporary Construction Easements.** The City shall grant the Developer and its contractors, subcontractors, consultants, and other representatives temporary construction easements or rights to enter upon City property as reasonably necessary to construct the Public Improvements thereon.
2. **Construction of Public Infrastructure Improvements – Modern Streetcar.** The City acknowledges and agrees to undertake good faith efforts to pursue construction of modern streetcar to facilitate transportation and mobility of the general public within the urban core, as well as employees and guests of the Owner, all as more specifically set forth in the Urban Core Redevelopment Plan. The parties acknowledge and agree that the proposed bond financing, or other such necessary funds may not be available, and the City’s obligation to proceed with the construction of the modern streetcar is specifically conditioned upon the City’s ability to secure the necessary funding for the project, as determined by the City, and approved by the Omaha City Council, in their sole discretion.
3. **Developer Parcel Owner and Owner Condition to Close.** The parties acknowledge and agree that the Owner and Developer Parcel Owner are not obligated to close on any transactions contemplated herein until such time as all contingencies and conditions to closing all of the transactions described in this Agreement and its Exhibits are accepted in accordance with this Agreement and the various Agreements attached hereto, and the City providing the Owner with sufficient evidence that the City will commence construction of the modern streetcar and related facilities, which evidence is generally agreed to be upon the issuance of revenue bonds for the purposes of designing and constructing a modern streetcar and related facilities, or other such financing mechanism approved by the City that satisfies the commitment set forth herein. The Developer Parcel Owner and the Owner may choose to proceed with the obligations set forth herein, prior to the issuance of bonds, as they deem appropriate and at their own risk.

### **SECTION 3. OBLIGATIONS OF OWNER AND DEVELOPER PARCEL OWNER**

#### **A. Redevelopment Project Area (“WDC Parcel”)**

1. **Transfer and Sale of Developer Parcel.** The Developer Parcel Owner shall transfer to the City at Closing, pursuant to the terms of that certain WDC Parcel Purchase Agreement entered into by and between the City and Developer Parcel Owner, and in conformance with terms set forth in this Agreement, Marketable Title to the Developer Parcel, as legally described in Exhibit “G” (the “**WDC Parcel Purchase Agreement**”).

2. **Construction of Redevelopment Project.** The Owner shall complete construction of the Redevelopment Project on the Redevelopment Project Area substantially as reflected in the Mutual Redevelopment Plan and pursuant to the Redevelopment Project Site Plan on or before December 31, 2026, subject to excusable delays and force majeure, creating an increase in real property taxable valuation on the Redevelopment Project Area by reason of such construction of at least \$295,000,000. The City hereby approves the Redevelopment Project and the development of the Redevelopment Project Area substantially as reflected in the Mutual Redevelopment Plan and pursuant to the Redevelopment Project Site Plan. Any change in the Redevelopment Project Site Plan will require an administrative amendment to this Agreement and be subject to the approval of the City in accordance with Section 4(I) of this Agreement, which approval shall not be unreasonably withheld, conditioned or delayed.
3. **Construction of Public Improvements.** The Owner and Developer agree to work in good faith with the City, and the Public Works and Planning Departments to determine the necessary and appropriate Public Improvements to be installed as part of the Redevelopment Project. Owner shall install all Public Improvements required by, and in conformance with, the Omaha Municipal Code, and all other applicable laws and regulations, and as may be evidenced in an agreement by and between the parties. The Owner and Developer shall have no obligation to install Public Improvements specifically related to the streetcar, except as may be customary and appropriate, and included in the agreement between the parties contemplated by this Subsection.
4. **Construction of the Tower Garage.** The Tower Garage shall be constructed in coordination and consultation with the City and the City's designated representatives, which may include Walker Consultants or other retained representatives. The City shall have and require the right to approve the final plans for the Tower Garage, which approval shall not be unreasonably conditioned, withheld, or delayed. In the event the Tower Garage is not constructed substantially in conformance with the final plans, as approved by the City, the City shall not be obligated to purchase the Tower Garage.

## **B. Tax Increment Financing Provisions**

1. **Redevelopment Loan to City.** Subject to the City's obligation under Section 2(B) of this Agreement, the Owner shall lend Redevelopment Loan Proceeds to the City in the amount of \$68,614,696.00, which, when combined with other private funds available, will be sufficient to construct the Redevelopment Project. The Redevelopment Loan to be accomplished by this Section and the obligation of the City to grant the Redevelopment Loan Proceeds to the Owner for redevelopment purposes under Section 2(B)4 of this Agreement may be accomplished by offset so that the Owner retains the Redevelopment Loan Proceeds. To the extent Owner Excess Ad Valorem Taxes are unavailable to the City for payment pursuant to this Section 3(B)1, that portion of the Redevelopment Loan indebtedness evidenced by the Owner Redevelopment Promissory Note shall be forgiven as provided in the Owner Redevelopment Promissory Note and the obligations of the Owner shall remain unaffected. If the City so requests, the Owner shall, from time to

time, furnish the City with satisfactory evidence as to the use and application of the Redevelopment Loan Proceeds.

2. **Redevelopment Project Documentation.** The Owner shall provide the City with progress reports during the construction of the Redevelopment Project upon written request from the City, and allow the City reasonable access, upon written request to Owner, to any relevant financial records pertaining to the public improvements or the Tower Garage associated with the Redevelopment Project.
3. **Compliance with Community Development Law.** The Owner shall retain copies of all supporting documents (as defined under Section 18-2119(4) of the Community Development Law) that are received or generated by the Owner in relation to the Redevelopment Project or Mutual Redevelopment Plan, until the expiration of three years following the end of the last fiscal year in which Owner Excess Ad Valorem Taxes are divided in relation to the Redevelopment Project and provide such copies to the City upon written request of the Director. Owner shall acquiesce to any and all reasonable requests deemed necessary by the City related to compliance with the Community Development Law.
4. **Owner Covenants.** Owner shall, during the period that the Owner Redevelopment Promissory Note is outstanding:
  - a. not protest the real estate improvement valuation on the Redevelopment Project Area or request a reduction in the Base Year Valuation on the Redevelopment Project Area certified as of January 1, 2023 (Base Year) prior to and during construction; and not protest the real estate improvement valuation on the Redevelopment Project Area to request a reduction in the Base Year Valuation to any amount less than as certified as of January 1, 2023 (Base Year) plus \$295,000,000 (excess valuation) after substantial completion or occupancy of the Redevelopment Project. This covenant is for the benefit of, and binding upon, both the City and the Owner and any successors and assigns, but all parties acknowledge that the excess valuation agreed to herein is not binding on the Douglas County Assessor and that any partial or full valuation designated by the Douglas County Assessor may not be an amount sufficient to produce Project Excess Ad Valorem Taxes necessary to amortize the Owner Redevelopment Promissory Note;
  - b. not convey the Redevelopment Project Area or structures thereon to any entity which would be exempt from the payment of real estate taxes, not apply for exemption of real estate taxes from the county or the state, or cause the nonpayment of such real estate taxes; if the county and/or state award the exemption of real estate taxes, this Redevelopment Agreement and its associated Owner Redevelopment Promissory Note will be rendered void and cancelled;
  - c. not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying real property encompassed within the



Redevelopment Project Area, subject to the creation of the condominium property regime to be formed;

- d. Cause the association of the condominium property regime to maintain insurance for a minimum of ninety percent (90%) of the replacement cost or value of the common elements and limited common elements of the condominium property regime to be formed upon the completion of the structures located within the Redevelopment Project Area and such other insurance as may be required under the master deed and declaration of the condominium property regime to be formed;
  - e. in the event of casualty, apply such insurance proceeds to the reconstruction of the Redevelopment Project in accordance with the master deed and declaration of the condominium property regime and to the extent permitted by Owner's mortgage lender; and
  - f. cause all real estate taxes and assessments levied on the Redevelopment Project Area to be paid prior to the time such become delinquent. The Owner acknowledges and agrees that any ad valorem taxes that become delinquent may be forfeited and returned to the appropriate public bodies or taxing jurisdictions, following notice and a right to cure.
5. **Notice of Redevelopment Covenants.** The covenants set forth in Section 3(B)(4) shall be referenced in a Notice of Redevelopment Agreement to be recorded against the Redevelopment Project Area with the Douglas County, Nebraska Register of Deeds, and subsequent owners of the Redevelopment Project Area shall take title subject to such covenants.
6. **Compliance with Subdivision Agreement.** The Owner shall construct the Public Improvements, make the dedications, and take the other actions under the terms of the subdivision agreement between the Owner and the City, if any. If any of the provisions of such subdivision agreement conflict with the other provisions of this Agreement, the other provisions of this Agreement shall control.
7. **Penal Bond.** The Owner shall provide the City with a penal bond as required by Section 18-2151 of the Community Development Law. A mutually agreeable and reasonably sufficient payment and performance bond from the Owner's general contractor or contractors will satisfy this requirement.

#### **SECTION 4. MISCELLANEOUS PROVISIONS.**

- A. **Equal Employment Opportunity Clause.** Annexed hereto as Exhibit "N" and made a part hereof by reference are the equal employment provisions of this Agreement, wherein the Owner is referred to as "Contractor".

- B. **Non-discrimination.** Neither the Owner nor the Developer shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.
- C. **Captions.** Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.
- D. **Applicable Law.** Parties to this Agreement shall conform with all existing and applicable city ordinances, state laws, federal laws, and all existing and applicable environmental rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.
- E. **No Conflict of Interest.** Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha contract. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the contract voidable by the Mayor or City Council.
- F. **Merger.** This Agreement shall not be merged into any other oral or written contract, lease or deed of any type.
- G. **Assignment.** The Owner shall have the right, without the written consent of the City, but with notice to the City, to collaterally assign its interests in this Agreement, and any Exhibit hereto, to a third party lender (a "Lender"), who is providing financing to Owner, as additional security for such Lender's security interest in the real property owned by Owner that is a part of the Redevelopment Project. The Owner shall have the right to assign all or any of its rights and delegate all or any of its duties under this Agreement to any entity controlled by or under common control with the Owner. In the event of any such assignment or delegation, the Owner shall notify the City, but the consent or approval of the City will not be required. The Owner and its permitted assignee(s) shall have the right to assign all or any of its rights and delegate all or any of its duties under this Agreement to any other person or entity with the prior written consent of the City, which shall not be unreasonably withheld, delayed or conditioned. The Mayor may, without City Council approval, approve, in writing, the assignment or delegation of any or all rights or duties hereunder to any other person or entity provided that the Mayor determines that such successor is reputable, creditworthy and experienced in the development and operation of developments comparable to the Redevelopment Project.
- H. **Strict Compliance.** All provisions of this Agreement shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.
- I. **Administrative Amendments.** The parties hereto recognize that certain administrative amendments may need to be made to this Agreement, including any Exhibits attached hereto,

in order to carry out the intent of this Agreement and the Mutual Redevelopment Plan. The parties hereto recognize that any such minor amendments to this Agreement negotiated and executed by the parties' respective representatives or such addendums as provided for herein, other than those defined in §18-2117 of the Community Development Law, shall be considered and treated as administrative in nature and not as a legislative amendment to this Agreement or the Mutual Redevelopment Plan. However, amendments of the following types shall be referred to the City Council for approval:

1. Those that materially alter or reduce existing areas or structures otherwise available for public use or access;
  2. Those that require the expenditure of \$75,000.00 or more of City funds above the levels contained in this Agreement;
  3. Those that increase City loans, bonded indebtedness, deferred payments of any types, or other financial obligations above the levels contained in this Agreement; and
  4. Those otherwise considered major or material in the reasonable discretion of the City.
- J. **Binding Effect.** This Agreement shall be binding upon the Owner's successors and assigns and shall run with the WDC Parcel described in Exhibit "F", to the benefit of the City.
- K. **Modification.** This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms herein unless done in writing and signed by an authorized officer of the respective parties.

## **SECTION 5. AUTHORIZED REPRESENTATIVES.**

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for the purposes of notice, including legal service of process, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

A. City of Omaha:

City Clerk  
1819 Farnam St., Suite LC1  
Omaha, NE 68183  
[elizabeth.butler@cityofomaha.org](mailto:elizabeth.butler@cityofomaha.org)

Jennifer J. Taylor  
1819 Farnam St., Suite 804  
Omaha, NE 68183  
[jennifer.taylor@cityofomaha.org](mailto:jennifer.taylor@cityofomaha.org)

B. Owner:

Senior Vice President –Business Resiliency  
Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
3301 Dodge St.  
Omaha, NE 68175-0002  
[Alex.Hayes@mutualofomaha.com](mailto:Alex.Hayes@mutualofomaha.com)

With a copy to and for legal service:  
General Counsel  
Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
3301 Dodge St.  
Omaha, NE 68175-0002  
[Nancy.Crawford@mutualofomaha.com](mailto:Nancy.Crawford@mutualofomaha.com)

C. Lanoha DT 1, LLC:

Jason Lanoha  
Lanoha DT 1, LLC  
17070 Wright Plaza, Suite 200  
Omaha, NE 68130  
[jlanoha@lanoha.com](mailto:jlanoha@lanoha.com)

With a copy to:  
Larry A. Jobeun  
Fullenkamp Jobeun Johnson & Beller, LLP  
11440 West Center Road, Suite C  
Omaha, NE 68144  
[larry@fjblaw.com](mailto:larry@fjblaw.com)

D. PB LREC, LLC:

Jason Lanoha  
Lanoha DT 1, LLC  
17070 Wright Plaza, Suite 200  
Omaha, NE 68130  
[jlanoha@lanoha.com](mailto:jlanoha@lanoha.com)

With a copy to:  
Larry A. Jobeun  
Fullenkamp Jobeun Johnson & Beller, LLP  
11440 West Center Road, Suite C  
Omaha, NE 68144  
[larry@fjblaw.com](mailto:larry@fjblaw.com)

All notices and demands which may or are required or permitted to be given by either party to the other hereunder shall be in writing and delivered to the addresses (including email addresses) set forth in this Agreement, delivered personally, by email, or sent by U.S. Mail will all postage prepaid or by express mail or overnight courier. Any “hard copy” notice to be given hereunder by a party hereto shall be deemed to have been received in the case of: (a) personal delivery, upon actual delivery or the intended recipient’s refusal to accept delivery; (b) a reputable overnight courier, on the next business day. Notices sent by electronic mail shall be effective on the business day of transmission to the proper electronic mail addresses if transmitted before 5:00 p.m. (local time at the party to whom notice is sent). To be effective as “notice” pursuant to this Agreement, any notice sent by electronic mail shall include the following phrase in all caps in the subject line thereof: “NOTICE DELIVERED PURSUANT TO REDEVELOPMENT AGREEMENT”.

Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

**SECTION 6. EXHIBITS.**

The exhibits attached to this Agreement and referred to herein are part of this Agreement and are incorporated herein by reference.

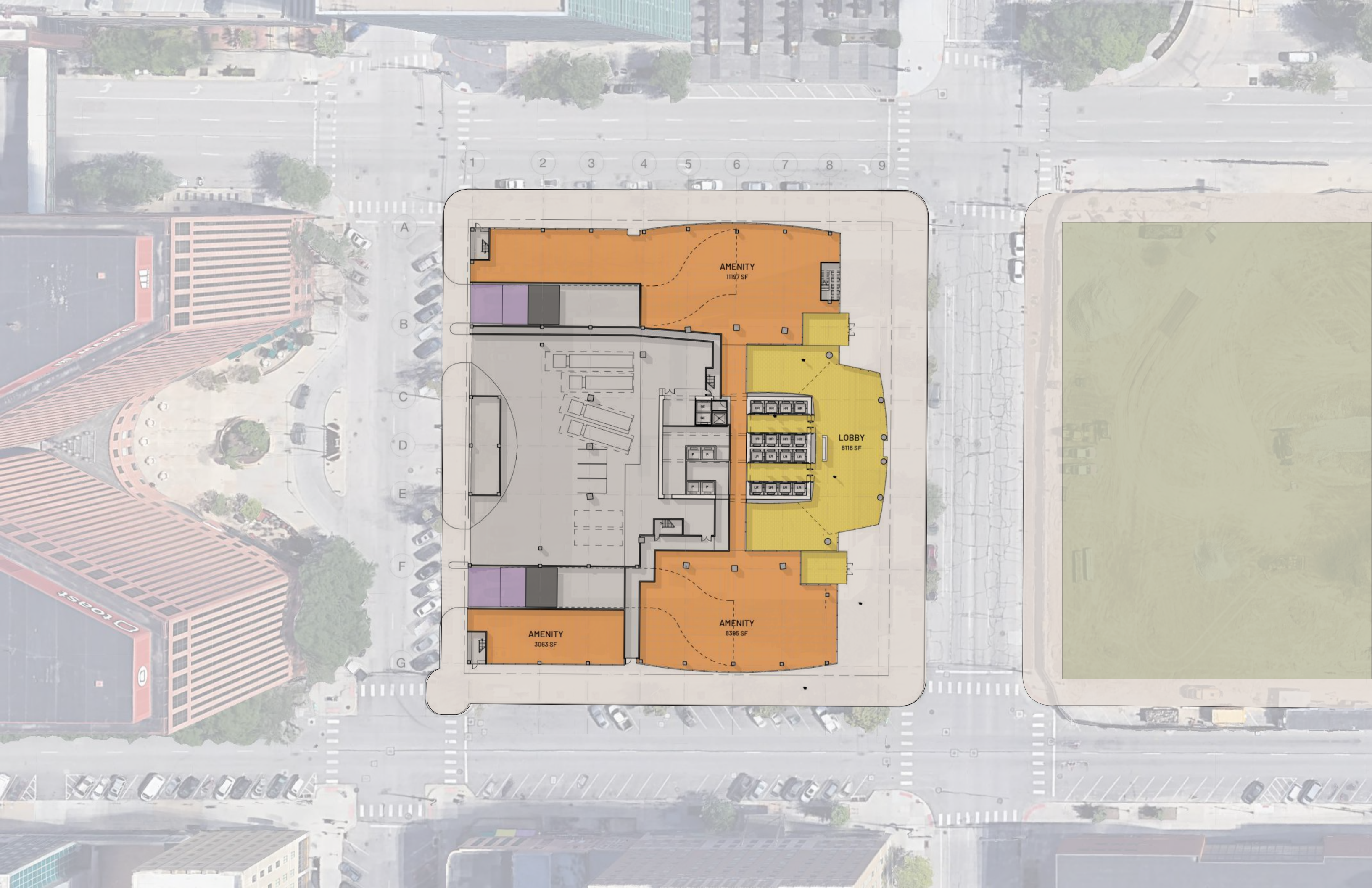
*[Continued after signature page]*



EXHIBIT “A”

REDEVELOPMENT PROJECT SITE PLAN





1 2 3 4 5 6 7 8 9

A

B

C

D

E

F

G

AMENITY  
11197 SF

LOBBY  
8116 SF

AMENITY  
3063 SF

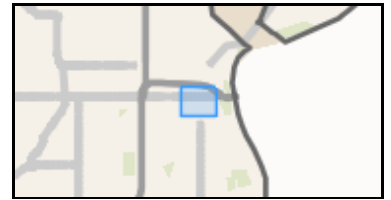
AMENITY  
8395 SF



EXHIBIT “B”

REDEVELOPMENT PROJECT AREA

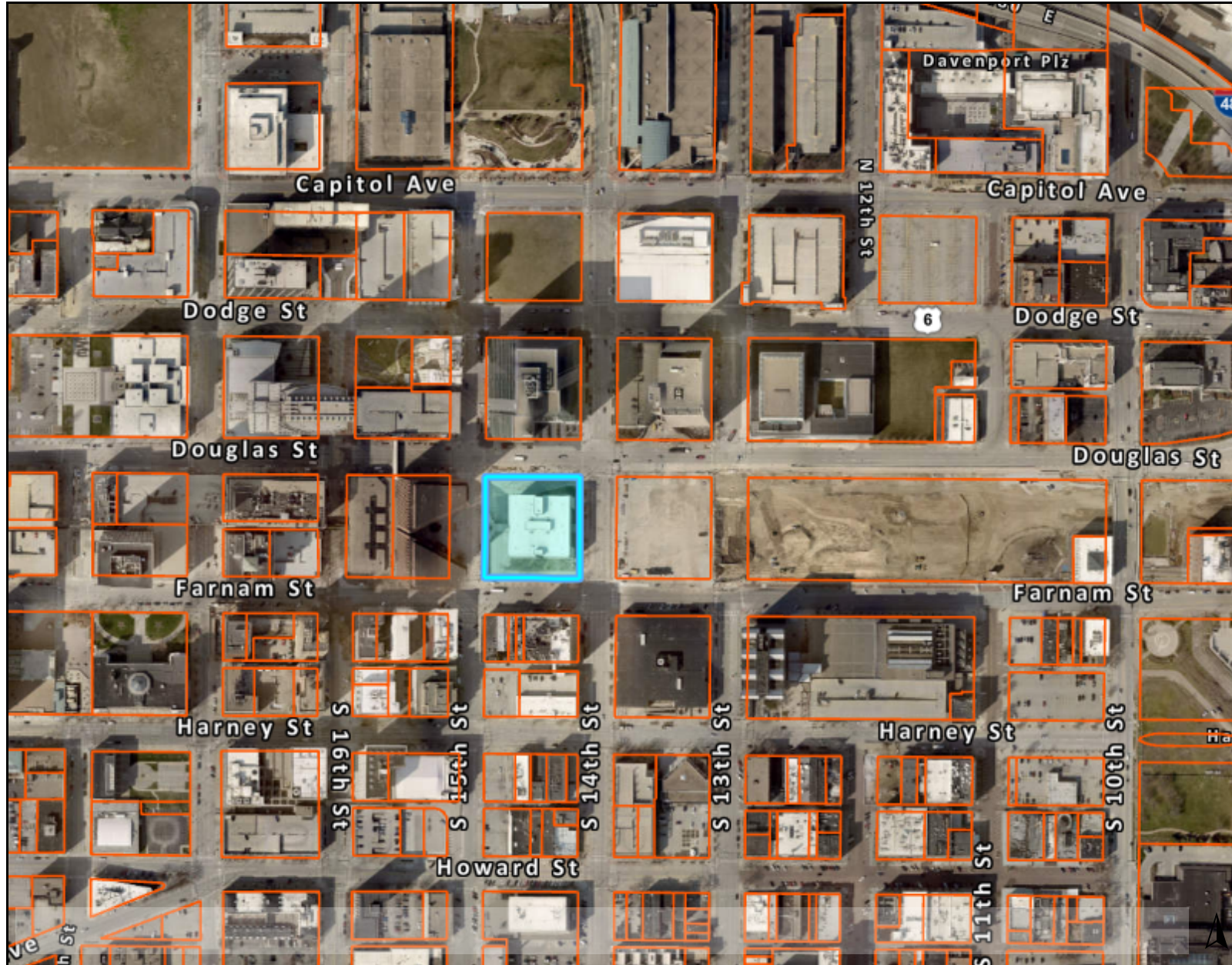




## Legend

Planning Viewer Reference

City Limits



0 500 1000  
ft

Please contact Douglas County GIS for map questions ([gis@douglascounty-ne.gov](mailto:gis@douglascounty-ne.gov))

Printed from [dogs.org](http://dogs.org):  
02/23/2022 13:57:30

*This map is a user generated static output from an Internet mapping site and is for reference only. Data on this map may or may not be accurate, current, or otherwise reliable. It is for informational purposes only, and may not be suitable for legal, engineering, or surveying purposes. Do NOT use property lines from this website for plan submissions.*

EXHIBIT “C”

MUTUAL REDEVELOPMENT PLAN



RESOLUTION NO. 2022-0223

City Clerk Office Use Only:

Publication Date (if applicable): \_\_\_\_\_

Agenda Date: 3/29/2022

Department: Law

Submitter: Jennifer Taylor

## CITY OF OMAHA

### LEGISLATIVE CHAMBER

Omaha, Nebraska

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, the primary objectives of the City of Omaha's Master Plan and Community Development Program are to encourage additional private investment and infill development within inner-city neighborhoods; and to eliminate conditions which are detrimental to public health, safety and welfare, by developing vacant or underutilized property within these neighborhoods; and,

WHEREAS, the redevelopment project site located at 215 South 15<sup>th</sup> Street, legally described in Exhibit "A", which is attached hereto and incorporated herein by this reference, is within a designated community redevelopment area and an extremely blighted area, as the area meets the appropriate definitions, per the Community Development Law and is in need of redevelopment; and,

WHEREAS, Section 18-2108 of the Nebraska Revised Statutes requires the City of Omaha to adopt a redevelopment plan before taking an active part in a redevelopment project; including the division of ad valorem taxes for a period not to exceed twenty years under Sections 18-2147 through 18-2150, Revised Statutes of Nebraska; and,

WHEREAS, the Project Beacon Tax Increment Financing (TIF) Redevelopment Project Plan ("Plan") for the redevelopment project site proposes the construction of an approximately 800,000 square foot corporate office tower, an associated 2,200 stall parking facility, and significant public infrastructure improvements adjacent to the redevelopment site, as described in Exhibit "B", attached hereto and herein incorporated by reference, with the use of TIF as authorized by Section 18-2147 of the Nebraska Revised Statutes; and,

WHEREAS, the Plan conforms to the City of Omaha's Master Plan and the legislative declarations and determinations of the Community Development Law, as the redevelopment project would not be economically feasible and would not occur at the redevelopment project site without the use of TIF; and,

WHEREAS, the costs and benefits of the redevelopment project, including their impact on other political subdivisions, have been analyzed and found to be in the long-term best interest of the community and the local economy, and the redevelopment project will satisfy an identified demand for the public and private services it will provide; and,

WHEREAS, the Plan for the redevelopment project site was approved by the TIF Committee and subsequently by the City of Omaha Planning Board at the March 2, 2022 meeting; and,

RESOLUTION NO. 2022-0223

WHEREAS, this Resolution seeks approval of the Mutual of Omaha Tax Increment Financing (TIF) Redevelopment Project Plan and authorizes the City's participation through the allocation of TIF in an amount up to \$62,751,034, plus capitalized and accrued interest, to offset TIF eligible expenses, including, but not limited to, site work, architecture and engineering fees, geotechnical and environmental costs, special foundations, and public improvements, as required and allowed by law, for a project with total estimated costs of \$443,125,000.00; and,

WHEREAS, the Plan presents a project based on estimated figures and projections that are subject to change as project costs are finalized, and is required to comply with all Planning Department requirements and Planning Board recommendations.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT the attached Mutual of Omaha Tax Increment Financing (TIF) Redevelopment Project Plan, for the redevelopment project site located at 215 South 15<sup>th</sup> Street, which proposes the new construction of corporate office tower and significant public infrastructure improvements adjacent to the redevelopment site, and authorizes the City's participation through the allocation of TIF in an amount up to \$62,751,034, plus capitalized and accrued interest, to offset TIF eligible expenses, including, but not limited to, site work, architecture and engineering fees, geotechnical and environmental costs, special foundations, and public improvements, as required and allowed by law, for a project with total estimated costs of \$443,125,000.00, containing a provision for the division of ad valorem taxes as authorized by Section 18-2147 through 18-2150, Revised Statutes of Nebraska, as analyzed and determined to be in conformance with the Community Development Law and as recommended by the City Planning Department, be and hereby is approved.

APPROVED AS TO FORM:

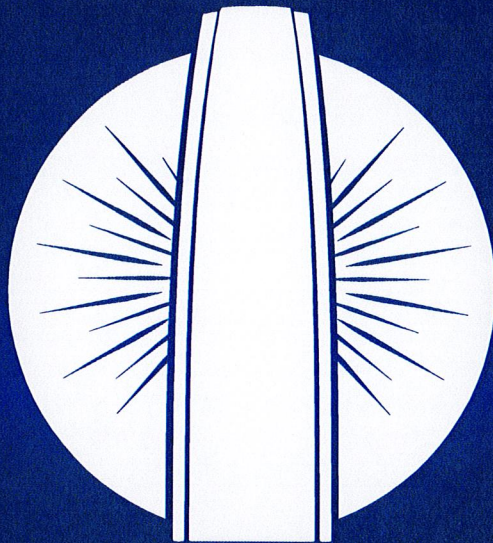
 3/13/2022  
ASSISTANT CITY ATTORNEY      DATE

Adopted: MAR 29 2022 7-0

Attest:   
City Clerk

Approved:   
Mayor





PROJECT BEACON

# **Tax Increment Financing Application**

February 2022





February 10, 2022

City of Omaha  
Tax Increment Financing Committee

**RE: Tax Increment Financing Application, Project Beacon**

Dear Committee,

PB LREC, LLC, a Nebraska limited liability company, and affiliate of Lanoha Real Estate Company (the "Applicant"), on behalf of Mutual of Omaha Insurance Company, a Nebraska corporation (herein "Mutual of Omaha"), hereby submits its application for Tax Increment Financing (the "Application") to the City of Omaha (the "City"). Please find the attached Exhibit "F" authorizing the Applicant to act on behalf of Mutual of Omaha.

In support of its Application, the Applicant has included supporting information set forth within the Application. Based upon the information set forth in this Application, the Applicant believes that the project, as defined within the Application, satisfies all the requirements under the Community Development Laws of the State of Nebraska, and furthers the City's goals as outlined in the Downtown Northeast Redevelopment Plan.

The Applicant hereby requests the City allow for the use of Tax Increment Financing from the City for the redevelopment of the property, as defined within the Application.

Respectfully submitted,

**PB LREC, LLC, a Nebraska limited liability company**

By: 

Name: Jason P. Lanoha  
Its: Managing Member



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# Project Summary

<b>The "Project"</b>	The redevelopment of the W. Dale Clark Main Library parcel into a modern office tower to serve as the new Headquarters for Mutual of Omaha. See attached Exhibits "B" and "C".	
<b>Project Address (The "Property")</b>	215 South 15th Street, Omaha, NE 68102	
<b>Applicant Name</b>	The applicant is PB LREC, LLC on behalf of Mutual of Omaha.	
<b>Property Owner</b>	The Property is currently owned by the City.	
<b>Applicant Address</b>	17070 Wright Plaza, Suite 200, Omaha, NE 68130	
<b>Site Legal Description</b>	City Lots Lot 8 Block 119 Vac Alley Adj & All Lts 1 Thru 8 264 X 284	
<b>Proposed Project Size</b>	Estimated Project size is as follows:	
	Gross Office, SF	800,000
	Structured Parking, Stalls	2,200
	Parcel, AC	1.697
<b>Current Zoning</b>	CBD-ACI-1(PL)	
<b>Proposed Zoning</b>	CBD-ACI-1(PL)	
<b>Current Use</b>	W. Dale Clark Main Library	
<b>Proposed Use</b>	Office tower, Corporate Headquarters	
<b>Estimated Total Project Cost</b>	\$433,125,000	
<b>TIF Loan</b>	Principal of \$68,614,696 with three (3) years of Capitalized Interest, see attached Exhibit "A"	
<b>Current Assessed Tax Valuation</b>	\$0. Applicant anticipates a Fair Market Value of \$3,748,800 will be applied to the Property upon transfer.	
<b>Development Schedule</b>	Estimated schedule is as follows:	
	Selection of Project Team	Complete
	City Entitlements	In Process
	Construction Documents Production	Upon City Approvals
	Construction, Commencement	01 Jan 2023
	Construction, Completion	01 Jan 2026





## OWNER



**Mr. Alex Hayes**  
SVP, Business Resiliency  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
P: 402.351.2097  
E: Alex.Hayes@mutualofomaha.com

## DESIGN ARCHITECT

### PICKARD CHILTON

**Mr. Jon Pickard**  
Principal  
980 Chapel Street  
New Haven, CT 06510  
P: 203.786.8600  
E: jpickard@pickardchilton.com

## GENERAL CONTRACTOR



**Mr. Chris Pesek**  
Vice President  
14606 Davenport Street, #300  
Omaha, NE 68154  
P: 402.384.5395  
E: Chris.Pesek@jedunn.com

## DEVELOPER



**Mr. Jason P. Lanoha**  
President  
17070 Wright Plaza, #200  
Omaha, NE 68130  
P: 402.289.5528  
E: jlanoha@lanoha.com

## ARCHITECT OF RECORD

### Kendall/Heaton Associates

**Mr. Patrick N. Ankney**  
Principal  
3050 Post Oak Boulevard, #1000  
Houston, TX 77056  
P: 713.877.1192  
E: pankney@kendall-heaton.com

## LEGAL



**Mr. Larry A. Jobeun**  
Partner  
11440 West Center Road  
Omaha, NE 68144  
P: 402.334.0700  
E: larry@fjjblaw.com

## Existing Land Use and Conditions

The Property is currently operated as the W. Dale Clark Main Library. Due to market demands and an outdated facility, the City has sought redevelopment opportunities for the Property. Following demolition of the aforementioned library, the Property will be transferred to the Applicant for a Fair Market Value.

## Proposed Use and Project Details

The Applicant, on behalf of Mutual of Omaha, intends to redevelop the downtown block that is currently occupied by the city-owned W. Dale Clark Library into a modern corporate office tower. Upon completion, Mutual of Omaha will relocate approximately 4,000 employees to the downtown urban core. Included within the Project is approximately 800,000 SF office space, including significant amenity space, vibrant ground floor lobby space and approximately 2,200 structured parking stalls.

## Parking Plan

It is anticipated for approximately 2,200 structured parking stalls to be constructed on the Property, and contained within the tower structure. As Mutual of Omaha will require additional parking stalls, it is anticipated that the currently contemplated modern streetcar will assist in meeting parking needs by connecting additional parking opportunities throughout the urban core and adjacent areas. Additionally, it is contemplated that said tower parking structure will become available for public parking outside of Mutual of Omaha's operating hours in support of the renovations and programming of the adjacent Gene Leahy Mall.

## Market Demand

The Project will be wholly occupied by Mutual of Omaha.

## Residential Information

Not applicable.

## Employment Information

Mutual of Omaha will relocate approximately 4,000 employees to the downtown urban core, with the potential for future expansion of its employee base. Additionally, approximately 1,200 construction jobs will be created throughout the life of the Project.

## Zoning Changes

The Property is currently zoned CBD-ACI-1(PL). The Applicant anticipates there will be no change to the current zoning classification.

## Public Improvements

The current condition of the Property is considered extremely blighted and substandard. The Applicant wishes to work with the City to construct new public improvements along with the Project, including new street landscape improvements, sidewalk, utility extensions, and support of the contemplated modern streetcar.

The downtown public infrastructure currently supports dense urban development.

## Historic Status

Not applicable.



## Sources and Uses

Mutual of Omaha currently intends to privately fund the entire cost of the Project (see Exhibit "E"). The Sources & Uses is estimated as follows:

### Sources of Funds:

Category	Contribution	Budget
Equity	85%	\$374,510,304
Tax Increment Financing, principal	15%	\$68,614,696
<b>Total Sources</b>	<b>100%</b>	<b>\$443,125,000</b>

### Uses of Funds:

Category	Contribution	Budget
Land & Acquisition Expense	1%	\$4,150,000
General Contractor Hard Costs	94%	\$418,100,000
Developer Direct Soft Costs	5%	\$20,875,000
<b>Total Uses</b>	<b>100%</b>	<b>\$443,125,000</b>

## Development Budget

The Development Budget is estimated as follows:

Category	Description	Budget
Site	Preparation & Utilities	\$1,515,650
	Dewatering	\$1,487,600
Structured Parking	On-site	\$91,845,650
Base Building	Core & Shell	\$222,267,450
Base Building	Interior Improvements	\$100,983,650
Direct	Architecture & Engineering	\$15,811,375
	Land	\$4,150,000
	Direct Fees	\$4,164,125
	Legal	\$389,500
	Other Direct Costs	\$125,000
	Material Testing	\$325,000
	Geotechnical & Environmental	\$60,000
	<b>Total</b>	<b>\$443,125,000</b>





## TIF Eligible Expenses

The TIF Eligible Expenses are estimated as follows:

Category	Budget
Site, Preparation and Utilities	\$1,515,650
Site Preparation, Dewatering	\$1,487,000
Special Foundations, Concrete/Rebar	\$32,491,370
Special Foundations, Excavation/Haul Off	\$6,854,700
Special Foundations, Drilled Piers	\$2,190,500
Public Parking, Delta	\$14,950,650
Architecture & Engineering	\$15,811,375
Geotechnical & Environmental	\$60,000
TIF Fees	\$46,000
Transfer of Eligible Expenses	\$5,500,000
<b>Total</b>	<b>\$80,907,245</b>



## Final Valuation – Estimation and Justification

Tower headquarters of similar scale are rare in the State of Nebraska, and surrounding states. Thus, a large comparable set is not available. However, the Projected Valuation of \$295,000,000 utilized in calculating the TIF Loan Principal represents only approximately 68% of the Project Budget, and thus represents a conservative and justifiable estimation of valuation.

## Three (3) Year Proforma

Not applicable as the Project will be wholly owned and occupied by Mutual of Omaha and will serve as its Headquarters.

## Statement of Need

Constructing and operating a significant office tower in a downtown urban core is significantly more challenging and expensive than doing so in a setting with less density, such as a suburban site. In cases of similar scale to the Project, the costs can approach a 100% increase and thus making the financial commitment to the downtown urban core cost prohibitive. However, the importance to the City, along with bringing a large base of quality employment to downtown, is immense. Additionally, the requested assistance only offsets a small percentage of said increase.



## Evaluation Criteria: Mandatory Criteria

1. The Project is located within a blighted area as set forth in the Nebraska Statutes.
2. The Project furthers the objectives of the City's Comprehensive Plan.
3. The use of Tax Increment Financing should not result in a loss of pre-existing tax revenues to the City and other taxing jurisdictions. All of the revenue which will be utilized to pay the redevelopment note will come from additional valuation on the site resulting from the improvements to be constructed on the site. None of the existing tax base will be utilized to fund the redevelopment note.
4. The Project is not economically feasible without the use of Tax Increment Financing. Further, based upon the projection set forth before, this Project will not occur without the availability of TIF.
5. The Project will allow the Omaha community, and specifically the downtown urban core, to retain thousands of quality jobs. The Project is located in a designated blighted area and development in this area will not occur without TIF. If this type of development does not occur in this area, the area may continue to decline in taxable value through the continued under-utilization of the Property.

## Cost Benefit Analysis

1. The use of Tax Increment Financing will not result in tax shifts. The current level of taxes will continue to flow to the current taxing entities and only the increased value of revenues resulting from the improvements will be applied to the cost of the improvements.
2. No community public service needs will be generated as a result of this Project. The proposed TIF will be used to help offset public infrastructure improvement cost.
3. The development will positively impact other businesses in the area and will further increase traffic in the area. The long-term benefits resulting from the elimination of the substandard and blighted condition and the increase in the tax base resulting from the Project are additional valid justifications to provide assistance to the Project.





# Exhibit A – TIF Loan

Project Analysis: Tax Increment Financing



## Assumptions

Base Valuation	\$	3,748,800
Projected Valuation	\$	295,000,000
Excess Valuation	\$	291,251,200
Mill Rate		2.22412%
Yearly Taxes Due	\$	6,561,154
Base Taxes	\$	83,378
Tax Increment	\$	6,477,776
Treasurer's 1% fee	\$	64,778
Yearly TIF Pay Out	\$	6,412,998
Years Before Increment		3.0
Loan Amortization		16.0
Loan Periods		32.0
Interest Rate		3.00%
Usable TIF Loan Proceeds	\$	62,751,034

TIF Loan Principal \$ 68,614,696

Period	Year	TIF Pay Out	Interest	Pay Down	Balance	Capitalized Interest
0	0	\$ -	\$ -	\$ -	\$(62,751,034)	\$ -
1	0.5	\$ -	\$ -	\$ -	\$(63,692,300)	\$(941,266)
2	1	\$ -	\$ -	\$ -	\$(64,647,684)	\$(955,384)
3	1.5	\$ -	\$ -	\$ -	\$(65,617,400)	\$(969,715)
4	2	\$ -	\$ -	\$ -	\$(66,601,661)	\$(984,261)
5	2.5	\$ -	\$ -	\$ -	\$(67,600,686)	\$(999,025)
6	3	\$ -	\$ -	\$ -	\$(68,614,696)	\$(1,014,010)
7	3.5	\$(3,206,499)	\$ 1,029,220	\$ 2,177,279	\$(66,437,417)	\$ -
8	4	\$(3,206,499)	\$ 996,561	\$ 2,209,938	\$(64,227,479)	\$ -
9	4.5	\$(3,206,499)	\$ 963,412	\$ 2,243,087	\$(61,984,392)	\$ -
10	5	\$(3,206,499)	\$ 929,766	\$ 2,276,733	\$(59,707,659)	\$ -
11	5.5	\$(3,206,499)	\$ 895,615	\$ 2,310,884	\$(57,396,774)	\$ -
12	6	\$(3,206,499)	\$ 860,952	\$ 2,345,548	\$(55,051,227)	\$ -
13	6.5	\$(3,206,499)	\$ 825,768	\$ 2,380,731	\$(52,670,496)	\$ -
14	7	\$(3,206,499)	\$ 790,057	\$ 2,416,442	\$(50,254,054)	\$ -
15	7.5	\$(3,206,499)	\$ 753,811	\$ 2,452,688	\$(47,801,366)	\$ -
16	8	\$(3,206,499)	\$ 717,020	\$ 2,489,479	\$(45,311,887)	\$ -
17	8.5	\$(3,206,499)	\$ 679,678	\$ 2,526,821	\$(42,785,066)	\$ -
18	9	\$(3,206,499)	\$ 641,776	\$ 2,564,723	\$(40,220,343)	\$ -
19	9.5	\$(3,206,499)	\$ 603,305	\$ 2,603,194	\$(37,617,149)	\$ -
20	10	\$(3,206,499)	\$ 564,257	\$ 2,642,242	\$(34,974,907)	\$ -
21	10.5	\$(3,206,499)	\$ 524,624	\$ 2,681,876	\$(32,293,031)	\$ -
22	11	\$(3,206,499)	\$ 484,395	\$ 2,722,104	\$(29,570,928)	\$ -
23	11.5	\$(3,206,499)	\$ 443,564	\$ 2,762,935	\$(26,807,992)	\$ -
24	12	\$(3,206,499)	\$ 402,120	\$ 2,804,379	\$(24,003,613)	\$ -
25	12.5	\$(3,206,499)	\$ 360,054	\$ 2,846,445	\$(21,157,168)	\$ -
26	13	\$(3,206,499)	\$ 317,358	\$ 2,889,142	\$(18,268,026)	\$ -
27	13.5	\$(3,206,499)	\$ 274,020	\$ 2,932,479	\$(15,335,547)	\$ -
28	14	\$(3,206,499)	\$ 230,033	\$ 2,976,466	\$(12,359,081)	\$ -
29	14.5	\$(3,206,499)	\$ 185,386	\$ 3,021,113	\$(9,337,968)	\$ -
30	15	\$(3,206,499)	\$ 140,070	\$ 3,066,430	\$(6,271,539)	\$ -
31	15.5	\$(3,206,499)	\$ 94,073	\$ 3,112,426	\$(3,159,113)	\$ -
32	16	\$(3,206,499)	\$ 47,387	\$ 3,159,113	\$ 0	\$ -
		\$ (83,368,980)	\$	83,368,980		

PV of TIF Payments

\$ (62,751,034)



Exhibit B: Renderings





Exhibit B: Renderings





Exhibit C: Site Plan

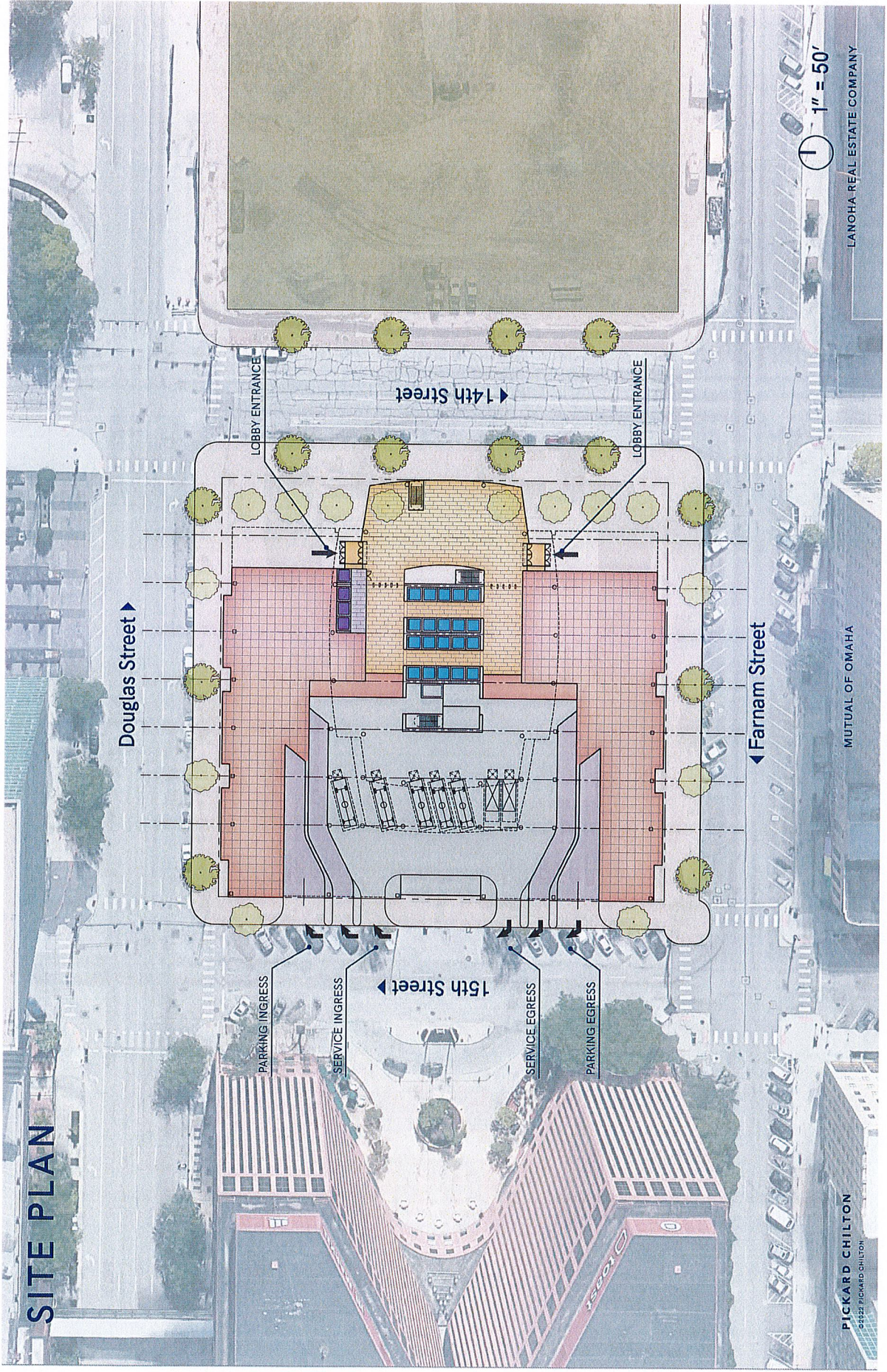
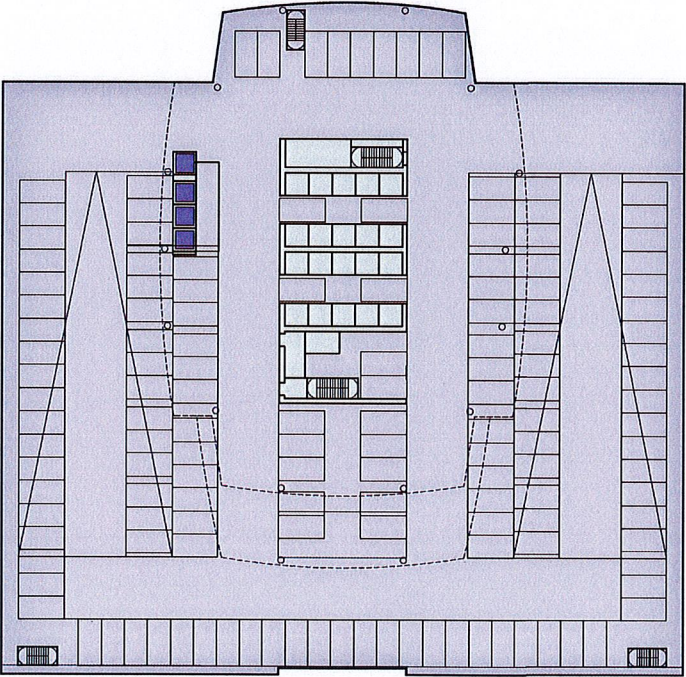
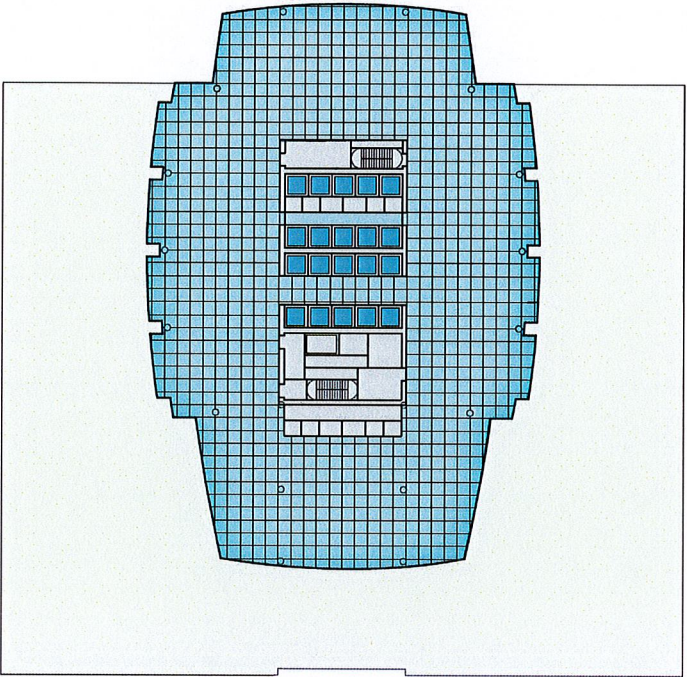




Exhibit C: Typical Podium Plans



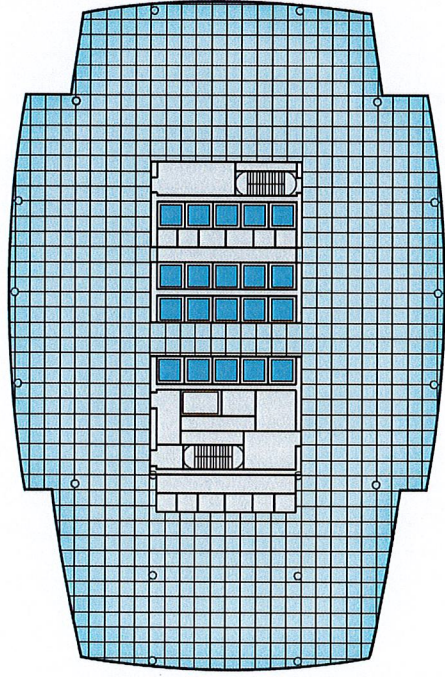
TYPICAL PARKING PLAN



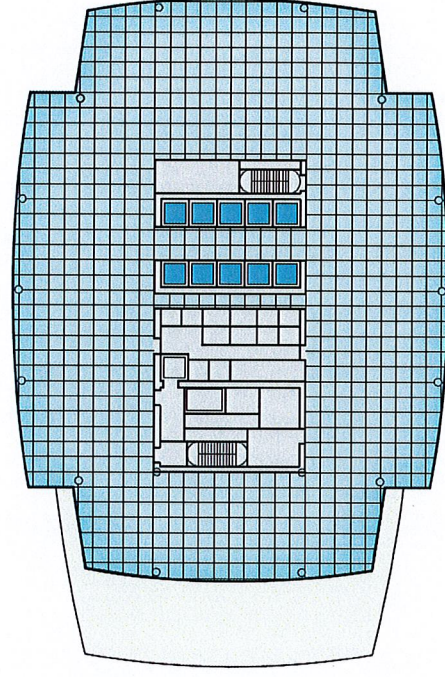
AMENITY LEVEL PLAN

1 1" = 50'

Exhibit C: Typical Office Plans



LOW RISE FLOOR PLATE



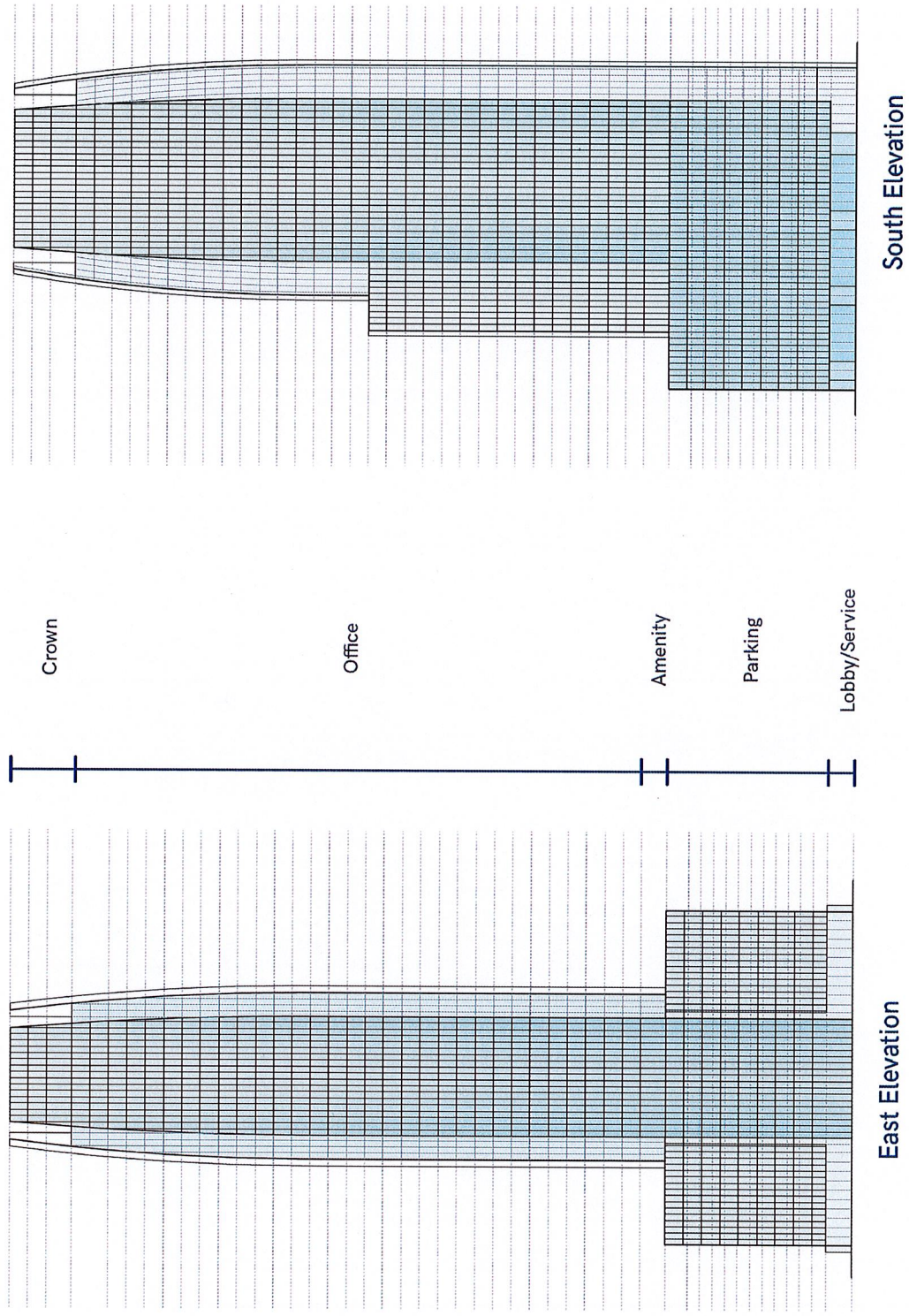
HIGH RISE FLOOR PLATE



1" = 50'

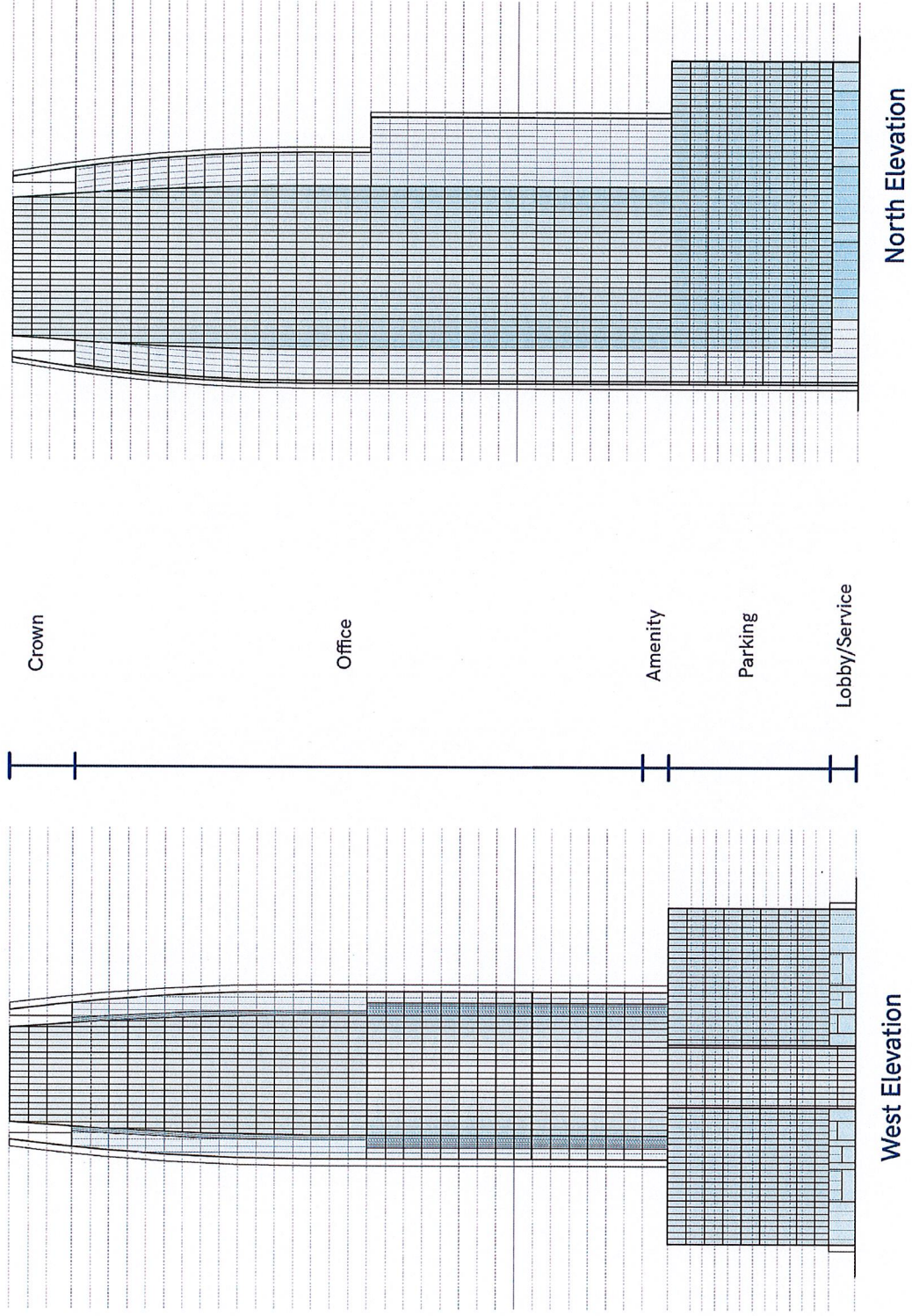


Exhibit C: Elevations



1" = 80'

## Exhibit C: Elevations



1" = 80'



## Exhibit D: Company Financials

### MUTUAL OF OMAHA INSURANCE COMPANY

#### STATUTORY STATEMENTS OF ADMITTED ASSETS, LIABILITIES, AND SURPLUS AS OF DECEMBER 31, 2020 AND 2019

	2020	2019
<b>ADMITTED ASSETS</b>		
CASH AND INVESTED ASSETS:		
Bonds	\$4,453,241,138	\$3,890,579,678
Preferred stocks	6,124,891	7,780,966
Common stocks—unaffiliated	110,532,842	61,309,587
Common stocks—affiliated	2,376,039,425	2,923,954,030
Mortgage loans—net	297,139,107	274,346,238
Real estate occupied by the Company—net of accumulated depreciation of \$47,754,062 and \$47,495,168, respectively	27,482,922	30,298,243
Investment real estate—net of accumulated depreciation of \$531,949 and \$506,615, respectively	4,417,380	7,108,873
Cash and cash equivalents	42,310	70,919,695
Short-term investments	76,310,437	61,233,017
Securities lending and repurchase agreement cash collateral	357,301,599	300,136,330
Other invested assets	<u>491,550,735</u>	<u>334,551,173</u>
Total cash and invested assets	8,200,182,786	7,962,217,830
INVESTMENT INCOME DUE AND ACCRUED	43,928,837	39,794,396
UNCOLLECTED PREMIUMS	209,192,400	203,621,757
RECEIVABLE FROM SUBSIDIARIES	226,235,924	158,446,623
FEDERAL INCOME TAXES RECOVERABLE	14,399,511	142,333,578
NET DEFERRED TAX ASSETS	83,473,468	73,446,665
COMPANY OWNED LIFE INSURANCE	625,621,329	489,311,725
OTHER ASSETS	<u>37,424,999</u>	<u>38,238,919</u>
TOTAL ADMITTED ASSETS	<u>\$9,440,459,254</u>	<u>\$9,107,411,493</u>
<b>LIABILITIES AND SURPLUS</b>		
LIABILITIES:		
Reserves for policies and contracts	\$3,098,462,958	\$2,847,420,955
Policy and contract claims	1,191,900,822	1,241,488,586
Premiums paid in advance	48,387,359	52,724,108
Asset valuation reserve	105,286,819	216,519,228
Drafts outstanding	22,456,565	22,798,139
Amounts held as agent or trustee	111,892,274	86,187,179
General expenses and taxes due or accrued	196,672,596	164,472,442
Liability for benefits for employees and agents	513,806,206	352,995,914
Borrowings and securities lending	378,534,063	799,411,416
Other liabilities	<u>149,606,116</u>	<u>183,409,317</u>
Total liabilities	<u>5,817,005,778</u>	<u>5,967,427,284</u>
SURPLUS:		
Surplus notes	710,610,861	710,436,567
Special surplus	-	142,187
Unassigned surplus	<u>2,912,842,615</u>	<u>2,429,405,455</u>
Total surplus	<u>3,623,453,476</u>	<u>3,139,984,209</u>
TOTAL LIABILITIES AND SURPLUS	<u>\$9,440,459,254</u>	<u>\$9,107,411,493</u>

See notes to statutory financial statements.



## Exhibit E: Financing Letter



Mutual of Omaha Insurance Company

3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
mutualofomaha.com

February 10, 2022

Mr. Jason P. Lanoha  
President  
Lanoha Real Estate Company  
17070 Wright Plaza, Suite 200  
Omaha, NE 68130

Dear Jason:

Mutual of Omaha Insurance Company intends to privately fund the cost of the Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Hrabchak", with a stylized flourish at the end.

Richard Hrabchak  
Chief Financial Officer and  
Chief Investment Officer



## Exhibit F: Organizational Documents



Mutual of Omaha Insurance Company

3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
[mutualofomaha.com](http://mutualofomaha.com)

Alexis N. Hayes  
Senior Vice President Business Resiliency  
t 402-351-2097  
[Alex.Hayes@mutualofomaha.com](mailto:Alex.Hayes@mutualofomaha.com)

February 10, 2022

### To Whom it May Concern:

Re: Mutual of Omaha Insurance Company

As Senior Vice President Business Resiliency of Mutual of Omaha Insurance Company (“Mutual of Omaha”), I am providing this letter to document that Mutual of Omaha hereby specifically designates and authorizes Jason P. Lanoha of PB LREC, LLC to represent Mutual of Omaha regarding the development and construction of its new corporate headquarters campus in downtown Omaha, Nebraska (the “Development”), including, but not limited to the TIF Application, Redevelopment Agreement, the Redevelopment Plan, and any other documents by and between Mutual of Omaha and the City of Omaha relating to the Development.

Very truly yours,

Alexis N. Hayes

EXHIBIT “D”

APPROVED ELIGIBLE EXPENSES

<b>Category</b>	<b>Budget</b>
Site, Preparation and Utilities	\$1,515,650
Site Preparation, Dewatering	\$1,487,000
Special Foundations, Concrete/Rebar	\$32,491,370
Special Foundations, Excavation/Haul Off	\$6,854,700
Special Foundations, Drilled Piers	\$2,190,500
Public Parking, Delta	\$14,950,650
Architecture & Engineering	\$15,811,375
Geotechnical & Environmental	\$60,000
TIF Fees	\$46,000
Transfer of Eligible Expenses	\$5,500,000
<b>Total</b>	<b>\$80,907,245</b>

EXHIBIT "E"

OWNER REDEVELOPMENT PROMISSORY NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE " '33 ACT") AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE '33 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE '33 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE CITY OF OMAHA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE CITY OF OMAHA TO THE EFFECT THAT REGISTRATION UNDER THE '33 ACT IS NOT REQUIRED.

REDEVELOPMENT PROMISSORY NOTE

\$ \_\_\_\_\_ .00 \_\_\_\_\_, 2022.

FOR VALUE RECEIVED, the City of Omaha, Nebraska ("Borrower"), promises to pay to \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_, (the "Payee"; the Payee, together with any subsequent holder(s) hereof, hereinafter collectively referred to as the "Holder") the principal sum of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_ .00), together with interest thereon at the rate of \_\_\_\_\_ % per annum from \_\_\_\_\_ until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Note as, only, and at such times as any excess ad valorem taxes generated by the Redevelopment Project to be developed on \_\_\_\_\_, a subdivision, as surveyed, platted and recorded, in Douglas County, Nebraska, as set forth in that certain Redevelopment Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and among Borrower, Mutual of Omaha Insurance Company, Lanoha DT 1, LLC and PB LREC, LLC (the "Redevelopment Agreement"), are collected by the Borrower and available for the retirement of the debt evidenced by this Note.

Borrower may prepay the principal amount outstanding in whole or in part, without the prior consent of the Holder.

In the event the monies collected and held in that special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Agreement are insufficient to pay in full all amounts due and owing as set forth in the Redevelopment Agreement, and all excess ad valorem taxes generated by the portion of the Redevelopment Project referred to above, as set forth in the Redevelopment Agreement, have been collected by the Borrower and have been paid, immediately upon being available, towards the retirement of the amounts due hereunder, then, at said date, the Holder shall waive any unpaid portion of the principal and interest due upon written request of Borrower.

Demand, presentment, protest and notice of nonpayment under this Note are hereby waived.



## EXHIBIT “F”

### LEGAL DESCRIPTIONS

#### WDC PARCEL LEGAL DESCRIPTION:

CITY LOTS LOT 8 BLOCK 119 VAC ALLEY ADJ & ALL LTS 1 THRU 8 264 X 284. Parcel # 0311330000.

#### DEVELOPER PARCEL LEGAL DESCRIPTION:

CITY LOTS LOT 8 BLOCK 88 9 INCHES ADJ ON S & ALL LOTS 1 THRU 8 BLOCK 88 240.66 X 264. Parcel # 0308240005.

#### PARK FRONTAGE BLOCK LEGAL DESCRIPTION:

CITY LOTS LOT 8 BLOCK 120 VAC ALLEY & LTS 1 THRU 8. Parcel # 0311520002.

#### MIDTOWN GARAGES LEGAL DESCRIPTION:

##### Ramp A:

Property Address: 3202 HARNEY STREET  
Legal Description: MIDTOWN CROSSING TURNER PARK LOT 3 BLOCK 0, Parcel # 1741675505

##### Ramp B:

A portion of MUTUAL OF OMAHA CAMPUS LOT 2 BLOCK 0 IRREG. Parcel # 1827990027, which will be subdivided to create a parking facility consisting of approximately 1,119 parking stalls from the adjacent surface parking lot and building).

##### Ramp C:

Property Address: 225 SOUTH 33 STREET  
Legal Description: MIDTOWN CROSSING TURNER PARK LOT 1 BLOCK 0

EXHIBIT “G”

PURCHASE AND SALE AGREEMENT FOR WDC PARCEL

## REAL ESTATE PURCHASE AND SALE AGREEMENT (WDC PARCEL)

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the “Purchase and Sale Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2022 (“Effective Date”), by and between the City of Omaha, Nebraska, a Nebraska municipal corporation (“City”), and Lanoha DT 1, LLC a Nebraska limited liability company (“Lanoha DT 1”), or its successor and assigns.

### RECITALS

WHEREAS, City is the owner of a certain real property a generally located at 215 South 15<sup>th</sup> Street, Omaha, NE 68102, and legally described as set forth in Exhibit “A” attached hereto (the “WDC Parcel”); and

WHEREAS, Lanoha DT 1 is the owner of certain real property generally located at 1414 Capitol Avenue, Omaha NE, 68102, and legally described as set forth in Exhibit “B”, attached hereto (the “Developer Parcel”); and

WHEREAS, City, Lanoha DT 1, Mutual of Omaha Insurance Company and PBLREC, LLC, have entered in a Redevelopment Agreement dated \_\_\_\_\_ (“Redevelopment Agreement”), in furtherance of various redevelopment plans identified therein, in which the parties have agreed to the transfer and sale of the WDC Parcel to Lanoha DT 1 and the Developer Parcel to the City, subject to the terms and conditions of the Redevelopment Agreement and this Purchase and Sale Agreement; and

WHEREAS, City desires to sell to Lanoha DT 1, and Lanoha DT 1 desires to purchase from City, the WDC Parcel, subject to the terms and conditions set forth herein; and

WHEREAS, as consideration for its purchase of the WDC Parcel, Lanoha DT 1 intends to sell and transfer to City all of Lanoha DT 1’s interest in the Developer Parcel.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Purchase, Sale and Transfer of Real Property.**

- a. **WDC Parcel Sale and Purchase.** On the terms and conditions hereinafter set forth, City hereby agrees to transfer, sell, convey and assign to Lanoha DT 1, and Lanoha DT 1 hereby agrees to purchase and assume from City the WDC Parcel together with all right-of-ways, restrictions and easements appurtenant thereto, as described in Exhibit “A” attached hereto and incorporated herein.

- b. **WDC Parcel Consideration.** On the terms and conditions hereinafter set forth, Lanoha DT 1 hereby agrees to transfer, convey and assign to City, and City hereby agrees to acquire and assume from Lanoha DT 1 the Developer Parcel, together with all right-of-ways, restrictions and easements appurtenant thereto, as described in Exhibit “B” attached hereto and incorporated herein. The City hereby finds and determines that the consideration received for the sale and transfer by the City of the WDC Parcel, pursuant to the WDC Parcel Purchase Agreement, is the fair value for the WDC Parcel, consistent with the provisions of the Nebraska Community Development Law.
  - c. **Closing.** The transactions contemplated by this Agreement shall be consummated (the “Closing”) at the offices of TitleCore National, 8701 West Dodge Road Suite 150, Omaha, Nebraska 68114 (the “Title Company”) on or before December 31, 2022, or such other earlier date as set forth in the Redevelopment Agreement or as may be mutually agreed upon by Lanoha DT 1 and City (herein referred to as the “Closing Date”). The fee payable to the Title Company for acting as closing agent in connection with this transaction shall be split equally between City and Lanoha DT 1 at Closing.
  - d. **Title and Possession of WDC Parcel.** At Closing, title to and possession of the WDC Parcel shall be conveyed by City to Lanoha DT 1 under the terms and conditions set forth herein. City shall be responsible for any documentary stamp or transfer tax incurred upon recording the WDC Parcel Deed (hereinafter defined) for the WDC Parcel at Closing. Lanoha DT 1 shall be responsible for the fee incurred in connection with recording the WDC Parcel Deed in the real estate records of Douglas County, Nebraska.
  - e. **Title and Possession of Developer Parcel.** At Closing, title to and possession of the Developer Parcel shall be conveyed by Lanoha DT 1 to City under the terms and conditions set forth herein. Lanoha DT 1 shall be responsible for any documentary stamp or transfer tax incurred upon recording the Developer Parcel Deed (hereinafter defined) for the Developer Parcel at Closing. City shall be responsible for the fee incurred in connection with recording the Developer Parcel Deed in the real estate records of Douglas County, Nebraska.
2. **WDC Parcel Title Insurance.** Within thirty (30) business days after the Lanoha DT 1 executes this Agreement, City shall deliver to Lanoha DT 1 a current Commitment for an Owner's Policy of Title Insurance (the “WDC Parcel Title Commitment”) from the Title Company issued by the title insurance company underwriting the same, pursuant to which the Title Company agrees to issue to Lanoha DT 1 an ALTA Owner's Policy of Title Insurance in the amount of the value of the WDC Parcel, showing Lanoha DT 1 as the proposed insured, describing the WDC Parcel, and insuring Lanoha DT 1's interest in the WDC Parcel. Written notice of any exception or condition contained in the WDC Parcel Title Commitment that is unacceptable to Lanoha DT 1 in its reasonable discretion (each, a “WDC Parcel Title Defect”) shall be delivered by Lanoha DT 1 to City within fifteen (15) business days of receipt of the WDC Parcel Title Commitment (“WDC Parcel Objection Notice”). City shall have the right, but not the obligation, to cure any WDC Parcel Title Defect to the satisfaction of Lanoha DT 1 within thirty (30) days from receipt of the WDC Parcel Objection Notice. In the event that City's right, title and interest in and to the WDC Parcel shall, at the time of Closing, be subject to any



WDC Parcel Title Defects arising after the effective date of the WDC Parcel Title Commitment and not waived or approved by Lanoha DT 1, City shall have fifteen (15) days from receipt of notice thereof from Lanoha DT 1 to cure such WDC Parcel Title Defects to the reasonable satisfaction of Lanoha DT 1 and the Closing Date shall be extended by such cure period. In the event that City elects not to cure or fails to cure all WDC Parcel Title Defects within the time periods set forth above to the satisfaction of Lanoha DT 1, Lanoha DT 1 may, in its sole discretion, elect to either (i) terminate this Agreement by delivering written notice to City within five (5) business days of the expiration of any such cure period or receipt of notice from City of its election not to cure such WDC Parcel Title Defect, in which event, neither Lanoha DT 1 nor City shall have any further obligation or liability to each other under this Agreement, except those which specifically survive the termination of this Agreement; or (ii) waive the requirement that City cure such WDC Parcel Title Defect, and close on the purchase of the WDC Parcel hereunder, thereby waiving any terms and provisions of this Agreement relating to such WDC Parcel Title Defect. The premium for a standard ALTA owner's title insurance policy on the WDC Parcel shall be split equally between Lanoha DT 1 and City. Lanoha DT 1 shall be solely responsible for payment of the premium for any additional endorsements which it requests to the policy on the WDC Parcel.

3. **Developer Parcel Title Insurance**. Within thirty (30) business days after the Lanoha DT 1 executes this Agreement, Lanoha DT 1 shall deliver to City a current Commitment for an Owner's Policy of Title Insurance (the "Developer Parcel Title Commitment") from the Title Company issued by the title insurance company underwriting the same, pursuant to which the Title Company agrees to issue to City an ALTA Owner's Policy of Title Insurance in the amount of the appraised value of the Developer Parcel, showing City as the proposed insured, describing the Developer Parcel, and insuring Lanoha DT 1's interest in the Developer Parcel. Written notice of any exception or condition contained in the Developer Parcel Title Commitment that is unacceptable to City in its reasonable discretion (each, a "Developer Parcel Title Defect") shall be delivered by City to Lanoha DT 1 within fifteen (15) business days of receipt of the Developer Parcel Title Commitment ("Developer Parcel Objection Notice"). Lanoha DT 1 shall have the right, but not the obligation, to cure any Developer Parcel Title Defect to the satisfaction of City within fifteen (15) days from receipt of the Developer Parcel Objection Notice. In the event that City's right, title and interest in and to the Developer Parcel shall, at the time of Closing, be subject to any Developer Parcel Title Defects arising after the effective date of the Developer Parcel Title Commitment and not waived or approved by City, Lanoha DT 1 shall have fifteen (15) days from receipt of notice thereof from City to cure such Developer Parcel Title Defects to the reasonable satisfaction of City and the Closing Date shall be extended by such cure period. In the event that Lanoha DT 1 elects not to cure or fails to cure all Developer Parcel Title Defects within the time periods set forth above to the satisfaction of City, City may, in its sole discretion, elect to either (i) terminate this Agreement by delivering written notice to Lanoha DT 1 within five (5) business days of the expiration of any such cure period or receipt of notice from Lanoha DT 1 of its election not to cure such Developer Parcel Title Defect, in which event, neither Lanoha DT 1 nor City shall have any further obligation or liability to each other under this Agreement, except those which specifically survive the termination of this Agreement; or (ii) waive the requirement that Lanoha DT 1 cure such Developer Parcel Title Defect, and close on the purchase of the Developer Parcel hereunder thereby waiving any terms and provisions of this

Agreement relating to such Developer Parcel Title Defect. The premium for a standard ALTA owner's title insurance policy on the Developer Parcel shall be split equally between Lanoha DT 1 and City. City shall be solely responsible for payment of the premium for any additional endorsements, which it requests to the policy on the Developer Parcel.

4. **Due Diligence Investigation; Right to Terminate.**

- a. **Due Diligence Materials.** Within sixty (60) business days after the date Lanoha DT 1 executed this Agreement, City shall provide to Lanoha DT 1 with respect to the WDC Parcel, and Lanoha DT 1 shall provide to City with respect to the Developer Parcel, copies of the following, to the extent in such party's possession: (i) any Leases; (ii) the most recent ALTA Survey; (iii) the most recent Phase I Environmental Site Assessment; and (iv) the most recent property condition report. Neither party makes any representation or warranty with respect to these and is providing them only as an accommodation to the other party. All information contained in any documents provided shall be deemed to have been fully and completely disclosed as if set forth in this Agreement.
- b. **Due Diligence Investigation.** Each party shall have until December 1, 2022 (the "Due Diligence Period"), or such later date as agreed to by the parties, to complete a due diligence investigation including, but not limited to, causing one or more independent environmental or structural engineers, inspectors, surveyors, appraisers, consultants, specialists or firms chosen by such party at its sole discretion, to inspect, audit and test the condition of the WDC Parcel or the Developer Property, as relevant. The cost and expense of all such inspections, appraisals, audits and tests shall be borne solely by the investigating party. No inspection shall involve the taking of samples or other physically invasive procedures without the prior written consent of the current owner of the property, in its sole and absolute discretion.
- c. **Access to Transferred Property.** Lanoha DT 1 and City each agree to permit the other and their agents and independent contractors full and complete access to the Developer Parcel or the WDC Parcel, respectively, at reasonable hours and upon at least twenty-four (24) hours' notice for the purposes set forth.
  - i. Lanoha DT 1 shall indemnify and hold City harmless from and against any loss, costs, damage or expense arising from any physical inspection of the WDC Parcel performed by Lanoha DT 1, its agents, employees, independent contractors or assigns. Before entering upon the WDC Parcel, Lanoha DT 1 shall furnish and shall cause each of its independent environmental or structural engineers, inspectors, surveyors, appraisers, consultants, specialists or firms chosen by Lanoha DT 1 to furnish to City a certificate of insurance, in which City is named as an additional insured and evidencing: (a) commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate; and (b) workers' compensation insurance as required by the State of Nebraska. The indemnification set forth in this Section 3(c)(i) shall specifically survive the closing and/or termination of this Agreement.

- ii. City shall indemnify and hold Lanoha DT 1 harmless from and against any loss, costs, damage or expense arising from any physical inspection of the Developer Parcel performed by City, its agents, employees, independent contractors or assigns. Lanoha DT 1 acknowledges and understands that City is self-insured. The indemnification set forth in this Section 3(c)(ii) shall specifically survive the closing or termination of this Agreement.
- d. **Right to Terminate.** If during the Due Diligence Period, Lanoha DT 1 in its sole discretion shall be satisfied with its findings hereof, Lanoha DT 1 shall notify City in writing (prior to the expiration of the Due Diligence Period) of Lanoha DT 1's election to proceed with the acquisition (such notice from Lanoha DT 1 being herein the "Proceed Notice"). In the absence of the timely delivery by Lanoha DT 1 of its Proceed Notice, Lanoha DT 1 shall be deemed to have elected to terminate this Agreement, in which event:
  - i. this Agreement shall be terminated; and
  - ii. the parties shall be relieved of any further obligation and responsibility under this Agreement, except provisions that expressly survive termination.

It is expressly recognized and agreed by the parties that following delivery by Lanoha DT 1 of its Proceed Notice, Lanoha DT 1 shall be deemed to have waived its termination right. In order for Lanoha DT 1 to waive its termination rights hereunder, Lanoha DT 1 shall be required to have delivered a Proceed Notice prior to expiration of the Due Diligence Period.

- 5. **Prorations.** Except as specifically set forth herein, income, expenses and liabilities attributable to either the WDC Parcel or the Developer Parcel, through the Closing Date shall be prorated between City and Lanoha DT 1 as of the Closing Date. City shall be deemed to be the owner of the WDC Parcel through the day immediately preceding the Closing Date, and Lanoha DT 1 shall be deemed to be the owner of the WDC Parcel as of the Closing Date. Lanoha DT 1 shall be deemed to be the owner of the Developer Parcel through the day immediately preceding the Closing Date, and City shall be deemed to be the owner of the Developer Parcel as of the Closing Date. All real estate taxes which become delinquent in the year in which closing takes place shall be treated as though all are current taxes, and those taxes shall be prorated as of the date of closing, and all the prior years' taxes, interest, and other charges, if any, will be paid by the current owner of such property.
- 6. **Representations, Warranties and Covenants.**
  - a. **Representations, Warranties and Covenants of City.** City hereby represents, warrants and covenants to Lanoha DT 1 as follows, for purposes of inducing Lanoha DT 1 to enter into this Agreement and satisfy its obligations hereunder:
    - i. **Transfer of Property.** City has and shall convey, transfer, and assign to Lanoha DT 1 at Closing good, marketable and indefeasible fee simple title to the WDC Parcel, free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses,

security interest, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, and those covenants, conditions, restrictions, rights-of-way, and easements of record reflected on the WDC Parcel Title Commitment other than any WDC Parcel Title Defects identified by Lanoha DT 1 pursuant to the terms of this Agreement, unless such WDC Parcel Title Defects are either cured by City to the reasonable satisfaction of Lanoha DT 1 or waived by Lanoha DT 1 after such identification (“Permitted WDC Parcel Exceptions”).

- ii. **Organization; Power; Good Standing.** City is a municipal corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and satisfy its obligations hereunder. City has taken all action necessary to authorize and direct City to enter into this Agreement and satisfy its obligations hereunder.
- iii. **Binding Agreement.** This Agreement and all other documents executed and delivered by City pursuant to this Agreement constitute the legally valid and binding agreement of City, enforceable against City in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.
- iv. **Effect of Agreement.** To the best of City’s knowledge and belief, the execution, delivery and performance of this Agreement by City and the consummation of the transactions contemplated hereby will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of City to be obtained, except for the approval of the Omaha City Council, which is a Lanoha DT 1’s condition of Closing; and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the WDC Parcel pursuant to any agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which City is a party or by which any of the WDC Parcel may be bound.
- v. **Bankruptcy.** There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or to City’s best knowledge and belief threatened against City or any of the WDC Parcel.
- vi. **Accuracy of City's Representations.** The representations and warranties of City herein are now, and shall be on and as of the Closing Date, true and correct in all material respects.

- b. **Representations, Warranties and Covenants of Lanoha DT 1.** Lanoha DT 1 hereby represents, warrants and covenants to City as follows, for purposes of inducing City to enter into this Agreement and satisfy its obligations hereunder:
- i. **Transfer of Property.** Lanoha DT 1 has and shall convey, transfer, and assign to City at Closing good, marketable and indefeasible fee simple title to the Developer Parcel, free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses, security interest, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, and those covenants, conditions, restrictions, rights-of-way, and easements of record reflected on the Developer Parcel Title Commitment other than any Developer Parcel Title Defects identified by City pursuant to the terms of this Agreement, unless such Developer Parcel Title Defects are either cured by Lanoha DT 1 to the reasonable satisfaction of City or waived by City after such identification (“Permitted Developer Parcel Exceptions”).
  - ii. **Organization; Power; Good Standing.** Lanoha DT 1 is a Nebraska limited liability company duly organized and validly existing and is in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and satisfy its obligations hereunder.
  - iii. **Binding Agreement.** This Agreement and all other documents executed and delivered by Lanoha DT 1 pursuant to this Agreement constitute the legally valid and binding agreement of Lanoha DT 1, enforceable against Lanoha DT 1 in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.
  - iv. **Effect of Agreement.** To the best of Lanoha DT 1’s knowledge and belief, the execution, delivery and performance of this Agreement by Lanoha DT 1 and the consummation of the transactions contemplated hereby will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Lanoha DT 1 to be obtained; and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Developer Parcel pursuant to any agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Lanoha DT 1 is a party or by which any of the Developer Parcel may be bound.
  - v. **Bankruptcy.** There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or to Lanoha DT 1’s best knowledge and belief threatened against Lanoha DT 1 or any of the Developer Parcel.



- vi. **Accuracy of Lanoha DT 1's Representations.** The representations and warranties of Lanoha DT 1 contained herein are now and shall be on and as of the Closing Date true and correct in all material respects.

7. **Closing Documents.**

- a. **Deliveries at Closing by City.** At the Closing, City shall deliver to Lanoha DT 1 and Lanoha DT 1 shall accept from City, the following:
  - i. A duly executed and acknowledged special warranty deed (warranting title against claims of all persons claiming by, through or under the City, but not otherwise) ("WDC Parcel Deed") in form attached hereto as Exhibit "C," conveying and assigning to Lanoha DT 1 title to the WDC Parcel.
  - ii. Possession of the WDC Parcel. Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the title policy in accordance with the WDC Parcel Title Commitment.
- b. **Documents to be Delivered by Lanoha DT 1.** At the Closing, Lanoha DT 1 shall deliver to City and City shall accept from Lanoha DT 1, the following:
  - i. A duly executed and acknowledged special warranty deed ("Developer Parcel Deed") in form attached hereto as Exhibit "D", conveying and assigning to City title to the Developer Parcel.
  - ii. Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the title policy in accordance with the Developer Parcel Title Commitment.

8. **Obligations Prior to Closing.** From the date hereof through the Closing Date:

- i. Lanoha DT 1 shall not enter into any contracts, agreements or any other commitments regarding the Developer Parcel without the prior written consent of City.
- ii. Lanoha DT 1 shall comply with all notices of violations or alleged violations by Lanoha DT 1 of any state, county, city or municipal laws, ordinances, regulations, rules, orders or requirements of departments of housing, building, fire, labor or health or other governmental authorities having jurisdiction over or affecting the WDC Parcel or the use or operation thereof, if any.

9. **Conditions Precedent to Obligation to Close.**

- a. **Conditions Precedent to Obligation of Lanoha DT 1 to Close.** The obligations of Lanoha DT 1 at Closing set forth herein are subject to the satisfaction of the following conditions:

- i. The representations and warranties of City set forth herein shall be true and correct in all material respects at and as of the Closing Date; and
  - ii. City shall have fulfilled its obligations to Lanoha DT 1 under the Redevelopment Agreement, specifically including, but not limited to, City shall have issued revenue bonds for the specific purposes of funding the construction of a modern streetcar, or otherwise irrevocably committed or secured the requisite funds to proceed with construction of the modern streetcar. Lanoha DT 1 reserves the right to waive this condition and proceed to Closing at its own risk; and
  - iii. City shall have satisfied all of its material obligations hereunder required to be satisfied on or prior to Closing, including, but not limited to the demolition of the building located on the WDC Parcel in accordance with the Redevelopment Agreement.
- b. **Conditions Precedent to Obligation of City to Close.** The obligations of City at Closing set forth herein are subject to the satisfaction of the following conditions:
- i. The representations and warranties of Lanoha DT 1 set forth herein shall be true and correct in all material respects at and as of the Closing Date; and
  - ii. Lanoha DT 1 shall have satisfied all of its material obligations hereunder required to be satisfied on or prior to Closing; and
  - iii. Lanoha DT 1 shall have fulfilled its obligations to City under the Redevelopment Agreement, specifically affirmatively notifying the City of Mutual of Omaha Insurance Company, Inc.'s intent to proceed with construction of the Redevelopment Project in accordance with the Redevelopment Agreement; and
  - iv. City shall have obtained approval of Redevelopment Agreement and this Real Estate Purchase and Sale Agreement from the Omaha City Council.

10. **Default.**

- a. **Default by City.** If City shall default under this Agreement and such default shall not have been cured by City within ten (10) days of notice thereof from Lanoha DT 1, Lanoha DT 1 shall have the right, at Lanoha DT 1's election, to:
  - i. Waive compliance with the breached term(s) or condition(s), without any claim or remedy for such breach;
  - ii. Terminate this Agreement (except for indemnification obligations expressly stated hereunder to survive such termination); or

iii. Seek money damages at law or specific performance with respect to the WDC Parcel if the City fails, neglects or refuses to Close on the sale of the WDC Parcel to Buyer.

- b. **Default by Lanoha DT 1.** If Lanoha DT 1 shall default under this Agreement and such default shall not have been cured by Lanoha DT 1 within ten (10) days of notice thereof from City, the City, at its sole discretion, shall have the right to terminate this Agreement without any recourse to Lanoha DT 1 (except for indemnification obligations expressly stated hereunder to survey such termination) or seek specific performance with respect to the WDC Parcel if Lanoha DC 1 fails, neglects or refuses to Close on the sale of the WDC Parcel.

11. **Miscellaneous.**

- a. **Binding Effect; Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and permitted assigns any right, remedy, obligation, or liability under or by reason of this Agreement.
- a) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- c. **Further Assurances.** At any time and from time to time before or after the Closing Date, at either party's reasonable request and without further consideration, the other party hereto shall execute and deliver such other instruments and documents, and take such other actions as may be reasonably required in order to more effectively carry out and implement the provisions and purposes of this Agreement.
- d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
- e. **Notices.** All notices, requests, demands or other communications hereunder (including notices of all asserted actions, claims or demands) shall be given in writing and shall be deemed to have been duly delivered upon personal delivery to the other party; or twenty-four (24) hours after deposit with a reputable overnight courier service, or forty-eight (48) hours after deposit in the U. S. Mail, first class postage prepaid, to the addressee at the address herein designated or at such other address as may be designated in writing by notice given in the manner provided herein:

To City:                      The City of Omaha  
                                      Attn: City Clerk  
                                      1819 Farnam Street, Suite LC-1  
                                      Omaha NE 68183

With a copy to:            The City of Omaha

Attn: Law Department  
1819 Farnam Street, Suite 804  
Omaha NE 68183

To Lanoha DT 1: Jason Lanoha  
Lanoha DT 1, LLC  
17070 Wright Plaza, Suite 200  
Omaha, NE 68130

With a copy to: Larry A. Jobeun  
Fullenkamp Jobeun Johnson & Beller, LLP  
11440 West Center Road, Suite C  
Omaha, NE 68144

- f. **Severability.** If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.
- g. **Time of Essence.** The parties agree that time is an essential element to the performance of their respective obligations hereunder.
- h. **Waivers.** No waiver of any breach of any warranty, representation, covenant or other term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other warranty, representation, covenant or other term or provision of this Agreement. No such waiver shall be effective unless in writing and signed by the party affecting the waiver.
- i. **Construction.** The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.
- j. **Assignability.** Neither party shall have the right to assign this Agreement, or any of its rights hereunder, without the consent of the other party.
- k. **Entire Agreement; Amendment.** This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby, superseding all prior agreements or understandings, written or oral, and shall not be changed or terminated except by written amendment signed by all the parties hereto.

- l. **Headings.** Headings of sections of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties.
- m. **Brokerage Commission.** The parties acknowledge that no brokers or brokerage fees are due or will be due upon the closing of this transaction.
- n. **Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is not a Business Day, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such non-Business Day. Unless otherwise specified herein, all references herein to a “day” or “days” shall refer to calendar days and not Business Days. A “Business Day” shall mean any day other than a Saturday, Sunday or any day on which commercial banks in Omaha, Nebraska, are authorized or obligated to close.
- o. **WDC PARCEL - AS IS:** LANOHA DT 1 ACKNOWLEDGES THAT LANOHA DT 1 IS FULLY RELYING ON ITS (OR ITS REPRESENTATIVES’) INSPECTIONS OF THE TRANSFERRED WDC PARCEL AND NOT UPON ANY REPRESENTATIONS, WARRANTIES OR STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE BY CITY OR ANY OF ITS REPRESENTATIVES. LANOHA DT 1 ACKNOWLEDGES THAT LANOHA DT 1 HAS OR WILL HAVE (OR ITS REPRESENTATIVES HAVE OR WILL HAVE) THOROUGHLY INSPECTED AND EXAMINED THE WDC PARCEL TO THE EXTENT DEEMED NECESSARY BY LANOHA DT 1 TO ENABLE LANOHA DT 1 TO EVALUATE THE PHYSICAL, LEGAL AND FINANCIAL CONDITION OF THE WDC PARCEL AND ALL OTHER ASPECTS OF THE WDC PARCEL (INCLUDING THE ENVIRONMENTAL CONDITION OF THE WDC PARCEL, COMPLIANCE OR NON-COMPLIANCE OF THE WDC PARCEL WITH ALL LEGAL REQUIREMENTS, INCLUDING ALL ZONING ORDINANCES, BUILDING CODES AND SET-BACK REQUIREMENTS, AMERICANS WITH DISABILITIES ACT REQUIREMENTS, AND COMPLIANCE OR NON-COMPLIANCE OF THE WDC PARCEL WITH ALL RESTRICTIVE COVENANTS, EASEMENTS, AND OTHER PRIVATE AGREEMENTS). AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT AND THE PURCHASE, LANOHA DT 1 HEREBY AGREES TO ACCEPT THE WDC PARCEL ON THE CLOSING DATE IN ITS “AS IS” CONDITION, WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, EXCEPT ONLY THE TITLE WARRANTIES EXPRESSLY SET FORTH IN THE WDC PARCEL DEED. THESE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING.
- p. **DEVELOPER PARCEL - AS IS:** CITY ACKNOWLEDGES THAT CITY IS FULLY RELYING ON ITS (OR ITS REPRESENTATIVES’) INSPECTIONS OF THE DEVELOPER PARCEL AND NOT UPON ANY REPRESENTATIONS, WARRANTIES OR STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE BY LANOHA DT 1 OR ANY OF ITS REPRESENTATIVES. CITY ACKNOWLEDGES THAT CITY HAS OR WILL HAVE (OR ITS REPRESENTATIVES



HAVE OR WILL HAVE) THOROUGHLY INSPECTED AND EXAMINED THE DEVELOPER PARCEL TO THE EXTENT DEEMED NECESSARY BY CITY TO ENABLE CITY TO EVALUATE THE PHYSICAL, LEGAL AND FINANCIAL CONDITION OF THE DEVELOPER PARCEL AND ALL OTHER ASPECTS OF THE DEVELOPER PARCEL (INCLUDING THE ENVIRONMENTAL CONDITION OF THE DEVELOER PARCEL, COMPLIANCE OR NON-COMPLIANCE OF THE DEVELOPER PARCEL WITH ALL LEGAL REQUIREMENTS, INCLUDING ALL ZONING ORDINANCES, BUILDING CODES AND SET-BACK REQUIREMENTS, AMERICANS WITH DISABILITIES ACT REQUIREMENTS, AND COMPLIANCE OR NON-COMPLIANCE OF THE DEVELOPER PARCEL WITH ALL RESTRICTIVE COVENANTS, EASEMENTS, AND OTHER PRIVATE AGREEMENTS). AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT AND THE PURCHASE, CITY HEREBY AGREES TO ACCEPT THE DEVELOPER PARCEL ON THE CLOSING DATE IN ITS "AS IS" CONDITION, WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, EXCEPT ONLY THE TITLE WARRANTIES EXPRESSLY SET FORTH IN THE DEVELOPER PARCEL DEED. THESE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING.

[SIGNATURE PAGES TO FOLLOW]



STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF DOUGLAS                )

        The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2022, by \_\_\_\_\_.

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

**EXHIBIT “A”**  
**“WDC PARCEL”**

CITY LOTS LOT 8 BLOCK 119 VAC ALLEY ADJ & ALL LTS 1 THRU 8 264 X 284. Parcel # 0311330000.

**EXHIBIT “B”**  
**“DEVELOPER PARCEL”**

CITY LOTS LOT 8 BLOCK 88 9 INCHES ADJ ON S & ALL LOTS 1 THRU 8 BLOCK 88 240.66 X 264. Parcel  
# 0308240005.



**EXHIBIT "C"**  
**"FORM OF DEED"**

WHEN RECORDED, RETURN TO:

[Space Above This Line for Recording Data]

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**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that the City of Omaha, a Nebraska municipal corporation, (hereinafter referred to as the "Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid, hereby grants, bargains, sells and conveys to Lanoha DT 1, LLC, a Nebraska limited liability company (hereinafter referred to as the "Grantee"), its successors and assigns, forever, the following described real estate (as defined in Neb. Rev. Stat. § 76-201) located in Omaha, Douglas County, Nebraska (the "Property"):

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This Deed is made and accepted subject to the easements, encumbrances, and other matters of record described on Exhibit A attached hereto and made a part hereof.

And Grantor does hereby bind itself and its successors and legal representatives to warrant and forever defend, all and singular, the title to the Property unto the said Grantee, its successors, and assigns, against the claims of every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed this \_\_\_\_ day of \_\_\_\_\_, 2022.

GRANTOR:

CITY OF OMAHA, a Nebraska municipal corporation,

By: \_\_\_\_\_

Mayor

Attest:

---

Clerk

STATE OF NEBRASKA     )  
  )SS.  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a notary public in and for said county, personally came \_\_\_\_\_, and acknowledged that **they** did execute the foregoing instrument and that the same is **their** free act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

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

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "D"**  
**"FORM OF DEED"**

WHEN RECORDED, RETURN TO:

[Space Above This Line for Recording Data]

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**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that Lanoha DT 1, LLC, a Nebraska limited liability company (hereinafter referred to as the "Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid, hereby grants, bargains, sells and conveys to the City of Omaha, a Nebraska municipal corporation (hereinafter referred to as the "Grantee"), its successors and assigns, forever, the following described real estate (as defined in Neb. Rev. Stat. § 76-201), located in Omaha, Douglas County, Nebraska (the "Property"):

---

This Deed is made and accepted subject to the easements, encumbrances, and other matters of record described on Exhibit A attached hereto and made a part hereof.

And Grantor does hereby bind itself and its successors and legal representatives to warrant and forever defend, all and singular, the title to the Property unto the said Grantee, its successors, and assigns, against the claims of every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed this \_\_\_\_ day of \_\_\_\_\_, 2022.

GRANTOR:

LANOHA DT 1, LLC, a Nebraska limited liability company,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[illegible]

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a notary public in and for said county, personally came \_\_\_\_\_, and acknowledged that **they** did execute the foregoing instrument and that the same is **their** free act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT “H”

CONDOMINIUM REGIME

**This Exhibit shall be in a mutually agreeable form to be drafted after the approval of this Redevelopment Agreement.**



EXHIBIT “T”

PURCHASE AND SALE AGREEMENT FOR TOWER GARAGE

**PURCHASE AND SALE AGREEMENT  
(PARKING GARAGE CONDOMINIUM UNIT)**

**THIS PURCHASE AND SALE AGREEMENT** (this “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between **MUTUAL OF OMAHA INSURANCE COMPANY**, a Nebraska corporation, or assigns (“**Seller**”), and **CITY OF OMAHA**, a Nebraska municipal corporation in Douglas County, Nebraska with an address of 1819 Farnam Street, Omaha, Nebraska 68183 (“**Buyer**”).

**RECITALS**

**WHEREAS**, Seller intends to construct and own an approximately 880,000 square foot headquarters office building (the “**Tower**”) with an associated parking facility located within the Tower consisting of approximately 2,200 parking stall facility (the “**Tower Garage**”), in substantial accordance with the mutually agreed upon plans and specification, on the real property legally described on **Exhibit “A”** attached hereto and by this reference made a part hereof (the “**Office Tower Site**”);

**WHEREAS**, the Office Tower Site and Tower Garage are the subject to the provisions of a Redevelopment Agreement dated as of \_\_\_\_\_ (“**Redevelopment Agreement**”), and the Mutual Redevelopment Plan, as defined therein; and

**WHEREAS**, Seller intends to subject the Office Tower Site, Tower and Tower Garage into the condominium form of ownership to be known as “\_\_\_\_\_” as provided for in the Nebraska Condominium Act and Declaration and Master Deed of The \_\_\_\_\_ Condominium Property Regime, as defined below (hereinafter referred to as the “**Condominium**”); and

**WHEREAS**, the parties have determined that, in order to satisfy the requirements of Nebraska law regarding creation and formation of condominiums, it is essential to have the Condominium constructed, with “as built” vertical and horizontal plat and plans of the constructed building prepared and filed prior to conveyance of the Tower Garage Unit to Buyer; and

**WHEREAS**, upon the recording of the Declaration, the Seller desires to sell and Buyer desires to purchase the following legally described condominium unit, to-wit:

Condominium Unit \_\_\_\_\_, in accordance with the Master Deed and Declaration of Condominium Ownership for \_\_\_\_\_ Condominiums, dated \_\_\_\_\_ and recorded \_\_\_\_\_, 20\_\_\_\_, Instrument No. \_\_\_\_\_ in the Office of the Douglas County Register of Deeds (the “**Tower Garage Unit**”); and

**WHEREAS**, the parties have determined that the Tower Garage Unit, together with the undivided percentage interest in the common elements (as defined in the Master Deed and Declaration of the \_\_\_\_\_ Condominium Property Regime (the “**Declaration**”), will be conveyed to Buyer at Closing hereunder in fee subject to the terms and conditions of the Declaration.

**NOW, THEREFORE**, for and in consideration of the promises and agreements of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Seller and Buyer hereby agree as follows:

**1. PURCHASE AND SALE OF REAL PROPERTY**

- A. Upon and subject to the terms and conditions set forth in this Agreement, Seller shall (i) sell to Buyer and Buyer shall purchase from Seller the Tower Garage Unit at the price herein set forth herein, and (ii) the parties shall take the other actions and enter into the other agreements contemplated by this Agreement.
- B. Buyer agrees to pay to Seller at Closing, for the Tower Garage Unit the product of Forty-Five Thousand and No/100<sup>th</sup> (\$45,000.00) Dollars multiplied by the number of parking stalls located within the Tower Garage Unit (the **“Purchase Price”**). The Purchase Price shall be payable at Closing, subject to the closing costs, adjustments, prorations and credits provided for herein.
- C. Seller agrees to sell and convey the Tower Garage Unit to Buyer by special warranty deed (the **“Deed”**).
- D. Subject to the provisions herein, the Closing of this transaction shall take place at the offices of TitleCore National, 8701 West Dodge Road Suite 150, Omaha, Nebraska 68114 (the **“Title/Escrow Agent”**) or such other place and time mutually agreed to by the parties, within thirty (30) days after the recording of the Declaration which shall be recorded within sixty (60) days after Substantial Completion of the Tower (as defined in Section 7, below) of the Redevelopment Project, as set forth in the Redevelopment Agreement (such date being the **“Closing”** or **“Closing Date”**).
- E. At Closing, Seller shall convey to Buyer title to the Tower Garage Unit in good and indefeasible condition, free and clear of all liens, tenants, occupancies and encumbrances, subject only to:
  - i. the lien for current real property taxes which are not yet due or payable. Taxes and assessments on or respecting the Tower Garage delinquent in the year of Closing shall be prorated to the date of Closing;
  - ii. those additional permitted exceptions arising pursuant to Section 2.C., below;
  - iii. the provisions of this Agreement respecting creation of the Condominium; and
  - iv. the Declaration and the Articles of Incorporation and Bylaws of the Condominium Property Regime (the **“Condominium Documents”**).

The title exceptions referred to in subparagraphs 1.E(i) – (iv) above, inclusive, are hereinafter included with the definition of “**Permitted Exceptions**” below.

## 2. **TITLE INSURANCE**

- A. Seller shall furnish to Buyer a title commitment in the amount of \$\_\_\_\_\_ (the “**Commitment**”) issued by the Title/Escrow Agent issued by the title insurance company underwriting the same (the “**Title Company**”) showing title to the Tower Garage Unit to be titled in Seller, subject to the Permitted Exceptions. Seller shall deliver the Commitment, together with copies of any documents noted as exceptions to title therein, to Buyer not later than fifteen (15) days prior to Closing. Within fifteen (15) days after Seller’s delivery to Buyer of the Commitment, copies of all documents noted therein as exceptions to title (as defined herein) (whichever is latest), Buyer shall notify Seller of any modifications to the Commitment required by Buyer to be made and any exceptions or defects to title revealed thereby not consented to by Buyer (any such modification, exceptions or defects being collectively referred to herein as “**Title Objections**”). Any matters revealed by the Title Commitment to which no objection is timely made by Buyer as provided in this Paragraph 2.A shall be considered “**Permitted Exceptions**” hereunder. In the event that Buyer shall give Seller notice of any Title Objections, Seller may, at its option and at its sole cost and expense, make such modifications, remove such exceptions and/or cure such defects (any such action being hereinafter “**Cure**”). If each of such Title Objections are not Cured to Buyer’s reasonable satisfaction within fifteen (15) days after Buyer’s notice of the Title Objections or if, alternatively, Seller shall not notify Buyer within such fifteen (15) day period that it will endeavor by Closing to Cure any remaining Title Objections (or if, having notified Buyer of intent to effect such Cure by Closing, Seller fails or is unable to do so to Buyer’s reasonable satisfaction), Buyer may terminate this Agreement by giving notice to Seller at any time within ten (10) days following expiration of Seller’s Cure period (or, as to matters to be Cured by Closing, on or before the Closing Date, if not Cured). Failure by Buyer to give notice of termination within the periods contemplated above shall be deemed an election by Buyer to waive the Title Objection(s) at issue and to close with such matters included among the Permitted Exceptions. In the event of termination pursuant to the provisions of this Paragraph 2.A., this Agreement shall be deemed a nullity and of no further force and effect, and neither party hereto shall thereafter have any rights, duties, liabilities or obligations whatsoever under this Agreement, other than for those provisions that expressly survive termination. Should the Commitment be revised after Buyer submits its notice of the Title Objections as set forth above, Buyer shall have an additional fifteen (15) days after receipt of such revised Commitment to make additional objections (which shall be included within the term “**Title Objections**”) and, as above, Seller may endeavor to Cure or give notice of intent to Cure such Title Objections within fifteen (15) days after delivery of such notice in accordance with the foregoing provisions, failing which Buyer shall again have the right either to terminate this Agreement in accordance with the foregoing provisions, or to proceed to Closing without adjustment of the Purchase Price (in which case such uncured Title Objections shall be included within the Permitted Exceptions).

- B. Notwithstanding anything contained in this Agreement to the contrary, Seller shall be required to Cure, at or before Closing, all Monetary Encumbrances, whether or not Buyer includes them in the Title Objections or otherwise notifies Seller of same. “**Monetary Encumbrances**” are herein defined to be encumbrances on title that may be cured by performance of the following acts: (i) satisfaction of any mortgages placed upon the Tower Garage Unit as a lien to secure indebtedness; (ii) causing the release of any mechanic’s liens placed upon the Tower Garage Unit by a third party (except by Buyer or persons claiming through or under Buyer) in connection with work performed or alleged to have been performed on the Tower Garage Unit or materials delivered or alleged to have been delivered on the Tower Garage Unit; (iii) causing the release of any ad valorem tax lien; and (iv) causing the release of any other judgment lien or other lien; provided that, except for matters voluntarily created or not contested by Seller.
- C. Promptly after Closing, Seller shall, at Seller’s expense, cause the Title Company to issue to Buyer a title insurance policy (the “**Policy**”) pursuant to the final Commitment insuring title to the Tower Garage Unit in Buyer in the amount of \$ \_\_\_\_\_, subject only to the Permitted Exceptions. The Policy shall contain such endorsements as requested by Buyer to the extent the same are available for owner’s policies of title insurance issued in the state where the Tower Garage Unit is located. Buyer shall be responsible for paying that portion of the Policy premium attributable to any such endorsements; provided, however Seller shall be responsible for any premium associated with the deletion of the so-called “standard exceptions” for a condominium unit from the Policy.

### 3. **TITLE CHARGES AND CLOSING COSTS**

- A. Seller shall be responsible for all recording fees, transfer taxes, and documentary fees imposed on the sale. Seller shall pay one-half (1/2) of the fees charged in connection with Closing and Seller’s own attorneys’ fees. Buyer shall pay one-half (1/2) of any escrow fees charged in connection with Closing and Buyer’s own attorneys’ fees. Any other closing costs incurred in connection with the Closing shall, unless contrary provision for payment is expressly made elsewhere in this Agreement, be paid by the party customarily paying such costs in commercial real estate transactions in Omaha, Nebraska.
- B. Regarding the Condominium, Seller shall be responsible for all recording fees, transfer taxes, and documentary fees incurred in recording the Condominium Documents (including without limitation the Declaration and all requisite plats and plans, including the “as-built” plans). The premium for a standard owner’s title insurance policy on the Tower Garage shall be split equally between Buyer and Seller.

### 4. **RIGHT OF ENTRY AND INSPECTION**

Buyer and its designated agents, consultants and employees shall (at such parties’ respective risk) have reasonable access to the Tower, including the Tower Garage Unit during and after



construction thereof and prior to Closing in order to make inspections, surveys, and such other observations, tests, and studies as are required by Buyer and as are reasonable and customary (or otherwise approved in advance by Seller), subject to the terms, provisions and limitations of this Section. Buyer agrees to cause all surveys, tests, analyses and inspections performed in accordance herewith to be conducted in a commercially-reasonable manner, and Buyer shall pay all costs incurred in connection with any and all such surveys, tests, analyses and investigations. In connection with the exercise of such right of access, Buyer agrees to defend and indemnify and hold harmless Seller from all claims, liens, actions, costs, damages, and/or liabilities (including, without limitation, injury or loss of life to person(s) in, on, or about the Office Tower Site, damage to the Office Tower Site or any portion thereof and/or court costs and attorneys' fees, inclusive of fees on appeal) arising out of, resulting from or caused by the activities of Buyer or its agents, consultants or employees on or about the Tower Garage Unit or balance of the Office Tower Site and the Condominium prior to the Closing. The foregoing indemnity shall survive Closing or any sooner termination of this Agreement.

Buyer shall endeavor in good faith to keep Seller reasonably apprised of its schedule with regard to any entries upon the Tower Garage Unit prior to Closing for testing and inspection as contemplated hereby. Buyer agrees that, in entering onto the Tower Garage Unit as permitted by this Agreement, Buyer and its representatives will take reasonable steps to minimize any interference with on-going construction then occurring on or about the Tower Garage Unit and, to the extent there will be any such disruption, Seller shall have the right to approve in advance the date, time and methodology of Buyer's studies and investigations.

Notwithstanding any contrary provision of this Agreement, Buyer is not permitted to perform any environmental sampling, boring, drilling or other physically-intrusive environmental testing in, on or about the Office Tower Site, including, without limitation, a so-called "Phase II environmental assessment", without (i) submitting to Seller the scope and specifications for such testing; and (ii) obtaining the prior written consent of Seller with respect to the scope and specifications for such testing, which consent shall not be unreasonably withheld, denied, delayed or conditioned and which consent shall be deemed given if Seller does not notify Buyer that it does not approve same within three (3) business days of its receipt of the proposed scope and specifications. The foregoing does not apply to geotechnical soil borings and similar geotechnical tests and studies needed to determine the physical characteristics of the Tower Garage with regard to matters of compaction and like construction issues.

In the event that the Office Tower Site or any portion thereof is disturbed or altered in any way as a result of Buyer's pre-Closing activities, then unless Seller specifically consents to the contrary in writing, Buyer shall promptly restore the affected portion of the Office Tower Site to its condition existing prior to the commencement of such activities which disturb or alter same, exclusive of normal wear and tear and customary effects of the surveys, tests, inspections and other activities so performed.

The indemnity provision of this Section shall survive Closing or any termination of this Agreement.

**5. DEFAULT BY BUYER; REMEDIES OF SELLER**

In the event Buyer fails to close the purchase of the Tower Garage Unit (to the extent Buyer becomes required hereunder to do so) on the Closing Date, if Seller is not otherwise in default hereunder, and if such failure continues uncured for fifteen (15) days after Seller gives Buyer notice thereof, Seller shall have the right to terminate this Agreement by giving written notice of such termination to Buyer, whereupon this Agreement shall be deemed null and void and of no further force and effect, and neither party hereto shall thereafter have any rights, duties, liabilities, or obligations whatsoever under this Agreement, except for matters that by the express terms of this Agreement survive termination.

In addition to the foregoing, if the Buyer is in default under the terms and conditions of this Agreement, and if any such failure continues uncured for fifteen (15) days after Seller gives Buyer notice thereof, Seller shall be entitled to exercise and pursue any and all remedies available at law and/or equity as a result of such default, including (without limitation) pursuit of specific performance of the obligations of Buyer.

**6. DEFAULT BY SELLER; REMEDIES OF BUYER**

In the event Seller is in default under any of the terms and conditions of this Agreement, if such failure continues uncured for fifteen (15) days after Buyer gives Seller written notice thereof, and if Buyer is not otherwise in default hereunder, Buyer may terminate this Agreement by giving written notice of such termination to Seller within ten (10) days after the cure period, whereupon this Agreement shall be deemed null and void and of no further force and effect, and neither party hereto shall thereafter have any rights, duties, liabilities, or obligations whatsoever under this Agreement, except for matters that by the express terms of this Agreement survive termination.

In addition to the foregoing, if the Seller is in default under the terms and conditions of this Agreement, and if any such failure continues uncured for fifteen (15) days after Buyer gives Seller notice thereof, Buyer shall be entitled to exercise and pursue any and all remedies available at law and/or equity as a result of such default, including (without limitation) pursuit of specific performance of the obligations of Seller.

**7. CLOSING CONDITIONS**

A. At the Closing, the following shall occur:

- i. Seller shall convey the Tower Garage Unit to Buyer by delivery of the Deed as provided herein;
- ii. Buyer shall pay Seller the Purchase Price to Seller as provided herein;
- iii. The Title/Escrow Agent shall record the Deed;
- iv. The parties shall execute settlement sheets confirming credits, prorations, and other adjustments to the Purchase Price provided for herein; and

- v. Seller and Buyer shall enter into a Parking Lease Agreement (the “**Parking Lease Agreement**”), in substantially the form of **Exhibit “O”** to the Redevelopment Agreement.
- B. Without in any way limiting any other provisions of this Agreement, Buyer’s obligation to consummate the Closing under this Agreement shall be subject to satisfaction of each of the following conditions at or before the Closing:
  - i. All of Seller’s representations and warranties contained herein being true and correct in all material respects as of the Closing;
  - ii. Seller shall not be in default in any material respect, as of the Closing Date, with respect to Seller’s covenants, agreements and undertakings set forth in this Agreement; and
  - iii. The construction of the Redevelopment Project shall be Substantially Complete. As used herein “Substantially Complete” means the date on which the construction of the Redevelopment Project is substantially complete, as evidenced by a certificate of occupancy issued for at least eighty percent of the Condominium. Seller agrees that its additional work relating to construction of the Redevelopment Project will not materially interfere with use and access to the Tower Garage Unit.
- C. Without in any way limiting any other provisions of this Agreement, the obligations of Seller to be performed at the Closing shall be subject to satisfaction of the following conditions:
  - i. Any and all representations and warranties of Buyer set forth in this Agreement shall be true, correct and complete in all material respects as of the Closing Date;
  - ii. Buyer shall not be in default in any material respect, as of the Closing Date, with respect to Buyer’s covenants, agreements or undertakings set forth in this Agreement;
  - iii. Buyer shall have delivered and paid the Purchase Price to Seller as required by this Agreement;
  - iv. Buyer shall have executed and delivered the Parking Agreement to Seller; and
  - v. Buyer shall have obtained approval of the Redevelopment Agreement and this Agreement from the Omaha City Council.

Should any of the conditions in favor of a party to this Agreement not be satisfied or waived in writing by such party on or before the Closing Date hereunder, then the party benefiting from such condition may terminate this Agreement by giving written notice to the other party, whereupon this Agreement shall be deemed null and void and of no further force or effect with Buyer and Seller having no further rights, duties, obligations or liabilities hereunder, except for matters that by the express terms of this Agreement shall survive termination. If the party benefiting from a condition that has not been satisfied prior to Closing fails timely to give notice of termination on or before the Closing Date, such party shall be deemed to have waived the condition at issue. Notwithstanding the foregoing, neither party shall be entitled to terminate this Agreement as the result of failure of a condition in its favor if failure of the condition at issue results from such party's breach or default of this Agreement and the terms and provisions hereof.

## **8. CONDOMINIUM DOCUMENTATION**

Seller and Buyer acknowledge and agree that, to achieve the intended separate ownership of the Tower Garage Unit, it is necessary that the Office Tower Site and the Tower be converted to a condominium form of ownership pursuant to the applicable Nebraska Condominium Act (herein, the "**Condominium Act**"), and Seller and Buyer agree that Seller, at Seller's sole cost and expense shall create the Condominium pursuant to a properly recorded and filed Declaration satisfying applicable requirements of the Condominium Act and the form of the Condominium Documents shall be mutually agreed to and attached to the Redevelopment Agreement as **Exhibit "I"** and by this reference made a part hereof (or in such other form as may be mutually acceptable to Seller and Buyer), all requisite vertical and horizontal plat and plans (including "as-built" plans) for the Condominium likewise completed in form mutually approved by the parties and properly filed, together with all organizational documents (and the filing thereof where applicable) to form the not-for-profit corporation to act as the association referenced in the Condominium Documents. The Condominium so created will include two separate units (each a "**Unit**" and, collectively, the "**Units**") comprised of (x) the Tower Garage Unit and (y) the Office Tower Unit as shown on **Exhibit "C"** to the Redevelopment Agreement (the "**Mutual Redevelopment Plan**"), all as more fully described in the Condominium Documents.

## **9. MISCELLANEOUS.**

A. **Binding Effect; Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and permitted assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

B. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

C. **Further Assurances.** At any time and from time to time before or after the Closing Date, at either party's reasonable request and without further consideration, the other party hereto shall execute and deliver such other instruments and documents, and take such other actions as may be reasonably required in order to more effectively carry out and implement the provisions and purposes of this Agreement.



D. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

E. **Notices.** All notices, requests, demands or other communications hereunder (including notices of all asserted actions, claims or demands) shall be given in writing and shall be deemed to have been duly delivered upon personal delivery to the other party; or twenty-four (24) hours after deposit with a reputable overnight courier service, or forty-eight (48) hours after deposit in the U. S. Mail, first class postage prepaid, to the addressee at the address herein designated or at such other address as may be designated in writing by notice given in the manner provided herein:

To Seller:                      The City of Omaha  
Attn: City Clerk  
1819 Farnam Street, Suite LC-1  
Omaha NE 68183  
[elizabeth.butler@cityofomaha.org](mailto:elizabeth.butler@cityofomaha.org)

With a copy to:              The City of Omaha  
Attn: Law Department  
1819 Farnam Street, Suite 804  
Omaha NE 68183  
[jennifer.taylor@cityofomaha.org](mailto:jennifer.taylor@cityofomaha.org)

To Buyer:                      Mutual of Omaha Insurance Company  
Attn: SVP Business Resiliency  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
[Alex.Hayes@mutualofomaha.com](mailto:Alex.Hayes@mutualofomaha.com)

With a copy to:              Mutual of Omaha Insurance Company  
Attn: General Counsel  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
[Nancy.Crawford@mutualofomaha.com](mailto:Nancy.Crawford@mutualofomaha.com)

Notices sent by electronic mail shall be effective on the business day of transmission to the proper electronic mail addresses if transmitted before 5:00 p.m. (local time at the party to whom notice is sent). To be effective as “notice” pursuant to this Agreement, any notice sent by electronic mail shall include the following phrase in all caps in the subject line thereof: “NOTICE DELIVERED PURSUANT TO PURCHASE AND SALE AGREEMENT”.

F. **Severability.** If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to

any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

G. **Time of Essence.** The parties agree that time is an essential element to the performance of their respective obligations hereunder.

H. **Waivers.** No waiver of any breach of any warranty, representation, covenant or other term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other warranty, representation, covenant or other term or provision of this Agreement. No such waiver shall be effective unless in writing and signed by the party affecting the waiver.

I. **Construction.** The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

J. **Assignability.** Neither party shall have the right to assign this Agreement, or any of its rights hereunder, without the consent of the other party.

K. **Entire Agreement; Amendment.** This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby, superseding all prior agreements or understandings, written or oral, and shall not be changed or terminated except by written amendment signed by all the parties hereto.

L. **Headings.** Headings of sections of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties.

.[Remainder of page intentionally left blank. Signature page follows.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed under proper authority the day and year first above written.

**SELLER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

ATTEST:

**CITY OF OMAHA**, a Nebraska municipal corporation,

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY    DATE

EXHIBIT “J”

RIGHT-OF-FIRST REFUSAL/RIGHT OF FIRST OFFER/OPTION TO PURCHASE

**RIGHT OF FIRST OFFER,  
RIGHT OF FIRST REFUSAL, AND OPTION AGREEMENT  
(PARKING UNIT)**

THIS RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL, AND OPTION AGREEMENT (this "**Agreement**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, XXXX, by and between Mutual of Omaha Insurance Company, a Nebraska corporation ("**Grantee**") and the City of Omaha, a Nebraska municipal corporation ("**Grantor**").

RECITALS:

- A. Grantor owns Unit \_\_\_\_, \_\_\_\_\_ Condominium Property Regime located in Omaha, Douglas County, Nebraska, which is comprised of a parking structure containing approximately 2,200 parking stalls within Unit \_\_\_\_ as further legally described on the attached Exhibit "A" (the "Parking Unit"); and
- B. Grantee desires to obtain a right of first offer, right of first refusal, and option to purchase the Parking Unit, and Grantor is willing to grant to Grantee such right of first offer, right of first refusal and option to purchase on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the matters recited herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Rights to the Parking Unit.** Grantor hereby grants to Grantee a right of first offer, right of first refusal, and option to purchase all of the Parking Unit (together with all tenements, hereditaments and appurtenances located thereon). In no event shall the City be permitted to sell or offer to sell a portion of the Parking Unit.
  - a. **Right of First Offer.** In the event Grantor decides to offer the Parking Unit for sale to third parties (an "**Offer to Sell**") at any time during the term of this Agreement, it shall first offer in writing to sell the Parking Unit to Grantee at the price and on the terms of such Offer to Sell. Grantee shall have the first right to accept such Offer to Sell for a period of sixty (60) days after Grantee's receipt of such Offer to Sell. If Grantee declines to accept such Offer to Sell within such sixty (60) day period, Grantor may thereafter sell the Parking Unit to any third-party at the same price and on the same terms stated in such Offer to Sell, provided that such third-party sale closes on such terms within ninety (90) days after the date on which Grantee declines such Offer to Sell. If not closed within such ninety (90) day period and Grantor still intends to sell the Parking Unit to such third-party, Grantor must re-offer the Parking Unit for sale to Grantee in the manner provided herein. This right of first offer shall continue so long as the Parking Unit is not sold. Each attempt by Grantor to sell the Parking Unit, including without limitation any subsequent attempts by Grantor to Offer to Sell the Parking Unit which is the subject of a prior Offer to Sell (or the continuation of any prior Offer to Sell) after the expiration of such ninety (90) day period, shall give rise to Grantee's rights to exercise the right of first offer with respect to such Parking Unit as set forth in this Section 1(a). The right of first offer set forth in this Section 1(a) is in addition to, and not in limitation of, the right of first refusal set forth in Section 1(b) and the option set forth in Section 1(c) below.
  - b. **Right of First Refusal.** In the event that Grantor receives a bona fide offer (a "**Third-Party Offer**") from any third-party (the "**Offeror**") to purchase the Parking Unit at any time during the term of this Agreement, Grantor shall first offer in writing to sell the Parking Unit to the Grantee at the same price and upon the same terms and conditions as such Third-Party Offer. Grantee shall have the first right to accept such offer to sell for a period of sixty (60) days after Grantee's receipt of such Third-Party Offer. If Grantee declines to accept such Third-Party Offer to sell within such sixty (60) day period, Grantor may thereafter sell the Parking Unit to the Offeror, but only at the same price and upon the same terms and conditions of such Third-Party Offer, provided that such sale to the Offeror closes on such terms within ninety (90) days after the date on which Grantee declines such offer to purchase. If not closed within such ninety (90) day period and Grantor still intends to sell the Parking Unit pursuant to such Third-Party Offer, Grantor must re-offer the Parking Unit for sale to Grantee in the manner provided herein. This right of first refusal shall continue for so long as the Parking Unit is not sold. Each Third-Party Offer received by Grantor (including



offers from the same Offeror on varying terms), regardless of when received, shall give rise to Grantee's rights to exercise the right of first refusal with respect to such Parking Unit as set forth in this Section 1(b). The right of first refusal set forth in this Section 1(b) is in addition to, and not in limitation of, the right of first offer set forth in Section 1(a), above, and the option set forth in Section 1(c), below.

c. **Option to Purchase.** Grantor hereby grants to Grantee an option to purchase and acquire the Parking Unit in accordance with the terms and conditions of this Section 1(c); provided, however, Grantee's option to purchase the Parking Unit pursuant to this Agreement shall not come into being until the earlier of the date the Grantor's bond financing used to finance the streetcar that is part of the Redevelopment Agreement of which the Grantor and Grantee are parties ("Bonds") has been paid in full or December 31, 2054. If Grantee elects to exercise its option to purchase and acquire the Parking Unit in Grantee's sole discretion, Grantee shall notify Grantor of such intent in writing. Upon receipt of such notice, Grantee shall have a period of ninety (90) days in which it may elect to purchase the Parking Unit from Grantor at a purchase price equal to the fair market value of such Parking Unit. After receipt of such notice from Grantee, the parties hereto will negotiate in good faith to determine the fair market value purchase price for the Parking Unit. In the event that Grantor and Grantee are unable to agree on the fair market value of the Parking Unit within thirty (30) days of Grantee's election, Grantee and Grantor shall each appoint, at their own cost, a "Qualified Appraiser" (as defined below) to appraise the Parking Unit. The purchase price for the Parking Unit under this Section 1(c) (the "**Option Purchase Price**") shall be the average of the results of the two appraisals; provided, however, that if there is more than a ten percent (10%) difference between the results of the two appraisals, then the two Qualified Appraisers shall select a third Qualified Appraiser, mutually acceptable to both Grantee and Grantor, to appraise the Parking Unit. Should a third Qualified Appraiser be appointed, Grantee and Grantor will share the cost of employing the third Qualified Appraiser, and the Option Purchase Price shall be the average of the results of the two (2) appraisals that are closest in value. In the event that no two appraisals are within ten percent (10%) in appraised value of either of the other appraisals, the Option Purchase Price shall be the average of the results of all three (3) appraisals. Notwithstanding the foregoing, in the event that either the right of first offer or right of first refusal set forth in Section 1(a) or Section 1(b) above are triggered at any time after Seller's delivery of notice pursuant to this Section 1(c), Grantee may elect to acquire the Parking Unit for the purchase price and terms set forth in the Third-Party Offer or Offer to Sell in lieu of establishing the Option Purchase Price in the manner set forth above in this Section 1(c). As used herein, the term "**Qualified Appraiser**" shall mean a duly licensed and qualified appraiser who is experienced in the valuation of commercial real estate similar to the Parking Unit and the valuation of the commercial parking businesses which are comparable to the Grantor's operations in the Omaha, Douglas County, Nebraska, and is a member in good standing of the Appraisal Institute.

d. **Recordable Agreement.** Grantor agrees to execute and acknowledge a memorandum in recordable and similar form to that Memorandum of Agreement ("Memorandum"), attached as Exhibit "B" to this Agreement and incorporated herein by this reference, reflecting Grantee's rights under this Agreement, which Memorandum may be recorded in the Offices of the County Assessor/Register of Deeds in Douglas County Nebraska.

2. **Term of Agreement; Options to Extend.** The term of this Agreement shall be for so long as the Parking Unit is owned by Grantor and for so long as Grantee, Grantee's affiliates, or any lender of Grantee owns the building to which the Parking Unit is attached.

3. **Representations and Covenants of Grantor.** Grantor represents and warrants to Grantee that Grantor is a municipal corporation, in existence and good standing under the laws of the State of Nebraska, and is duly authorized by all necessary actions to execute and deliver this Agreement and carry out its terms.

4. **Notice of Default; Certain Rights to Cure.** In the event of a default by Grantor or Grantee, beyond any applicable cure period, the Grantor and Grantee shall each have all rights and remedies as provided for at law or in equity, including, but not limited to injunctive relief and specific performance. In the event of a default, the non-defaulting party shall notify the defaulting party, in writing, of any such default and the defaulting party shall have ten (10) days after receipt of such written notice of default to cure any default.

5. **Miscellaneous.**

a. **Entire Agreement; Binding Effect; Severability.** This Agreement constitutes the entire agreement between the parties with respect to the right of first sale, right of first refusal and option to purchase the Parking Unit as set forth in this Agreement and supersedes all prior agreements, oral or written with respect to the same. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. If any severable provision of this Agreement is held to be invalid or unenforceable by any judgment of a court of competent jurisdiction, the remainder of this Agreement shall not be affected by such judgment, and the Agreement shall be carried out as nearly as possible according to its original terms and intent.

b. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing and unless personal delivery is effected, shall be deemed delivered upon (i) deposit in the United States Mail, postage prepaid, registered or certified mail, return receipt requested or Express Mail, or (ii) delivery prepaid to Federal Express or other overnight delivery service for next-day delivery, addressed to the parties at the respective addresses set forth below or at such other addresses as may be later specified by written notice delivered in accordance herewith, or (iii) facsimile addressed to the party at the facsimile number set forth below and mailing in the manner set forth in (i) above, or (iv) other electronic means to such electronic address as provided by the parties and mailing in the manner set forth in (i) above):i. Grantor: City of Omaha:

City Clerk  
1819 Farnam St., Suite 1100  
Omaha, NE 68183

City Law Department  
1819 Farnam St., Suite 804  
Omaha, NE 68183

ii. Grantee: Mutual of Omaha

Senior Vice President Business Resiliency  
Mutual of Omaha Insurance Company  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175-0002  
Email: Alex.Hayes@mutualofomaha.com

With notice to and for legal service:  
General Counsel  
Mutual of Omaha Insurance Company  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175-0002  
Email: Nancy.Crawford@mutualofomaha.com

c. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska. This Agreement is made and entered into in Omaha, Douglas County, Nebraska and is being performed in Douglas County. The parties hereby agree that any action to enforce the terms of this Agreement, or for any other remedy arising out of this Agreement, shall be brought solely in a Douglas County state court or federal court in the State of Nebraska, and in no other court, and each party specifically acknowledges and submits to the personal jurisdiction of said court, and waives as to any such court any defense of inconvenient forum or improper venue.

d. **Captions.** The captions appearing herein are for the convenience of the parties only and shall not be construed to affect the meaning of the provisions of this Agreement.

e. **Amendment.** This Agreement may be amended, modified, superseded or cancelled, and any of the terms, provisions, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto or, in the case of a waiver, by the party waiving compliance.

f. **Waiver.** The failure to enforce or to require the performance at any time of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions and shall not affect either the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

g. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement. This Agreement shall become effective when one or more counterparts shall have been signed by each of the parties and delivered to the other parties.

- h. **Further Actions.** At the request of Grantee, Grantor shall deliver such further instruments of transfer and take all reasonable action as may be necessary or appropriate to effectuate this Agreement and the transactions contemplated hereby.
- i. **No Third-party Beneficiary; No Partnership or Joint Venture.** This Agreement is for the sole benefit of the parties hereto, and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. The relationship between Grantee and Grantor established hereunder shall be that of Grantee and Grantor only, and this Agreement shall not be construed to establish any partnership, joint venture or other arrangement between Grantee and Grantor.
- j. **Assignability.** Grantee may assign its rights and obligations under this Agreement to any entity which controls, is controlled by, or is under common control with, Grantee, without the consent of Grantor. Other than the assignment referred to in the forgoing sentence, no party hereto shall have the right to assign their respective rights or obligations under this Agreement without the prior written consent of the other parties. IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**GRANTOR:**

**CITY OF OMAHA**, a Nebraska municipal corporation,

ATTEST:

BY:

\_\_\_\_\_  
Elizabeth Butler,  
City Clerk, City of Omaha

\_\_\_\_\_  
Jean Stothert,  
Mayor, City of Omaha

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY      DATE

**GRANTEE:**

**MUTUAL OF OMAHA INSURANCE COMPANY**,  
a Nebraska corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT "B"**  
**MEMORANDUM OF AGREEMENT**

**MEMORANDUM OF RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL  
AND OPTION AGREEMENT**

THIS MEMORANDUM OF RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL AND OPTION AGREEMENT (this "**Memorandum**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, XXXX, by and between MUTUAL OF OMAHA INSURANCE COMPANY, a Nebraska corporation ("**Grantee**"), whose address for purposes of this Memorandum is 3300 Mutual of Omaha Plaza, Omaha, Nebraska 68175 attn: SVP Business Resiliency, and City of Omaha, a Nebraska municipal corporation ("**Grantor**"), whose address for purposes of this Memorandum is attn.: David Fanslau, Planning Director, City Planning Department, Omaha/Douglas Civic Center, 1819 Farnam Street, Suite 1100 and Legal Service c/o City Clerk, Omaha/Douglas Civic Center, 1819 Farnam Street, Omaha, Nebraska 68183.

WITNESSETH:

The parties hereto have entered into a Right of First Offer, Right of First Refusal and Option Agreement dated as of \_\_\_\_\_, XXXX (the "**Agreement**"), wherein, among other matters, Grantor has granted to Grantee a right of first offer, right of first refusal and option to purchase and acquire the real property and improvements thereon described on the attached Exhibit "A" (the "**Parking Unit**"). Said rights provide Grantee with: (a) the first right to purchase the Parking Unit from Grantor in the event that Grantor desires to offer the Parking Unit for sale, (b) the first right to purchase the Parking Unit from Grantor in the event Grantor receives any bona fide offers to purchase the Parking Unit during the term of the right of first refusal, and (c) an option to purchase the Parking Unit, all as more specifically provided for in the Agreement. The rights described herein are effective from the date of the Agreement until the Parking Unit is no longer owned by Grantor and until the Grantee, Grantee's affiliates, or any lender of Grantee no longer owns the building to which the Parking Unit is attached. In the event of any inconsistency between the terms and conditions of the Agreement and of this Memorandum, the terms of the Agreement shall in all respects govern and control.

[SIGNATURE PAGE TO FOLLOW]



GRANTOR:

ATTEST:

BY:

Jean Stothert,  
Mayor, City of Omaha

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY      DATE

[illegible]

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County, personally came Jean Stothert, Mayor of the City of Omaha, Nebraska, a Municipal Corporation, to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as Mayor and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:

NOTARY PUBLIC

[illegible]

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County, personally came Elizabeth Butler, City Clerk of the City of Omaha to me personally known to be the respective officer of said Municipal corporation and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be their respective voluntary act and deed as City Clerk and the voluntary act and deed of said Municipal Corporation.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Seal:

NOTARY PUBLIC

GRANTEE:

**MUTUAL OF OMAHA INSURANCE COMPANY,**  
a Nebraska corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

\_\_\_\_\_, \_\_\_\_\_ of Mutual of Omaha Insurance Company, acknowledged the foregoing Memorandum before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that the Memorandum was signed on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Nebraska

My commission expires on \_\_\_\_\_.

EXHIBIT “K”

PURCHASE AND SALE AGREEMENT FOR PARK FRONTAGE BLOCK

**REAL ESTATE PURCHASE AND SALE AGREEMENT  
(PARK FRONTAGE BLOCK)**

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2022 (“**Effective Date**”), by and between the City of Omaha, Nebraska, a Nebraska municipal corporation (“**Seller**”), and Mutual of Omaha Insurance Company, a Nebraska corporation (“**Buyer**”), or its assigns.

**RECITALS**

WHEREAS, Seller is the owner of a certain real property generally located between 13<sup>th</sup> and 14<sup>th</sup> Streets and Farnam and Douglas Streets, Omaha, NE 68102, and legally described as set forth in Exhibit “A” attached hereto (the “**Park Frontage Block**”); and

WHEREAS, Buyer is the owner of certain real property generally located at 215 South 15<sup>th</sup> Street, Omaha NE, 68102, and legally described as set forth in Exhibit “B”, attached hereto (the “**WDC Parcel**”); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Park Frontage Block, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. **Purchase, Sale and Transfer of Real Property.**

- a. **Park Frontage Block Sale and Purchase.** On the terms and conditions hereinafter set forth, Seller hereby agrees to transfer, sell, convey and assign to Buyer, and Buyer hereby agrees to purchase and assume from Seller the Park Frontage Block together with all rights of way, restrictions and easements appurtenant thereto, as described in Exhibit “A” attached hereto and incorporated herein.
- b) **Purchase Price and Payment.** The purchase price for the Park Frontage Block shall be fair market value as determined by an appraisal and in accordance with Division 1 of Chapter 27 for the Omaha Municipal Code, which shall be \_\_\_\_\_ (\$\_\_\_\_\_) Dollars (the “**Purchase Price**”). The Purchase Price shall be paid by Buyer to Seller and shall be full and just compensation for all obligations of the Buyer herein including relocation and other related expenses as required by law.
- c) **Closing.** The transactions contemplated by this Agreement shall be consummated (the “**Closing**”) at the offices of the TitleCore National, 8701 West Dodge Road, Suite 150, Omaha, Nebraska, 68114 (the “**Title Company**”) on or before December 31, 2022, or such other earlier date as set forth in the Redevelopment Agreement or as may be mutually agreed upon by Buyer and Seller (herein referred to as the

“Closing Date”). The fee payable to the Title Company for acting as closing agent in connection with this transaction shall be split equally between Seller and Buyer at Closing.

- d) **Title and Possession of the Park Frontage Block.** At Closing, title to and possession, of the Park Frontage Block shall be conveyed by Seller to Buyer under the terms and conditions set forth herein. Seller shall be responsible for any documentary stamp or transfer tax incurred upon recording the Park Frontage Block Deed (hereinafter defined) for the Park Frontage Block at Closing. Buyer shall be responsible for the fee incurred in connection with recording the Park Frontage Block Deed in the real estate records of Douglas County, Nebraska.
2. **Title Insurance.** Within thirty (30) business days after the Buyer executes this Agreement, Buyer shall deliver to Seller a Commitment for an Owner's Policy of Title Insurance (the “Title Commitment”), pursuant to which the Title Company agrees to issue to Buyer an ALTA Owner's Policy of Title Insurance in the full amount of the Purchase Price, showing Buyer as the proposed insured, describing the Park Frontage Block, and insuring Buyer’s interest in the transferred Park Frontage Block subject only to matters of record on the effective date of the Title Commitment. Written notice of any exception or condition contained in the Title Commitment that is unacceptable to Buyer in its reasonable discretion (each, a “Title Defect”) shall be delivered by Buyer to Seller within fifteen (15) business days of receipt of the Title Commitment (“Title Objection Notice”). Seller shall have the right, but not the obligation, to cure any Title Defect to the satisfaction of Buyer within thirty (30) days from receipt of the Title Objection Notice. In the event that Seller’s right, title and interest in and to the Park Frontage Block, shall, at the time of Closing, be subject to any Title Defects arising after the effective date of the Title Commitment and not waived or approved by Buyer, Seller shall have fifteen (15) days from receipt of notice thereof from Buyer to cure such Title Defects to the reasonable satisfaction of Buyer and the Closing Date shall be extended by such cure period. In the event that Seller elects not to cure or fails to cure all Title Defects within the time periods set forth above to the satisfaction of Buyer, Buyer may, in its sole discretion, elect to either (i) terminate this Agreement by delivering written notice to Seller within five (5) business days of the expiration of any such cure period or receipt of notice from Seller of its election not to cure such Title Defect, in which event, neither Buyer nor Seller shall have any further obligation or liability to each other under this Agreement, except those which specifically survive the termination of this Agreement; or (ii) waive the requirement that Seller cure such Title Defect, without adjustment to the Purchase Price, and close on the purchase of the Park Frontage Block hereunder thereby waiving any terms and provisions of this Agreement relating to such Title Defect. The premium for a standard ALTA owner’s title insurance policy on the transferred Park Frontage Block shall be split equally between Buyer and Seller. Buyer shall be solely responsible for payment of the premium for any additional endorsements which it requests to the policy on the transferred Park Frontage Block.
3. **Due Diligence Investigation; Right to Terminate.**



a. **Due Diligence Materials.** Within sixty (60) business days after the date Buyer executed this Agreement, Seller shall provide to Buyer with respect to the Park Frontage Block, copies of the following, to the extent in such party's possession: (i) any leases or other agreements relating to the Park Frontage Block; (ii) the most recent ALTA Survey; (iii) the most recent Phase I Environmental Site Assessment; and (iv) the most recent property condition report. Neither party makes any representation or warranty with respect to these and is providing them only as an accommodation to the other party. All information contained in any documents provided shall be deemed to have been fully and completely disclosed as if set forth in this Agreement.

b. **Due Diligence Investigation.** Each party shall have until December 1, 2022 (the "Due Diligence Period"), or such later date as agreed to by the parties, to complete a due diligence investigation including, but not limited to, causing one or more independent environmental or structural engineers, inspectors, surveyors, appraisers, consultants, specialists or firms chosen by such party at its sole discretion, to inspect, audit and test the condition of the Park Frontage Block, as relevant. The cost and expense of all such inspections, appraisals, audits and tests shall be borne solely by the investigating party. No inspection shall involve the taking of samples or other physically invasive procedures without the prior written consent of the current owner of the Park Frontage Block, in its sole and absolute discretion.

c. **Access to the Park Frontage Block.** Buyer and Seller each agree to permit the other and their agents and independent contractors full and complete access to the Park Frontage Block, respectively, at reasonable hours and upon at least twenty-four (24) hours' notice for the purposes set forth.

Buyer shall indemnify and hold Seller harmless from and against any loss, costs, damage or expense arising from any physical inspection of the Park Frontage Block performed by Buyer, its agents, employees, independent contractors or assigns. Before entering upon the Park Frontage Block, Buyer shall furnish and shall cause each of its independent environmental or structural engineers, inspectors, surveyors, appraisers, consultants, specialists or firms chosen by Buyer to furnish to Seller a certificate of insurance, in which Seller is named as an additional insured and evidencing: (a) commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate; and (b) workers' compensation insurance as required by the State of Nebraska. The indemnification set forth in this Section 3.d shall specifically survive the closing and/or termination of this Agreement.

d. **Right to Terminate.** If during the Due Diligence Period, Buyer in its sole discretion shall be satisfied with its findings hereof, Buyer shall notify Seller in writing (prior to the expiration of the Due Diligence Period) of Buyer's election to proceed with the acquisition (such notice from Buyer being herein the "Proceed Notice"). In the absence of the timely delivery by Buyer of its Proceed Notice, Buyer shall be deemed to have elected to proceed to Closing. The Buyer shall have the right to terminate this Agreement at any time prior to the expiration of the Due Diligence Period in which case this Agreement shall be deemed

terminated, and the parties shall be relieved of any further obligation and responsibility under this Agreement, except provisions that expressly survive termination.

It is expressly recognized and agreed by the parties that in the event Buyer fails to provide Seller with written notice to terminate this Agreement prior to the expiration of the Due Diligence Period, Buyer shall be deemed to have waived Buyer's right to terminate the acquisition under this Agreement and Buyer shall proceed to Closing.

4. **Prorations.** Except as specifically set forth herein, income, expenses and liabilities attributable to the Park Frontage Block through the Closing Date shall be prorated between Seller and Buyer as of the Closing Date. Seller shall be deemed to be the owner of the Park Frontage Block through the day immediately preceding the Closing Date, and Buyer shall be deemed to be the owner of the Park Frontage Block as of the Closing Date. All real estate taxes which become delinquent in the year in which Closing takes place shall be treated as though all are current taxes, and those taxes shall be prorated as of the Closing Date, and all the prior years' taxes, interest, and other charges, if any, will be paid by the current owner of the Park Frontage Block.
5. **Representations, Warranties and Covenants.**
  - a. **Representations, Warranties and Covenants of Seller.** Seller hereby represents, warrants and covenants to Buyer as follows, for purposes of inducing Buyer to enter into this Agreement and satisfy its obligations hereunder:
    - i. **Transfer of Property.** Seller has and shall convey, transfer, and assign to Buyer at Closing good, marketable and indefeasible fee simple title to the Park Frontage Block, free and clear of any deeds of trust, mortgages, liens, encumbrances, leases, tenancies, licenses, security interest, covenants, conditions, restrictions, judgments, rights-of-way, easements, encroachments and any other matters affecting title, and those covenants, conditions, restrictions, rights-of-way, and easements of record reflected on the Title Commitment other than any Title Defects identified by Buyer pursuant to the terms of this Agreement, unless such Title Defects are either cured by Seller to the reasonable satisfaction of Buyer or waived by Buyer after such identification ("**Permitted Exceptions**").
    - ii. **Organization; Power; Good Standing.** Seller is a municipal corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and satisfy its obligations hereunder. Seller has taken all action necessary to authorize and direct Seller to enter into this Agreement and satisfy its obligations hereunder.
    - iii. **Binding Agreement.** This Agreement and all other documents executed and delivered by Seller pursuant to this Agreement constitute the legally valid and binding agreement of Seller, enforceable against Seller in accordance with their respective terms,

except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

iv. **Effect of Agreement.** To the best of Seller's knowledge and belief, the execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the transferred Park Frontage Block pursuant to any agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which any of the transferred Park Frontage Block may be bound.

v. **Bankruptcy.** There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or to Seller's best knowledge and belief threatened against Seller or the transferred Park Frontage Block.

vi. **Accuracy of Seller's Representations.** The representations and warranties of Seller herein are now, and shall be on and as of the Closing Date, true and correct in all material respects.

b. **Representations, Warranties and Covenants of Buyer.** Buyer hereby represents, warrants and covenants to Seller as follows, for purposes of inducing Seller to enter into this Agreement and satisfy its obligations hereunder:

i. **Organization; Power; Good Standing.** Buyer is a Nebraska corporation duly organized and validly existing, and is in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and satisfy its obligations hereunder.

ii. **Binding Agreement.** This Agreement and all other documents executed and delivered by Buyer pursuant to this Agreement constitute the legally valid and binding agreement of Buyer, enforceable against Buyer in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

iii. **Effect of Agreement.** To the best of Buyer's knowledge and belief, the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Buyer to be obtained.

iv. **Accuracy of Buyer's Representations.** The representations and warranties of Buyer contained herein are now, and shall be on and as of the Closing Date, true and correct in all material respects.

6. **Closing Documents.**

a. **Deliveries at Closing by Seller.** At the Closing, Seller shall deliver to Buyer and Buyer shall accept from Seller, the following:

i. A duly executed and acknowledged special warranty deed (warranting title against claims of all persons claiming by, through or under the Seller, but not otherwise) (“**Deed**”) in form attached hereto as Exhibit “C,” conveying and assigning to Buyer title to the Park Frontage Block.

ii. **Possession of the Park Frontage Block.**

iii. Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the title policy in accordance with the Title Commitment.

b. **Documents to be Delivered by Buyer.** At the Closing, Buyer shall deliver to Seller and Seller shall accept from Buyer, the following:

i. Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the title policy in accordance with the Title Commitment

7. **Conditions Precedent to Obligation to Close.**

a. **Conditions Precedent to Obligation of Buyer to Close.** The obligations of Buyer at Closing set forth herein are subject to the satisfaction of the following conditions:

i. The representations and warranties of Seller set forth herein shall be true and correct in all material respects at and as of the Closing Date;

ii. Seller shall have satisfied all of its material obligations hereunder required to be satisfied on or prior to Closing.

iii. Seller shall have fulfilled its obligations to Buyer under the Redevelopment Agreement, specifically including, but not limited to, Seller shall have issued revenue bonds for the specific purposes of funding the construction of a modern streetcar, or otherwise irrevocably committed or secured the requisite funds to proceed with construction of the modern streetcar. Buyer reserves the right to waive this condition and proceed to Closing at its own risk.

c. **Conditions Precedent to Obligation of Seller to Close.** The obligations of Seller at Closing set forth herein are subject to the satisfaction of the following conditions:

- i. The representations and warranties of Buyer set forth herein shall be true and correct in all material respects at and as of the Closing Date;
- v. Buyer shall have satisfied all of its material obligations hereunder required to be satisfied on or prior to Closing;
- vi. Buyer shall have performed all obligations under the Redevelopment Agreement, specifically that Buyer shall have closed on the purchase of the WDC Parcel (as defined therein); and
- vii. Seller shall have obtained approval of Redevelopment Agreement and this Real Estate Purchase and Sale Agreement from the Omaha City Council.

8. **Default.**

- a. **Default by Seller.** If Seller shall default under this Agreement and such default shall not have been cured by Seller within ten (10) days of notice thereof from Buyer, Buyer shall have the right, at Buyer's election, to:
  - i. Waive compliance with the breached term(s) or condition(s), without any claim for reduction of the Purchase Price for such breach;
  - iv. Rescind this Agreement and upon such rescission Buyer shall be entitled to the reimbursement of the deposit, if any, and all interest accrued thereon; and/or
  - v. Seek money damages at law or specific performance with respect to the Park Frontage Block if the Seller fails, neglects or refuses to Close on the sale of the Park Frontage Block to Buyer.
- b. **Default by Buyer.** If Buyer shall default under this Agreement and such default shall not have been cured by Buyer within ten (10) days of notice thereof from Seller, Seller shall have the right to terminate this Agreement.

9. **Miscellaneous.**

- a. **Binding Effect; Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and permitted assigns any right, remedy, obligation, or liability under or by reason of this Agreement.
- b. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.



- c. **Further Assurances.** At any time and from time to time before or after the Closing Date, at either party's reasonable request and without further consideration, the other party hereto shall execute and deliver such other instruments and documents, and take such other actions as may be reasonably required in order to more effectively carry out and implement the provisions and purposes of this Agreement.
- d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
- e. **Notices.** All notices, requests, demands or other communications hereunder (including notices of all asserted actions, claims or demands) shall be given in writing and shall be deemed to have been duly delivered upon personal delivery to the other party; or twenty-four (24) hours after deposit with a reputable overnight courier service, or forty-eight (48) hours after deposit in the U. S. Mail, first class postage prepaid, to the addressee at the address herein designated or at such other address as may be designated in writing by notice given in the manner provided herein:

To Seller:                      The City of Omaha  
Attn: City Clerk  
1819 Farnam Street, Suite LC-1  
Omaha NE 68183  
[elizabeth.butler@cityofomaha.org](mailto:elizabeth.butler@cityofomaha.org)

With a copy to:              The City of Omaha  
Attn: Law Department  
1819 Farnam Street, Suite 804  
Omaha NE 68183  
[jennifer.taylor@cityofomaha.org](mailto:jennifer.taylor@cityofomaha.org)

To Buyer:                      Mutual of Omaha Insurance Company  
Attn: SVP Business Resiliency  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
[Alex.Hayes@mutualofomaha.com](mailto:Alex.Hayes@mutualofomaha.com)

With a copy to:              Mutual of Omaha Insurance Company  
Attn: General Counsel  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175  
[Nancy.Crawford@mutualofomaha.com](mailto:Nancy.Crawford@mutualofomaha.com)

Notices sent by electronic mail shall be effective on the business day of transmission to the proper electronic mail addresses if transmitted before 5:00 p.m. (local time at the party to

whom notice is sent). To be effective as “notice” pursuant to this Agreement, any notice sent by electronic mail shall include the following phrase in all caps in the subject line thereof: “NOTICE DELIVERED PURSUANT TO PURCHASE AND SALE AGREEMENT”.

- f. **Severability.** If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.
  - g. **Time of Essence.** The parties agree that time is an essential element to the performance of their respective obligations hereunder.
  - h. **Waivers.** No waiver of any breach of any warranty, representation, covenant or other term or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other warranty, representation, covenant or other term or provision of this Agreement. No such waiver shall be effective unless in writing and signed by the party affecting the waiver.
  - i. **Construction.** The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.
  - j. **Assignability.** Neither party shall have the right to assign this Agreement, or any of its rights hereunder, without the consent of the other party.
10. **Entire Agreement; Amendment.** This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby, superseding all prior agreements or understandings, written or oral, and shall not be changed or terminated except by written amendment signed by all the parties hereto.
- a. **Headings.** Headings of sections of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties.
  - b. **Brokerage Commission.** The parties acknowledge that no brokers or brokerage fees are due or will be due upon the closing of this transaction.
  - c. **Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is not a Business Day, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such non-Business Day. Unless otherwise specified herein, all references herein to a “day” or “days” shall

refer to calendar days and not Business Days. A “Business Day” shall mean any day other than a Saturday, Sunday or any day on which commercial banks in Omaha, Nebraska, are authorized or obligated to close.

- d. **PARK FRONTAGE BLOCK - AS IS:** BUYER ACKNOWLEDGES THAT BUYER IS FULLY RELYING ON ITS (OR ITS REPRESENTATIVES’) INSPECTIONS OF THE TRANSFERRED PARK FRONTAGE BLOCK AND NOT UPON ANY REPRESENTATIONS, WARRANTIES OR STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE BY SELLER OR ANY OF ITS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS OR WILL HAVE (OR ITS REPRESENTATIVES HAVE OR WILL HAVE) THOROUGHLY INSPECTED AND EXAMINED THE TRANSFERRED PARK FRONTAGE BLOCK TO THE EXTENT DEEMED NECESSARY BY BUYER TO ENABLE BUYER TO EVALUATE THE PHYSICAL, LEGAL AND FINANCIAL CONDITION OF THE TRANSFERRED PARK FRONTAGE BLOCK AND ALL OTHER ASPECTS OF THE TRANSFERRED PARK FRONTAGE BLOCK (INCLUDING THE ENVIRONMENTAL CONDITION OF THE TRANSFERRED PARK FRONTAGE BLOCK, COMPLIANCE OR NON-COMPLIANCE OF THE TRANSFERRED PARK FRONTAGE BLOCK WITH ALL LEGAL REQUIREMENTS, INCLUDING ALL ZONING ORDINANCES, BUILDING CODES AND SET-BACK REQUIREMENTS, AMERICANS WITH DISABILITIES ACT REQUIREMENTS, AND COMPLIANCE OR NON-COMPLIANCE OF THE TRANSFERRED PARK FRONTAGE BLOCK WITH ALL RESTRICTIVE COVENANTS, EASEMENTS, AND OTHER PRIVATE AGREEMENTS). AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT AND THE PURCHASE, BUYER HEREBY AGREES TO ACCEPT THE TRANSFERRED PARK FRONTAGE BLOCK ON THE CLOSING DATE IN ITS “AS IS” CONDITION, WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, EXCEPT ONLY THE TITLE WARRANTIES EXPRESSLY SET FORTH IN THE DEED. THESE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING.

[SIGNATURE PAGES TO FOLLOW]

4854-0833-1023.3

“BUYER”

MUTUAL OF OMAHA INSURANCE  
COMPANY, a Nebraska corporation,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF DOUGLAS                )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2022, by \_\_\_\_\_, a \_\_\_\_\_ of  
Mutual of Omaha Insurance Company, a Nebraska corporation, and that the said document was  
signed on behalf of said corporation by authority and acknowledged said document to be the free act  
and deed of said corporation..

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



**EXHIBIT “A”**  
**“PARK FRONTAGE BLOCK”**

CITY LOTS LOT 8 BLOCK 120 VAC ALLEY & LTS 1 THRU 8. Parcel # 0311520002

**EXHIBIT "B"**  
**WDC PARCEL**

CITY LOTS LOT 8 BLOCK 119 VAC ALLEY ADJ & ALL LTS 1 THRU 8 264 X 284. Parcel  
# 0311330000.

**EXHIBIT "C"**  
**"FORM OF DEED"**

WHEN RECORDED, RETURN TO:

[Space Above This Line for Recording Data]

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**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that the City of Omaha, a Nebraska municipal corporation (hereinafter referred to as the "Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid, hereby grants, bargains, sells and conveys to Mutual of Omaha Insurance Company, a Nebraska corporation (hereinafter referred to as the "Grantee"), its successors and assigns, forever, the following described real estate (as defined in Neb. Rev. Stat. § 76-201), located in Omaha, Douglas County, Nebraska (the "Property"):

CITY LOTS LOT 8 BLOCK 120 VAC ALLEY & LTS 1 THRU 8. Parcel # 0311520002

This Deed is made and accepted subject to the easements, encumbrances, and other matters of record described on Exhibit A attached hereto and made a part hereof.

And Grantor does hereby bind itself and its successors and legal representatives to warrant and forever defend, all and singular, the title to the Property unto the said Grantee, its successors, and assigns, against the claims of every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed this \_\_\_\_ day of \_\_\_\_\_, 2022.

GRANTOR:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF NEBRASKA     )  
  )SS.  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the subscriber, a notary public in and for said county, personally came \_\_\_\_\_, and acknowledged that **they** did execute the foregoing instrument and that the same is **their** free act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

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

My Commission Expires:

\_\_\_\_\_

EXHIBIT “L”

COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR PARK FRONTAGE BLOCK

This instrument was prepared by and upon recordation should be returned to:  
Jennifer J. Taylor, 1819 Farnam Street, Suite 804 Omaha, NE 68183

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**DECLARATION OF  
EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (“**Declaration**”) is made by the City of Omaha, Nebraska a Nebraska municipal corporation (“**the City**”), and Mutual of Omaha Insurance Company, a Nebraska corporation (“**Mutual of Omaha**”). The City and Mutual may collectively be referred to as “Declarants,” and individually as a “Party.”

**Recitals**

A. The City is the owner of Parcel ID 0311520002, located generally between 13<sup>th</sup> and 14<sup>th</sup> Streets, Douglas and Farnam Streets, totaling approximately 1.6969 acres, (“**Park Frontage Block**”) which currently serves as construction staging site for the demolition of the W. Dale Clark Library at 215 South 15<sup>th</sup> Street (“**WDC Parcel**”):

CITY LOTS LOT 8 BLOCK 120 VAC ALLEY & LTS 1 THRU 8. Parcel # 0311520002

B. Mutual of Omaha is the lawful owner of the WDC Parcel.

C. The City and Mutual of Omaha desire to encourage and guide the future redevelopment of Park Frontage Block in a manner that respects the individual and shared interests of, and provides benefits for, all stakeholders, the City of Omaha, particularly as related to the RiverFront, a \$300 Million public park completed in 2022.

D. The Declarants intend by this Declaration to impose upon the Park Frontage Block certain easements, covenants and restrictions and to establish a general plan for the development, use and operation of the Park Frontage Block consistent with a first-class development.

E. By virtue of recording this Declaration, the Park Frontage Block shall be used, owned, held, transferred, sold, leased, conveyed, developed, occupied, operated, improved and mortgaged or otherwise encumbered subject always to the provisions of this Declaration, and every grantee of every interest in the Park Frontage Block or any portion thereof, by acceptance of a deed, lease or other conveyance of such interest, and every owner of the Park Frontage Block or any portion thereof, whether or not such deed or other conveyance of such interest shall be signed by such person, and whether or not such person shall otherwise consent in

writing, shall use, own and take subject to the provisions of this Declaration and shall be deemed to have consented to the terms hereof.

F. Declarants hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants running with the Park Frontage Block, and shall be binding upon the present owners of the Park Frontage Block and their respective successors and assigns, and upon all subsequent owners of the Park Frontage Block or any portion thereof together with their respective successors and assigns.

NOW THEREFORE, Declarants hereby impose the following easements, covenants and restrictions on or with respect to the Park Frontage Block, which shall run with the equitable and legal title to the Park Frontage Block, and shall be for the benefit or burden, as the case may be, of all owners, lessees and mortgagees of the Park Frontage Block and their respective successors and assigns.

#### Article I.

##### Permitted Uses

1.1 **Permitted Uses.** Subject to the remaining provisions of this Declaration, Park Frontage Block may be used only for the following designated uses (the “Permitted Uses”) and may be used for no other purpose:

- a. The Park Frontage Block may be used for purposes to include, but not be limited to, retail, office (all types), entertainment, hotel, service, residential facilities and parking related thereto.
- b. Unless otherwise restricted herein, the Permitted Uses set forth herein are intended to be additional use restrictions on the Park Frontage Block. Any use proposed for the Park Frontage Block must be an allowed use under its zoning district, as well as a Permitted Use hereunder for such use to be implemented. Any amendment to the Permitted Uses hereunder shall not be deemed to change or modify in any manner the allowed uses under the Park Frontage Block’s then zoning.

#### Article II.

##### Prohibited Uses and Improvements

2.1 **First Class Environment.** No use of any Park Frontage Block in any portion of the Park Frontage Block shall be inconsistent with a first-class environment.

2.2 **Industrial; Manufacturing; Excavation.** No area of Park Frontage Block may be used for industrial or manufacturing uses, refuse collection (other than refuse collection facilities for buildings within the Park Frontage Block) or related uses. No rock, gravel, clay or other material shall be excavated or removed from Park Frontage Block for commercial purposes except strictly as necessary to prepare the site for permitted buildings and improvements.

2.3 **No Nuisances, Hazardous Waste, or Environmental Hazards.** No noxious weeds or underbrush shall be permitted to grow or remain upon the Park Frontage Block, and no refuse pile, construction debris, unused motor vehicle, or other private nuisance of any kind shall be allowed to be placed or to remain anywhere on the Park Frontage Block. No uses producing hazardous or toxic waste or other environmental hazards shall be permitted upon the Park Frontage Block. In the event that an owner of any or all of the Park Frontage Block shall fail or refuse to keep such Park Frontage Block free from any such private nuisance, waste or environmental hazard, the City may enter upon such Park Frontage Block and remove such



nuisance, waste or hazard at the expense of the owner of such Park Frontage Block, and such entry shall not be deemed a trespass; provided, however, nothing in this Declaration shall prevent owner's use of the Park Frontage Block for construction staging of improvements on the WDC Parcel.

2.4 **No gambling.** No gambling or wagering of any kind shall be permitted within the Park Frontage Block, except that (i) Nebraska State Lottery tickets may be sold at retail establishments in accordance with applicable laws and regulations and (ii) with the prior approval of the Implementation Committee, an establishment serving food and beverages, located within a platted lot within the Park Frontage Block, may conduct keno games and sell "pickle cards" in accordance with City of Omaha and State of Nebraska laws and regulations.

2.5 **No Sexually Oriented Commercial Activities.** No portion of the Park Frontage Block shall be used, whether by the owner or any lessee thereof, to engage in any commercial endeavor which primarily conducts, markets, promotes or sells items or activities of a sexually oriented nature.

2.6 **No Temporary Buildings.** No temporary buildings, trailers, manufactured homes or other structures, mobile homes or structures, modular facilities or other similar structures shall be allowed upon the Park Frontage Block, except in connection with an approved construction plan. Construction trailers and related temporary facilities may be permitted as reasonably required by construction contractors then engaged in constructing improvements on the WDC Parcel.

2.7 **Signage Restrictions.** No stand-alone outdoor advertising signs or billboards shall be permitted upon the Park Frontage Block. Notwithstanding the foregoing, Mutual of Omaha or its affiliates shall have the right to erect signage on the fencing relating to the construction of the Redevelopment Project on the WDC Parcel or the Park Frontage Block.

2.8 **Temporary Landscaping.** No undeveloped land shall remain on the Park Frontage Block without a temporary landscaping plan installed and maintained by the owner of such Park Frontage Block, which presents an attractive appearance. Within ninety days of evacuation and removal of construction trailers from the Park Frontage Block and no more than three months from the issuance of a certificate of occupancy for the structure to be constructed upon the WDC parcel, the owner of the Park Frontage Block shall install the landscaping required herein, weather permitting, or the next available planting season.

### **Article III.** **Site Development Regulations**

3.1. **Urban Design Principles.** All development within the Park Frontage Block shall be consistent with basic urban design principles as set forth in City Urban Design Code (if applicable), and any amendments thereto, including, but not limited to:

- a. Wide, pedestrian-friendly sidewalks with extensive landscaping and specialty lighting;
- b. open space, plazas and other small gathering spaces incorporated into the pedestrian system;
- c. buildings that front on the sidewalks with little or no setbacks; except where buildings are deliberately pulled away from the street to create public plazas, pedestrian areas, and other special community value areas;
- d. off-street parking facilities, either structures or surface lots, located behind and screened by buildings; and
- e. building architecture and design which presents a consistent theme, rhythm and use of materials.

3.2 **Exterior Appearance.** All structures within the Park Frontage Block must present a visually attractive appearance on all sides consistent with a first-class development.

3.3 **Maximum Height.** The maximum height of any structure on the Park Frontage Block shall not exceed a three hundred twenty (320') feet above the mean elevation of the existing grade of the Park Frontage Block while the Park Frontage Block is owned by Mutual of Omaha or its affiliates. Notwithstanding the foregoing, in the event the Park Frontage Block is repurchased by the City pursuant to that certain Redevelopment Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and among the City, Mutual of Omaha Insurance Company, Lanoha DT 1, LLC and PB LREC, LLC (the "Redevelopment Agreement"), the maximum height of the Park Frontage Block shall be reduced from three hundred twenty (320') feet to one hundred forty (140) feet above the mean elevation of the grade of the existing grade of the Park Frontage Block, together with a requirement that any such building have a "green roof" as approved by Mutual of Omaha.

3.4 **Pedestrian Experience.** The Park Frontage Block shall include greenspace and well-designed pedestrian walkways complimentary to the RiverFront and in accordance with scales and standards established by the Declarants.

3.5 **Loading Areas; Trash Receptacles; Mechanical Equipment.** All loading areas and loading docks, trash receptacles, antennae and mechanical equipment shall be off-street and screened from adjacent streets and sidewalks.

3.6 **Exterior Lighting.** Any redevelopment shall install or cause to be installed sufficient exterior lighting so as to properly illuminate drives, parking facilities, streets and sidewalks. Where appropriate, decorative lighting will be employed in accordance with the requirements of any future design guidelines.

3.7 **Landscaping.** Upon completion of any building or parking facility (or the next available planting season), the owner shall install landscaping in accordance with the requirements of any future design guidelines.

3.8 **Signage.** No exterior signs incorporating flashing, pulsating or rotating lights shall be permitted, and no exterior walking or message signs (except time and temperature, and community messaging, and only as permitted by the Omaha Municipal Code) shall be permitted, except for those the City may approve. No pole signs or roof signs shall be permitted.

#### **Article IV.** **General Provisions.**

4.1 **Constructive Notice and Acceptance of Declaration.** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Park Frontage Block is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in the Park Frontage Block.

4.2 **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Nebraska. Venue for enforcement hereof shall lie exclusively in Douglas County, Nebraska and each person with rights hereunder hereby waives the right to sue or be sued in any other place.

4.3           **Headings.** Headings, where used herein, are inserted for convenience of reference only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

4.4           **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

4.5           **Amendment or Termination.** This Declaration shall not be amended or terminated without the prior written agreement of the Parties hereto.

Dated: \_\_\_\_\_, 2022

CITY OF OMAHA, NEBRASKA, a Municipal Corporation,

By \_\_\_\_\_  
Jean Stothert, Mayor

MUTUAL OF OMAHA INSURANCE COMPANY, a Nebraska Corporation,

By \_\_\_\_\_  
Title:

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing Declaration was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Jean Stothert, Mayor of the City of Omaha, Nebraska, on behalf of the City.

My commission expires on \_\_\_\_\_  
Notary Public \_\_\_\_\_

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing Declaration was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, on behalf of Mutual of Omaha Insurance Company, a Nebraska Corporation.

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

My commission expires on \_\_\_\_\_.

EXHIBIT “M”

PARKING LEASE FOR TOWER GARAGE

## **PARKING LEASE AGREEMENT**

**THIS PARKING LEASE AGREEMENT** (this “Agreement”) is entered into as of \_\_\_\_\_, 2022, between the **CITY OF OMAHA, NEBRASKA** (“City”) and **MUTUAL OF OMAHA INSURANCE COMPANY**, a Nebraska corporation, or assigns (“Lessee”).

### **RECITALS**

This Agreement is made with respect to the following facts:

A. Whereas, Lessee is proposing to construct an approximately 800,000 square foot headquarters office building at 215 South 15<sup>th</sup> Street, and bounded by Farnam Street on the South, 14<sup>th</sup> Street on the East, Douglas Street on the South, and 15<sup>th</sup> Street on the West (the “Mutual Tower”), which will be subject to a to be formed Condominium Property Regime (the “Condo Regime”), which Condo Regime shall create a separate and legal “Unit” to be owned by the City and will encompass an approximately 2,200 stall parking garage (i.e., the “Tower Garage”, as defined in the Redevelopment Agreement dated \_\_\_\_\_, 2022, by and among the City, Lessee, Lanoha DT 1, LLC, and PB LREC, LLC (the “Redevelopment Agreement”)), which Tower Garage will be part of the Mutual Tower (collectively, the “Redevelopment Project”).

B. Pursuant to a Redevelopment Agreement, the City has agreed to lease to Lessee, and Lessee has agreed to lease from the City, the 2,200 parking spaces located within the Tower Garage Unit (the “Parking Spaces”), which Tower Garage shall be constructed by Lessee and sold to and operated by the City pursuant to the terms of the Redevelopment Agreement, and as provided for herein.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Lessee agree as follows:

### **PARKING SPACES**

The City, for and in consideration of the rents herein reserved and of the covenants and agreements contained herein on the part of Lessee to be performed, leases to Lessee and Lessee leases from the City, approximately 2,200 Parking Spaces in the Tower Garage pursuant to the terms contained herein, together with the right of ingress to and egress from the Parking Spaces over and across such portions of the Tower Garage as reasonably mutually agreed to by the parties from time to time. The Parking Spaces shall be exclusively leased to Lessee between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday (“Exclusive Use Period”). At all other times, the Parking Spaces shall be available to the general public, as determined by the City, in its sole discretion; provided, however, Lessee shall have the right to rent Parking Spaces outside of the Exclusive Use Period for its personnel who work on nights and weekends, outside of the Exclusive Use Period. The parties agree to negotiate an acceptable discounted rate for such Parking Spaces.



The parties agree to review and discuss the Lessee's usage of the Parking Spaces during the Exclusive Use Period on an annual basis. In the event that the Parking Spaces do not have a minimum occupancy of seventy percent (70%), on a rolling monthly average, the parties agree to consider and discuss an amendment to this Agreement, whereby the City could backfill certain Parking Spaces to maximize the utilization.

Notwithstanding the foregoing, Lessee, with prior written notice to and upon approval from City (not to be unreasonably withheld, conditioned, or delayed), shall have the right to reserve the Parking Spaces, or a portion thereof, from time to time outside of the Exclusive Use Period for special events or occasions associated with the Tower, at a reasonable market rate, and the City agrees to reasonably review such requests; provided, that, such requests shall not unreasonably affect the general public's rights and use of the Parking Spaces outside of the Exclusive Use Period.

If any of the Parking Spaces are unavailable for use because the Parking Garage has been damaged or destroyed or because of the need for maintenance, repairs or alterations, and other parking spaces in other City parking facilities are un-usable for parking, the City will attempt to make such other spaces available to serve as Lessee's "Parking Spaces" at the currently existing rate that the City is charging for similarly situated parking garages.

## **TERM**

**Commencement of Term.** The basic term of this Agreement (the "Basic Term") will commence on the date the Tower Garage is substantially completed (the "Commencement Date") and ready for use by Lessee and its employees, and their invitees, guests, agents, representatives, vendors, mortgagees, and tenants ("Authorized Users"), and terminate on a date which is the last day of the one-hundred and twentieth (120<sup>th</sup>) full calendar month after the Commencement Date (the "Expiration Date").

**Options to Extend Term.** Provided there is no existing uncured Event of Default, the Basic Term of this Agreement shall automatically renew for successive five (5) year terms (each, an "Extension Term") commencing on the first day following the expiration of the Basic Term and each successive Extension Term, unless Lessee delivers written notice to the City of its desire to terminate this Agreement not later than thirty (30) days before the expiration of the then-current Term. The Basic Term and the Extension Term shall be referred to collectively as the "Term".

## **MONTHLY RENT**

**Monthly Rent.** Commencing on the Commencement Date and continuing through the Term, Lessee will pay monthly rent ("Monthly Rent") for the Parking Spaces. The Monthly Rent for years one (1) through ten (10) of the Term, shall equal \$80 per stall per month ("Base Rent"). Thereafter, on each successive five (5) year anniversary following the tenth year of the Term, the Monthly Rent shall equal the Base Rent, adjusted to include any increases in the CPI Index in the start of the 11<sup>th</sup> year of the Term from the Base Year, not to exceed three percent (3%) As used herein the term "Base Year" shall mean the first year of the Term of this Lease, and "CPI Index" shall mean the

current Consumer Price Index for All Items Less Food and Energy issued by the Bureau for Labor Statistics of the U.S. Department of Labor; provided, that, in the event the Bureau for Labor Statistics of the U.S. Department of Labor ceases to publish the CPI Index, the parties agree to use a commercially accepted replacement thereof as currently used in the Omaha metropolitan area.

**Payment.** Monthly Rent will be paid in advance on or before the Commencement Date and on or before the first day of each successive calendar month during the Term. If the Commencement Date is a day other than the first day of the calendar month, Monthly Rent will be appropriately prorated. Monthly Rent will be paid to the City without notice or demand, in lawful money of the United States of America, at the office of the Omaha City Finance Department or to such other person or at such other place as the City may from time to time designate in writing.

**Interest on Late Payments.** All Monthly Rent, if not paid when due, will bear interest from the due date until paid at the rate of six percent (6%) per annum.

### **OPERATING EXPENSES**

The City will operate and pay, all costs of management, operation, security and maintenance of the Tower Garage, including without limitation, the following costs: real and personal property taxes and assessments allocable to the Tower Garage (and any tax levied in whole or in part in lieu of or in addition to real property taxes), wages, salaries and compensation of employees, costs of consulting, accounting, legal, janitorial, maintenance, guard and other services, management fees, costs of power, water, waste disposal and other utilities, materials and supplies, costs of maintenance and repairs, condominium dues or assessments, owner association dues or fees, costs of insurance obtained with respect to the Tower Garage, ground lease payments, depreciation on personal property and equipment, any general assessments, special assessments, or other fees or charges assessed by any entity authorized to operate, maintain, and repair the Tower Garage.

### **CITY'S INSURANCE**

The City will carry property insurance and is self-insured for liability.

### **USE**

**Entry System; Reserved Spaces; and Authorized Users.** The City will construct and at all times maintain a card entry system for ingress to and egress from the Tower Garage. City will issue cards to the Authorized Users needing the cards for the spaces. If a card is lost or stolen, Lessee may notify the City and the City will promptly cancel the lost or stolen card. There will be a \$10.00 charge for each additional card issued to Lessee.

The City will not be liable for use of any of the Parking Spaces by persons other than Authorized Users so long as the City makes reasonable efforts to prevent such usage (including the immediate towing of unauthorized vehicles parked in the Parking Spaces upon notification by Lessee).

**Manner of Use and Access.** Lessee and Authorized Users will use the Parking Spaces only for parking of passenger model vehicles, small vans, and small trucks. Lessee and Authorized Users will use the Parking Spaces in a safe, careful and proper manner, in compliance with any present or future governmental or quasi-governmental laws, rules, regulations or orders.

## **MAINTENANCE AND ALTERATIONS**

**Operation and Maintenance of Tower Garage.** Subject to the Master Deed and Declaration of the Condo Regime, the City, at its expense, and through such agents, representatives or independent contractors as it may designate, will operate, maintain, repair, secure, and keep the Tower Garage in a Class A manner similar to comparable garage facilities in Class A properties, in such manner as will ensure Lessee and any Authorized Users the continued availability, security, use and enjoyment of the Parking Spaces during the Term. For purposes of this Agreement, “Class A” maintenance and repair shall mean maintenance and repair in a manner similar to comparable garage facilities in Class A properties so as to maintain a professional appearance and structural maintenance of the Tower Garage. Routine maintenance to be performed includes, but is not limited to, keeping the Tower Garage clean, free of trash and debris, ice and snow, and appropriately sanding, salting, painting and striping the Tower Garage and Parking Spaces, including but not limited to daily removal of trash and emptying of trash receptacles, maintenance of all interior/exterior garage doors, maintaining/repairing/replacing of all drain lines and drainage systems as needed, maintaining elevators, and addressing any access and minor equipment failures, lighting fixture issues and replacement, and other similar issues that cause temporary disruptive impediments to access and use of the Tower Garage and Parking Spaces (“Routine Maintenance”).

Subject to the Master Deed and Declaration of the Condo Regime, the City shall also perform maintenance and repairs and install improvements aimed at ensuring the protection of the Tower Garage and the Mutual Tower from decline over time and to ensure the preservation of the Tower Garage’s useful life in concert with the useful life of the Mutual Tower (“Periodic Maintenance”). Such Periodic Maintenance shall include, but not be limited to, jetting out drain lines not less than once per year, repairing areas of visible corrosion, repairing any concrete spalling, trouble-shooting and remediating moisture issues such as water penetration, rust or effervescence, re-striping stalls, graphic replacements, etc. at least once every three (3) years, sweeping no less than quarterly, flushing salt/sand at least once a year after the winter season, quarterly cleaning of “high dusting” areas which includes cobwebs, stairwells, dust and debris, any necessary code or functional obsolescence upgrades to the elevators, washing windows, if any, at least semi-annually, maintaining garage surface coating, replacing concrete moisture coating/sealant no less than once every three (3) years, maintaining all seams/joints and repairing/replacing seams/joints as needed, minimizing water leaks/water penetrations throughout the Tower Garage, annual TEGG service testing of electrical equipment, maintaining/replacement as necessary of all electrical systems, and conducting a calcium chloride test no less than once every three (3) years.

The City will have the right to enter upon or restrict access to the Parking Spaces or any of them for purposes of performing the City’s obligations under this Section, provided that the City will use its best efforts in connection with such entry or restriction of access to minimize any disruption to any Authorized User’s use of the Parking Spaces. Lessee will be entitled to abatement of Monthly

Rent on a prorated basis during the period of unavailability of any Parking Space unless an alternate parking space is made available in the Tower Garage or in the vicinity of the Tower Garage. In the event the City shall, after two (2) business days' prior written notice from Lessee in the case of Routine Maintenance, and after thirty (30) days' prior written notice from Lessee in the case of Periodic Maintenance, fail to maintain the Tower Garage in the manner provided for herein, Lessee shall have the right to self-perform a portion of or all of the maintenance and repair obligations of the City, and any costs or expenses incurred by Lessee shall be used to offset or otherwise abate any current or future Base Rent. Should the City dispute the Lessee's assessment that the City has failed to maintain and repair the Tower Garage as required herein, the parties shall engage a third-party, agreeable to both parties, that has experience and expertise in evaluating the maintenance and condition of Class A properties or parking facilities to assess whether the City is in compliance with the obligations set forth in this Agreement. To the extent the parties are unable to agree on a resolution regarding maintenance and repair of the Tower Garage, or any of the other rights, duties and obligations under this Agreement, the parties shall have all rights and remedies provided under law or in equity.

**Alterations and Improvements.** The City may, from time to time, make additions, improvements and alterations to the Tower Garage; provided, however, that any addition, alteration, or improvement (other than as necessary to operate, maintain, and repair the Tower Garage as provided in this Agreement) which materially impairs access to or use of the Parking Spaces, either temporarily or permanently, will be made only with reasonable prior notice to and written approval by Lessee. Notwithstanding anything contain herein, in no event shall the City make any changes to the Tower Garage that may reduce the Parking Spaces that have been leased to Lessee. If any such addition, improvement or alteration to the Tower Garage causes Parking Spaces to be unavailable for use and alternate spaces are not available in the Tower Garage, Monthly Rent will abate on a prorated basis.

**Lessee Security and Monitoring.** Provided such activities do not unreasonably impair the City's ability to lease Parking Stalls outside the Exclusive Use Period, Lessee shall at all times have the right, but not the obligation, to take the following, but not limited to, actions in the Tower Garage in the interests of promoting the safety and well being of Authorized Users and for protection of the Mutual Tower: (a) install security equipment for purposes of monitoring the Tower Garage occupied by Authorized Users; (b) patrol the Tower Garage for safety and security violations and concerns; and (c) take immediate action to remediate any perceived threat or safety issue. For purposes of clarity, and regardless of Lessee's rights set forth in this Section, all obligations to operate, maintain, repair, and secure the Tower Garage set forth in this Agreement are obligations of the City.

## **CASUALTY**

If the Tower Garage is damaged or destroyed in whole or in part by any casualty, the City will promptly commence and diligently complete any necessary repairs or restoration. During any period when any Parking Spaces are not available for use, Monthly Rent will abate on a prorata basis.

## **ASSIGNMENT AND SUBLETTING**

Lessee may assign this Agreement to any other party. If Lessee requests the City to do so, the City and Lessee will amend this Agreement to reflect the Assignment or to reduce the number of Parking Spaces leased to Lessee and the City will enter into a separate Parking Lease Agreement with such third party in substantially the form of this Agreement.

## **QUIET ENJOYMENT**

So long as Lessee pays Monthly Rent and observes and performs all the terms, covenants and conditions of this Agreement on Lessee's part to be observed and performed, Lessee may peaceably and quietly enjoy the Parking Spaces subject to the terms and conditions of this Agreement.

## **DEFAULT**

**Events of Default.** The following events are referred to collectively as "Events of Default," or individually, as an "Event of Default":

Lessee defaults in the due and punctual payment of Monthly Rent, and such default continues for thirty (30) days after written notice from the City;

This Agreement or the Parking Spaces are taken upon execution or by other process of law directed against either party (provided, that, this sentence shall not relate to any action commenced by or on behalf of the City), or are subject to any attachment at the instance of any claimant against either party and such attachment is not discharged with sixty (60) days after its levy, and the party subject to such execution or attachment is not actively seeking such discharge;

Either party files a petition in bankruptcy or insolvency, or a petition for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved, or makes an assignment for the benefit of creditors;

Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of either party are instituted against such party or a receiver or trustee is appointed for all or substantially all of the property of such party, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment, and such party is not actively pursuing the vacation of such action; or

Either party breaches any of its other obligations under this Agreement, and such breach continues for thirty (30) days after notice by the non-breaching party to the breaching party or, if such default cannot reasonably be cured within such 30-day period, the breaching party fails to commence curative efforts within such 30-day period or thereafter fails to proceed in good faith to cure such breach within a reasonable time, but in no event more than an additional one-hundred eighty (180) days without the City's further written consent, not to be unreasonable withheld, conditioned or delayed.

Notwithstanding anything contained in this Section, the City acknowledges that any lender of

Lessee shall have thirty (30) days beyond any cure time period contained herein to cure any Event of Default by Lessee, and any such lender's foreclosure of Lessee's rights and interest in this Agreement shall not constitute an Event of Default by Lessee, provided, that, such lender continues to pay Monthly Rent, and otherwise complies with all terms and provisions of this Agreement. The City agrees to work in good faith with Lessee and any lender to negotiate and execute any commercially reasonable agreements to further memorialize the intent of this paragraph.

**Remedies.** If an Event of Default occurs, then the non-defaulting party has the right, at its election, to:

Give the defaulting party written notice of termination of this Agreement, in which case Lessee's right to possession of the Parking Spaces will cease and this Agreement will be terminated thirty (30) days from the first day of the calendar month following the date of such notice and the parties shall have no further rights or obligation under this Agreement; or

With respect to Lessee's default, the City may after demand and notice, expel Lessee and those claiming through or under Lessee, except for any Authorized Users who maintain a valid sublease agreement with Lessee for such Parking Spaces. Should the City expel Lessee pursuant to legal proceedings or pursuant to any notice provided by law, the City may, from time to time, without terminating this Agreement, collect and receive payments from the Authorized Users for use of all or any portion of the Parking Spaces. The expulsion of Lessee by the City shall not be construed as an election on the City's part to terminate this Agreement unless a written notice of such intention is given to Lessee and the Authorized Users. No notice from the City under this subsection or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by the City to terminate this Agreement unless such notice specifically so states. The City reserves the right following any such expulsion to exercise its right to terminate this Agreement by giving Lessee written notice in accordance with this Agreement, in which event this Agreement will terminate as specified in such notice, subject to the rights of the Authorized Users; or

With respect to the City's default, whether in the performance of the City's duties under this Agreement, and in addition to the other rights set forth in this Agreement, Lessee may provide written notice to the City specifying the nature of such default, and, if the City fails to cure such default within thirty (30) days following receipt of such written notice, Lessee may cure such default and offset the cost and expense of such cure against one or more future installments of Monthly Rent.

**Cumulative Remedies.** Unless otherwise provided in this Agreement, each right and remedy provided in this Agreement is cumulative and in addition to every other right or remedy provided in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by such party of any or all other such rights or remedies.



## MISCELLANEOUS

**Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

**No Waiver.** The waiver by either party of any agreement, condition or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision contained in this Agreement, nor will any custom or practice which may occur between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms of this Agreement.

**Estoppel Certificate.** At any time and from time to time but within ten (10) business days after written request made by the City or Lessee to the other party to this Agreement, such other party will execute, acknowledge and deliver to the requesting party a certificate certifying (a) that this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification, (b) the date, if any, to which Monthly Rent payable under this Agreement has been paid, (c) that no notice has been delivered to such party of any default by such party which has not been cured, except as to defaults specified in such certificate, (d) that to the other party's actual knowledge, no Event of Default then exists under this Agreement and that no event has occurred which, with the giving of notice or passing of time, or both, could result in an Event of Default, except as to Events of Default or other events specified in such certificate, and (e) such other factual matters with respect to this Agreement as may be reasonably requested by such requesting party. Any such certificate may be relied upon by any prospective purchaser of, or existing or prospective mortgagee or beneficiary under any deed of trust encumbering, the Tower Garage or any real estate owned, leased, or used by Lessee.

**Alternative Dispute Resolution.** In the event of any dispute between the City and Lessee arising out of this Agreement, the relationship of the City and Lessee, Lessee's use and occupancy of the Parking Spaces, or any related matter, the City and Lessee agree to cooperate in the exploration of alternative forms of dispute resolution, such as mediation and arbitration, provided, however, that this will not limit: (a) either party's right to terminate this Agreement if an Event of Default occurs, (b) the City's right to seek an order granting possession of the Parking Spaces to the City upon the occurrence of any other Event of Default, or (c) the right of either the City or Lessee to seek emergency injunctive relief in situations in which irreparable harm might otherwise result.

**Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law will be in writing and will be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth below, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below:

City:  
City of Omaha  
Omaha City Attorney  
Omaha/Douglas Civic Center  
1819 Farnam Street  
Omaha, NE 68183  
[jennifer.taylor@cityofomaha.org](mailto:jennifer.taylor@cityofomaha.org)

Lessee:  
Senior Vice President Business Resiliency  
Mutual of Omaha Insurance Company  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175-0002  
[Alex.Hayes@mutualofomaha.com](mailto:Alex.Hayes@mutualofomaha.com)

With a copy to and for Legal Service:  
General Counsel  
Mutual of Omaha Insurance Company  
3300 Mutual of Omaha Plaza  
Omaha, NE 68175-0002  
[Nancy.Crawford@mutualofomaha.com](mailto:Nancy.Crawford@mutualofomaha.com)

All notices, demands and requests are effective upon receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as required will be deemed to be receipt of the notice, demand or request sent. Notices sent by electronic mail shall be effective on the business day of transmission to the proper electronic mail addresses if transmitted before 5:00 p.m. (local time at the party to whom notice is sent). To be effective as “notice” pursuant to this Agreement, any notice sent by electronic mail shall include the following phrase in all caps in the subject line thereof: “NOTICE DELIVERED PURSUANT TO PARKING LEASE AGREEMENT”. By giving to the other party at least fifteen (15) days’ prior notice, the parties will have the right to change their addresses.

**Severability.** If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, a provision will be added as a part of this Agreement as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**Written Amendment Required.** No amendment, alteration, modification or addition to this Agreement will be valid or binding unless expressed in writing and signed by the party or parties to be bound.

**Indemnification.** The City agrees to indemnify, defend, and hold harmless Lessee and its affiliates, and their directors, officers, employees and agents, and any Authorized User from and against any loss, liability, damage, cost, or expense resulting from the City’s negligence or failure to properly maintain the Tower Garage and Parking Spaces, or perform its other obligations under this Agreement.

**Cooperation in Design Phase.** The City and Lessee agree to cooperate and consult with each other in connection with the design, layout, and function of the Tower Garage so that the Tower Garage will be reasonably satisfactory to the City and Lessee.

**Entire Agreement.** This Agreement contains the entire agreement between the City and Lessee with respect to the subject matter of this Agreement.

**Captions.** The captions of the various Articles and Sections of this Agreement are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

**Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Nebraska.

**Binding Effect.** The covenants, conditions and agreements contained in this Agreement will bind and inure to the benefit of the City and Lessee and their respective successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF OMAHA, a Nebraska municipal corporation,

By: \_\_\_\_\_

Title: Mayor of the City of Omaha

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

City Clerk

Approved as to Form:

By: \_\_\_\_\_

Assistant City Attorney

Date

LESSEE:

MUTUAL OF OMAHA INSURANCE  
COMPANY, a Nebraska corporation,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT "N"

### EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability as defined by the Americans With Disabilities Act of 1990 and Omaha Municipal Code 13-82. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex or national origin. The Contractor shall take all actions necessary to comply with the Americans With Disabilities Act of 1990 and Omaha Municipal Code (Chapter 13) including, but not limited to, reasonable accommodation. As used herein, the word "treated" shall mean and include, without limitation, the following: Recruited, whether advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.

(2) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or disability as recognized under 42 USCS 12101 et seq.

(3) The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the Contractor's commitments under the Equal Employment Opportunity Clause of the City and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor shall furnish to the contract compliance officer all Federal forms containing the information and reports required by the Federal government for Federal contracts under Federal rules and regulations, and including the information required by Sections 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the Contract Compliance Officer shall be those

which are related to Paragraphs (1) through (7) of this subsection and only after reasonable notice is given the Contractor. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.

(5) The Contractor shall take such actions with respect to any subcontractor as the City may direct as a means of enforcing the provisions of Paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the Contractor becomes involved in or is threatened with litigation as the result of such directions by the City, the City will enter into such litigation as necessary to protect the interests of the City and to effectuate the provisions of this division; and in the case of contracts receiving Federal assistance, the Contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.

(6) The Contractor shall file and shall cause his subcontractors, if any, to file compliance reports with the Contractor in the same form and to the same extent as required by the Federal government for Federal contracts under Federal rules and regulations. Such compliance reports shall be filed with the Contract Compliance Officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the Contractor and his subcontractors.

(7) The Contractor shall include the provisions of Paragraphs (1) through (7) of this Section, "Equal Employment Opportunity Clause", and Section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.