

## ForeREAL ESTATE EXCHANGE AGREEMENT

**THIS REAL ESTATE EXCHANGE AGREEMENT** (this “Exchange Agreement”) is entered into with an effective date as of the \_\_\_\_\_ day of November, 2020, by and between Downtown Development Corporation (the “DDC”), an Illinois not-for-profit corporation, and the City of Peoria (the “City”), an Illinois municipal corporation, located in Peoria County, State of Illinois;

WITNESSETH

**WHEREAS**, the DDC is the owner of the following described real estate, commonly known as 807 SW Washington St., Peoria, Illinois 61602 (the “807 Parcel”) subject to an Air Rights Development Easement, to-wit:

SEE ATTACHED EXHIBIT A

PIN: 18-09-330-038

**WHEREAS**, the City is the owner of the following described real estate, commonly known as 225 State St., Peoria, Illinois, 61602 (the “225 Parcel”), to-wit:

SEE ATTACHED EXHIBIT B

PIN: 18-09-331-006

**WHEREAS**, for purpose of accommodating and providing for the development by the City of its property that adjoins the 807 Parcel, and for the purpose of accommodating and providing for the assemblage by the DDC of properties near the southeast corner of Adams St. and State Street for future development by the DDC or others, the parties desire to exchange each of the 807 Parcel and the 225 Parcel with each other; and

**WHEREAS**, in furtherance of the above, the parties desire to memorialize their understandings and objectives relating thereto;

**NOW, THEREFORE**, for and in consideration of the above and of the mutual covenants herein contained, the parties agree as follows:

1. **OWNERSHIP; TITLE; CONVEYANCE.** Each of the DDC and the City warrant and represent unto the other with respect to their respectively owned Parcel that each currently has fee simple title to their respective Parcel which is marketable and free from all liens and encumbrances except the hereinafter described Permitted Exceptions. At Closing, each party shall convey by Special Warranty Deed any and all interest of such party in such party’s currently owned Parcel to the other so as to result in the DDC being the owner of the 225 Parcel and so as to result in the City being the owner of the 807 Parcel, each Parcel of which, however, shall be subject to the special covenants and

limitations as are hereinafter set forth. Such respective conveyances by each party shall be subject only to the following ("Permitted Exceptions"):

- A. The lien of general real estate taxes, if any, not yet due;
- B. Covenants, easements and restrictions of record as shall not materially impair the development or use of each respective Parcel as described and provided herein; and
- C. Any other matters waived or approved by the party which is the intended grantee of each respective Parcel.

As soon as reasonably practicable after the date of this Exchange Agreement, each of the respective owners of the 807 Parcel and the 225 Parcel shall, at such owner's sole cost and expense provide (or cause to be provided) to the other Parcel owner a title commitment for an ALTA owners title insurance policy in the amount of Ten Thousand Dollars (\$10,000) or such lesser amount of coverage as may be available/provided by the issuing title insurance company, issued by Chicago Title Insurance Company, Attorneys Title Guaranty Fund, or other reputable title insurance company, covering title to the Parcel of such respective owner showing title to such owner's Parcel vested in such owner, subject only to the Permitted Exceptions applicable thereto and other title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which such respective owner shall so remove from such owner's Parcel upon Closing. Such title commitment for a Parcel shall be conclusive evidence of title to the respective Parcel as therein described as to all matters, subject only to exceptions as therein stated. If the applicable title insurance commitment discloses unpermitted exceptions that are not approved by the intended grantee of the Parcel ("Title Defects"), the owner of such Parcel (described in the applicable title commitment) shall, at such owner's sole cost and expense, have ten (10) days from the date of delivery thereof to have the exceptions removed from such title commitment or to have the title insurance company satisfactorily commit to insure against loss or damage that may be occasioned by any such unacceptable exceptions. If such Parcel owner fails to have such exceptions removed or to correct any Title Defects, or in the alternative, to obtain a commitment for title insurance specified above as to such exceptions or Title Defects within the specified time, then the Parcel owner who is to be a grantee of the Parcel affected by such Title Defects may (i) terminate this Exchange Agreement upon written notice to the other party; or (ii) such affected owner/grantee may elect, upon written notice given to the Parcel owner of the Parcel encumbered by such Title Defect within seven (7) business days after the expiration of the ten (10) day period, to take title to the Parcel (to which such owner is to be conveyed) in a status as it then is.

The purpose of the foregoing shall be to demonstrate to each respective Parcel owner that the other owner is vested with sufficient ownership rights and other interests and/or privileges to carry out and effectuate the intent of this Exchange Agreement and/or to

provide a procedure by which Title Defects that may otherwise impair the effectuation of the intent of this Exchange Agreement can be resolved or eliminated.

2. **CONSIDERATION FOR CONVEYANCES.** The parties acknowledge and confirm that the intended conveyances described herein are solely for and as reciprocal obligations to the other (without additional monetary consideration owed to the other) to effectuate changes of ownership in the Parcels so as to result in the 807 Parcel being owned by the City and the 225 Parcel being owned by the DDC. To the extent that, for any reason (such as declarations for transfer tax exemption purposes), the parties may need to establish a value/amount of a conveyance, then such value/amount shall be as mutually determined by and between the parties or, in the event of a failure to agree, such value shall be at the fair market value based upon that amount for which the Parcel that is being conveyed is then assessed for general real estate tax purposes.

3. **SURVEY; SUBDIVISION PLAT.** Unless it otherwise becomes apparent or required that a survey or subdivision plat is needed for one or both Parcels in order to effectuate the provisions or intent hereof, each party acknowledges and confirms that neither party expects the other to provide a survey (for subdividing purposes for which this transaction does not appear to apply or for any other purpose) and each party waives any requirement or expectation of the other to provide same. Notwithstanding the foregoing,, however, should it be determined that there is a requirement or other valid purpose for a need of a survey (e.g. boundary dispute/issue as to a Parcel, the requirement for platting and subdivision approval to properly perform and complete the transaction contemplated hereby, etc.), then the owner for the Parcel so requiring same shall, at such owner's expense, provide such survey which shall be done promptly by a surveyor/engineer duly licensed by the State of Illinois to survey and effectuate/generate plats such that any requirements are met for which any such survey is intended to fulfill.

4. **TAXES AND ASSESSMENTS.** To the extent that any real estate taxes or other assessments/fees may be a lien upon or otherwise applicable to a Parcel, each of the parties shall pay the amount of such taxes for the year 2019 and prior years as are applicable to each respective owner's Parcel. For the year 2020, any such taxes or other assessments/fees shall be prorated for each Parcel and paid when due (according to such prorated portions) by each of the respective Parcel owners. Any such taxes or other assessments/fees for the years 2021 and thereafter shall be paid by that Parcel owner which is the grantee of the Parcel being conveyed.

5. **POSSESSION AND CLOSING.** To the extent that any conveyance of a Parcel is made to a party hereunder, the parties agree that exclusive possession of such Parcel, subject to any restrictions or limitations herein set forth with respect thereto, shall be delivered and provided to such intended grantee of said Parcel at and upon Closing, and each party that currently owns any applicable portion thereof agrees that in the meantime and until Closing any such Parcel will be maintained in substantially its present condition, ordinary wear and tear excepted.

Closing of the conveyances/transactions contemplated hereby shall contemporaneously occur at the office of Miller, Hall & Triggs, Peoria, Illinois, or such other place as shall be mutually chosen and determined by the parties, and shall take place on that date which is mutually agreed upon by and among the parties, but no later than thirty (30) days after the expiration of the Contingency Period hereinafter described. At Closing, each respective owner of a Parcel shall execute and deliver Special Warranty Deeds conveying any and all rights, title or interest of any such Parcel owner in each Parcel (to which each party hereto is entitled to be conveyed under the terms hereof) together with other documentation customarily furnished and provided jointly or to the other for such transactions occurring within the County of Peoria. At such Closing, the status of title to which any such Parcel shall be conveyed to a party shall be subject only to the respective Permitted Exceptions as are applicable to such Parcel as determined consistent with the provisions of paragraph 1 hereinabove.

6. **EXCHANGE CONDITIONS.** This Exchange Agreement is subject to the following conditions for the benefit of the party for whom each respective right and condition is provided (and is only and solely waivable by the party for whose benefit such right and condition is so provided):

A. Inspection. Each party obtaining, at such party's expense, a report or reports of inspection of the physical condition of the Parcel to be conveyed to such party so as to determine that, in such respective party's absolute discretion and determination, that the said Parcel to be so conveyed is in compliance with the terms of this Exchange Agreement and is otherwise suitable and acceptable for its conveyance to such party and for the intended uses thereof by and for such party.

B. Permitted Use(s). Each party obtaining through any and all appropriate and necessary proceedings therefor, written evidence satisfactory to such party that the zoning of (and any required government approvals applicable to) the Parcel to be conveyed to such party is, or has been changed to, a classification or status to permit the Parcel to be used as such party intends to use the Parcel (the "Permitted Uses").

C. Adequate Access/Services: Each party obtaining written evidence that adequate water, storm sewer, sanitary sewer, telephone, electrical services, and other utility and public services are available to the Parcel to be conveyed to such party to serve the Permitted Uses.

D. Environmental Assessment. Each party obtaining, at such party's expense, a written Phase I environmental assessment report (together with a Phase II environmental assessment report if such Phase I report suggests, but is inconclusive or incomplete as to, the existence of possible environmental risk or violation) prepared by an engineering firm acceptable to such party verifying that the Parcel to be conveyed to such party is free from any environmental risk or environmental violation of any applicable environmental law.

In connection with the satisfaction of the above conditions, each party shall be permitted reasonable access to a Parcel or any portion thereof as may involve a Parcel to which such party shall be conveyed under the terms of this Exchange Agreement; provided, however, that any such party shall indemnify and hold any other party harmless of and from any and all damages, claims, causes of actions or fees, including reasonable attorneys' fees as may be incurred or threatened against any other party by reason of such party's entry upon any Parcel or portion thereof for such purposes. To the extent that any testings require any intrusions within or upon any Parcel or portion thereof, such entering party shall keep such intrusions to the least as are reasonably possible and practicable, and upon completion of same shall restore the Parcel or portion thereof as may be affected by such entry to substantially its same condition as existed prior to such entry or intrusion.

In the event that the above conditions are not fulfilled to each party's satisfaction within thirty (30) days from the date of this Exchange Agreement (the "Contingency Period"), then, unless the other party shall have within three (3) days after the expiration of the Contingency Period delivered to the other party a written notice to the effect that such party is thereupon electing to terminate this Exchange Agreement (in which case this Exchange Agreement shall thereupon terminate) such party shall be deemed to have waived any right of termination and the further performance of this Exchange Agreement shall thereafter continue as though any such conditions had not been included herein.

7. **REPRESENTATIONS AND WARRANTIES.** Each of the DDC and the City (as parties hereto) covenant, represent and warrant unto the other as follows:

- A. That there are no service or maintenance agreements or any other agreements, licenses or permits affecting their respective Parcel to be conveyed which cannot be terminated upon thirty (30) days prior written notice
- B. That each party by reason of their acquisition of that Parcel to be conveyed to such party as herein provided will not be required to satisfy any obligations of any other party other than those set forth herein or especially assumed by such party under the terms of this Exchange Agreement. Each party, subject to the terms and conditions of this Exchange Agreement, covenants that it shall, on or after the Closing, pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the conduct of any activities conducted on, or arising out of, such respective owner's Parcel up to and including the date of Closing.
- C. There are no leases or other obligations of a party in connection with such party's owned Parcel that cannot be terminated on or before the date of Closing.
- D. Each party has not received any written notice from any governmental agency of violations of any laws or ordinances, rules, regulations or orders (including, but not limited to, those relating to zoning, condemnation, building, fire, environmental, health or safety) with respect to either of the Parcels or any

operations being conducted thereupon that have not been resolved to the satisfaction of the issuer of the notice.

E. As of the Closing, there shall be no liens, security interests, charges or encumbrances against the Parcel to be conveyed by such party to the other party, except the Permitted Exceptions and except to the extent that same shall be released at or prior to Closing.

F. Each party shall maintain through to and including the date of Closing any and all insurance coverage presently in effect with respect to its currently owned Parcel, including policies of public liability, property damage and fire insurance.

8. **MUTUAL REPRESENTATIONS.** Each party represents and warrants to the other that the execution hereof does not result in the material breach of any legally binding written or oral agreement or any other agreement to which the party making the representation or the warranty is bound; and that all covenants, representations and warranties of such party making the representation or warranty are binding upon and enforceable against said party in accordance with their respective terms; and that the parties so making the representation or warranty has full authority to enter into this agreement as well as any and all documents pertaining to this transaction.

9. **MUTUAL ASSISTANCE AND COOPERATION.** The parties hereto mutually hereby agree that they will cooperate in all activities required hereunder, whether expressed or implied, to effectuate and consummate the transactions and procedures contemplated hereunder and to do or cause to be done, execute, acknowledge and deliver any and all such documents and assurances and to take or cause to be taken all such actions before and after the Closing as shall be reasonably necessary or desirable to carry out and effectuate fully the terms, conditions and intentions of this Exchange Agreement; provided that any expenses incurred in carrying out such acts shall, unless provided to the contrary in this Exchange Agreement, be borne by the party that requested such action be performed.

10. **SPECIAL COVENANTS / RESTRICTIONS.** Each of the parties acknowledges that their willingness to participate in, and carry out the terms and provisions of, this Exchange Agreement are based upon the grantee of the Parcel to be conveyed accepting certain covenants, conditions and restrictions (to run with the land) relating to the use and development of the Parcel being conveyed to such grantee. Consistent with the foregoing, the City as the intended grantee of the 807 Parcel agrees that the following covenants, conditions and restrictions shall apply to the 807 Parcel as part of and subsequent to the Closing:

A) The City acknowledges that the 807 Parcel is subject to (or is obligated to provide to) the owner of the parcel of real estate located at 801 SW Washington St., Peoria, Illinois 61602 (the "801 Parcel), an air rights development easement substantially in the form as that which is attached hereto as Exhibit C. The City agrees to accept the conveyance of the 807 Parcel from DDC subject to such air rights development easement

and assume any and all obligations as are required by DDC to be performed pursuant to the terms thereof;

B) It being intended by A) above that the use and development of the 801 Parcel, shall be able to install windows (and doors with balconies as may protrude over and into such Air Rights area) along and within the southwest exterior building wall which will have and be provided an unobstructed view of, and unrestricted natural light from, that area vertically above the existing grade surface of such twenty-five foot wide strip of land as provided and described in such air rights development easement, with the City agreeing that window penetrations from the first/lowest story to the uppermost story of the building upon the 801 Parcel may be made in and from such exterior building wall for purposes thereof;

C) Provided, however, that the foregoing shall not prevent or restrict the City from using the surface for the parking of motor vehicles in conjunction with the providing of parking to serve business or other operations upon other properties adjoining or within the vicinity of the 807 Parcel.

Further, and also consistent with the above, the DDC as the intended grantee of the 225 Parcel agrees that the following covenants, conditions and restrictions shall apply to the 225 Parcel as part of, and subsequent to, the Closing:

i). The use of the 225 Parcel (in its current state of improvement) for parking of motor vehicles for use by current existing buildings/projects/operations within the area of the 225 Parcel shall only be permitted for a period of not to exceed three (3) years (the "Temporary Parking Period") with the option to extend for two (2) additional years with the written consent from the City;

ii). Beyond the Temporary Parking Period and any extensions parking upon the 225 Parcel may only be for the purpose of supporting and being used by new development upon the 225 Parcel, adjoining property thereto, or property within the vicinity of the 225 Parcel;

iii) It being intended by i) and, ii) above that, after the Temporary Parking Period, the use of the 225 Parcel for parking shall only be in combination with other development within the area of the 225 Parcel or upon the 225 Parcel, such that the use of the 225 Parcel be itself used for new building development or to support other new building development to enhance the assessed value of those properties (which may also include the 225 Parcel as a part thereof) above and beyond that assessed value which is currently the case.

As part of the Closing of the contemporaneous exchange of the 807 Parcel and the 225 Parcel, the parties agree that they shall (to the extent not otherwise provided otherwise such as by the air rights development easement) proceed with good faith and best efforts to prepare, execute and record (prior to other restrictions and/or encumbrances) an instrument in the nature of a restrictive covenant agreement (with the provisions thereof





With copy to: City of Peoria  
Attn: Legal Department  
419 Fulton Street  
Peoria, IL 61602  
Fax #: 309 / 494-8559

B. **Entire Agreement.** The parties declare that this instrument contains the entire Exchange Agreement among the parties and it is subject to no understandings, conditions, or representations other than those contained herein. There may be no modification or amendment of this Exchange Agreement except in writing executed by all the parties hereto.

C. **Headings.** Section headings and numbers herein are included for convenience only, and this Exchange Agreement is not to be construed with reference thereto. If there is any conflict between such numbers and headings in the text hereof, then the text shall control.

D. **Agreement Supersedes Prior Agreements.** This Exchange Agreement supersedes all previous agreements, negotiations, statements and undertakings which are merged herein and its terms and conditions, including all representations, covenants and warranties, shall remain in full force and effect and shall not merge or terminate on the Closing.

E. **Governing Law.** This Exchange Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

F. **Counterparts.** This Exchange Agreement and any and all modifications hereto may be signed in counterparts, all of which shall be deemed an original.

G. **Time of Essence; Attorneys' Fees.** Time shall be of the essence of each and every obligation of this Exchange Agreement.

If either party should find it necessary to retain an attorney for the enforcement of any of the provisions hereunder or for other reasons occasioned by the default of the other party, the party not in default shall be entitled to recover for reasonable attorneys' fees and court costs incurred whether the attorneys' fees are incurred for the purpose of negotiation, trial, appellate or other legal or support services.

H. **Escrow Closing.** At the election of any of the parties, the Closing contemplated hereby shall be through an Escrowee as and pursuant to what is commonly referred to as an escrow closing. In such case, the parties agree to equally share any fees of any such Escrowee for services in connection therewith.

I. **Broker's Commission.** Each of the parties warrants unto the other that neither has engaged the services of a real estate broker or engaged in any conduct as will permit a broker to claim that such broker was the procuring cause of this transaction

or Purchaser's decision to acquire/exchange either of the Parcels. Each party agrees to indemnify and hold the other harmless of and from any and all claims, causes of action, damages, costs, expenses, fees (including reasonable attorney's fees) as may be incurred or threatened against the other party by a breach of the foregoing representation.

J. **Assignability.** The rights, obligations and benefits of this Exchange Agreement shall be fully assignable by any of the parties hereto, and in such event, the provisions hereof shall enure to the benefit of and be binding upon the successors and assigns of any party making any such assignment.

SIGNATURE PAGE FOLLOWS



