

CITY OF OMAHA

COUNCIL CHAMBER

BOOK 704 PAGE 702

Omaha, Nebr. December 20 19 83

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, on August 23, 1983, the City Council of the City of Omaha approved the Mall/South Redevelopment Plan; and,

WHEREAS, pursuant to said redevelopment plan the City Council of the City of Omaha passed Ordinance No. 30175, finding it necessary to acquire various properties on Block 149, Original City of Omaha; and,

WHEREAS, Greater Omaha Chamber Foundation, owner of certain lots on Block 149, have accepted the terms and conditions of the City's tentative purchase offer. As a part of the terms of said sale the City and the Foundation have agreed on a Use Agreement in connection with the parking structure to be constructed on Block 149.

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

THAT, the Mayor is hereby authorized to execute, and the City Clerk to attest, the Use Agreement with Greater Omaha Chamber Foundation attached hereto, in connection with the proposed parking structure on Block 149.

APPROVED AS TO FORM:

Ken Berger
ASSISTANT CITY ATTORNEY

4C1:26

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

By *Bernie Simon*
Councilman

Adopted DEC. 20 1983 6-0

Mary Gully-Carter
City Clerk

Approved *Michael Boyle* 12/21/83
Mayor

Mary Gully-Carter
BY CITY CLERK

(L)

USE AGREEMENT

THIS AGREEMENT, executed November 28, 1983 between the GREATER OMAHA CHAMBER FOUNDATION, a Nebraska Nonprofit Corporation, hereinafter referred to as "Foundation", and the CITY OF OMAHA, NEBRASKA, a Municipal Corporation, hereinafter referred to as "City".

RECITALS:

WHEREAS, the Foundation presently owns the North Half of Block 149, Original City of Omaha, upon which it recently constructed a new building to house its offices, the offices of the Greater Omaha Chamber of Commerce and certain related organizations with contiguous parking vital to its activities and those of its tenants,

WHEREAS, the City is desirous of constructing a parking garage (Facility) on the western portion of Block 149 to replace a parking lot currently used by the State of Nebraska, which parking lot will be used for a major downtown redevelopment project, and the parties recognize that the construction of this Facility would alter the Foundation's present and planned future contiguous parking areas,

WHEREAS, the City and the Foundation recognize that the construction of this Facility will subvert the Foundation's partially implemented development plan and will deprive the Foundation, its tenants their members, and invitees of planned contiguous parking,

WHEREAS, the City is desirous of proceeding with the construction of the Facility and is agreeable to making long-term contiguous parking available for use by the Foundation in the Facility under the terms and conditions contained in this Agreement.

LOT 4 AND THE WEST 48.5 FEET OF LOT 3, BLOCK 149, ORIGINAL CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA.



IT IS THEREFORE AGREED AS FOLLOWS:

1. Conveyance of Properties. The parties have by separate agreement provided for the exchange of properties to facilitate the construction of the Facility.

2. Premises. The premises may be legally described as use of not more than 50 parking spaces in the parking facility located on the west half of Block 149 in the Original City of Omaha.

3. Term. The term of this Agreement shall commence on the date the Facility is completed and open for occupancy and shall terminate on December 31, 1996, unless sooner terminated as provided in Paragraph 7 below.

4. Rental. The Foundation agrees to pay to the operator of the Facility a rental fee for each space during the initial term of this Agreement equal to the monthly rate charged to State employees for use of the Facility. This monthly rate is based solely on the total operating and maintenance costs associated with the Facility. Rental for the first month shall be prorated from the date the premises are available for use by the Foundation.

5. Assignment to State of Nebraska. It is anticipated that on or about July 1, 1986 ownership of the Facility will be transferred to the State of Nebraska through exercise of a lease-purchase option currently available to the State of Nebraska. Exercise of such purchase option will be made by and through the Department of Administrative Services of the State of Nebraska. Upon the transfer of such facility to the State of Nebraska, all references in this Agreement to the City shall automatically be considered to mean the Department of Administrative Services, an agency of the State of Nebraska. The State of Nebraska is cognizent of the negotiations which have comminated in the execution this Agreement and is fully aware and concurs in the intention to provide long term contiguous parking for use for the Foundation.



6. Use of Premises. The premises shall be used and occupied by the Foundation, its tenants, their employees, members and invitees for vehicle parking.

7. Termination. From and after the time of transfer of ownership of the Facility to the State of Nebraska as described in Paragraph 5 above, this Agreement may be terminated as provided in Section 81-1108.17 of the Nebraska Statutes, which states in part as follows:

"...provided, that all leases shall contain the provision that upon notice that such property is needed for public use, the use or occupancy thereof shall cease;..."

For the purposes of this Agreement, "public use" is intended to mean the demand for parking in the Facility generated solely by (1) state employees, (2) state vehicles, (3) conference attendees (4) students and (5) other invitees of State agencies, including the University of Nebraska, housed in the downtown area of Omaha, Nebraska; and provided that the Foundation shall be given sixty (60) days prior notice of such termination.

8. Extension. Subject to the right of termination set forth in Paragraph 7 above, this Use Agreement shall be automatically extended on a month-to-month basis, subject to (30) thirty days termination by either party. The terms and conditions herein specified shall remain in effect for such extension except that the rental rate shall be subject to renegotiation.

9. Notices. Any and all notices provided to be given or which may be given under the provisions of this Agreement by either party to the other, shall be deemed to have been fully given when made in writing and either hand-delivered or deposited in the United States Mail, certified and postage prepaid and addressed as follows:



To the City of Omaha at:

City of Omaha
Omaha-Douglas Civic Center
1819 Farnam Street
Omaha, Nebraska 68183

To the Foundation at:

Greater Omaha Chamber Foundation
1301 Harney Street
Omaha, Nebraska 68102

After the change of ownership described in Paragraph 5 above, all notices intended for the City or its successor shall be addressed as follows:

The State of Nebraska
Department of Administrative Services
Room 1315, State Capitol
Lincoln, Nebraska 68509

10. Destruction of Premises: Should said premises be made unfit for occupancy due to fire or other unavoidable casualty, said tenancy shall immediately terminate and the Chamber shall pay rent only to the time of such termination. If the damage is not of a permanent or substantial nature, the Owner shall have the privilege of repairing the same and the rental payments shall be suspended on a pro-rata basis until said premises have been put in proper condition for occupancy.

11. Compliance with Law. The Foundation shall comply with all applicable statutes, charters, laws, ordinances, building maintenance codes, rules, regulations, requirements and orders of duly constituted public authorities now or hereafter in any manner affecting the property described, or the use thereof, whether or not any such statutes, charters, laws, ordinances, rules, regulations, requirements or orders which may be hereinafter enacted involved a change of policy on the part of the governmental body enacting the same. In addition, the Foundation shall comply with all the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the Facility.



12. Effectiveness of Agreement. This Agreement shall be subject to the execution by the parties of an exchange of properties agreement with respect to certain portions of Block 149. This Agreement shall be null and void in the event that the Facility described herein is not in fact constructed by the City within two (2) years from the date of this Agreement.

ATTEST:

CITY OF OMAHA, NEBRASKA

Maureen Wallace Powers
City Clerk of the City of Omaha

By: Michael Boyle 1/27/83
Mayor of the City of Omaha

GREATER OMAHA CHAMBER FOUNDATION

APPROVED

Denise A. Hill
ASSISTANT CITY ATTORNEY

By: [Signature]

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Before me, a notary public qualified in said county personally came Michael Boyle, Mayor of the City of Omaha, a municipal corporation, known to me to be the Mayor and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said municipal corporation and that its corporate seal was thereto affixed by its authority.

WITNESS my hand and notarial seal on Dec 27, 1983.

[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

GENERAL NOTARY - State of Nebraska
SANDRA L. MOSES
My Comm. Exp. Jun. 13, 1984

Before me, a notary public qualified in said county personally came Frank D. McMullen, Jr., President of the Greater Omaha Chamber Foundation, a nonprofit corporation, known to me to be the President and identical person who signed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that its corporate seal was thereto affixed by its authority.

WITNESS my hand and notarial seal on Dec. 7, 1983.

GENERAL NOTARY - State of Nebraska
DIANE M. MICEK
My Comm. Exp. June 20, 1985

Diane M. Micek
Notary Public

50 years

RECEIVED
1984 FEB -7 PM 2:50

C. HAROLD OSTLER
REGISTER OF DEEDS
DOUGLAS COUNTY, NEBR.

Vertical stamps: 2002, 2-29, 25, 2000, 2:50, Confed, 9-5-11, 517, 9-1