

PROPERTY TAX INCENTIVE APPLICATION FOR
ENCLAVE DEVELOPMENT
(Jim Gilmour)

SUGGESTED MOTION:

Move to participate in the request for a Tax Increment Finance (TIF) District in the City of Fargo submitted by Enclave Development for housing and commercial redevelopment located at 2301 University Drive South for up to a 15-year period.

OR

Move to **NOT** participate in the request for a Tax Increment Finance (TIF) District in the City of Fargo submitted by Enclave Development for housing and commercial redevelopment located at 2301 University Drive South for up to a 15-year period.



RECEIVED
CASS COUNTY COMMISSION

DEC 09 2021

ADMINISTRATION DEPARTMENT

December 7, 2021

Chad Peterson, Chairman
Cass County Commission
211 9th St. S.
Fargo, ND 58103

Mr. Peterson,

According to N.D.C.C. Chapter 40-05-24, if the City of Fargo anticipates granting a property tax incentive for more than five years, the Chairman of the County Commission must be notified by letter. Within 30 days of receipt of the letter, the County Commission shall notify the City of Fargo whether they intend to participate in the incentive. If the City does not receive a response, the County must be treated as participating.

The City of Fargo has received an application for Tax Increment Financing (TIF) of up to \$1.45 million to assist with the redevelopment of the old Kmart site at 2301 University Drive South. The project will be a mixed-use site, with housing and commercial businesses. Plans for the site include ~88 affordable housing units for seniors, ~20,000 square feet of retail space, two fast-food restaurants and a coffee business. TIF funds would be used for demolition and site cleanup, public works improvements and administration.

The incentive would be granted in the form of a TIF note that would repay the developer from TIF property taxes for approved TIF costs. The TIF request is for extraordinary costs to make the site suitable for development. These include demolition and site cleanup, public works improvements and administration. The maximum period of the TIF district would be 15 years after project completion. The property within the proposed district now has a value of \$3 million. The value of the completed project is estimated at more than \$10 million.

Please respond at your earliest convenience with the determination made by the County regarding the participation. Feel free to contact me with any questions or concerns.

Jim Gilmour
Director of Strategic Planning and Research

CC: Robert Wilson

DEVELOPER AGREEMENT

By and Between

CITY OF FARGO,
a North Dakota Municipal Corporation

and

GROVE ENCLAVE LLC

TAX INCREMENT FINANCING DISTRICT 2021-03

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DEVELOPER AGREEMENT

THIS AGREEMENT is dated as of _____, 2022; is by and between the City of Fargo, North Dakota, and Craig Enclave OG, LLC, a North Dakota Limited Liability Company; and provides as follows:

ARTICLE I

Definitions

Section 1.1. **Definitions.** As used in this Agreement, the following terms have the following respective meanings:

"Agreement" means this Developer Agreement, as the same may be amended.

"Available Tax Increments" means the Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby.

"Certificate of Completion" means a certification in the form of the certificate attached hereto as Exhibit F and hereby made a part of this Agreement, provided to the Developer pursuant to Section 4.4 of this Agreement.

"City" means the City of Fargo, North Dakota.

"Closing Date" means the date Developer closes with its institutional lender on its financing of the Minimum Improvements.

"Condemnation Award" means the amount remaining from an award to the Developer for the acquisition of title to and possession of the Development Property, or any material part thereof, after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such award.

"County" means the County of Cass, North Dakota.

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the sum of the products of the various eligible expenses initially borne by Developer and the City that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Three and One-half Percent (3-1/2%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date such expense was incurred to the date of the Tax Increment Note.

"Developer" means GROVE ENCLAVE LLC, a North Dakota limited liability company or permitted successors or assigns.

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes.

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15th) Tax Year and earlier Tax Years. Taxes for the sixteenth (16th) year following the first Tax Year, or for any subsequent year, are not included as Developer's Taxes.

"Development Costs" means those costs incurred and to be incurred by or on behalf of the Developer in acquiring the Development Property, in completing the Improvements and in financing those undertakings (including all interest charges on borrowed funds).

"Development Plan" means the Developer's development plan for the Development Property approved by the City on December 27, 2021, including all exhibits thereto, as the same may be amended from time to time.

"Development Property" means the real property described in Exhibit A to this Agreement.

"Effective Date" means the date this Agreement is actually executed and delivered.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 96.01 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. sec. 69.01 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. sec. 1802 et seq., the Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. sec. 1251 et seq., the Clean Water Act, 33 U.S.C. sec. 1321 et seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, all as may be from time to time amended.

"Event of Default" means an event of default defined in Section 9.1 of this Agreement.

"Hazardous Substances" means asbestos, ureaformaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

"Improvements" means the improvements constructed or to be constructed by the Developer on the Development Property, including all related landscaping, lighting, parking, and other site improvements. The Improvements may exceed, but shall not be less than, the Minimum Improvements, as provided in Section 4.1

"Maturity Date" means the date that is three (3) years from the Payment Date for the fifteenth Tax Year following the date of the issuance of the Tax Increment Note.

"Minimum Improvements" means the improvements contemplated by and in accordance with this Agreement and generally described in Section 4.1.

"Mortgage" means any mortgage or security agreement in which the Developer has granted a Mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon, and which is a permitted encumbrance pursuant to the provisions of Article VII; the term "Mortgage" shall specifically include, but shall not be limited to, leases or sale-leaseback arrangements which provide financing for the acquisition of the Development Property, or the construction of the Minimum Improvements.

"Net Proceeds" means any proceeds paid by an insurer to the Developer or City under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

"Party" means either the Developer or City.

"Parties" mean the Developer and City.

"Project" means the project of improvements in and adjacent to the TIF District contemplated in the Development Plan.

"Specified Event of Default" means an Event of Default for which the City may withhold payment on the Tax Increment Note. Such Event of Default consists of a default of the Developer after the issuance of the Tax Increment Note in the Developer's ongoing covenants set forth in Sections 8.1, and 8.2.

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of \$1,400,000 or in a lesser initial principal amount that represents reimbursement of eligible costs paid by the Developer as described in this agreement, plus Capitalized Interest at 3-1/2% per annum, the form of which is attached as Exhibit C to this Agreement, issued when conditions set forth in Section 3.3 are met.

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15th) Tax Year, therefore, is the fourteenth (14th) calendar year following the first said year.

"Urban Renewal Law" means the North Dakota Urban Renewal Law, that is, North Dakota Century Code, Chapter 40-58, as the same may be amended.

"TIF District" means the area identified as the "District," or "District 2021-03" under the City's Development Plan approved by the Board of City Commissioners of the City of Fargo on December 27, 2021, as the same may be amended.

"Unavoidable Delays" means any delay outside the control of the Party claiming its occurrence which is the direct result of strikes; other labor troubles; unusually severe or prolonged bad weather; unavailability of materials; Acts of God; fire or other casualty to the Improvements; remediation of contaminants, pollutants or hazardous substances; unforeseen soil conditions, hazardous materials or concealed conditions; litigation (including without limitation bankruptcy proceedings); or the direct result of the COVID-19 epidemic or other virus-related epidemic and which directly results in delays; or acts of any federal, state or local governmental unit, including epidemic-related government lockdowns, which directly result in delays.

ARTICLE II

Representations, Warranties and Covenants

Section 2.1. **Representations, Warranties and Covenants by City.** The City represents and warrants that:

(a) The City has received the approval of its Board of City Commissioners to enter into and perform its obligations under this Agreement.

(b) The City herein makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2. **Representations, Warranties and Covenants by Developer.** The Developer represents and warrants that:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State of North Dakota, is not in violation of any provisions of its agreement or the laws of the State of North Dakota and is authorized to enter into and perform its obligations under this Agreement.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented or limited by and will not conflict with or result in a breach of any provision or requirement applicable to the Developer or of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound.

(c) The Developer, with respect to its construction, operation and maintenance of the Improvements upon the Development Property, will cause the same to occur in accordance in all material respects with this Agreement and all local, state and federal laws and regulations (including without limitation environmental, zoning, building code and public health laws and regulations and including any relocation requirements under local, state or federal law).

(d) The Developer has received no notice or communication from any local, state or federal official or body that any activities of the Developer respecting the Development Property contemplated by this Agreement, including the construction of the Improvements on the Development Property, may be or will be in violation of any law or regulation.

(e) The Developer will use its reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed and completed.

(f) To the best knowledge and belief of the Developer, the construction of the Improvements on the Development Property within the reasonably foreseeable future is conditioned on the assistance and benefit to the Developer provided for in this Agreement. The Developer would not undertake the Project without the financing provided by the City pursuant to this Agreement.

(g) The Developer represents and covenants that throughout the term of this Agreement that the tax increment assistance provided under this Agreement will be used by the Developer solely to finance those costs which are eligible costs for reimbursement of a project as defined in the Urban Renewal Law. This provision does not apply to those costs that are initially borne by the City and reimbursed to the City by Developer as provided in Section 3.3 of this Agreement.

(h) The Developer will cooperate fully with the City with respect to any litigation commenced by third parties or by the City or both against third parties with respect to the Project.

(i) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(j) The Developer has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Project may or will be in violation of any Environmental Law or regulation, and the Developer, without any duty of inquiry, is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any Environmental Law.

(k) The Developer understands that the City will or may subsidize or encourage the development of other properties in the City, including properties that compete with the Development Property and Improvements, and that such subsidies or encouragements may be more favorable than the terms of this Agreement, and that the City has not represented that development of the Development Property will be favored over the development of other properties.

(l) The Developer will spend enough in construction of the Minimum Improvements, when combined with the value of the Development Property, to generate an estimated minimum market value of \$_____.

(m) The Developer expects that, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2024.

(n) As of the Closing Date, the Developer shall have binding arrangements for all the equity and loan financing necessary to complete the Minimum Improvements.

(o) As of the Closing Date, the Developer shall have submitted to the City Construction Plans consistent with the Improvements as described in Section 4.1.

(p) As of the Closing Date, the City shall be satisfied in its reasonable judgment that the Developer has firm arrangements for financing construction or acquisition of the Project in an amount sufficient, together with equity commitments, to complete the Project in conformance with such Construction Plans, or the City shall receive such other evidence of financial ability as in the reasonable judgment of the City is required.

(q) As of the Closing Date, the Developer shall have obtained an opinion from its independent legal counsel that this Agreement is in accordance with North Dakota state law, including the provisions of N.D.C.C. Chapter 40-58, and is a binding and enforceable agreement.

(r) As of the Effective Date, the Developer has marketable record title to Developer's Property free and clear of any encumbrances or lienholders except as provided in Article VII of this Agreement or, to the extent Developer does not have marketable record title, Developer has obtained from the person, firm or entity having such title an agreement [hereinafter referred to as an "Agency Agreement"] authorizing Developer to develop Developer's Property as contemplated by this agreement and authorizing Developer to enter into this Agreement, said Agency Agreement to be in a form approved by the City.

ARTICLE III

Completion of Improvements; Reimbursement of Certain Costs

Section 3.1. **Completion of Improvements by Developer.** Subject to Unavoidable Delays as provided in Section 4.2, below, the Developer shall have substantially completed the Improvements by December 31, 2024. The Developer's use of the Development Property shall be subject to (a) all of the conditions, covenants, restrictions and limitations imposed by this Agreement and also to (b) building and zoning laws and ordinances and all other local, state and federal laws and regulations.

Section 3.2. Intentionally Left Blank.

Section 3.3. **Reimbursement by City of Certain Costs; Terms of Tax Increment Note.** The Developer hereby represents to the City that the Developer has incurred and paid and will incur and pay significant Development Costs. The reimbursements that establish the principal balance of the Tax Increment Note whose principal and interest are payable to the Developer shall be as follows. The City hereby agrees to defray a portion of the Development Costs up to \$1,450,000, as follows:

1. Demolition & Site Cleanup	\$ 1,300,000
2. Public Works Improvements	\$ 100,000
3. Advance administrative Costs (Fees)	<u>\$ 50,000</u>
Total	\$ 1,450,000

For purposes of the above-described Development Costs, eligible costs for Demolition and Site Cleanup shall include, without limitation, ~~soil and foundation corrections,~~ soil remediation, building/basement removal, ~~levee shoring,~~ asbestos removal, engineering and other consultant fees, topographic, soil excavation and site fill, including reasonable fees and overhead charges and eligible costs for Public Works Improvements shall include, without limitation, storm water infrastructure/detention, grading, ~~gate valve removal, sidewalk and curb, street work and utilities,~~ including reasonable consultants' costs and fees and including reasonable overhead charges. The demolition and site clearing and public works improvement costs may be transferred between categories so long as the total costs do not exceed \$1,450,000 (including the stated administrative fee). The advance administrative fee, set forth above, will be paid by Developer to the City at the time of issuance of the Tax Increment Note. In addition, an annual administrative fee equal

to five percent (5%) of the annual increment received from the County Auditor shall be retained by the City prior to remittance to developer of said increment as payment on the TIF Renewal Note.

If there is a category of expense that is deemed ineligible under the Urban Renewal Law, but there are additional eligible expenses not otherwise reimbursed under this Agreement, then such otherwise non-reimbursed, but eligible, expenses may be recognized as an eligible expense under this Agreement. In addition to the foregoing costs, Developer shall be entitled to reimbursement over and above the foregoing eligible expenses an agreed upon interest rate of Three and One-half Percent (3.50%) Per Annum to be paid to Developer under the Tax Increment Note. All of the said costs, and interest, meet the representation set forth at Section 2.2(g) by issuing the Tax Increment Note, substantially in the form of Exhibit C to this Agreement, subject to the following conditions:

(a) There shall be one (1) Tax Increment Note. The principal amount of the Tax Increment Note shall be determined by adding the \$1,450,000 (or so much thereof as shall be demonstrated as set forth in Section 3.3(d)) plus a sum equal to Capitalized Interest. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first Tax Year and for each of fourteen (14) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the fifteenth (15th) or earlier Tax Years .(b) The Tax Increment Note shall be delivered only if no Event of Default shall have occurred and be at the time continuing.

(c) This subsection intentionally left blank.

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered when the Certificate of Completion has been delivered and when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the Developer has incurred and paid eligible costs of the Improvements to be borne by Developer which will not be otherwise reimbursed or paid hereunder. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the costs of the Improvements have been incurred, together with evidence satisfactory to the City

of the nature and amount of the costs of the Improvements and of the costs incurred by the Developer. Each certification shall demonstrate the specific purpose and amount of the costs of the Improvements and their compliance with the representation set forth at Section 2.2(g). The City's determination of a cost's compliance with the representation set forth at Section 2.2(g) shall, if based on the advice of its city attorney after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15th following the date of issuance of the Tax Increment Note and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates". The first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project. For all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

(f) The unpaid principal of the Tax Increment Note shall bear interest at Three and One-half Percent (3.50%) per annum from the date of issuance, compounded annually. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

(g) The City expresses no opinion in particular as to whether, or not, the interest income from any such TIF Revenue Note is exempt from federal income taxation, but it is assumed that the Tax Increment Note will be a "taxable" obligation.

(h) The Tax Increment Note shall be a special and limited revenue obligation of the City and not a general obligation of the City, and only Available Tax Increments received by the City shall be used to pay the principal of and interest on the Tax Increment Note. [Note: See definition of “Available Tax Increments”, above.]

(i) The Tax Increment Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit C. In the event of any conflict between the terms of the Tax Increment Note and the terms of this Section 3.3, the terms of the Tax Increment Note shall govern. No payments will be made on the Tax Increment Note during such time as there is a Specified Event of Default that has not been cured by the Developer.

(j) In connection with the issuance of the Tax Increment Note, and as conditions to such issuance, the Developer shall be provided with a Private Placement Memorandum and shall execute a receipt in a form acceptable to the City stating that it has relied on its own determinations in acquiring the Tax Increment Note and not on representations or information provided by the City.

(k) For purposes of this Agreement all project values shall be as valued by the City Assessor.

Section 3.4. Release and Indemnification Covenants.

(a) The Developer releases the City and the governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person for which a claim is made prior to the issuance of a Certificate of Completion and occurring at, about or in connection with the Development Property and/or Improvements, or the Developer's undertaking and completion thereof, or resulting from any defect therein, except to the extent such loss, damage or death is caused by the negligence or other wrongful acts of the Indemnified Parties. This paragraph (a) shall only apply to claims made prior to the issuance of a Certificate of Completion.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any

claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever brought prior to the issuance of a Certificate of Completion and arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Improvements; provided that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

(e) This Agreement shall not create nor be construed to create any partnership, joint venture, agency, or employment relationship between the Parties.

Section 3.5. Intentionally left blank.

Section 3.6. Use of Tax Increments.

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (1) to make payments on the Tax Increment Note; and
- (2) after payment of the Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

ARTICLE IV

Construction Of Minimum Improvements

Section 4.1 **Construction of Minimum Improvements.** The development shall be construction of ~~housing~~ multi-family housing with 80 affordable housing units, 20,000 square feet of commercial space, and two new stand-alone restaurant or coffee businesses. The Improvements constructed by the Developer may, and are hereby permitted to and encouraged to, exceed in scope, scale and nature the Minimum Improvements. The Minimum Improvements constitute the lowest (or minimum) amount of Improvements which meet the development required to be provided hereunder by the Developer.

Section 4.2 **Commencement and Completion of Construction.** Subject to Unavoidable Delays, by December 31, 2024, the Developer shall have substantially completed the construction of the Minimum Improvements.

Time lost as a result of Unavoidable Delays shall be added to extend the completion date beyond such date, a number of days equal to the number of days lost as a result of Unavoidable Delays.

The Developer agrees for itself, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall cause to be promptly begun and diligently prosecuted to complete construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.2. Until construction of the Minimum Improvements has been completed, the Developer shall make reports to the City, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of the Developer with respect to construction of the Minimum Improvements.

The Developer agrees that it shall permit designated representatives of the City to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction, after reasonable notice to Developer and at City's risk, to determine compliance with this agreement. This paragraph is not intended to apply to the customary building or code inspections by the City.

Section 4.3 **Certificate of Completion.** Promptly after completion of the Minimum Improvements in accordance with the provisions of this Agreement, the City will furnish the Developer with a Certificate of Completion, in substantially the form set forth in Exhibit F attached hereto. Such Certificate of Completion shall be a conclusive determination that the Developer has fulfilled the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements.

If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.4, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in

what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion.

ARTICLE V

Insurance And Condemnation

Section 5.1. **Insurance.**

(a) The Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the City, furnish the City with proof of payment of premiums on:

(I) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis" in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy; the interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Worker's compensation insurance, with statutory coverage.

(b) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer will deposit upon the request of the City, but no more often than annually, with the City a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 5.2. **Condemnation.** In the event that title to and possession of the Improvements, or any material part thereof, but solely as to the Development Property and Improvements which the Developer retains ownership of, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or other person (except the City) prior to the Maturity Date the Developer shall, with reasonable promptness after such taking, notify the City as to the nature and extent of such taking.

ARTICLE VI

Intentionally left blank.

ARTICLE VII

Mortgage Financing

Section 7.1. **Limitation Upon Encumbrance of Property.** Prior to the completion of the Minimum Improvements, as certified by the City, neither the Developer nor any successor in interest to the Development Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property, other than:

- (a) except for the purpose of securing financing for the Development Property or Minimum Improvements, or all of them; and
- (b) if the City is given notice of such Mortgage in accordance with Sections 7.1 and 7.2.

Section 7.2. **Notice of Mortgage.** The Developer shall provide the City with a copy of the Mortgage and related note prior to the completion of the Minimum Improvements thereon.

Section 7.3. **Notice of Default; Copy to Mortgagee.** Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement for which the remedies of Sections 9.3 and 9.4 are available, the City shall at the same time forward a copy of such notice or demand to each holder of any Mortgage at the last address of such holder shown in the records of the City.

Section 7.4. **Mortgagee's Option to Cure Defaults.** After any breach or default referred to in Section 7.3, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Development Property covered by its mortgage) and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided, however, that if the breach or default is with respect to construction covered by the Mortgage, nothing contained in this Section or any other Section of this Agreement shall be deemed to require such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the work covered by the Mortgage (beyond the extent necessary to conserve or protect the work or construction already made), provided that any such holder shall not devote the Development Property or portion thereof to a use inconsistent with the Development Plan or this Agreement without the agreement of the City.

Section 7.5. **City's Option to Cure Default on Mortgage.** In the event that the Developer is in default under any Mortgage authorized pursuant to this Article VII, whether or not the holder of the Mortgage has given the Developer notice of such default, the Developer shall notify the City in writing of:

- (a) the fact of the default;

- (b) the elements of the default; and
- (c) the actions required to cure the default.

If the default is an "Event of Default" under such Mortgage, which shall entitle such holder thereof to foreclose upon the Development Property covered by the Mortgage or any portion thereof, the Developer shall afford the City an opportunity to cure the "Event of Default" to the extent consistent with the Mortgage or permitted by the holder of the Mortgage upon request of the Developer, which request the Developer hereby covenants to make, within the time for cure provided by the Mortgage or within such longer reasonable time period as the holder shall deem appropriate. The City shall have no obligation to cure any such default.

ARTICLE VIII

Prohibitions Against Assignment And Transfer; Indemnification

Section 8.1. **Status of Developer; Transfer of Substantially All Assets.** As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that prior to the earlier of the Maturity Date, the Developer will maintain its existence as a North Dakota limited liability company and maintain its authority to conduct business in the State of North Dakota and shall not consolidate with or merge into another entity and shall not dissolve or otherwise dispose of all or substantially all of its assets; provided that the Developer may consolidate with or merge into another entity or sell or otherwise transfer to a partnership, limited liability partnership or corporation organized under the laws of one of the United States, or an individual, all or substantially all of its assets as an entirety and thereafter dissolve and be discharged from liability hereunder if (i) the transferee partnership, corporation or individual assumes in writing all of the obligations of the Developer under this Agreement; and (ii) the City receives such new security from the successor Developer to assure completion of the Project and the fulfillment of the remaining obligations of this Agreement as the City deems necessary or desirable.

Section 8.2. **Prohibition Against Transfer of Property and Assignment of Agreement.** The Developer represents and agrees that prior to the Maturity Date (treated for this purpose as the earlier of the date on which all principal of and premium, if any, and interest on the Tax Increment Note have been paid or fifteen (15) years after issuance of the Tax Increment Note):

(a) Subject to Article VII and Section 8.2(c) of this Agreement, except (i) only by way of security for, and only for, the purpose of obtaining financing (including construction loans secured by the Project, and loans secured by the Tax Increment Note) necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, (ii) for a transfer of a portion of the Development Property to a separate entity that controls, is controlled by, or is under common control with, Developer, or (iii) for any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the relevant portion of the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City.

(b) Subject to Section 8.2(c), the City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to

fulfill the remaining obligations undertaken in this Agreement by the Developer with respect to the relevant portion of the Development Property.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed with respect to the relevant portion of the Development Property all of the remaining obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (unless the Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 8.2(b)(ii) shall not apply); provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written approval by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) There shall be submitted to the City for review and prior written approval all pertinent instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII.

(c) Upon the furnishing of a Certificate of Completion pursuant to Section 4.4, notwithstanding any provisions to the contrary in this Article VIII, the Developer may sell or transfer such property or a portion thereof without any approval pursuant to Section 8.2(a) or (b).

(d) Nothing in subsections (a) or (b), above, is intended to limit the Developer's authority and right to rent or lease space in the Development Property to tenants.

Section 8.3. **Approvals.** Any approval of a transfer of interest in the Developer, this Agreement, or the Development Property or of a release of the Developer from its obligations hereunder required to be given by the City under this Article VIII may be denied only in the event that the City reasonably determines that the ability of the Developer to perform its obligations under this Agreement and its statutory duty, as owner, to pay ad valorem real property taxes assessed with respect to the Development Property, or any part thereof, or the overall financial security provided to the City under the terms of this Agreement, or the likelihood of the Minimum Improvements being successfully constructed and operated pursuant to the terms of this Agreement, will be materially impaired by the action for which approval is sought.

ARTICLE IX

Events of Default

Section 9.1. **Events of Default Defined.** The following are Events of Default under this Agreement:

(a) There shall have occurred a failure in the observance or performance in any material respect of any covenant, condition, obligation or agreement to be observed or performed under this Agreement.

(b) If any representation or warranty made by the Developer herein shall at any time prove to have been incorrect in any material respect as of the time made.

(c) If the Improvements are not substantially completed by December 31, 2024, as such time may be extended by Unavoidable Delays.

(d) If the holder of any mortgage on the Development Property or any portion thereof shall commence a legal action on the secured indebtedness or a foreclosure of its mortgage.

(e) If the Developer shall breach, in a material respect, any warranties, covenants or other provisions of this Agreement not referred to in the foregoing provisions of this Section 9.1.

(f) The filing by the Developer of a voluntary petition in bankruptcy or the adjudication of the Developer as a bankrupt, the insolvency of the Developer or the filing by the Developer of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation resolution or similar relief under any present or future federal, state or other statutes, laws or regulations relating to bankruptcy, insolvency or other relief for debtors, or if the Developer seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator for itself or its property, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due.

(g) If the Developer shall not have available, and be able to demonstrate to the reasonable satisfaction of the City, sufficient funds to complete the Improvements and pay all costs thereof.

An Event of Default shall also include any occurrence which would with the passage of time or giving of notice become an Event of Default as defined hereinabove.

Section 9.2. **Remedies on Default.** Whenever any Event of Default occurs, in addition to all other remedies available to the City at law or in equity, the City (1) may, upon written notice, suspend its performance (other than the payment of the Tax Increment Note, except as provided below for a Specified Event of Default) under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer has cured its

default and will continue its performance under this Agreement, and (2) may, after provision of sixty (60) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible, terminate this Agreement, without further obligation whatsoever hereunder to the Developer.

Notwithstanding anything to the contrary stated in this Agreement, the City shall not exercise any remedies at law or in equity or under this Agreement upon an Event of Default by the Developer, other than the City's right to suspend its performance under this Agreement, until after provision of sixty (60) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible.

As a remedy for an Event of Default:

(a) The City may suspend or terminate payments on the Tax Increment Note, if the Event of Default is a Specified Event of Default.

(b) The City may withhold a Certificate of Completion.

(c) The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, to recover any damages or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the either Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4. **No Additional Waiver Implied by One Waiver.** If any agreement contained in this Agreement should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. **Agreement to Pay Attorneys' Fees and Expenses.** Whenever any Event of Default occurs and has not been cured within sixty (60) days and the City shall employ attorneys or incur other expenses for the enforcement, performance or observance of any obligations or agreement on the part of the Developer contained herein, or for the identification

and/or pursuit of any remedies or possible workouts of such default, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City. If an Event of Default cannot be cured within sixty (60) days, but the Developer has provided assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible (as provided in Section 9.2), and the Developer does so cure said Event of Default in the manner as assured to the City, the Event of Default shall be deemed to have been cured within said sixty (60) days for purposes of this Section.

ARTICLE X

Additional Provisions

Section 10.1. **Titles of Articles and Sections.** Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 10.2. **Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by either Party to the other shall be sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and,

(a) in the case of the Developer, to Austin Morris, Manager, GROVE ENCLAVE LLC, 1 2nd Street North #102, Fargo, North Dakota 58102, and

(b) in the case of the City, to the City at 225 North 4th Street, Fargo, North Dakota 58102, Attention: Director of Strategic Planning and Research AND to the City at 225 North 4th Street, Fargo, North Dakota 58102, Attention: City Auditor;

or at such other address with respect to either such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.3. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof.

Section 10.4. **Law Governing.** The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Dakota.

To the extent the ability of the City to perform any obligations under this agreement is impaired or limited by modifications in North Dakota law, as established either by the legislature or the courts, this agreement shall be interpreted and construed to maximize the fulfillment of such obligations under the law; however, no breach of this agreement may be deemed to occur as a result of such impairment or limitation.

Section 10.5. **No Filing of Agreement.** The Parties agree that this Agreement shall not be filed against the Development Property, and each Party agrees that if it shall inadvertently cause or suffer this Agreement to be so filed, it will take such actions as may be necessary to remove, satisfy and render ineffective any such filing.

Section 10.6. **Modification.** If the Developer is requested by the holder of a Mortgage or by a prospective holder of a prospective Mortgage to amend or supplement this Agreement in any manner whatsoever, the City will, in good faith, consider the request with a view to granting the same unless the City, in its reasonable judgment, concludes that such modification is not in

the public interest, or will significantly and undesirably weaken the financial security provided to the interests of the City by the terms and provisions of this Agreement.

Section 10.7. **Legal Opinions.** Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

Section 10.8. **Approvals; Officer Action.** Wherever in this Agreement the consent or approval of the City or Developer is required or requested, such consent or approval shall not be unreasonably withheld or unduly delayed (except to the extent that, as a remedy upon the occurrence of an Event of Default, the City is entitled to withhold its performance). Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the Mayor of the City without further approval by the Board of City Commissioners of the City, to the extent permitted by law. The Mayor may, but shall not be required to, consult with other City staff with respect to such matters. Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the Mayor without further approval by the Board of City Commissioners of the City, to the extent permitted by law. The Mayor may, but shall not be required to, consult with City staff with respect to such matters.

ARTICLE XI

Termination of Agreement; Expiration

Section 11.1. **City's Option to Terminate.** As provided and under the conditions specified in Section 9.2, the City may terminate this Agreement if an Event of Default shall have occurred hereunder and be continuing. Nothing in that or in this Section shall affect the City's right, should the City not so elect to terminate this Agreement and as recourse against the Developer, to insist on performance hereunder by the Developer.

Section 11.2. **Expiration.** This Agreement shall expire when the Tax Increment Note is paid in full or, if earlier, on the Maturity Date.

Section 11.3. **Effect of Termination or Expiration.** No termination or expiration of this Agreement pursuant to the terms hereof shall terminate (i) any rights or remedies of the City arising hereunder due to an Event of Default, or of the Developer arising hereunder due to a breach of this Agreement by the City, occurring prior to such termination or expiration or (ii) the provisions of Sections 3.5, 3.6 and 9.7 hereof.

Section 11.4. **No Third Party Beneficiaries.** There shall, as against the City, be no third party beneficiaries to this Agreement. More specifically, the City enters into this Agreement, and intends that the consummation of the City obligations contemplated hereby shall be, for the sole and exclusive benefit of the Developer, and notwithstanding the fact that any other "persons" may ultimately participate in or have an interest in the Improvements, the City does not intend that any party other than the Developer shall have, as alleged third party beneficiary or otherwise, any rights or interests hereunder as against the City, and no such other party shall have standing to complain of the City's exercise of, or alleged failure to exercise, its rights and obligations, or of the City's performance or alleged lack thereof, under this Agreement.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Timothy Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Timothy Mahoney and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, North Dakota, on behalf of said City.

Notary Public

This document drafted by:

Erik R. Johnson
Office of the Fargo City Attorney
505 Broadway, Suite 206
Fargo, ND 58102
(701) 280-1901
ejohnson@lawfargo.com

GROVE ENCLAVE LLC

By _____,
Austin Morris, General Manager

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Austin Morris, the General Manager of GROVE ENCLAVE LLC, a North Dakota Limited Liability Company.

Notary Public

EXHIBIT A

Legal Description:

Lots One (1) through Three (3), Block One (1), University South Addition to the City of Fargo, Cass County, North Dakota,

EXCEPT:

[[[insert exclusion from above legal description]]

EXHIBIT B

INTENTIONALLY LEFT BLANK.

EXHIBIT C

FORM OF TAX INCREMENT NOTE

No. R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

TAX INCREMENT
REVENUE NOTE OF 20__
(TAX INCREMENT DISTRICT 2021-03 PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota (the "City"), certifies that it is indebted and for value received promises to pay to GROVE ENCLAVE LLC (the "Developer"), or the registered assign, the principal sum of _____ Million _____ Hundred _____ Thousand and no/100 Dollars (\$ __, ____, 000.00), an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of Three and One-half Percent (3.50%) per annum, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of December 13, 2021 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and GROVE ENCLAVE LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by GROVE ENCLAVE LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15th following the date of issuance of the Tax Increment Note and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates".

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

"Developer Tax Increments" are defined in the Developer Agreement as follows:

"The portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

“Tax Increments” means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

In addition, “Developer’s Taxes” are defined in the Developer Agreement as follows:

“Developer's Taxes” means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15th) Tax Year and earlier Tax Years. Taxes for the sixteenth (16th) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes..”

In addition, “Tax Year” is defined in the Developer Agreement as follows:

“Tax Year” is one of a maximum of fifteen (15) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15th) Tax Year, therefore, is the fourteenth (14th) calendar year following the first said year.

In addition, “Maturity Date” is defined in the Developer Agreement as follows:

"Maturity Date" means the date that is three (3) years from the Payment Date for the fifteenth Tax Year following the date of the issuance of the Tax Increment Note.

In addition, Section 3.6 of the Developer Agreement provides as follows:

"The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,
- (b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$1,450,000 (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2021-03, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2021-03(Craig Enclave OG Project) Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2021-03 Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. **This Note may only be transferred to a person who is (1) a successor of GROVE ENCLAVE LLC, by reorganization, merger or acquisition, (2) a member of GROVE ENCLAVE LLC, (3) to a lender of GROVE ENCLAVE LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to GROVE ENCLAVE LLC, noted above.**

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than GROVE ENCLAVE LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of _____, 20__.

CITY OF FARGO, CASS COUNTY, NORTH
DAKOTA

By: _____
Timothy Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

Tax Increment Revenue Note of 2022 (District 2021-03)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATION

REGISTERED OWNER

SIGNATURE OF
AUTHORITY'S TREASURER

GROVE ENCLAVE LLC

_____, 2022

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT D
INTENTIONALLY LEFT BLANK

EXHIBIT E

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EXHIBIT F

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the "City") and GROVE ENCLAVE LLC, a North Dakota limited liability company (the "Developer") have entered into an agreement dated as of the ____ day of _____, 20__; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this certification:

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by the Developer have been completed, and the above covenants and conditions in said Developer Agreement have been performed by the Developer therein, and that the Tax Increment Note, referred to in said Developer Agreement, may be issued to Developer by the City.

CITY OF FARGO, NORTH DAKOTA

By: _____
Timothy Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

EXHIBIT G
INTENTIONALLY LEFT BLANK.

EXHIBIT H
FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL

[Fargo]

Re: Development Agreement by and between the City of Fargo, North Dakota, and GROVE ENCLAVE LLC, a North Dakota limited liability company

Ladies and Gentlemen:

As counsel for GROVE ENCLAVE LLC, a North Dakota limited liability company (the "Company"), and in connection with the execution and delivery of a certain Developer Agreement (the "Development Agreement") dated as of _____, 2022, between the Company and the City of Fargo, North Dakota (the "City"), we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following:

- (a) The LLC Operating Agreement;
- (b) Minutes relating to the meetings of the board of directors of the Company at which action was taken with respect to the transactions covered by this opinion;
- (c) The Development Agreement;
- (d) and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. The Company has been duly organized and is validly existing as a limited liability company under the laws of the State of North Dakota and is qualified to do business in the State of North Dakota. The Company has full power and authority to execute, deliver and perform in full the Development Agreement; and the Development Agreement has been duly and validly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the other parties thereto, is in full force and effect and is a valid and legally binding instrument of the Company enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The consummation of the transactions contemplated by the Development Agreement, and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the partnership agreement of the Company or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which the Company is a party or by which it or its property is bound or subject, and do not constitute a loan to the Company.

3. The undersigned has provided an opinion to the Company that the Development Agreement is in accordance with North Dakota state law, including N.D.C.C. Chapter 40-58, and is a binding and enforceable agreement. A copy of such opinion, fully dated and executed, is in turn attached to this opinion.

Very truly yours



P: 701.478.4300

1 2ND STREET N STE. 102
FARGO, ND 58102

enclavecompanies.com

January 20, 2021

Jim Gilmour
Director of Strategic Planning and Research
City of Fargo
225 4th St N
Fargo, ND 58102

RE: 2301 S University Dr, Fargo, ND 58103

Dear Mr. Gilmour,

Enclave Development, LLC in collaboration with GFI Dakota Development, LLC politely requests to be added to the Fargo City Commission agenda on January 25th. We request the City's support to move forward with the Tax Increment Financing (TIF) application process as well as to consider establishing a housing Payment in Lieu of Taxes (PILOT) on the development property, as determined by the City's third-party financial review. The subject property, located at 2301 S University Dr., contains approximately 11.7 acres which currently includes the 90,000 square foot vacant big-box ("Kmart building") and the Burger King building. The estimated TIF eligible costs at this time are shown below.

TIF Eligible Costs Budget	
Soil Remediation (environmental)	\$ 125,000.00
Building Demolition and Abatement	\$ 2,150,000.00
Acquisition Costs	\$ TBD
Public Infrastructure	\$ 100,000.00
Legal and TIF Fees	\$ 50,000.00
Total	\$ TBD

*TIF eligible costs are estimated at this point in time and will be finalized after pursuit of TIF approval.

The site presents a set of unique challenges for redevelopment along the University South corridor. After working diligently to find a solution to reuse the vacant Kmart building, it was determined to be economically unfeasible. The extensive redevelopment cost for the site would include the building abatement, site demolition, acquisition, and removal of the vacant Kmart building. In addition, we propose to include 34 units to be set aside for affordable housing to establish a housing PILOT. These units would follow HUD guidelines for Area Median Income (AMI) and restricted rental rates.

The promotion of infill development is the number two ranked priority within the Fargo Go2030 Comprehensive Plan. There is an obvious need for redevelopment along the South University corridor and this development will serve as a catalyst for future developments and improvements in the area. The planned redevelopment includes 170 multifamily units, grocer, inline commercial retail, and a mix of standalone uses fronting University Drive. The current taxable value of the vacant site is \$5.9M, which is greater than the market value of the site. The total site development is projected to cost +/- \$35M and will not otherwise occur but for the assistance provided through TIF.

Sincerely,

Austin Morris, CEO
Enclave Development, LLC



City of Fargo
Application for TIF

Contact Information

Primary Contact: Austin Morris, Enclave Development
300 23rd Ave E, Suite 300, West Fargo, ND 58078
(701) 478-4300; austin@enclavecompanies.com

General Information

Name and description of Corporation/Partnership Grove Enclave, LLC
Project Location 2301 University Drive South, Fargo ND 58102
Project Description with conceptual plans See attached
Propose Schedule Construction start expected Spring 2022 contingent on TIF determination. Estimated Completion Fall 2023

Project Financials and Financing

Name of Developer Enclave Development, LLC
Ultimate owner of development Grove Enclave, LLC and/or assigns
Type of Project Mixed-Use, Commercial
Dollar request of TIF assistance See Confidential Pro Forma for Delta
Term of request property tax payments Fifteen (15) year property tax increment exemption
Minimum of a 10-Year Proforma See Confidential Pro Forma provided to third party consultant
Total project cost See Confidential Pro Forma
Hard Capital Costs per Policy & Guidelines See Confidential Pro Forma
Contributed equity See Confidential Pro Forma
Loan amount(s) with terms See Confidential Pro Forma. Loan terms vary by project.
Number of housing units by type 92+ Multifamily Rental Units
Square footage of commercial space 43,700 square feet
Proposed rents by housing unit types See Confidential Pro Forma
Detailed assumptions for any other revenues See Confidential Pro Forma
Expenditures broken out by category See Confidential Pro Forma
Extraordinary Costs per Policy & Guidelines See Confidential Pro Forma

James Gilmour

From: Tim Gleason <timg@enclavecompanies.com>
Sent: Wednesday, November 3, 2021 3:51 PM
To: James Gilmour
Subject: South University (Kmart) Project Description
Attachments: Houston Site Plan.pdf

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Jim,

See attached for the project site plan with each user shown. The following is a brief description on each portion:

- The Residential is being completed by Beyond Shelter. No increment from the building improvements will be used.
- The two retail buildings (Retail 1 and 2) will be +20,600SF and built in 2022 and 2023.
- The Burger King will remain as-is until the site is fully built out. At that time we would find a new user or they would rebuild.
- The Coffee will be built in 2022 and similar to the Caribou cabins that you see in town.
- The Fast Food will be built in 2022 or 2023. (Example: Chipotle, Panera Bread, Chick-fil-a)
- The Carwash will be built in 2022.
- The Tires store will be minimum of 6,300SF quick service tire/oil change or an inline retail/office building if the tenant does not sign.

Let me know if you can connect me with Matt at PFM and I can provide him with our pro forma analysis.

Thanks!

Tim Gleason
Developer

300 23rd Ave E, Suite 300, West Fargo, ND 58078

M. 701.351.2048 **D.** 701.997.2569

W. enclavecompanies.com

Disclaimer

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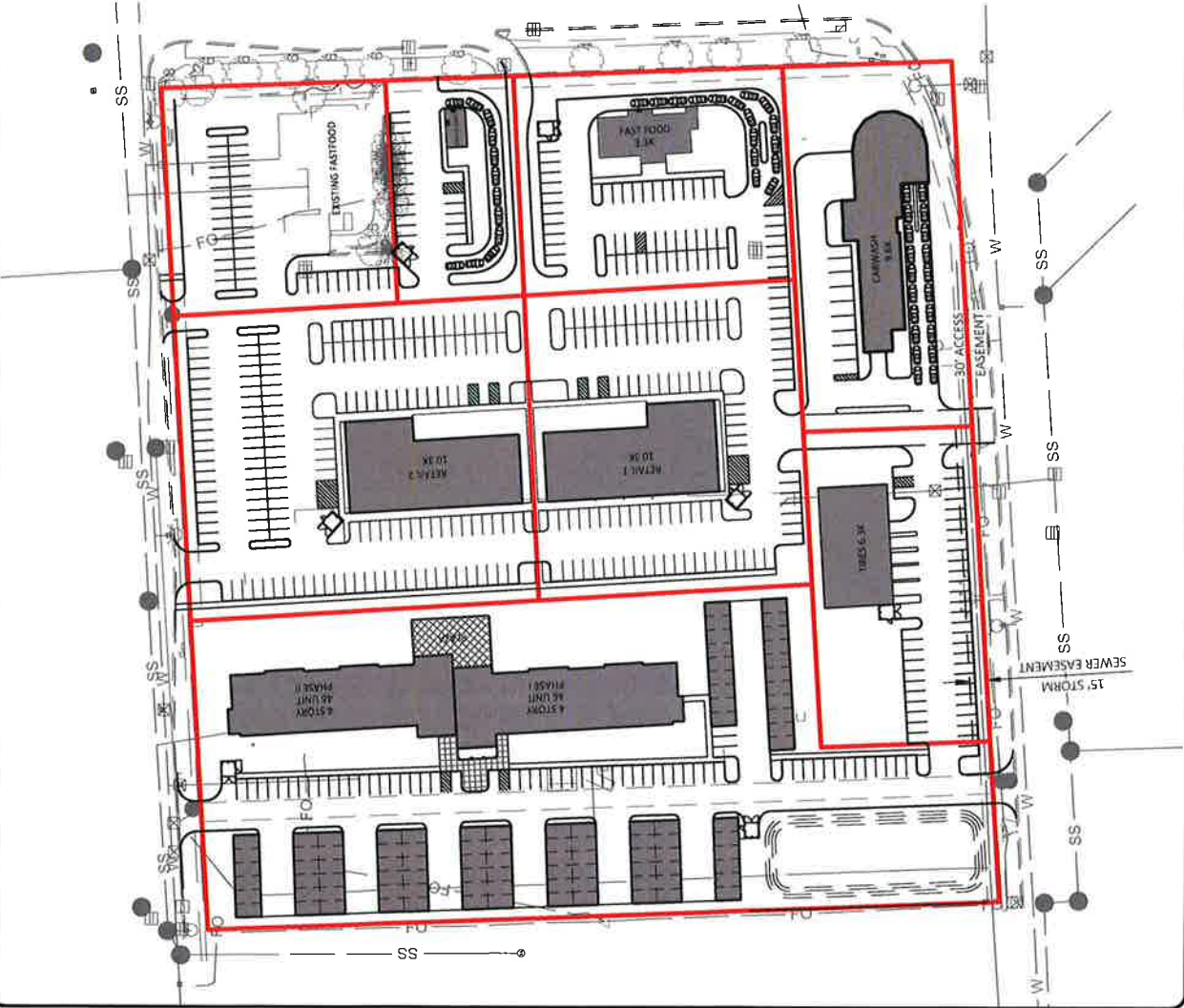
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USE	BLDG SF	SF	LOT SIZE	ACRE	REQ'D	PROVIDED
EXISTING FASTFOOD (1) ??		±38,828	0.90		??	40
FASTFOOD (1)	3,300	±44,956	1.03		±30	55
COFFEE	600	±21,610	0.50		±6	19
RETAIL 1(2)	10,300	±63,859	1.46		±42	108
RETAIL 2 (2)	10,300	±81,984	1.88		±42	163
CARWASH	9,600	±47,500	1.09		N/A	40
TIRE & SERVICE	6,300	±41,000	0.94		±30	40
RESIDENTIAL (2 BLDG'S)	89,520	±172,286	3.95		±38	151(4)
TOTAL		±512,023	11.75			

PARKING REQUIREMENT INFORMATION:

1. ASSUMED 1/3 OF BLDG USED FOR FOOD PREP & 2/3 OF BLDG USED FOR SERVICE AND DINING.
2. ASSUMED RETAIL ONLY BASE PARKING REQUIREMENTS. NO RESTAURANTS INCLUDED.
3. PARKING REQUIREMENTS PER USE:
 - RETAIL: 1 PER 250 SF OF BLDG + 10 X 25 LOADING AREA
 - FASTFOOD: 1 PER 75 SF OF SERVICE AND DINING OR 1 PER 150 SF OF GROSS FLOOR AREA, WHICHEVER IS GREATER, PLUS STACKING FOR DRIVE-THRU.
 - VEHICLE SERVICE, LIMITED: 6 PER SERVICE BAY
 - 92 GARAGES, 59 SURFACE STALLS



City of Fargo, North Dakota

Tax Increment Financing Program

“But-For” Report

2301 University Drive



November 19, 2021



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2. Project	2
3. Assistance Request	3
4. Project Financing	5
5. Return Analysis	6
6. Conclusion	8

Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for the project at 2301 University Drive, a development by Grove Enclave, LLC (the "Developer").

The Developer plans to demolish the existing K-Mart building and sell off a portion of the land. The demolition and remediation costs are estimated at \$3,350,000 and need to be done prior to the sale of the property. The sale of the properties is expected to generate \$3,378,154 leaving a net purchase price of the entire property at \$5,971,846. PFM reviewed the capitalization rates and annual lease payments the Developer assumed for their pro forma. After confirming the assumptions were reasonable, PFM used those assumptions to project a 15-year cash flow, calculating an internal rate of return ("IRR") and annual debt service coverage. We also made sure the Developer followed the City of Fargo's (the "City") Tax Increment Financing Policy (the "Policy") including the allowable costs and the Developer's calculations for determining the amount of allowable subsidy financing. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.



Project

The project being proposed by the Developer includes the development of a retail, coffee shop, and fast casual restaurant. In addition, there is an existing Burger King restaurant on the property.

The Developer estimates the construction will be completed in the Fall of 2023 with occupancy immediately following. The Developer has requested as much TIF assistance as available to complete the project.



Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. According to Policy #3, the maximum TIF assistance is 15 years and the Developer is asking for the full 15 years exemption.

Requested Reimbursement

Below is the detailed requested cost of the proposed project that are eligible for reimbursement.

Property Acquisition	\$2,940,000
Demolition, Abatement, & Fill	1,100,000
Strip, Grade, & Pave Site	1,325,000
Retention Pond & Utility Infrastructure	750,000
Legal and TIF Fees	<u>25,000</u>
Total Requested Cost to be Reimbursed	\$6,290,000

The Developer is requesting as much TIF assistance as available to complete the project.

Policy #8

Policy #8 limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of \$10,266,346 the Developer can receive up to \$1,539,952. Policy #8 also states that the Developer must provide at least 10% of total capital costs as Developer's equity in the project. It is estimated the Developer will contribute \$3,016,664 as equity which is 25% of the total capital costs.

Land Cost

The Developer states the purchase price to acquire the property for the project is \$6,000,000 including the land value at \$3,060,000. The price is based on the actual purchase agreement of the property. Land acquisition is reimbursable under the Policy. The Developer is requesting to be reimbursed \$2,940,000 for the land acquisition.

Policy #6

The Policy states that the maximum eligible land costs to be recouped by the Developer should be limited to the lesser of:

- 1.) The total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value of the property.** The Developer's cost to acquire the property is \$1,250,000. The assessor's market value for the property totals \$1,134,400. The eligible amount for reimbursement is 150% of \$1,134,400 which totals \$1,701,600. The Developer's reimbursement request of \$971,639 is within the allowable reimbursable amount under this policy.
- 2.) The difference between what was paid by the Developer for the property less the assessor's market value for the land (as opposed to land and buildings).** The current assessor's land value is \$309,000. Based on an acquisition price of \$1,250,000 the maximum reimbursement is \$941,000.



The lesser of the two tests detailed above is \$941,000. The requested reimbursement for land acquisition of \$971,639 is slightly above the allowable amount of \$941,000 under Policy #6.

Policy #3

Policy #3 states the length of the term will be limited to 15 years or less. The Developer is requesting reimbursement for 15 years.

TIF Estimate

PFM estimates that \$1,851,240 of TIF will be generated over the 15 years assuming a 1.50% market growth rate. Based on a discount rate of 3.50%, the present value of the estimated TIF cash flow is \$1,391,882. PFM's analysis assumes the Developer receives the full amount of TIF generated.



Project Financing

The Developer is investing 25% equity, or \$3,016,664, and will be privately financing \$12,066,654. The Developer is additionally requesting annual TIF assistance. The private financing is estimated to be two separate loans - a 20-year loan with an estimated interest rate of 3.50% resulting in an annual principal and interest payment of \$36,667 and a 25-year loan with an estimated interest rate of 3.75% resulting in an annual principal and interest payment of \$517,418. The application states the project will be completed by the Fall of 2023.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's purchase price of the property and assumptions including expected lease rates, vacancy rate, and loan assumptions. The Developer is proposing reasonable lease rates per CoStar and included reasonable vacancy rates and loan assumptions.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10- and 15-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without TIF assistance the Developer would have about a 10.00% internal rate of return based on 10 years and 9% based on 15 years. The Developer would have about a 13.14% internal rate of return for 10 years and 12% for 15 years if it received the public assistance. A reasonable rate of return for the proposed project is 15% - 25%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 15 of 1.22x without assistance, with a Year 5 coverage of 1.01x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.45x in Year 15, with a Year 5 coverage of 1.21x.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable internal rate of return. We also looked at how much the rental rates would have to fluctuate in order to achieve a reasonable internal rate of return. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable internal rate of return of 15% on a 10-year basis.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$1,918,598 or 15.9% in order for the project to become viable without assistance. This reduces the amount to be financed from \$9,049,991 to \$7,611,042 and reduces the annual payment from \$554,148 to \$466,038 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur, especially at this stage in the development.



Sensitivity Scenario 2 – Lease Revenue

In order for the project to be viable without public assistance, the lease revenue would have to increase by 40%. This high increase is very unlikely to occur.

Sensitivity Scenario 3 – Combination of Project Costs and Lease Revenue

The final scenario looks at both a reduction of project costs and an increase in lease revenue. The analysis showed that project costs would have to be reduced by \$1,435,932 or 12% and the lease revenue would have to increase by 10%. While either of these events could occur, PFM does not believe they are likely to occur at this point in the process, especially together.

The above scenarios show the circumstances in which the project would become viable without public assistance. PFM has determined that the project is unlikely to occur “but-for” the public assistance.



Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs and occupancy of the retail buildings. The base scenario without assistance along with the sensitivity analyses demonstrates that the project would be unlikely to be feasible without assistance.

PFM has calculated that with public assistance, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 13.14%. In addition, the coverage ratio in Year 5 is estimated to be 1.21x. The estimated internal rate of return is on the lower end given the risk level for this type of project. Based on the internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.



RENEWAL PLAN
TAX INCREMENT FINANCING DISTRICT NO. 2021-03

CITY OF FARGO, NORTH DAKOTA

NOVEMBER 2021

RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2021-03 1

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SUBSECTION 1.5. LAND ACQUISITION, DEVELOPMENT, DEMOLITION AND REMOVAL OF STRUCTURES,
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SUBSECTION 1.10. ESTIMATE OF TAX INCREMENT. 5

SUBSECTION 1.11. DURATION OF THE TIF DISTRICT. 5

APPENDIX A: LEGAL DESCRIPTION OF PROPERTY

APPENDIX B: MAP OF THE RENEWAL AREA/TIF DISTRICT

APPENDIX C: ZONING MAP

APPENDIX D: PHOTOS OF EXISTING CONDITIONS

APPENDIX E: PLAN FOR REDEVELOPMENT

RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2021-03

Subsection 1.1. Definitions.

For the purposes of the Renewal Plan, the following terms shall have the meanings specified below, unless the context otherwise requires:

“City” means the City of Fargo, a municipal corporation under the laws of the State of North Dakota.

“City Commission” or “Commission” means the Fargo City Commission.

“Comprehensive Plan” means the City's GO 2030 Comprehensive Plan, including the objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and water within the City as and when such plan is adopted and finalized.

“County” means Cass County, North Dakota.

“Development” means the construction of new buildings, structures, or improvements; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in the Renewal Area.

“Renewal Area” means the property described in Subsection 1.4 of this Plan.

“Renewal Plan” or “Plan” means this Plan adopted by the Commission for the Renewal Area.

“State” means the State of North Dakota.

“Tax Increment Financing Act” or “TIF Act” means North Dakota Century Code, Section 40-58-20, as amended.

“Tax Increment Bonds” means any general obligation or revenue tax increment bonds or notes issued by the City to finance the public costs associated with the TIF District as stated in this Plan, or any obligations issued to refund the Tax Increment Bonds.

“Tax Increment Financing District” or “TIF District” means Tax Increment Financing District No. 2021-03.

“Urban Renewal Law” means North Dakota Century Code, Chapter 40-58.

Subsection 1.2. Statutory Authority.

The creation of the Renewal Area and the establishment of Tax Increment Financing District No. 2021-03 are authorized by the Urban Renewal Law. Specifically the creation of the Renewal Area is authorized under North Dakota Century Code, Sections 40-58-01.1(7) and (14), which provide that the local governing body may designate industrial or commercial property, a slum or

blighted area, or combination of these properties as appropriate for a development or renewal project.

The Urban Renewal Law provides that communities develop a “workable program” for the use of public and private resources to facilitate the development of industrial or commercial properties, eliminate and prevent the development or spread of slums and urban blight, encourage needed urban rehabilitation, provide for the redevelopment of slum and blighted areas, or undertake these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. North Dakota Century Code, Section 40-58-04.

Subsection 1.3. Statement of Public Purpose

In adopting the Renewal Plan for TIF District No. 2021-03, the City Commission intends to make the following findings:

- (a) The Renewal Area includes a blighted area.

Factual basis: This Renewal Area is blighted due to the presence of a vacant building and deteriorated asphalt parking lot, which substantially impairs the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

- (b) The Renewal Area includes vacant building, which previously was a commercial building with a Kmart as the tenant. The building has been vacant since the Kmart store closed.

Factual basis: The renewal area is considered blighted as described in (a) above. Blighted areas are eligible for renewal.

- (c) The Renewal Area is appropriate for a development or renewal project.

Factual basis: The renewal area was recently rezoned to allow for a mixed-use development that includes senior housing, retail space, restaurants and other commercial businesses.

- (d) The site is vacant and existing housing will not be affected.

Factual basis: No housing will be eliminated by this redevelopment. The redevelopment will include new housing units.

- (e) The Plan conforms to the Comprehensive Policy Plan for the City as a whole.

Factual basis: The proposed development is consistent with the goals that are embodied in the Go2030 Comprehensive Plan. Specifically, the Fargo Go2030 Comprehensive Plan supports infill and density within areas that are already developed, serviced with utilities, and protected by a flood resiliency strategy. The promotion of infill development is the number two ranked priority of Go2030.

The proposed use of the property is consistent with zoning, and may encourage additional redevelopment adjacent to the site. The proposed development will use existing infrastructure as the property is served with water and sewer main lines.

Subsection 1.4. Description of Renewal Area

The Renewal Area is located two miles south of the downtown on University Drive in close proximity to Interstate 94. The site is approximately eleven and a half acres as legally described in Appendix A. A map of the Renewal Area is attached as Appendix B.

A zoning map of the Renewal Area is attached as Appendix C. Adjacent land uses are commercial multi-family housing.

The proposed project will be multi-family housing for lower income seniors, retail space, restaurants and other commercial businesses.

The redevelopment plan is attached as Appendix E.

Subsection 1.5. Development, Demolition and Removal of Structures, Redevelopment or Improvements

The Development of the Renewal Area includes the following activities:

Building Demolition and Hazardous Material Removal – This estimate is for environmental cleanup and demolition. The estimate is \$1,400,000.

Public Works Improvements – This is the cost for needed improvements for infrastructure to serve the site, primarily new storm water facilities. The estimate is \$750,000.

Administrative/TIF Fees – Other Tax Increment costs include the administrative costs. There are estimated to be \$50,000 in administrative costs for the City of Fargo.

These costs represent estimated costs for planning purposes, and may be different when this plan is implemented with a development agreement. The development agreement costs will be determined after a review by City financial advisers. The maximum allowed costs will be specified in the development agreement. Based on the proposed development, the present value of TIF revenue is ~\$1.5 million

Subsection 1.6. Land Use Attributes – TIF District

- (a) *Zoning or Planning Changes.*
The Renewal area was recently replatted into several lots. No additional zoning and planning changes are required to accommodate this project.
- (b) *Maximum Densities.*
The property within the TIF District will be developed in accordance with the applicable zoning district requirements.

- (c) *Building Requirements.*
All properties within this district are subject to the provisions of the City of Fargo Building Codes and the Land Development Code.
- (d) *Plan relationship to land use objectives (land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public imps.)*
The physical improvements outlined in the plan meet critical needs required for the redevelopment of this property. The project complies with the General Commercial zoning district and the redevelopment goals of the Go2030 Comprehensive Plan. The development provides clears a largely vacant site and brings needed senior housing and commercial uses to this area of Fargo

Subsection 1.7. Estimate of Development Costs

The City anticipates development of the Renewal Area will involve certain public costs. Under North Dakota Century Code, Sections 40-58-20 and 40-58-20.1 allow the use of funds received from tax increments to be applied to certain specified costs. The City will provide for certain costs as listed below in a development agreement. The primary costs involved in the development are demolition and site cleanup, and public works improvements.

Demolition and Site Cleanup	\$1,300,000
Public Works Improvements	\$100,000
Administration	\$50,000
TOTAL	\$1,450,000

The City and Developer may also obtain reimbursement of interest between the time project costs are incurred and the date the Tax Increment Revenue Note is issued, such interest being capitalized and added to the foregoing costs.

Subsection 1.8. Estimate of Bonded Indebtedness

The City intends to finance certain costs of the Development through the issuance of a Tax Increment Financing Note to the Developer. In addition, the City may use general obligation bonds, special assessment warrants or refunding improvement bonds pursuant to North Dakota Century Code, Section 40-58-20 (9), and the City may specially assess all or a portion of the costs of development and apply funds received from tax increments to payment of the special assessments and other bonds.

Subsection 1.9. Tax Increment Financing.

The County Auditor is requested to compute, certify and remit tax increments resulting from the Development within the Renewal Area.

The original assessed value of the property within the Renewal Area, as last assessed and equalized before the base year of this Plan, is outlined on Attachment A.

Each year, the County Auditor will compute the amount of tax increment generated within the Renewal Area in accordance with the TIF Act. Any year in which there is an "incremental value" as provided in the TIF Act, an increment will be payable to the City and deposited in the fund created by the County Auditor for that purpose. Any year in which there is "lost value" pursuant to the TIF Act, no increment will be payable to the City.

Subsection 1.10. Estimate of Tax Increment.

It is anticipated the Development will result in an increase in true and full value of the Renewal Area redevelopment site to \$10.4 million. The value of the development site within the TIF district is ~\$3 million. The increase in value will be approximately \$7.4 million. Under the mill rate in effect as of the date of this Plan, the Renewal Area will generate tax increment each year in the estimated amount of \$104,000.

Subsection 1.11. Duration of the TIF District.

The City anticipates that the TIF District will continue until all development costs are reimbursed through the receipts of tax increment, or after a maximum of fifteen years after completion of the project. The first tax increment payment will be received in 2024.