PROPERTY TAX INCENTIVE APPLICATION FOR

GREAT PLAINS BLOCK 3 HOLDINGS, LLC —RIVERFRONT

(Jim Gilmour)

SUGGESTED MOTION:

Move to participate in the request for a Tax Increment Finance (TIF) in the City of Fargo submitted by Great Plains Block 3 Holdings, LLC to assist with the redevelopment of a property located 419 4th Street North and 225 4th Avenue North for up to a fifteen-year period.

OR

Move to **NOT** participate in the in the request for a Tax Increment Finance (TIF) in the City of Fargo submitted by the Great Plains Block 3 Holdings, LLC to assist with the redevelopment of a property located 419 4th Street North and 225 4th Avenue North for up to a fifteen-year period.

OR

Move to **NOT** participate in the request for a Tax Increment Finance (TIF) in the City of Fargo submitted by the Great Plains Block 3 Holdings, LLC to assist with the redevelopment of a property located 419 4th Street North and 225 4th Avenue North for up to a fifteen-year period and to negotiate the terms of the property tax incentive as described in N.D.C.C Chapter 40-05-24.

Riverfront Block 3 - Opt 2

225 4th Ave N
Fargo, ND

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Project Underwriting Summary			
Project Cost * See breakdown at right	**Total**	**$ per SF**	
Acquisition Cost	$1,395,984	$10.69	
Construction Costs	$23,396,440	$179.13	
Soft Costs	$3,385,013	$25.92	
Interest & Financing Costs	$638,321	$4.89	
Total Project Costs	**$28,815,758**	**$220.62**	
Pro Forma	**Year 1**	**Year 2**	**Year 3**
Occupancy	60.0%	95.0%	95.0%
Total Revenue	$1,697,464	$2,608,443	$2,660,633
NOI	$1,053,833	$1,953,077	$1,993,297
Margin	62.1%	74.9%	74.9%
Return on Cost (1)	**3.7%**	**6.8%**	**6.9%**
Returns Summary			
Stabilized Return on Cost (1)			**6.8%**
Unlevered IRR (2)			**7.9%**
Levered IRR (2)			**13.1%**
Avg. Cash Yield for Investment Period (3)			**13.8%**
Peak Equity			**$10,085,515**
Whole Dollar Profit (4)			**$15,303,805**
Equity Multiple (2)			**2.52**

(1) Return on Cost is measured as NOI as a percent of Total Investment

(2) IRR and Equity Multiple are based on the project-level returns before deduction of any affiliate level expenses, compensation or profit sharing

(3) Avg. Cash Yield Over Investment Period reflects annualized project level returns before affiliate level expenses, compensation, or profit sharing. The sum of all cashflows (positive and negative) divided by equity injected, divided by years held.

(4) Whole Dollar Profit is the sum of all cash returns, less equity in before deduction of any affiliate level expenses, compensation or profit sharing

(5) The underwriting summary provide here were projections provided originally to the City of Fargo's third-party financial review. These cost and project values represent the project's condition in April of 2022. Since then, the project cost has increase several million dollars, and the TIF ask has remained the same.

UNIT	Size (SF)	Rent	Rent PSF	Count
1b	664	$1,375	$2.07	30
1B+	800	$1,592	$1.99	10
2b	958	$1,750	$1.83	34
2B+	1125	$2,050	$1.82	25
3b	1238	$2,100	$1.70	15

Funding Sources		
Equity	$ 10,085,515	35%
Debt	$ 18,730,243	65%
Total Investment	**$ 28,815,758**	**100%**

Interest Rate	4.00%
Amortization	25
Lending Institution	TBD
Rate Index	5-year FHLB

PROJECT COSTS			
Acquisition Costs		**Cost ($)**	**Sq. Ft.**
Existing Buildings	$	1,395,984	44,898
	$	-	
Total Acquisition Costs	$	1,395,984	44,898
Total Construction Budget	$	23,396,440	174,980
Development Costs		**Total Cost**	
Architecture & Engineering	$	1,410,529	6.03%
Developer Fee	$	793,054	3.39%
Environmental	$	41,000	0.18%
Construction Interest	$	433,333	1.85%
Legal	$	35,000	0.15%
Design Fee	$	347,837	1.49%
Financing	$	204,988	0.88%
Staff - Leasing	$	25,000	0.11%
Marketing - Leasing	$	111,412	0.48%
Other	$	30,480	
FFE	$	170,292	
Property Tax	$	228,821	0.98%
Soft Contingency	$	191,587	0.82%
Total Development Costs	$	4,023,333	
Total Project Costs	$	28,815,758	-

* Breakdown of cost underwriting

CONFIDENTIAL: Propietary, Non Public Information

Riverfront Block 3
225 4th Ave N
Option 2

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11
Physical Occupancy	0.00%	0.00%	60.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%
Operating Expense Ratio	0.00%	0.00%	37.92%	25.12%	25.08%	25.04%	25.00%	36.34%	36.08%	35.82%	35.57%
REVENUES											
Apartment Income	$0	$0	$2,415,567	$2,463,900	$2,513,200	$2,563,500	$2,614,800	$2,667,100	$2,720,400	$2,774,800	$2,830,300
Parking Revenue	$0	$0	$223,500	$227,970	$232,529	$237,180	$241,924	$246,762	$251,697	$256,731	$261,866
Internet Revenue	$0	$0	$24,624	$39,768	$40,563	$41,374	$42,202	$43,046	$43,907	$44,785	$45,681
Vacancy Loss	$0	$0	($966,227)	($123,195)	($125,660)	($128,175)	($130,740)	($133,355)	($136,020)	($138,740)	($141,515)
EFFECTIVE GROSS REVENUE	**$0**	**$0**	**$1,697,464**	**$2,608,443**	**$2,660,633**	**$2,713,879**	**$2,768,185**	**$2,823,553**	**$2,879,984**	**$2,937,576**	**$2,996,332**
OPERATING EXPENSES											
General and Administrative	$0	$0	($265,712)	($271,029)	($276,452)	($281,985)	($287,628)	($293,381)	($299,244)	($305,228)	($311,333)
Marketing	$0	$0	($33,818)	($34,495)	($35,185)	($35,889)	($36,607)	($37,339)	($38,086)	($38,847)	($39,624)
Repairs and Maintenance	$0	$0	($86,477)	($88,208)	($89,973)	($91,773)	($93,610)	($95,482)	($97,390)	($99,338)	($101,325)
Utilities	$0	$0	($53,142)	($54,206)	($55,290)	($56,397)	($57,526)	($58,676)	($59,849)	($61,046)	($62,267)
Property Tax	$0	$0	($57,131)	($57,131)	($57,131)	($57,131)	($57,131)	($378,638)	($378,638)	($378,638)	($378,638)
Insurance	$0	$0	($38,649)	($39,422)	($40,211)	($41,016)	($41,837)	($42,674)	($43,526)	($44,397)	($45,285)
Centric Management Fee	$0	$0	($108,701)	($110,876)	($113,094)	($115,358)	($117,666)	($120,020)	($122,418)	($124,866)	($127,364)
TOTAL OPERATING EXPENSES	**$0**	**$0**	**($643,631)**	**($655,366)**	**($667,336)**	**($679,549)**	**($692,004)**	**($1,026,210)**	**($1,039,151)**	**($1,052,359)**	**($1,065,835)**
NET OPERATING INCOME	**$0**	**$0**	**$1,053,833**	**$1,953,077**	**$1,993,297**	**$2,034,331**	**$2,076,181**	**$1,797,343**	**$1,840,833**	**$1,885,217**	**$1,930,497**
Capital Reserves	$0	$0	$0	$0	$0	($80,174)	($81,800)	($83,400)	($85,100)	($86,800)	($88,500)
OPERATING CASH FLOW	**$0**	**$0**	**$1,053,833**	**$1,953,077**	**$1,993,297**	**$1,954,156**	**$1,994,381**	**$1,713,943**	**$1,755,733**	**$1,798,417**	**$1,841,997**
TIF											
Principal Payments Received	$0	$0	$0	$0	$0	$0	$0	$256,527	$265,506	$274,798	$284,416
Interest Payments Received	$0	$0	$0	$0	$0	$0	$0	$48,904	$39,926	$30,633	$21,015
Total TIF Payments Cash Flow	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$0**	**$305,432**	**$305,432**	**$305,432**	**$305,432**
DEVELOPMENT AND SALE											
Unleveraged Development Cost	($16,940,023)	($11,237,414)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Sale Price @ 5.50% Cap Rate	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$35,406,270
Disposition Cost @ 3% of Sale Price	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	($1,062,188)
CASH FLOW BEFORE DEBT	**($16,940,023)**	**($11,237,414)**	**$1,053,833**	**$1,953,077**	**$1,993,297**	**$1,954,156**	**$1,994,381**	**$2,019,375**	**$2,061,165**	**$2,103,848**	**$36,491,510**
MORTGAGE DEBT											
Funding and Payoff	$7,203,939	$ 11,526,303	$0	$0	$4,322,364	$0	$0	$0	$0	$0	($18,125,447)
Leveraged Development Cost	($349,432)	($288,889)	$0	$0	($275,514)	$0	$0	$0	$0	$0	$0
Debt Service	$0	$0	($749,210)	($1,186,381)	($1,460,162)	($1,460,162)	($1,460,162)	($1,460,162)	($1,460,162)	($1,460,162)	($1,460,162)
CASH FLOW AFTER DEBT	**($10,085,515)**	**$0**	**$304,624**	**$766,695**	**$4,579,984**	**$493,994**	**$534,219**	**$559,213**	**$601,003**	**$643,687**	**$16,905,901**
PROJECT RETURN METRICS											
Return on Cost (1)			3.66%	6.78%	6.92%	7.06%	7.21%	6.24%	6.39%	6.54%	6.70%
Cash on Cash Return (2)			3.02%	7.60%	45.41%	4.90%	5.30%	5.54%	5.96%	6.38%	167.63%
Debt Service Coverage Ratio			1.41x	1.65x	1.37x	1.34x	1.37x	1.17x	1.20x	1.23x	1.26x
Whole Dollar Profit (3)											$15,303,805
Equity Multiple (4)											2.52
IRR (4)											13.1%

(1) Weighted Average Underwritten Rent is calculated by dividing the monthly effective gross revenue by the building square footage.
(1) Return on Cost is calculated by dividing the annual net operating income before deduction of any affiliate level expenses, compensation or profit sharing by the total projects costs.
(2) Cash on Cash Return is calculated by dividing the operating cash flow before deduction of any affiliate level expenses, compensation or profit sharing by the total equity contributions.
(3) Whole Dollar Profit is the sum of all cash returns, less equity in before deduction of any affiliate level expenses, compensation or profit sharing.
(4) IRR and Equity Multiple are based on the project-level returns before deduction of any affiliate level expenses, compensation or profit sharing.
(5) The cashflow summary provide here were projections provided originally to the City of Fargo's third-party financial review. These cost and project values represent the project's condition in April of 2022. Since then, the project cost has increase several million dollars, and the TIF ask has remained the same.

THE CITY OF
Fargo
FAR MORE

ADMINISTRATION DEPARTMENT

May 26, 2022

Rick Steen, Chairman
Cass County Commission
211 9th Street South.
Fargo, ND 58103

Mr. Steen,

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 thirty 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 is considering approval of ~$1.4 million of Tax Increment Financing (TIF) funds to assist with the redevelopment of a site at 419 4th Street North and 225 4th Avenue North. An old warehouse and vacant office building are on these sites. The project will be a 100+ unit apartment building with parking on the main floor level.

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 is for extraordinary costs to make the site suitable for development. These include:

- Demolition, Soil Correction and Remediation
- Public Improvements
- Legal and TIF Fees

TIF costs are estimated at ~$1.4 million, which will include ~$350,000 for public improvements and ~$1.05 million for demolition and site cleanup. The period of the TIF revenue needed to pay for these costs is anticipated to last 9 years after Renaissance Zone incentives end. The development site property now has a value of ~$2 million. The value of the completed project is estimated at more than $17 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

KILBOURNEGROUP

Kilbourne Group
210 Broadway, Suite 300
Fargo, ND 58102
p: (701) 237-2279
e: info@kilbournegroup.com
www.kilbournegroup.com

April 14, 2022

Jim Gilmour
Director of Strategic Planning & Research
City of Fargo
225 4th Street North
Fargo, North Dakota 58102

Dear Mr. Gilmour:

Please find this application for Tax Increment Financing for the Riverfront infill project located at 225 4th Ave N and 419 3rd St N.

1. Project Summary

Option 2 increases the number of units to +/-114 and adds an additional +/-$12 MM in private investment on this site, bringing the total project cost to $28.8MM. This is accomplished by constructing a first-floor podium across the entire site for parking (one stall per bed). This more complex and costly project achieves greater density for the site and a higher tax base for the City of Fargo. This option requires a larger TIF incentive to make the project feasible, but nearly doubles the property taxes generated when compared to Option 1.

Location – 225 4th Ave N and 419 3rd St N

Schedule – 24-month construction with planned start in Fall of 2022 and opening Fall of 2024

2. Contact Information

Mike Allmendinger
210 Broadway, Suite 300
Fargo, ND 58102
701.237.2279
mike@kilbournegroup.com

Owner – Great Plains Block 3 Venture, LLC
Developer – Kilbourne Group

3. Project Program

Apartments – Option 2 +/- 114 apartments
Unit Mix – 1B 35% | 2B 52% | 3B 13%

4. PROJECT FINANCIALS

Option 2
Total Project Cost – $28.8MM
RZ – $1,607,534
TIF – $1,397,266

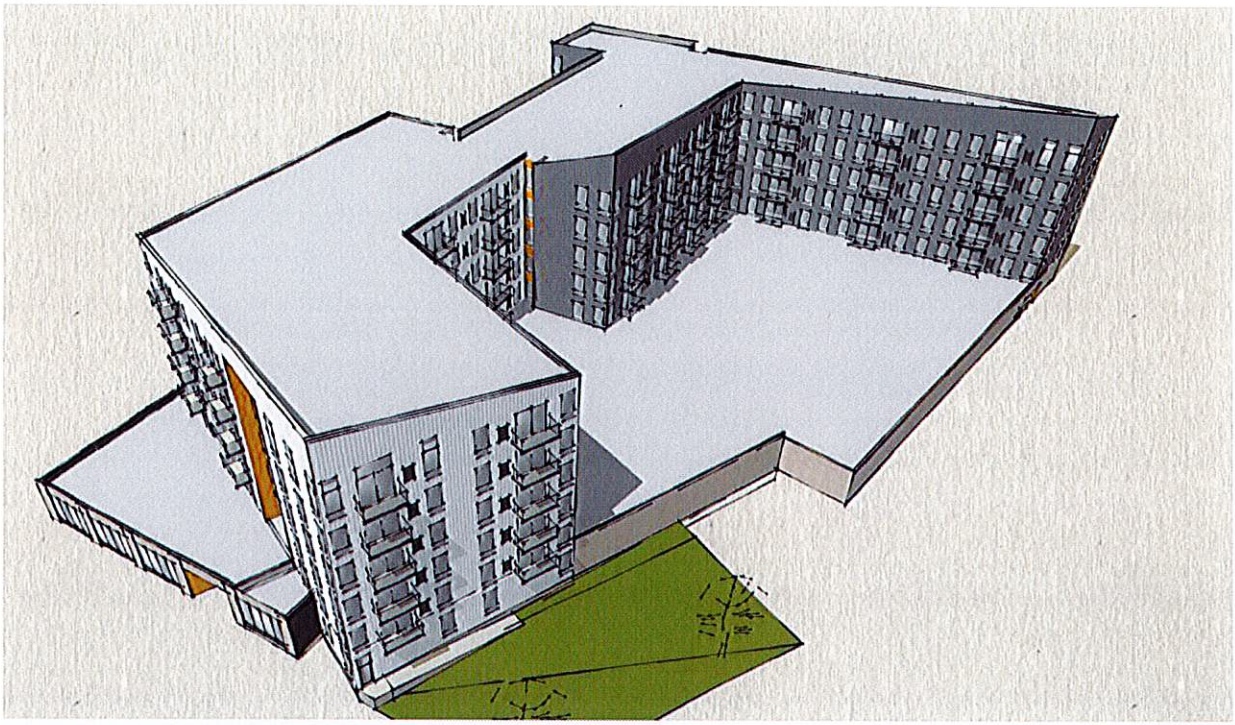
Eligible Costs – *Estimated Costs - Phase II and Geotech Borings in Process*

Site Preparation/Environmental – $600,000
Public Improvements – $350,000
Demo - $449,775

We are excited at the opportunity to partner with the City on this project and continue the City's effort for riverfront redevelopment. Please let me know if there is additional information needed.

Sincerely,

Mike Allmendinger
President
Enclosures



BLOCK 3 APARTMENTS

AERIAL VIEW FROM SOUTHEAST

MARCH 11, 2022 | JLG 21341 |

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DESIGN FOR LIFE

BLOCK 3 - PRELIMINARY MASSING & MATERIALS STUDY

MARCH 2022 |

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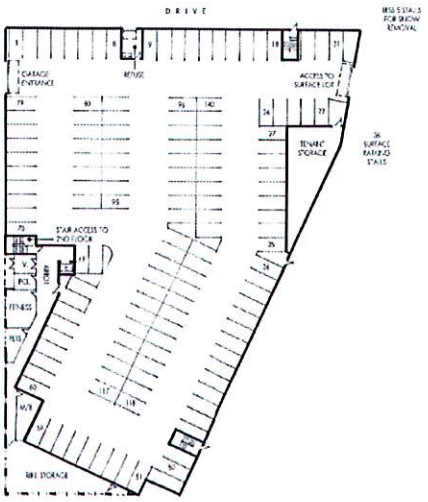

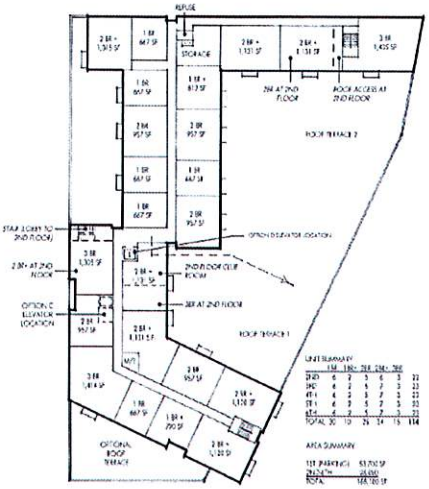

BLOCK 3 APARTMENTS

OPTION D (CENTRAL LOBBY, WEST ENTRANCE)

MARCH 25, 2022 | JLG 21341 |

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DESIGN FOR LIFE

City of Fargo, North Dakota

Tax Increment Financing Program
"But-For" Report

Riverfront

May 13, 2022

Table of Contents

Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for 225 4th Ave N and 419 3rd St N., a development by Kilbourne Group (the "Developer").

PFM first reviewed the application to ensure that appropriate assumptions regarding property value, rent, vacancy, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). 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 114-unit rental apartment building located at 225 4th Ave N and 419 3rd St N.

The Developer estimates the construction will be completed in the Fall of 2024 with occupancy immediately following. The Developer has requested TIF assistance in the amount of $1,397,266 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 the Policy, the maximum TIF assistance is 15 years. Since this project falls within the City's Renaissance Zone, the Developer will only pay property tax on the land value of the property for the first five years.

Eligible TIF Expenditures

Site Preparation/Environmental	$ 600,000
Public Improvements	350,000
Demolition	449,775
Total Eligible TIF Expenditures	**$ 1,399,775**

The Policy limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of $24,792,424 the Developer can receive up to $3,718,864. The Developer is requesting $1,397,266 which is below the maximum allowed.

Land Cost

The Developer states the purchase price to acquire the property for the project is $1,395,984. Land acquisition is reimbursable under the Policy. The Developer is not requesting to be reimbursed for the land acquisition.

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 $1,395,984. The assessor's market value for the property totals $4,062,300. The eligible amount for reimbursement is 150% of $4,062,300 which totals $6,093,450.

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 $751,000. Based on an acquisition price of $1,395,984 the maximum reimbursement is $644,984.

The lesser of the two tests detailed above is $644,984. The Developer is not requesting reimbursement for land acquisition, which is allowable under the Policy.

Term

The Policy states the length of the term will be limited to 15 years or less. It is estimated the term will be 9 years starting in year 6 following a 5-year Renaissance Zone period.

TIF Estimate

PFM estimates that $2,843,991 of TIF will be generated over the 9 years following the 5-year renaissance period assuming a 2.00% market growth rate. The TIF request plus the accrued interest during the 5-year Renaissance Zone period totals $1,729,283. Based on a discount rate of 4.75%, the present value of the estimated TIF cash flow reaches $1,729,283 in year 14 or in the ninth year after the 5-year Renaissance Zone period.

Project Financing

The Developer is investing 35% equity, or $10,085,818, and will be privately financing $18,730,243. The Developer is additionally requesting annual TIF assistance in the total amount of $1,397,266. The private financing is estimated to be a 25-year loan with an estimated interest rate of 4.00% resulting in an annual principal and interest payment of $1,185,144. Following stabilization of the project, the developer will add an additional $4,322,364 to the financing in order to repay equity investment. The new annual loan payment amount would be $1,453,621. The application states the project will be completed by the Fall of 2024.

Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and operating expenses. The Developer is proposing rents of $1,375 for a one-bedroom unit, $1,592 for a one-bedroom unit plus, $1,750 for a two-bedroom unit, $2,050 for a two-bedroom unit plus, and $2,100 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market and location. Annual estimates of operating expenses for the 114-unit rental development were provided, as follows; General and Administrative - $265,712, Marketing - $33,818, Repairs and Maintenance - $86,477, Utilities - $53,142, Insurance Costs - $38,649, Centric Management Fee - $108,701, and Property Taxes - $304,667. The total expenses are approximately 35% of gross operating income.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-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 6.90% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 13.82% internal rate for 10 years if it received the public assistance. A reasonable rate of return for the proposed project is 10% - 15%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 10 of 1.23x without assistance, with a Year 6 coverage of 1.19x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.45x in Year 10, with a Year 6 coverage of 1.39x.

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 13.82%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by $5,330,915 or 18.50% in order for the project to become viable without assistance. This reduces the amount to be financed from $18,730,243 to $15,265,148 and reduces the annual payment from $1,185,144 to $965,892 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development but could still occur.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rates would have to increase by 16.25%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from $1,613,558 to $1,851,570. PFM believes the proposed rents are reasonable rental rates and does not believe an increase this large would occur.

Sensitivity Scenario 3 – Combination of Project Costs and Rental Rates

The final scenario looks at both a reduction of project costs and an increase in rental rates. The analysis showed that project costs would have to be reduced by $2,449,339 or 8.50% and rental rates would have to increase by about 8.75%. Either of these events could occur but may be unlikely to occur 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, occupancy of the buildings, the rental market, and monthly expenses. 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 13.82%. In addition, the coverage ratio in Year 6 is estimated to be 1.39x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.

DEVELOPER AGREEMENT

By and Between

CITY OF FARGO,

a North Dakota Municipal Corporation

and

GREAT PLAINS BLOCK 3 HOLDINGS, LLC

TABLE OF CONTENTS
(Included for Convenience of Reference Only)

TABLE OF CONTENTS
(continued)

DEVELOPER AGREEMENT

THIS AGREEMENT is dated as of June 1, 2022; is by and between the City of Fargo, a North Dakota municipal corporation, and GREAT PLAINS BLOCK 3 HOLDINGS, 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.

"Annual Administrative Fee" means an annual administrative fee equal to five percent (5%) of the annual Available Tax Increments received from the County Auditor, subject to a maximum sum of $12,500 each year, that is to be retained by the City prior to remittance to developer of said increment as payment of the Tax Increment Note, as described in Section 3.3.

"Available Tax Increments" means the Developer Tax Increments minus the Annual Administrative Fee.

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the various eligible expenses initially borne by Developer that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Four and 75/100ths Percent (4.75%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date each such eligible expense was incurred to the date of the Tax Increment Note.

"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 4.3 of this Agreement.

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

"City Parcel" means the real property described in Exhibit B to this Agreement.

"City Parcel Closing" means the closing of the transaction in which the City Parcel is transferred to Developer as contemplated in Section 3.2 of this Agreement.

"City Parcel Closing Date" means the date Developer and City close on the transfer of the City Parcel to Developer as contemplated in Section 3.2 of this Agreement.

"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.

"Final Plans" means the construction grade plans and specifications Developer intends to utilize for construction of the Improvements.

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

"Developer" means GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, or permitted successors or assigns.

"Developer Financing Closing Date" means the date Developer closes with its institutional lender on its financing of the Minimum Improvements. This date may, or may not be, the same date as the City Parcel Closing Date.

"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 Property" means Tract A described on Exhibit A to this Agreement.

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15^{th}) Tax Year and earlier Tax Years. Taxes for years prior to the first Tax Year are not included as Developer's Taxes. Taxes for the sixteenth (16^{th}) 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 May 31, 2022.

"Development Property" means all of the real property (Tract A and Tract B) 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.

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

"Minimum Improvements" means the Improvements specifically required of Developer as set out 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" means the Developer and City.

"Project" means the project of improvements in and adjacent to the Development Property.

"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 3.4, 8.1, and 8.2.

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of $1,447,266.00 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 4.75% 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 first calendar year that follows the final calendar year in which a Renaissance Zone tax exemption, if any, under Chapter 40-63 of the North Dakota Century Code, is applicable to the Development Property, 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", under the City's renewal plan approved by the Board of City Commissioners of the City of Fargo on April 5, 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; unavailability of labor and/or materials caused by a pandemic; 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) and which directly results in delays; or acts of any federal, state or local governmental unit 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 operating

agreement or articles of organization 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. Developer acknowledges that tax increment assistance does not apply to those costs that are initially borne by the City and reimbursed to the City by Developer and City administrative or TIF fees, including the Annual Administrative Fees, 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 market value of $17,000,000.

(m) The Developer expects that, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2025.

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

(o) Within a reasonable time prior to the Contingencies Deadline to allow for City review, Developer shall submit to the City Final Plans evidencing the Minimum Improvements.

(p) As of the Developer Financing Closing Date, Developer shall submit to City reasonable documentation satisfying City 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 the Final 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 City Parcel Closing Date, the Developer shall have obtained an opinion from its independent legal counsel in substantially the form set out at Exhibit H, subject to reasonable and customary assumptions, limitations and exclusions.

(r) As of the City Parcel Closing 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; Transfer of City Parcel; 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, 2025. 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.

(a) 2nd Street/4th Ave Streetscape. As an expectation but not as a binding commitment by either Party, the City and Developer agree to work together in identifying an area on the southeast corner of the Project, at least a portion of which may be located within the 2nd Street right-of-way and/or the 4th Avenue North right-of-way for the design and installation of a streetscape by Developer, with cost-allocating arrangements to be determined.

(b) City to Move Generator on City Parcel. There is a power generator located on the City Parcel that once supported Fargo School District functions. The generator shall be deemed to be personal property to be removed by the City (and associated electrical connections safely terminated) prior to the City Parcel Closing and the generator is not the property of the Developer as part of this Agreement.

Section 3.2. **Transfer of the City Parcel.**

(A) Subject to the terms and conditions of this Agreement, City will convey to Developer, and Developer will purchase and accept from City the City Parcel. Except as provided in Section 3.1(b) above, the City shall not be required to remove any improvements from the City Parcel and Developer takes the City Parcel in its as-is condition without any representation or warranty concerning the City Parcel (including, without limitation, the warranties of fitness for a particular purpose, tenantability, habitability and use).

(B) City Parcel Closing. The closing of the sale by the City and purchase by Developer of the City Parcel (the "City Parcel Closing") will occur as soon as reasonably possible after the Contingencies have been waived or satisfied by the City and Developer, as applicable, but not later than fifteen (15) days after the Contingencies Deadline.

(C) Purchase Price. The purchase price for the City Parcel is **One Hundred Sixty Two Thousand Nine Hundred Eighty Four and no/100 DOLLARS ($162,984)** (the "Purchase Price"), which is payable by Developer to City at the City Parcel Closing.

(D) Title and Survey. Developer shall be responsible for performing any and all title and survey examination or due diligence that Developer deems prudent, at Developer's sole cost and expense. Developer acknowledges and agrees that the City is providing marketable title and otherwise is not providing any representations or warranties as to the condition of title and

expressly waives any claims Developer may have against the City in connection with any title defects. Notwithstanding the foregoing, the City will reasonably cooperate with Developer to address and/or remove any title defects to which the parties agree, including without limitation legal access.

(E) Closing Documents.

(1) City Closing Documents. The City will deliver to Developer at the City Parcel Closing:

(i) a warranty deed duly executed by the City conveying the City Parcel to Developer in the form agreed to by the Parties; and

(ii) Encroachment Agreement. – An encroachment agreement suitable to City and Developer pertaining to the following:

(1) East Side-2nd Street ROW Encroachment. The agreement will identify an area within the 2nd Street right-of-way and North of the Easterly extension of the South Boundary of the City Parcel for parking and so that vehicles may use such area for ingress and egress to such parking and the enclosed parking space within the development project and for possible installation of aesthetically-pleasing screening of view of said surface parking area from the south and east of the Project, particularly from the point of view from 2nd Street facing North. For purposes of illustration, only, an exemplar site plan reflecting the surface parking area with the 2nd St. right-of-way is attached hereto as Exhibit G. Agreement to state that encroachment rights of Developer are subject to City right of access for maintenance, repair, replacement of infrastructure for flood mitigation features or 2nd Street right-of-way and underground utility needs and Developer shall be responsible for restoration of damage to paved parking/drive surface of encroachment area caused by City's access at Developer's sole cost.

(2) Canopies overhanging Public Sidewalk. Encroachment Agreement to allow canopies over public sidewalk/right of way at entrances of the Project onto 3rd Street North and at the corner at 3rd Street and 4th Avenue North and the corner at 2nd Street and 4th Avenue North.

(3) Easement Granted to City. Developer to grant easement to north 20-feet of the Developer's Property to City for access to 2nd Street right-of-way (ROW) for retaining wall maintenance, maintenance of any utilities within the 2nd St. ROW and for use by law enforcement, fire, ambulance and other City or other government or public emergency services to the extent needed to satisfy all building code, fire code and any other safety code requirements pertaining to the Project, the form of which

shall be substantially in conformance with Exhibit I. (the "Easement Agreement")

(4) A termination of that certain Encroachment Easement Agreement recorded in the Cass County, North Dakota Recorder's Office as Doc. No. 1472621 in form satisfactory to the title company to remove any exception from coverage related to same from Developer's owner's policy of title insurance.

(5) Such action and/or documentation, if any, as required by the title company to insure legal access over an area generally described as the South 30.5' of vacated 5th Ave. N. lying North of and adjacent to 3rd St. N.

(iii) Option to Repurchase City Parcel Agreement. – The Option to Repurchase City Parcel Agreement as described in Section 4.4.

(iv) Any other items required by this Agreement or reasonably requested by Developer to the Title Company for the City Parcel Closing.

(2) Developer Closing Documents. Developer will deliver to the City at the Closing:

(i) the Purchase Price;

(ii) the Encroachment Agreement, the Easement Agreement and the Option to Repurchase City Parcel Agreement as described in the list of City Closing Documents, above; and

(iv) any other items required by this Agreement or reasonably requested by the Title Company or the City for the City Parcel Closing.

(F) City Parcel Closing Costs, Prorations and Order of Recording.

(1) Closing Costs. Developer will be responsible for all document recording fees (including the deed), fees associated with the transfer or obtaining of licenses and permits required to operate the City Parcel, title examination costs and title insurance premiums and the cost of its ALTA survey. Developer will pay the closing fee and any escrow fees imposed by the Title Company in connection with this transaction.

(2) Taxes and Assessments. Real estate taxes and installments of special assessments for the year prior to the City Parcel Closing (payable the year of the City Parcel Closing) and prior years shall be the responsibility of City. Real estate taxes and installments of special assessments for the year of the City Parcel Closing (payable the year following the City Parcel Closing) shall be prorated between the parties to the City Parcel Closing date, based on the prior year's information if the tax statements for the current year are not yet available. Real estate taxes and installments of special assessments for the year

following the City Parcel Closing (payable the second year following the City Parcel Closing) and subsequent years shall be the responsibility of Developer.

(3) Income and Expenses. All income and operating expenses relating to the City Parcel, if any, will be prorated as of the close of business of the day before the City Parcel Closing. The City will be responsible for the expenses and entitled to the revenues accrued or applicable to the period prior to the City Parcel Closing. Developer will be responsible for the expenses and entitled to the revenues accrued or applicable to the day of the City Parcel Closing and thereafter.

(4) Estimates. If any amount to be apportioned under (3) cannot be calculated with precision because any item included in such calculation is not then known, such calculation will be made on the basis of reasonable estimates of the City of the items in question. Promptly after any such item becomes known to either Party, such Party will so notify the other and will include in such notice the amount of any required adjustment. If such adjustment requires an additional payment by the City to Developer, the City will make such payment to Developer simultaneously with its giving or within twenty (20) days of its receipt of such notice, as the case may be. If such adjustment requires a refund by Developer to the City, Developer will make such refund simultaneously with its giving or within twenty (20) days after its receipt of such notice, as the case may be.

(5) Order of Recording. The Closing Documents will be recorded in the following order:

(a) Deed from the City to Developer for the City Parcel.

(b) Option to Repurchase City Parcel Agreement.

(c) Encroachment Agreement.

(d) Easement Agreement

(e) Mortgage, if any, of the Development Property (including the City Parcel) granted by Developer to Developer's lender.

(G) AS IS. Except for those covenants, agreements, obligations, representations and warranties specifically in this Agreement: (i) the City makes no representations or warranties regarding the City Parcel; (ii) the City hereby disclaims, and Developer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the City Parcel or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous materials on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the City Parcel, including the warranties of fitness for a particular purpose, tenantability, habitability and use; and (iii) Developer otherwise takes the City Parcel "AS IS", "WHERE IS" and "WITH ALL FAULTS".

(H) Contingencies.

(1) Developer's Contingencies. Developer's obligations under this Agreement are subject to satisfaction or waiver by Developer of the following contingencies on or before May 15, 2023 (the "Contingencies Deadline"):

(a) The City and Developer agreeing, each in their reasonable discretion, that the Final Plans include the Minimum Improvements.

(b) The City and Developer's agreement (each in its sole discretion) to the final form of the following (collectively, the "Contingent Agreements"): the Encroachment Agreement and Easement Agreement and Option to Repurchase City Parcel Agreement as described in the list of City Closing Documents, above.

(c) Developer's acquisition of the Developer's Property.

(d) Developer's approval of all aspects of the City Parcel and the Project (including, without limitation, title, survey, physical condition, costs of intended improvements and financing) and the City and Developer's agreement on any title objections which require cure and the cure that has been undertaken.

(e) All of the covenants and obligations that the City are required to perform or to comply with pursuant to this Agreement, as applicable, including the delivery of all documents and notices provided for herein, have been performed and complied with in all material respects.

The contingencies set forth in subparagraph (1) of this section are intended for the sole benefit of Developer and may be insisted upon or waived, in whole or in part, by Developer, in its sole discretion.

(2) City's Contingencies. City's obligations under this Agreement are subject to satisfaction or waiver by City of the following contingencies on or before May 15, 2023 (the "Contingencies Deadline"):

(a) The City and Developer agreeing, each in their reasonable discretion, that the Final Plans include the Minimum Improvements.

(b) The City and Developer's agreement (each in its sole discretion) to the final form of the Contingent Agreements.

(c) All of the covenants and obligations that the Developer is required to perform or to comply with pursuant to this Agreement, as applicable, including the delivery of all documents and notices provided for herein, have been performed and complied with in all material respects.

The contingencies set forth in this subparagraph (2) of this section are intended for the sole benefit of City and may be insisted upon or waived, in whole or in part, by City, in its sole discretion.

(3) As set forth more fully below, the mayor of the City without further approval by the Board of City Commissioners of the City, to the extent permitted by law, is authorized to approve the submitted plans for construction and to determine whether the Contingencies of the City are fully satisfied.

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, through Available Tax Increments, 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 $1,447,266.00, comprised of three components:

First Component: Demolition and site cleaning, soil correction and remediation, grading and utility distribution throughout the Development Property This cost is the estimate to demolish the existing structure(s), remove substandard soils and rubble, fill and grade the site plus install new utilities ($1,047,266.00) that will be borne by the Developer;

Second Component: Public improvements in the City right of way, including utilities disconnect and stub, sidewalk repair and right of way repair and enhancements such as plantings, landscape and furnishings ($350,000.00).

Third Component: Advance Administrative/TIF Fees. Other Tax Increment costs include the administrative costs ($50,000.00) for the city of Fargo.

The $50,000.00 advance administrative fee, set forth above, will be initially paid by Developer to the City at the time of issuance of the Tax Increment Note, but shall be an eligible cost reimbursable through Available Tax Increments along with other eligible costs. In addition, an annual administrative fee equal to five percent (5%), subject to a maximum sum of $12,500 each year, of the annual increment received from the County Auditor (the "Annual Administrative Fee") shall be retained by the City prior to remittance to developer of said increment as payment of the Tax Increment 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 shall be recognized as an eligible expense under this Agreement. If eligible costs in the First, Second or Third Component noted above are less than the maximum amount designated for each Component, then such deficit may be realized through another Component so long as all costs are in fact eligible costs. 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 Four and 75/100ths Percent (4.75%) 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 amount of the Tax Increment Note shall be determined by adding the $1,447,266.00 (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) RESERVED.

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered upon the later of when the Certificate of Completion is delivered and when the Developer has demonstrated in writing to the reasonable satisfaction of the City the amount of eligible costs of the Improvements incurred and paid by Developer. 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 eligible costs of the Improvements have been incurred, together with lien waivers and evidence satisfactory to the City of the nature and amount of the eligible costs of the Improvements that have been paid by the Developer. Each certification shall demonstrate the specific purpose and amount of the eligible 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 the city attorney's office 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 commencing on May 15th immediately following the first Tax Year, and on May 15th of each year thereafter until the Maturity Date, said May 15th being referred to herein as the "Payment Date" or collectively as "Payment Dates", in the amount described in this subsection. The sole source of funds available for payment of the City's obligations to the Developer under this Section shall be the Tax Increment Note (a non-cash source), and the sole source of funds available for payment of the Tax Increment Note shall be the Available Tax Increments for the first through the fifteenth Tax Years. The amounts otherwise payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City from Tax Years prior to the applicable 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 Four and 75/100ths Percent (4.75%) 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

(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 after the City Parcel Closing and 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 or omissions of the Indemnified Parties. This paragraph (a) shall only apply to claims made after the City Parcel Closing and prior to the issuance of a Certificate of Completion.

(b) Except for any misrepresentation or any 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 after the City Parcel Closing and 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, representations, covenants or agreements 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 after the City Parcel Closing and due to any act of negligence of any person, other than any act of misconduct or 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. **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 Available Tax Increments for any purpose permitted by law. Available Tax Increments shall be used on each Payment Date for the following purposes in the following order of priority: (a) to make the maximum possible payment on the Tax Increment Note; (b) to pay or reimburse redevelopment costs at or near the Project identified by the City; and then (c) 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.

Section 3.6. **Renaissance Zone.** Prior to the execution of this Agreement, the City has taken all appropriate steps to establish approval of the Project as a Renaissance Zone project, with the benefits as provided by N.D.C.C. Chapter 40-63, which benefits include an ad valorum tax exemption of an initial five (5) calendar year period. The first calendar year of such five-year period shall be the calendar year in which the first February 1st occurs immediately following issuance of the Certificate of Completion. By way of clarification and example: (a) if the Certificate of Completion is issued after February 1, 2024, but on or before February 1, 2025, the first calendar year of such five-year period shall be 2025; and (b) if the Certificate of Completion is issued after February 1, 2025, and on or before February 1, 2026, then the first calendar year of such five-year period shall be 2026. The authority for the Renaissance Zone designation to be unilaterally terminated by the City under the terms of this Agreement shall only be in the event that the City is allowed to and has exercised its rights to terminate this Agreement following an Event of Default by Developer for an event that occurs prior to the issuance of Certificate of Completion, in which case ad valorum property taxes and tax increment will be available to the City in accordance with the Urban Renewal Law and other laws. Otherwise, the authority for the Renaissance Zone designation to be terminated shall be limited to applicable North Dakota law.

ARTICLE IV

Construction Of Minimum Improvements

Section 4.1. **Construction of Minimum Improvements.** The Developer agrees that it will cause the Minimum Improvements specified in this Section 4.1 to be constructed on the Development Property. Sufficiently in advance of the Contingencies Deadline to allow for City's review, Developer must submit to City the Final Plans, which shall include the following "Minimum improvements":

(a) A minimum of 102 apartment dwelling units.

(b) Building podium level (first floor—ground level) within the Development Property shall accommodate vehicular parking of at least one parking space for each apartment unit as well as indoor bicycle storage room to accommodate at least 25 bicycles.

(c) The Project shall not include outdoor surface parking within the Development Property along either 4th Avenue or 3rd Street.

(d) The first floor of the building exterior will be brick and precast stone, brick inlay in precast concrete or precast decorative concrete on the 4th Avenue side, the 3rd Street side, and southern-most 100 feet of the east face of the Project (on the first floor) adjacent to 2nd Street.

(e) Project to include an elevated terrace with a river view on the level above the parking level.

(f) The Project must be constructed upon the Development Property, which includes the City Parcel.

(g) So long as Developer's Final Plans meet the above-described minimum improvement standards, the City may not unreasonably withhold such approval.

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.** The Developer shall commence the construction of the existing structure on the Subject Property no later than December 31, 2023, said date to be referred to herein as the "Construction Commencement Deadline"; the Developer having demolished the existing structure(s) on the Development Property prior thereto. Subject to Unavoidable Delays, by December 31, 2025, the Developer shall have completed construction of the Minimum Improvements.

Time lost as a result of Unavoidable Delays shall be added to extend the Construction Commencement Deadline and completion date above 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 completion 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. It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be, to the fullest extent permitted at law and in equity, binding for the benefit of the City and enforceable by the City against the Developer and its successors and assigns. 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 4.3, 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.

Section 4.4. **Option to Repurchase City Parcel Agreement.** City shall have the option to purchase the City Parcel for the same Purchase Price originally paid by Developer to City, as defined herein, plus one-half of the costs incurred by Developer in the demolition of the existing structure(s), if any, in the event that Developer has not met the Construction Commencement Deadline, all in accordance with a form of option agreement substantially in conformance with **Exhibit "E"**, hereto, (the "**Option to Repurchase City Parcel Agreement**") to be executed at the City Parcel Closing. The Option to Repurchase City Parcel Agreement shall automatically become null and void if Developer timely achieves the Construction Commencement Deadline. If Developer timely achieves the Construction Commencement Deadline and if requested by Developer, City shall execute and deliver to Developer a release of the Option to Repurchase

City Parcel Agreement or such other written affirmation that the Option to Repurchase City Parcel Agreement is null and void as requested by Developer.

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 nonreporting form on the so-called "all risk" form of policy;

(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, if applicable.

(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 copies of policies evidencing all such insurance, or 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 Project, Development Property or Improvements, or all of them; and

(b) only 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 Mortgage.

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. **Transfer of Property after Issuance of Tax Increment Note.** After issuance of the Tax Increment Note, Developer shall be free to transfer the Development Property or any part thereof, but transfer of the Tax Increment Note shall be subject to any restrictions therein.

Section 8.2. **Prohibition Against Transfer of Property and Assignment of Agreement Prior to Issuance of Tax Increment Note**. The Developer represents and agrees that prior to the issuance of the Tax Increment Note:

(a) Subject to Article VII and Section 8.2(c) of this Agreement, except only by way of security for (and the realization of such security), and only for, the purpose of obtaining financing 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, and 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 same or greater qualifications and financial responsibility of Developer, 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.

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 a party herein shall at any time prove to have been incorrect in any material respect as of the time made.

(c) If the Minimum Improvements are not substantially completed by December 31, 2025, 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 a party shall breach any warranties, representations, covenants, agreements, obligations 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 Minimum 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 non-defaulting party at law or in equity, the non-defaulting party (1) may with 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 defaulting party, deemed adequate by the non-defaulting party, that the defaulting party 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 defaulting party 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 defaulting party does not provide assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible, terminate this Agreement, without further obligation whatsoever hereunder to the defaulting party.

As a remedy for an Event of Default by Developer:

(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 non-defaulting party shall employ attorneys or incur other expenses for the enforcement, performance or observance of any obligations or agreement on the part of the defaulting party contained herein, or for the identification and/or pursuit of any remedies or possible workouts of such default, the defaulting party agrees that it shall, on demand therefor, pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party. If an Event of Default cannot be cured within sixty (60) days, but the defaulting party has provided assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured as soon as reasonably possible (as provided in Section 9.2), and

the defaulting party does so cure said Event of Default in the manner as assured to the non-defaulting party, 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 GREAT PLAINS BLOCK 3 HOLDINGS, LLC, ATTN: President, 210 Broadway N., Suite 300, Fargo, ND 58102.

(b) in the case of the City, to the City at 225 4th Street North, 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, all of which taken together shall constitute one, complete Agreement. A copy of this Agreement delivered as or by .pdf, facsimile or other electronic means containing a party's signature shall be deemed such party's original, binding signature.

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 non-defaulting party 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, including the authority to approve the submitted plans for construction and to determine whether the Contingencies of the City are fully satisfied, as referenced above. The mayor may, but shall not be required to, consult with other 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 beyond applicable cure periods. 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 issued; provided, however, this Agreement shall still be used thereafter for definitions and context purposes to the extent required for reference purposes under the Tax Increment Note.

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 non-defaulting party arising hereunder due to an Event of Default occurring prior to such termination or expiration or (ii) the provisions of Sections 3.4 (entitled "Release and Indemnification Covenants") and 9.5 (entitled "Agreement to Pay Attorneys' Fees and Expenses") 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. Notwithstanding anything in this Section to the contrary, permitted successors and assigns shall not be deemed a "third party" for the purposes of this Section, and such permitted successors and assigns shall inure to all of the benefits of Developer and be bound by all of Developer's obligations.

[The remainder of this page intentionally left blank – signature pages follow]

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 J. Mahoney, M.D.,, 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 June, 2022, by Timothy J. Mahoney, M.D., 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
Assistant City Attorney
Fargo, ND
ejohnson@lawfargo.com
701-371-6850

Execution Page to Developer Agreement between the above-named Party and GREAT PLAINS BLOCK 3 HOLDINGS, LLC

GREAT PLAINS BLOCK 3 HOLDINGS, LLC

By _____,
Bill Rothman, Vice President

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

The foregoing instrument was acknowledged before me this 26th day of May, 2022, by Bill Rothman, the Vice President of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, on behalf of said company.

DANIEL A. BUEIDE
Notary Public
State of North Dakota
My Commission Expires Sept. 16, 2022

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property consists of the following properties located in the City of Fargo, Cass County, North Dakota:

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:
Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning.
The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

TRACT B

LOT TWO, IN BLOCK THREE, NORTH DAKOTA R-1 URBAN RENEWAL ADDITION TO THE CITY OF FARGO, SITUATE IN THE COUNTY OF CASS AND THE STATE OF NORTH DAKOTA; EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT TWO; THENCE SOUTH 87°07'40" WEST, ALONG THE NORTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 84.55 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 102.27 FEET; THENCE SOUTH 57°31'44" EAST FOR A DISTANCE OF 25.00 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 63.71 FEET, MORE OR LESS, TO A POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF SAID LOT TWO; THENCE NORTH 87°04'06" EAST, ALONG THE SOUTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 144.53 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID LOT TWO; THENCE NORTHERLY, ALONG THE EASTERLY LINE OF SAID LOT

TWO, FOR A DISTANCE OF 151 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

The current property addresses are 419 3rd St. N and 225 4th Ave. N, Fargo, ND 58102, respectively.

EXHIBIT B

LEGAL DESCRIPTION OF CITY PARCEL

The City Parcel consists of the following property or properties located in the City of Fargo, Cass County, North Dakota:

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:
Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning.
The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

The current property address is 419 3rd St. N, Fargo, ND 58102.

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____ [i.e. year of issuance]
(TAX INCREMENT DISTRICT 2022-0___ 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 GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company (the "Developer"), or the registered assign, the principal sum of ONE MILLION _____and no/100 Dollars ($1,___,___.00), [[Note: principal sum to include validated eligible expenses of Developer from Section 3.3, including City Administrative Fee ($50,000) and Capitalized Interest amount]] an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date; 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 Four and 75/100ths Percent **(4.75%)** 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 June 1, 2022 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and GREAT PLAINS BLOCK 3 HOLDINGS, 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 GREAT PLAINS BLOCK 3 HOLDINGS, 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 commencing on the later of (a) May 15th immediately following the date of issuance of the Tax Increment Note and (b) May 15th of the second calendar year following the final year in which a Renaissance Zone tax exemption, under Chapter 40-63 of the North Dakota Century Code, if any, is applicable to the Development

Property and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as a "Payment Date" or collectively as "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 for the first Tax Year 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 (and not previously paid to the Registered Owner and applied by City as an Annual Administrative Fee) for the first and any subsequent Tax Year. 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 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.

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.

No Payment Upon Default. 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.

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 $_____ [$1,447,266 plus Capitalized Interest] (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 2022-0__, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2022-0__ Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2022-0__ 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 GREAT PLAINS BLOCK 3 HOLDINGS, LLC, by reorganization, merger or acquisition, (2) a member of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, (3) a related person to such member or successor, (4) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (5) 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 GREAT PLAINS BLOCK 3 HOLDINGS, 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 GREAT PLAINS BLOCK 3 HOLDINGS, 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 J. Mahoney, M.D.,, its Mayor

ATTEST:

_____
Steven Sprague, City Auditor

(SEAL)

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
	GREAT PLAINS BLOCK 3 HOLDINGS, LLC	
_____, 20___	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT D

FORM OF ENCROACHMENT AGREEMENT

ENCROACHMENT AGREEMENT

THIS AGREEMENT, is made and entered into as of the effective date below by and between the **CITY OF FARGO,** a North Dakota municipal corporation [hereinafter "City"] and **Kilbourne Group, LLC,** a North Dakota limited liability company [referred to as "Owner"]

WITNESSETH:

WHEREAS, Owner is the fee title owner of the following described real property (the "Development Property"): see Exhibit A attached hereto and incorporated herein.

WHEREAS, Owner is proposing to build a mixed-use building ("Development") on the Development Property; and

WHEREAS, a portion of the 2nd St. North Right of Way (the "Right of Way") lies between the Development Property and a retaining wall located within the Right of Way that is associated with a railroad underpass (the "Retaining Wall"); this area is a non-buildable area dedicated for any future excavation required to maintain the Retaining Wall; and

WHEREAS, The Owner has requested the use of a portion of such area, described and depicted on Exhibit B attached hereto and incorporated herein (the "Encroachment Area") for the following encroachments (collectively, the "Encroachment Elements"): (i) install paving and striping and use such area for parking, a drive aisle and for ingress and egress to its enclosed parking; (ii) install aesthetically-pleasing screening to obstruct the view of surface parking from the south and east of the Project, particularly from the point of view from 2nd Street facing North;

and (iii) to install and use roof drain connections to the storm sewer located in the Encroachment Area [or following further discussion with City, install a separate roof drain and/or storm sewer line in the Encroachment Area – change as appropriate prior to signing] to support its development; and

WHEREAS, the City agrees to allow said Encroachment Elements under certain terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, it is hereby agreed by and between the parties as follows:

1. Owner covenants and agrees that it owns all right, title and interest in the Development Property.

2. City hereby grants Owner the right to encroach and use the Encroachment Area for the purpose of installing the Encroachment Elements for the purposes (and no other purposes) and in the locations shown on Exhibit B attached hereto and incorporated herein. Said Encroachment Elements have the sole purpose to serve the Development Property.

3. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. Notwithstanding the foregoing sentence, this Agreement is transferable to subsequent owners, successors and assigns of the Development Property, provided (1) City has not fully terminated the Agreement as provided herein; and (2) Owner, its successors or assigns, provides a notice of transfer to City not less than 15 days prior to such transfer; and (3) Owner, its successors and assigns, provides City a certificate of insurance within 10 days following transfer, evidencing continued, uninterrupted insurance as provided for herein. Failure to abide by these requirements may be cause for termination of this Agreement. Further while in force, this Agreement shall be binding upon subsequent owners, successors and assigns of the Development Property, irrespective of whether the foregoing conditions have been satisfied.

4. Owner is responsible for all costs to design, install, maintain, and replace the Encroachment Elements ("Owner's Work"). City shall have no obligation, liability, or responsibility for costs incurred by the Owner to complete the Encroachment Elements,

including, but not limited to, contractor and engineering fees. Owner's contractor(s) and engineer(s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City. Contractors working in the Encroachment Area shall be licensed by the City of Fargo. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's Work under this Agreement. In no event will City be responsible for any payments, including payments for additional work or costs occasioned by unforeseen or changed conditions encountered in doing the work. Except as expressly provided otherwise in this Agreement, the parties understand and agree that City shall have no responsibility for repairs or costs thereof to the Encroachment Elements, or damages which may be occasioned by such repairs, in the event City completes any repairs to the Retaining Wall or other City infrastructure lying below surface within the Encroachment Area.

5. The parties further understand and agree that the cost of any repairs to the Encroachment Area and existing public infrastructure therein or adjacent thereto caused by or resulting from by the Encroachment Elements shall be Owner's sole financial responsibility, and further understand and agree that the costs thereof shall be assessed directly to the Development Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with N.D.C.C. Chapter 40-22. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to N.D.C.C. § 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Development Property. Owner further waives its right to protest the amount, benefit or any other assessment attributed to such work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing such work, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

6. Owner agrees to pay City a $500 application fee, due at signing. The annual fee is waived by City. This fee waiver is based on the restricted nature of the property with the location of the property not serving any public use but a protective space to protect the Retaining Wall. The Encroachment Area is also in the LDZS zone so this further limits the use

of the area.

7. The Owner shall use due care when working in the Encroachment Area. All or a portion of the Encroachment Area may have special fill associated with the Retaining Wall. Any excavation deeper than 12 inches within 15 feet of the Retaining Wall may not be performed without a minimum two business day notice to the City and work cannot start until written authorization has been received from the City. An Engineering Inspector must be present for any excavation deeper than 12 inches within 15 feet of the wall.

8. If Owner damages any portion of the Retaining Wall including any special material associated with the Retaining Wall during the construction of the Encroachment Elements or the Development, City will make the necessary repairs to same and Owner agrees to be financially responsible for such repairs. If Owner fails to reimburse City then the costs thereof shall be assessed directly to the Development Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with N.D.C.C. Chapter 40-22. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to N.D.C.C. § 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Development Property.

9. Owner understands and agrees that City construction in the Encroachment Area, including but not limited to repair of the Retaining Wall and/or other public improvements in the Encroachment Area, may damage or impact the Encroachment Elements. City shall have no responsibility for any damage to the Encroachment Elements, if using due and proper care when working around the Encroachment Elements. Owner shall be responsible for the repair or replacement of the Encroachment Elements unless City fails to use due and proper care.

10. To the extent Owner no longer occupies the Encroachment Area, or if this Agreement is terminated, City shall determine if the Owner must remove or abandon in place (capping any subsurface pipes if applicable an appropriate) some or all of Encroachment Elements and restore and replace all public property thereby affected to its pre-encroachment condition. The City must approve the construction methods unless it directs that all Encroachment Elements will be left in place. It is understood and agreed that Owner, its successors and assigns, are responsible for the repair or replacement of any public property

Owner disturbs or damages, at Owner's cost and expense.

11. Owner is responsible for all locates and must register with ND One Call and be responsible for all ND One Call requirements as the owner of Encroachment Elements, if and as applicable to specific Encroachment Elements.

12. Except as expressly provided otherwise in this Agreement, Owner, its successors and assigns, agrees to hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements, by reason of the use of the Encroachment Area by Owner pursuant to this Agreement. Owner agrees to provide to the City a certificate of insurance with a minimum coverage of $1,000,000 and indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

13. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the Encroachment Area. The intent of this Agreement is to allow the Encroachment Elements to remain in place for so long as the Development remains on the Development Property. In the extraordinary event that City determines a public need for some or all of that portion of the Encroachment Area occupied by the Encroachment Elements while the Development remains in place, including but not limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation and/or water main repair and installation, and the continued presence of some or all of the Encroachment Elements is no longer practicable under the circumstances, as determined by the City Commission following at least 10-days' prior written notice to Owner of the hearing at which such matter will be considered, terminate Owner's rights, in whole or in part, under this Agreement. Upon notice of such termination by the City Commission, Owner's rights shall be terminated and Owner shall have 360 days to remove and/or appropriately cap and abandon in place all Encroachment Elements that are the subject of such notice.

14. Owner understands and agrees that all work completed in the Encroachment Area shall meet City of Fargo Construction Standards, including but not limited to City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as amended or modified from time to time. Owner must obtain City approval prior to starting work in the Encroachment Area and obtain City acceptance of any portion of the

work that constitutes public improvements after the work is completed. Owner agrees that failure to secure acceptance from City of the agreed upon modifications and restoration of any portion of the work that constitutes public improvements may result in City completing the work and assessing the cost to the Development. Owner waives its right to protest the resolution of necessity for the improvements and restoration or other provisions of N.D.C.C. Chapter 40-27 as the same may be amended for which such resolutions are required pursuant to N.D.C.C. § 40-22-17 pertaining to all work authorized by City under this Agreement, and Owner specifically consents to the potential restoration of the Encroachment Area (if and as directed by City) to its pre-existing condition upon termination of this Agreement. Owner further consents to the assessment of costs thereof to the Development and waives any right to protest the benefit or other assessment attributed to the construction. Project costs which may be assessed against the Development include all costs of the improvement that are authorized by North Dakota law, including N.D.C.C. § 40-23-05, such as engineering, fiscal agent's and attorney's fees for any services in connection with authorization and financing of the improvement, and all other costs as authorized by law.

15. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any limitation on the statutory authority of City to grant such permission, which may now or hereafter exist, provided City acknowledges that it is not aware of any current such limitations.

16. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objections to personal jurisdiction and improper venue.

17. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

18. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed

from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable. The parties, having been represented by counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this Agreement

19. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.

20. Any modifications or amendments of this Agreement must be in writing and signed by both partiesto this Agreement.

21. It is specifically agreed between the parties that a copy of this Agreement may be recorded.

22. **EFFECTIVE DATE.** This Agreement shall be effective as of the date and year last signed by the parties below, as reflected by the date of acknowledgement thereof.

[This agreement is a form Encroachment Agreement based upon information available at the time it was attached to the Development Agreement. The parties acknowledge and agree that a geotechnical analysis will be completed by and at the Owner's expense prior to a closing, where this document would be executed. Changes to Encroachment Elements locations and additional use and maintenance restrictions within the Encroached Area, all to preserve the integrity of the Retaining Wall, may be necessary based upon the geotechnical report; if so and both parties are unable to agree upon those, then this agreement will not be executed.]

Dated this ___ day of _____, 2022.

Kilbourne Group, LLC, a North Dakota limited liability company

_____
By: Bill Rothman
Its: Vice President

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

On this ____ day of _____, 2022, before me, a notary public in and for said county and state, personally appeared _____, to me known to be the persons described in and that executed the within and foregoing instrument.

_____
Notary Public
Cass County, ND

(SEAL)

Dated this ____ day of _____, 2022.

City of Fargo, a North Dakota
Municipal Corporation

_____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

_____
Steve Sprague, City Auditor

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

On this ____ day of _____, 2022, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

_____
Notary Public
Cass County, ND
My Commission expires:

(SEAL)

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property consists of the following properties located in the City of Fargo, Cass County, North Dakota:

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:
Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning.
The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

TRACT B

LOT TWO, IN BLOCK THREE, NORTH DAKOTA R-1 URBAN RENEWAL ADDITION TO THE CITY OF FARGO, SITUATE IN THE COUNTY OF CASS AND THE STATE OF NORTH DAKOTA; EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT TWO; THENCE SOUTH 87°07'40" WEST, ALONG THE NORTHERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 84.55 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 102.27 FEET; THENCE SOUTH 57°31'44" EAST FOR A DISTANCE OF 25.00 FEET; THENCE SOUTH 32°28'16" WEST FOR A DISTANCE OF 63.71 FEET, MORE OR LESS, TO A POINT OF INTERSECTION WITH THE SOUTHERLY LINE OF SAID LOT TWO; THENCE NORTH 87°04'06" EAST, ALONG THE SOUTHERLY LINE OF

SAID LOT TWO, FOR A DISTANCE OF 144.53 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID LOT TWO; THENCE NORTHERLY, ALONG THE EASTERLY LINE OF SAID LOT TWO, FOR A DISTANCE OF 151 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Exhibit B

Legal Description of Encroachment Area and Depiction of Encroachment Elements

[Owner will commission a ND licensed surveyor to prepare a legal description for the Encroachment Area and drawings for this exhibit, which after approval by City and Owner, will be attached as Exhibit B prior to execution and recording of the Encroachment Agreement.]

EXHIBIT E

OPTION TO REPURCHASE CITY PARCEL AGREEMENT

Find and Replace:

[[year of agreemt]]

[[Developer Name]]

[[Developer form of entity]]

[[PURCHASE PRICE WRITTEN OUT]] One Hundred Sixty Two Thousand Nine Hundred Eighty Four

[[$Purchase price-arabic]] $162,984

OPTION TO REPURCHASE CITY PARCEL AGREEMENT

THIS OPTION TO PURCHASE ("Option Agreement") is made as of _____, **20____** between **GREAT PLAINS BLOCK 3 HOLDINGS, LLC**, a North Dakota limited liability company, ("**Developer**") whose address is ATTN: President, 210 Broadway N., Suite 300, Fargo, ND 58102, and **City of Fargo,** a North Dakota municipal corporation, 225 Fourth Street North, Fargo, North Dakota 58102 ("**City**"). **Developer** and **City** may also be referred to herein as "party" or together as "parties".

RECITALS:

WHEREAS, this Option to Purchase was part of a Developer Agreement (the "Developer Agreement"), the effective date of which was the 1st day of June, **2022**, between **Developer** and **City** in which the subject property, described below, was sold and conveyed by **City** subject to certain conditions being met which, if not met, would provide the **City** with this option to purchase back the subject property; and,

WHEREAS, the parties are desirous of setting forth the terms of said purchase option;

NOW, THEREFORE, it is hereby stipulated and agreed:

1. **Grant of Option**. In consideration of the sum of one dollar ($1.00) and other valuable consideration the receipt of which is hereby acknowledged, **Developer** hereby grants and conveys unto **City** the option to purchase that certain real property situate in the County of Cass and State of North Dakota legally described as:

[Legal description attached hereto as Appendix "A"]

the "Subject Property".

2. **Exercise of Option – Notice. City** shall be authorized to exercise said option in the event that on or before December 31, 2023 (the "Performance Deadline"), **Developer** has failed or refused to have meet the following conditions:

A. **Developer** must submit to **City** the **Developer**'s plans for construction of the project that is the subject of the Developer Agreement, to include certain Minimum Improvements defined in the Developer Agreement, and **Developer** must have received the written approval of the **City**.

B. **Developer** must have commenced construction of the said approved project, said commencement having been deemed to occur when (1) **Developer**, or **Developer**'s authorized contractor, has obtained a building permit for commencement of excavation of the project and (2) excavation has actually been commenced on said project.

Upon the failure or refusal of **Developer** to meet both of said conditions by said Performance Deadline, **City** shall have the right to exercise its option to purchase the Subject Property by delivery to **Developer** of written notice, delivered to **Developer** on or before **March 31, 2024.**

3. **Purchase Price.** In the event **City** exercises its option, as provided herein, **City** shall pay to **Developer** a purchase price consisting of the sum of (1) **One Hundred Sixty Two Thousand Nine Hundred Eighty Four and no/100 DOLLARS ($162,984)** and (2) one-half of the costs incurred by Developer, if any, in demolishing the structure or structures existing on the Subject Property as of the effective date of the Developer Agreement, assuming Developer has initiated demolition thereof prior to the Performance Deadline, which sum shall be referred to herein as the "Purchase Price". The Purchase Price shall be payable as follows:

a. The PURCHASE PRICE shall be paid by wire transfer of immediately available United States funds, to be received by **Developer** from the Title Company on the Closing Date pursuant to written wiring instructions to be delivered by **Developer** to the Title Company prior to the Closing Date.

4. **Title.** If title to the property is subject to any liens or encumbrances that didn't exist when Developer took title, **Developer** shall have a period of 90 days in which to remove any such liens or encumbrances.

5. **Terms of Sale and Closing**. Upon the exercise of the option by **City**, the closing shall occur within 90 days of the notice unless such time shall be extended by the mutual consent of the parties or to allow title defects to be cured as provided in the preceding paragraph. At the closing, **Developer** shall deliver to **City** a warranty deed free and clear of all liens or encumbrances not existing when Developer took title, if any, and building and zoning laws, ordinances and state and federal regulations and **City** shall pay to **Developer** the balance of the purchase price after receiving all due credits for pro-rated taxes and special assessments and any other credit due to **Developer**.

6. **Closing Costs.** It is specifically acknowledged and agreed that **Developer** shall pay the following costs connected with closing of this transaction should this option be exercised:

a. The preparation of the warranty, deed; and,

b. The recordation of any instruments required to clear title as provided in Sections 4 and 5.

7. **Taxes and Special Assessments**. Real estate taxes and installments for special assessments for the year prior to the year of closing and all and prior years shall be paid by **Developer**. For the year in which the closing occurs, real estate taxes and installments of special assessments shall be prorated to the date of closing. In all events **City**, if Option is exercised, shall pay the real estate taxes and installments of special assessments for the year subsequent to the year of closing.

8. **Possession**. Possession shall be delivered to **City** on the date of closing.

9. **Amendment**. No amendment or modification of this agreement, including extension of the time for the exercise of any option granted hereunder shall be effective unless reduced to writing and subscribed by each of the parties hereto.

10. Form of Notices; Addresses.

All notices, requests, consents, or other communications required under this agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the parties as follows (or at such other address as a party may from time to time designate by notice given pursuant to this Section):

To Developer: **GREAT PLAINS BLOCK 3 HOLDINGS, LLC**
ATTN: President
210 Broadway N., Suite 300,
Fargo, ND 58102

To the City: City Auditor
Fargo City Hall
225 N. 4th Street
Fargo, ND 58102

and to: Director of Strategic Planning and Research
ATTN: James Gilmour
Fargo City Hall
225 N. 4th Street
Fargo, ND 58102

Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States registered or certified mail or by overnight delivery service, then the day so sent to the address of the respective party, as provided in this Article, postage pre-paid. Notices sent by a party's counsel shall be deemed notices sent by such party.

11. **Binding Effect.** This shall inure to and be binding upon the parties hereto, their respective heirs, administrators, executors' personal representatives' successors and assigns. **City** has the right to assign this purchase option.

12. **Recording of Option Right of City. City** shall be authorized to record this Agreement against the Subject Property with the Office of the Recorder, County of Cass, State of North Dakota.

IN WITNESS WHEREOF, the parties hereto, have signed this purchase option this _____ day of _____, **20____**.

[Remainder of page intentionally blank – execution pages to follow]

Developer:

GREAT PLAINS BLOCK 3 HOLDINGS, LLC,
a North Dakota **limited liability company**

By:_____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____, the _____ of **GREAT PLAINS BLOCK 3 HOLDINGS, LLC**, a North Dakota limited liability company, on behalf of said company.

_____
Notary Public

CITY:

CITY OF FARGO,
a North Dakota municipal corporation

(SEAL)

By _____
Timothy J. Mahoney, M.D., 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 _____, 20___, by Timothy J. Mahoney, M.D., and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, a North Dakota municipal corporation, on behalf of said City.

Notary Public

Legal description obtained from previously recorded instrument.

This document drafted by:

Erik R. Johnson
Fargo Assistant City Attorney
(701) 371-6850
ejohnson@lawfargo.com

APPENDIX "A"

TO OPTION TO PURCHASE

Legal Description of Subject Property

TRACT A

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:
Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning.
The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.

EXHIBIT F

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the "City") and GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company (the "Developer") have entered into a Developer Agreement dated as of the 1st day of June, 2022; 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 J. Mahoney, M.D.,, Mayor

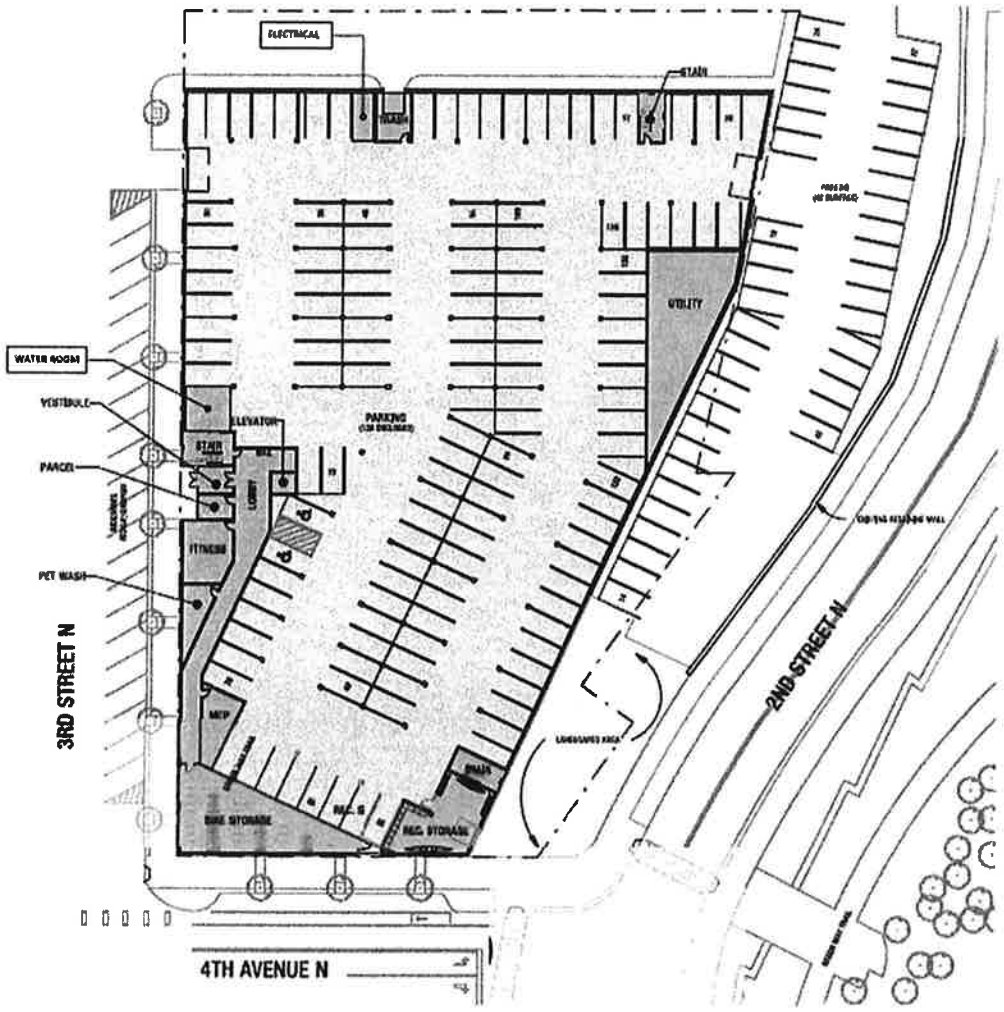
Attest:

_____
Steven Sprague, City Auditor

Signature page to the Certificate of Completion of the City of Fargo, North Dakota.

EXHIBIT G

EXEMPLAR SITE PLAN



LANDSCAPE PLAN SHOWN FOR ILLUSTRATION PURPOSES ONLY. FINAL LANDSCAPE PLAN TBD.

0 25 50 100

AG 21341 | © 2022 AG ARCHITECTS 16

EXHIBIT H

FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL

[Fargo]

Re: Developer Agreement by and between the City of Fargo, North Dakota, and GREAT PLAINS BLOCK 3 HOLDINGS, LLC

Gentlemen:

As counsel for GREAT PLAINS BLOCK 3 HOLDINGS, LLC (the "Company"), and in connection with the execution and delivery of a certain Developer Agreement (the "Developer Agreement") dated as of June 1, 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 Articles of Organization and Operating Agreement of the Company;

(b) Minutes relating to the meetings of the Board of Governors or any other managing committee of the Company at which action was taken with respect to the transactions covered by this opinion;

(c) The Developer 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 Developer Agreement; and the Developer 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 Developer Agreement, and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of organization, member control agreement or operating 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.

Very truly yours

EXHIBIT I

FORM OF EASEMENT AGREEMENT

EASEMENT AGREEMENT

A. THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 202___ (the "Effective Date"), by and among GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company("Grantor"), whose address is Attn: Bill Rothman, Vice President, 210 Broadway N., Suite 300, Fargo, ND 58102, and The City of Fargo, a North Dakota municipal corporation, ("Grantee"), whose address is City Auditor, Fargo City Hall, 200 N. 3rd Street, Fargo, ND 58102 .

RECITALS

B. Grantor and Grantee entered into a Development Agreement dated June 1, 2022, whereby Grantor acquired from Grantee that certain tract of land legally described on Exhibit A attached hereto and made a part hereof (the "Grantor Property"), and upon which Grantor will, together with other adjacent property, construct certain improvements (the "Project").

C. 2nd Street North, a publicly dedicated right of way, was recently relocated and widened and the West boundary of such right way adjoins the East boundary of the Grantor Property ("2nd Street ROW").

D. Additionally, a retaining wall was recently constructed within the 2nd Street ROW and certain underground utilities were installed in the 2nd Street ROW Westerly of the retaining wall (all such items, the "Improvements").

E. Due to varying elevations, access to the Improvements can only be safely and conveniently accessed across a portion of the Grantor Property.

F. Grantee desires to obtain from Grantor and Grantor desires to grant to Grantee, a non-exclusive easement over and across the Northerly 20 feet of the Grantor Property (the "Easement Area") for purposes of: (1) access to and repair and maintenance of the Improvements; and (2) use by law enforcement, fire, ambulance and other City or other government or public emergency services to the extent needed to satisfy all building code, fire code and any other safety code requirements pertaining to the Project.

AGREEMENTS

NOW, THEREFORE, in consideration of the recitals, the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby declare, grant, covenant and agree to the following:

1. Grant of Easement. Grantor hereby establishes, declares, grants, and conveys to Grantee, a non-exclusive, appurtenant, permanent access easement upon the Easement Area for

purposes of: (1) access to and repair and maintenance of the Improvements; and (2) use by law enforcement, fire, ambulance and other City or other government or public emergency services to the extent needed to satisfy all building code, fire code and any other safety code requirements pertaining to the Project. In conjunction with construction of the Project, Grantor shall pave, restore and/or repave the Easement Area as appropriate and shall thereafter keep the Easement Area in good, drivable condition.

2. Notice. The Grantee, its successors or assigns, shall give the then owner of the Grantor Property not less than 10 days advance notice prior to exercising its rights under this Agreement, except in the case of exigent circumstances, where the notice may be less than 10 days, but shall be as much in advance as reasonably possible.

3. Non-Disturbance. City shall exercise the rights granted in this Agreement in such a manner that causes the least interference and disturbance of tenants and other occupants of the Grantor Property as is practicable under the circumstances. Notwithstanding anything in this Agreement to the contrary, the rights granted in this Agreement are limited to the passage of persons and vehicles and such rights do not include the right to stage or store any materials or equipment within the Easement Area.

4. Maintenance Obligations. Grantee shall be responsible to promptly repair any damage to the Easement Area resulting directly from activities or use of the Easement Area for repair or replacement of the Improvements (as opposed to damage resulting from normal wear and tear of the Easement Area").

5. Hold Harmless. The Grantee, its successors or assigns, shall defend and hold the Grantor, its successors or assigns, harmless from and against any claims, liens, liabilities, lawsuits, costs, expenses damages and/or the like (including reasonable attorneys' fees), including, but not limited to, claims for personal injury, wrongful death, property damage or the like, resulting from, arising out of or in any way related to exercising its rights under this Agreement.

6. Notice of Default. A party will not be in default under this Agreement, unless such party shall have been served with a written notice specifying the default and shall fail to cure such default within 30 days after receipt of such notice, or shall fail to commence to cure and thereafter proceed diligently to cure such default within such period of time, if the default cannot be cured within such 30 day period.

7. Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Grantor Property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement be strictly limited to and for the purposes expressed herein.

8. Scope/Binding Effect. The rights and obligations herein provided shall inure to the benefit of and be binding upon the parties hereto, their successors, assigns, heirs and legal representatives, and shall run with, benefit and burden the Grantor Property and the Flood Wall Area.

9. Waiver. No waiver of any breach of the easements or of any rights, obligations, covenants and/or provisions herein contained shall be construed as, or constitute, a waiver of any breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other such easements, rights, obligations, covenants and/or other provisions.

10. Recording. This Agreement shall be recorded against the Grantor Property in the office of the County Recorder for Cass County, North Dakota.

11. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms or provisions of this Agreement shall not be affected thereby, but such remaining terms and provisions shall be valid and enforceable to the fullest extent permitted by law.

12. Governing Law. This document shall be construed and enforced in accordance the laws of the State of North Dakota.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on and as of the Effective Date.

[The rest of this page intentionally left blank. Signature pages follow.]

GRANTOR SIGNATURE PAGE
FOR
EASEMENT AGREEMENT

GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company

By: _____
Bill Rothman, Vice President

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

The foregoing instrument was acknowledged before me this ____ day of _____, 202___, by Bill Rothman, Vice President of GREAT PLAINS BLOCK 3 HOLDINGS, LLC, a North Dakota limited liability company, on behalf of the limited liability company.

_____
Notary Public

GRANTEE SIGNATURE PAGE
FOR
EASEMENT AGREEMENT

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

On this _____ day of _____, 202___, before me personally appeared Timothy J. Mahoney, M. D. and Steven Sprague, to me known to be the Mayor and City Auditor of the City of Fargo, a North Dakota municipal corporation, and that they executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of said municipal corporation.

_____
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Bueide Law Firm (DAB)
1 N 2nd St. Ste 100
Fargo, ND 58102

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR TRACT

That part of vacated Fifth Avenue North (Dedicated as Fourth Avenue), that part of a vacated alley, and all of Lot 8, all in Block 24, KEENEY AND DEVITT'S SECOND ADDITION, that part of Block 24 of KEENEY'S SUB-DIVISION OF CERTAIN LOTS IN PORTIONS OF BLOCKS NOS. 32 – 30 – 24 – 25 – 26 – 20 AND 19 IN KEENEY & DEVITT'S SECOND ADDITION, and that part of a vacated alley and Lot 1, Block 3, NORTH DAKOTA R1 URBAN RENEWAL ADDITION, all in the City of Fargo, said plats being on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 8, Block 24, said corner also being on the southerly right-of-way line of said Fifth Avenue North (Dedicated as Fourth Avenue); thence North 02 degrees 53 minutes 01 second West along the northerly extension of the westerly line of said Lot 8 a distance of 30.50 feet to a point on a line lying 30.00 feet southerly of, as measured at a right angle to, and parallel with, the centerline of the Burlington Northern Santa Fe Railway company's mainline track; thence North 86 degrees 54 minutes 11 seconds East along said parallel line a distance of 241.52 feet to the westerly right-of-way line of Second Street North, as shown on the DEDICATION PLAT OF SECOND STREET NORTH, said plat being on file and of record in the Cass County Recorder's office; thence South 09 degrees 24 minutes 11 seconds West along said westerly right-of-way line a distance of 185.68 feet to the south line of said Lot 1, Block 3; thence South 87 degrees 07 minutes 40 seconds West along the south line of said Lot 1, Block 3 a distance of 202.01 feet to the southwest corner of said Lot 1, Block 3; thence North 02 degrees 53 minutes 01 second West along the west line of said Lot 1, Block 3, and along the west line of said Block 24, a distance of 150.00 feet to the point of beginning.
The above-described tract contains 40,120 square feet and is subject to all easements, restrictions, reservations, and rights-of-way of record.