

FARGO CITY COMMISSION AGENDA
Monday, August 26, 2019 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, August 12, 2019).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file an Ordinance Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
- 2. 1st reading of the following Ordinances:
 - a. Relating to Ordinance Violations.
 - b. Amending Ordinance No. 5140 which Rezoned Certain Parcels of Land Lying in Diamond Willow Addition, A Replat of Portions of Douglas Addition.
- 3. 2nd reading and final adoption of the following Ordinances; 1st reading, 8/12/19:
 - a. Rezoning Certain Parcels of Land Lying in 42nd Street Addition.
 - b. Relating to Marijuana and Marijuana Paraphernalia.
 - c. Relating to Classification of Ordinance Violations.
- 4. Amendment to Lease Agreement with FM Metropolitan Council of Governments.
- 5. Parking Lease Agreement with 5th Floor Apartments LLC.
- 6. Applications for property tax exemptions:
 - a. James C. and Kathy S. Rugroden, 1809 13th Avenue South (5 year).
 - b. John and Susan Deutsch, 220 8th Street South, Unit C1 (5 year).
 - c. Susan Viola Hunley, 1208 2nd Avenue South (5 year).
 - d. Laura A. Hahn, 1122 9th Avenue South (5 year).
- 7. Release of Agreement regarding Special Assessments for Lot 1, Block 12, The Pines at The District.
- 8. Annual Renewal and extension of the Class "FA" Alcoholic Beverage License until 2/29/20 for Grazies.
- 9. Site Authorization of Fargo Metro Baseball Association at the African International Restaurant and Night Club.
- 10. Applications for Games of Chance:

- a. Fargo South High School for a calendar raffle from 9/3/19 to 2/25/20.
 - b. Nativity Church Fargo for bingo and a raffle on 11/3/19.
 - c. Pink It Forward for a raffle on 9/14/19.
 - d. North Dakota Long Term Care Association for a raffle on 9/19/19.
 - e. Unseen for a raffle on 9/19/19; Public Spirited Resolution.
11. Resolution adopting the Cass County Multi-Hazard Mitigation Plan.
 12. Change Order No. 9 for an increase of \$13,532.20 for Project No. FM-15-K1.
 13. Easement (Storm Sewer and Outfall) with Heiser and Miller, LLC.
 14. Increase to the 2019 Fire Permit Fee Schedule beginning 1/1/20, as presented.
 15. First Amendment to Agreement for the Provision of Professional Services (Occupational Medicine and Medical Director Services) with Essentia Health West.
 16. Amendments to 2019 Action Plan Community Development Block Grant (CDBG) and HOME Investment Partnerships Programs.
 17. Agreement with Lisa Wise Consulting, Inc. for Professional Consulting Services for Land Development Code Diagnostic.
 18. Resolution approving Plat of St. Paul's Newman Center Addition.
 19. Change Orders for the Fargo Police Department Headquarters Project:
 - a. No. 2 for an increase of \$16,776.00 for general contract.
 - b. No. 2 for an increase of \$1,477.00 for mechanical contract.
 - c. No. 2 for an increase of \$38,169.44 for electrical contract.
 20. Bid award for General Consulting and Engineering Services (RFP19127).
 21. Amendment to the Joint Powers Agreement for Transit Support with NDSU.
 22. Reject bid for the GTC Jefferson Lines Ticketing and Storage Counter and rebid the project under the main GTC Renovation Project.
 23. Change Orders for Project No. SW 16-03 Phase II:
 - a. No. 11 for an increase of \$12,522.00 for the mechanical contract.
 - b. No. 7 for an increase of \$3,339.91 for the electrical contract.
 24. Task Order No. 8 with Apex Engineering in the amount of \$245,550.00 for design and bidding of a new Downtown water tower.
 25. Task Order No. 27 with AE2S in the amount of \$208,400.00 for Project No. WA1860.
 26. Sole Source Procurement with Metrohm Process Analytics for a process analyzer in the estimated amount of \$77,817.00 (SSP19137).
 27. Title VI and Non-Discrimination Policy Statement (City of Fargo Transit Department).
 28. Transit Capital Project – Fiscal Year 2019 Urban Roads Program Memorandum of Understanding with the NDDOT.

29. Request to submit an RFP for tire purchase and services.
30. NDDOT Section 5310 and 5339 Transit Grant Agreements.
31. Bills.
32. Change Order No. 2 for an increase of \$3,301.98 for Improvement District No. BN-18-F2.
33. Change Order No. 3 for an increase of \$10,590.60 and time extension to 9/12/19 for Improvement District No. BR-18-A1.
34. Change Order No. 4 for an increase of \$9,097.43 and time extension to 9/30/19 for Improvement District No. NR-18-A1.
35. Change Order No. 7 for an increase of \$25,189.85 and time extension to 7/28/19 for Improvement District No. BN-17-A1.
36. Task Order No. 2 with Apex Engineering in the amount of \$235,200.00 for Improvement District No. BR-20-C0.
37. Change Order No. 5 for an increase of \$42,554.50 for Improvement District No. NR-17-B1.
38. Contract and bond for Improvement District No. NR-19-A1.

REGULAR AGENDA:

39. Construction projects update.
40. Public Hearings - 5:15 pm:
 - a. Special Assessment of unpaid utility bills.
 - b. Transfer of a Class "FA" Alcoholic Beverage License from ERJ Dining IV, LLC d/b/a Chili's to Brinker Restaurant Corporation d/b/a Chili's Grill & Bar at 3902 13th Avenue South, Suite 4402.
 - c. Transfer of a Class "A" Alcoholic Beverage License from FSB Associates LLC d/b/a Cowboy Jacks to L & D Hospitality d/b/a Cowboy Jacks at 506 Broadway North.
 - d. WITHDRAWN - Application for a Class "A-Club" Alcoholic Beverage License for the Downtown Community Partnership d/b/a Downtown Community Partnership at 207 4th Street North, Suite B.
 - e. Renaissance Zone Project for Great Plains 1001 Holdings, LLC for a new construction project located at 1001 and 1011 Northern Pacific Avenue North; 28 10th Street North; 1016 1st Avenue North and 11 11th Street North; continued from the 7/15/19 Regular Meeting; continued from the 7/15/19, 7/29/19 and 8/12/19 Regular Meetings.
 - f. Application filed by Great Plains 1001 Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1001 NP Avenue, 28 10th Street North, 1016 1st Avenue North and 11 11th Street North which the applicant will use in the operation of leasing of residential apartments and commercial space; continued from the 7/15/19 and 7/29/19 Regular Meetings.

- g. Application filed by Great Plains Antique Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1017 4th Avenue North which the applicant will use in the operation of leasing residential apartments; continued from the 7/15/19 and 7/29/19 Regular Meetings.
- h. Renaissance Zone Project for DFI Kesler LLC and DFI BJ LLC for a new construction project located at 617 and 621 1st Avenue North, and 624 2nd Avenue North; continued from the 7/15/19, 7/29/19 and 8/12/19 Regular Meetings .
- i. Application filed by DFI Kesler, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 624 2nd Avenue North, 621 1st Avenue North and 617 1st Avenue North which the applicant will use in the operation of leasing residential apartments and commercial space; continued from the 7/15/19 and 7/29/19 Regular Meetings.
- j. CONTINUED to 9/9/19 - Right-of-Way Vacation of the alley between Lots A, B, C, D, E, F, T and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition (624 2nd Avenue North and 613, 617, and 621 1st Avenue North); approval recommended by the Planning Commission on 4/2/19; continued from the 7/15/19 and 8/12/19 Regular Meetings.
- k. CONTINUED to 9/9/19 - Right of Way Vacation of a portion of 5th Street North between Blocks 21 and 22 Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition (410 5th Street North); continued from the 8/12/19 Regular Meeting.
- l. CONTINUED to 9/9/19 - Alley Vacation of the alley between Lot 12, Block 26 and a part of Lot 7 and all of Lots 8-12, Block 25, Roberts Second Addition (1001 NP Avenue North and 28 10th Street North); approval recommended by the Planning Commission on 7/2/19; continued from the 8/12/19 Regular Meeting.
- m. Development Plan for Tax Increment Financing District No. 2019-02 (for property northeast of 11th Avenue North and University Drive North and other sites in the Roosevelt Neighborhood).

41. Appointments to the Human Relations Commission.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

NOTICE OF HEARING
FOR SPECIAL ASSESSMENT OF
UNPAID UTILITY BILLS



The Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing on special assessments for Unpaid Utility Bills, provided in the list below, on Monday, August 26, 2019, at 5:15 o'clock p.m. in the City Commission Room, City Hall, Fargo, North Dakota.

Address	Parcel	Assessment	Reason
6012 56 AVE S	01-8449-03960-000	281.17	Unpaid Utilities
6801 24 ST S	01-8466-00430-000	571.69	Unpaid Utilities
4650 25 ST N UNIT 34	01-5900-00200-000	768.70	Unpaid Utilities
6298 59 AVE S	01-8562-00040-000	916.00	Unpaid Utilities
5972 36 ST S	01-8394-00550-000	211.25	Unpaid Utilities
498 25 ST S	01-0740-02490-000	465.16	Unpaid Utilities
702 UNIVERSITY DR N UNIT A	01-1620-00030-000	386.01	Unpaid Utilities
3028 18 ST S	01-2350-00261-000	395.71	Unpaid Utilities
6195 63 AVE S	01-8449-07260-000	1,106.98	Unpaid Utilities
3467 58 CT S	01-8394-00530-000	999.82	Unpaid Utilities
1529 34 1/2 AVE S	01-2705-00375-000	935.43	Unpaid Utilities
6116 55 AVE S	01-8449-03480-000	649.87	Unpaid Utilities
2562 54 AVE S	01-8386-00740-000	481.92	Unpaid Utilities
6228 35 ST S	01-8394-01390-000	625.51	Unpaid Utilities
6247 35 ST S	01-8394-01900-000	476.17	Unpaid Utilities
6103 55 AVE S	01-8449-02220-000	615.00	Unpaid Utilities
5855 57 AVE S	01-8449-04130-000	518.89	Unpaid Utilities
6164 61 AVE S	01-8449-07180-000	802.20	Unpaid Utilities
6188 59 AVE S	01-8449-05930-000	964.01	Unpaid Utilities
6279 59 AVE S	01-8562-00030-000	755.68	Unpaid Utilities
7379 21 ST S	01-8571-01620-000	618.30	Unpaid Utilities
5982 36 ST S	01-8394-00550-000	646.24	Unpaid Utilities
5978 36 ST S	01-8394-00550-000	567.67	Unpaid Utilities
6191 SILVERLEAF DR S	01-7740-02500-000	861.75	Unpaid Utilities
5884 36 ST S	01-8394-00550-000	521.04	Unpaid Utilities
5918 36 ST S	01-8394-00550-000	550.30	Unpaid Utilities
5936 36 ST S	01-8394-00550-000	696.45	Unpaid Utilities
922 UNIVERSITY DR S	01-1620-00590-000	356.02	Unpaid Utilities
5936 53 AVE S	01-8420-00030-000	387.34	Unpaid Utilities
6084 23 ST S	01-6350-01251-000	306.92	Unpaid Utilities
1513 14 1/2 ST S	01-2040-04200-000	370.56	Unpaid Utilities
5917 53 AVE S	01-8418-00010-000	571.56	Unpaid Utilities
3533 29 ST S	01-1395-00290-000	738.09	Unpaid Utilities
715 10 ST N	01-1120-00400-000	306.04	Unpaid Utilities
325 19 ST N	01-3300-02420-000	364.90	Unpaid Utilities
1502 7 ST S	01-1400-02730-000	598.40	Unpaid Utilities

1013 1 AVE S	01-2240-01500-000	303.56	Unpaid Utilities
424 25 ST S	01-0740-02443-000	345.68	Unpaid Utilities
4258 3 AVE N	01-0470-03852-000	717.62	Unpaid Utilities
4804 38 AVE S	01-7440-00420-000	383.19	Unpaid Utilities
3644 CORDOVA LOOP S	01-8568-00640-000	472.88	Unpaid Utilities
1442 10 ST S	01-1440-01440-000	348.07	Unpaid Utilities
313 NP AVE N	01-1520-00370-000	365.53	Unpaid Utilities
909 7 AVE N	01-1120-00280-000	410.16	Unpaid Utilities
1038 25 ST N	01-0480-01541-000	359.05	Unpaid Utilities
1418 12 AVE S	01-0020-01300-000	321.05	Unpaid Utilities
15 10 ST S	01-2240-01540-000	366.65	Unpaid Utilities
855 45 ST S UNIT A2	01-3880-01609-000	580.46	Unpaid Utilities
1701 45 ST S	01-0525-00023-010	1,388.41	Unpaid Utilities
301 25 ST S UNIT 5	01-3190-00020-000	409.11	Unpaid Utilities
4761 10 AVE S	01-3880-01233-000	855.05	Unpaid Utilities
1409 16 1/2 ST S UNIT B	01-2040-01840-000	319.27	Unpaid Utilities
4724 47 ST S UNIT F	01-8170-00050-000	306.25	Unpaid Utilities
1839 7 AVE S	01-1270-00500-000	333.36	Unpaid Utilities
1547 1 AVE N	01-2340-02420-000	327.89	Unpaid Utilities

Any person aggrieved may appeal from the action of the Board of City Commissioners by filing with the City Auditor, prior to August 26, 2019, a written Notice of Appeal stating therein the grounds upon which the appeal is based. Any person having filed such a Notice may appear before the Board of City Commissioners to present reasons why the action of the Board of City Commissioners should not be confirmed.

City Auditor's Office
(August 5 & August 12, 2019 - Legals)

INSTRUCTIONS TO THE FORUM

Please publish on Monday, August 5 & August 12, 2019 – Legals.

I will need an affidavit of publication.

Bill to: CITY AUDITOR'S OFFICE
 ATTN MICHELLE
 P.O. BOX 2471
 FARGO ND 58108

If you have any questions, please call 241-1301.
Steve Sprague

406

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Liquor License Application – Chili's
DATE: August 21, 2019

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: FA Full alcohol, food sales requirements, bar allowed
Business Name: Chili's Grill & Bar
Location: 3902 13th Avenue South, Suite 4402 (West Acres)
Applicants: Christopher Green, Daniel Fuller, Alan Streifel

Brinker Restaurant Corporation is purchasing the controlling interest in all 114 ERJ Dining, Chili's restaurants, including Fargo. Brinker owns and operates over 1,600 Chili's restaurants world wide.

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class FA alcoholic beverage license from ERJ Dining IV, LLC d/b/a Chili's to Brinker Restaurant Corporation d/b/a Chili's Grill & Bar. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class FA alcoholic beverage license from ERJ Dining IV, LLC d/b/a Chili's to Brinker Restaurant Corporation d/b/a Chili's Grill & Bar.

MEMORANDUM

TO: Chief David Todd
FROM: Sergeant Matt Christensen
DATE: August 12th, 2019

SUBJECT: Application for a transfer of a Class "FA" Alcoholic Beverage License from ERJ Dining IV, LLC d/b/a: Chili's, to Brinker Restaurant Corporation d/b/a: Chili's Grill & Bar to be located at 3902 13th Avenue South, Suite 4402, Fargo, ND.

Per City Auditor Steve Sprague, this is only a transfer of use and location of a currently existing liquor license of existing owners that does not require a background investigation done.

Christopher Green – Owner

Criminal History- DUI in Kansas in February 1999
Received 180 days in jail with 2 served and 178 suspended

Credit History- No areas of concern

Daniel Fuller – Owner

Criminal History- No areas of concern

Credit History- No areas of concern

Alan Streifel - Manager

Criminal History- No areas of concern

Credit History- No areas of concern

Investigation

This application is for a transfer of the license to new corporate ownership who will continue to operate Chili's restaurant and bar under the same business model of a grill and bar. The operating manager will also remain the same. Nothing is changing other than ownership at this time.

Business Location

Chili's Grill & Bar will be located at 3902 13th Avenue South, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Holiday Inn, Holiday Inn Express, Red Lobster, and Crave.

Conclusion

I believe I have discovered all information related to the listed applicant(s) and all information related to the transfer of the requested liquor license. I have provided this condensed background review to Fargo Police Chief David Todd for his review and recommendation.

NOTICE OF HEARING

Application for Alcoholic Beverage License Transfer

Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing in the City Commission Room, City Hall, on Monday, August 26, 2019 at 5:15 o'clock p.m. to consider an application for transfer of a Class "FA" Alcoholic Beverage License from ERJ Dining IV, LLC d/b/a Chili's, to Brinker Restaurant Corporation d/b/a Chili's Grill & Bar to be located at 3902 13 Ave S, Suite 4402 Fargo.

Any interested person may appear and will be heard.

City Auditor's Office
(August 12, 2019)

Please return to
Auditor's office
by 8-14-19

ADC

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Liquor License Application – Cowboy Jacks
DATE: August 21, 2019

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: A Full alcohol, no food sales requirements, bar allowed
Business Name: Cowboy Jacks
Location: 506 Broadway
Applicants: David Erickson

This application is for a change in the corporate name only. No change in ownership or in location.

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class A alcoholic beverage license from FSB Associates, LLC d/b/a Cowboy Jacks to L & S Hospitality, LLC d/b/a Cowboy Jacks. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class A alcoholic beverage license from FSB Associates d/b/a Cowboy Jacks to L & S Hospitality d/b/a Cowboy Jacks.

MEMORANDUM

TO: Chief David Todd

FROM: Sergeant Matt Christensen

DATE: August 12th, 2019

SUBJECT: Application for a transfer of a Class "A" Alcoholic Beverage License from FSB Associates, LLC d/b/a: Cowboy Jack's to L&D Hospitality d/b/a: Cowboy Jack's to be located at 506 Broadway N, Fargo, ND.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I questioned the applicant's criminal background, credit history, past residence history as well as any interaction they have had with law enforcement in any state.

The following information was discovered through this investigation:

David Erickson – Owner/Manager

Criminal History- No areas of concern

Credit History- No areas of concern

Investigation Notes

This application is for a transfer of a class "A" Alcoholic Beverage License which allows the licensee to sell "on sale" only. Cowboy Jack's will be located downtown when it opens for business and will be an all ages restaurant with a bar. There may be small bands and live entertainment on the weekends as well. David Erickson currently holds other liquor licenses in both Fargo, ND and Dilworth, MN which include Bulldog Tap in Fargo and Red Hen Taphouse in Dilworth, MN.

Business Location

Cowboy Jack's will be located at 506 Broadway North, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: The Radisson, the VFW, Toscana, Blackbird Woodfire Grill, The Boiler Room, Rosey's Bistro, Twist, Kilstone Brewing, Dempsey's, Beerfish, Sammy's Pizza, Mezzaluna, Spicy Pie, Black Coffee and Waffle Bar, Wasabi/Poke Bowl, Black Sheep Grill and Tavern, The Empire, Empire Liquors, Pickled Parrot, Cowboy Jacks, and The Bismarck.

Conclusion

I believe I have discovered all information related to the listed applicant(s) and all information related to the issuance of the requested liquor license. I have provided this completed background investigation to Fargo Police Chief David Todd for his review and recommendation.

NOTICE OF HEARING

Application for Alcoholic Beverage License Transfer

Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing in the City Commission Room, City Hall, on Monday, August 26, 2019 at 5:15 o'clock p.m. to consider an application for transfer of a Class "A" Alcoholic Beverage License from FSB Associates LLC d/b/a Cowboy Jacks, to L & D Hospitality d/b/a Cowboy Jacks to be located at 506 Broadway N, Fargo.

Any interested person may appear and will be heard.

City Auditor's Office
(August 12, 2019)

Please return to
Auditor's office
by 8-14-19

40d

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Liquor License Application – Downtown Community Partnership (DCP)
DATE: August 21, 2019

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: A-Club Full alcohol
Business Name: Downtown Community Partnership
Location: 207 4th Street North, Suite B (Block 9 Plaza)
Applicants: Melissa Rademacher, Lee Dobrinz, Michael Erickson

The Downtown Community Partnership (DCP) is seeking a liquor license so they will qualify to submit a proposal to the Fargo Park District to manage and operate alcohol sales at the Block 9 Plaza. This license will be used for events only and not as a stand alone bar. Should their RFP not be accepted, they would relinquish the license.

UPDATE

After discussions with City staff, the DCP and the Park District, the DCP is requesting their application for a liquor license be withdrawn.

Discussions revealed the Block 9 Plaza would not have a permanent structure for alcohol service, since liquor licenses are issued to a person and a place, there needed to be a permanent structure located at the plaza in order to have a liquor license sited there. The goal of the Park District and the DCP is to enhance the quality of life and to hold successful events at the Plaza. It was decided the best way to provide alcohol for events at the Plaza is to utilize the Class E (events) permit. Should the Park District choose the DCP as its alcohol vendor, the DCP would facilitate the E permits with licensees and where appropriate use a DCP-E permit to allow alcohol consumption in the public right of way. There may need to be some amendments to the DCP-E permit to facilitate this part, staff is currently reviewing the ordinances to make that determination.

Recommended Motion:

Move to withdraw the application for a Class A-Club liquor license submitted by the DCP.



Lee Dobrinz, Board Chair
207 4th St N, Suite B – Fargo, ND

Steve Sprague, City Auditor
City Auditor's Office
225 N 4 St.
Fargo, ND 58102-4817

August 20, 2019

Dear Mr. Sprague,

I am writing on behalf of the Downtown Community Partnership (DCP) to notify you and the Liquor Control Board that it is our intent to withdraw our Application for Alcoholic Beverage License which was submitted to your office and the City of Fargo on August 1, 2019. We thank you for reaching out to our organization after the application was submitted to discuss the details of the license. We understand the concerns that the City of Fargo's legal counsel has pointed out regarding the "Class A-Club" license for which we were applying as well as the requirement that the applicant must have a permanent location listed as the premises for sales of alcoholic beverages. Since we do not yet have the ability to list the plaza as our premises and since we will not be able to define a specific fixed location for sales within the plaza we feel it is appropriate to withdraw our application at this time.

The DCP does still see an opportunity to partner with the Fargo Park District in the operations of alcohol sales for events held at the Block 9 Plaza in downtown Fargo and we still plan to respond to the Fargo Parks RFP for these services. We would like to discuss further the possibility of using the City of Fargo's Class DCP-E License, which is currently for the exclusive use of the DCP, as a means in which we can coordinate the sales of alcoholic beverages by other vendors using their Class E license for special events held at the Block 9 Plaza. This would be an extension of the already proven and successful use of the DCP-E License by the DCP for events like the annual Street Fair, Corks & Canvas, and the Holiday Lights Parade. As described in our application, the DCP believes that this scope of work for the Park District and the owners of the plaza fits very well into our organization's mission and strengths. The Block 9 Plaza will be a private property that is used for the betterment of the downtown neighborhood and community as a whole by providing a gathering space where cultural, leisure and entertainment activities take place. The DCP's mission is to support events and spaces exactly like this and we have years of experience in operating events for the public good which also bring people and customers to downtown businesses. We envision that, if chosen by Fargo

Parks, we can be a partner with them in the creation of new events that would benefit many downtown businesses as well as further enliven Downtown Fargo, focus on community engagement all while boosting the local economy on and off the plaza site.

We request the opportunity to discuss the approach of a DCP-E License use further at the August 21st Liquor Control Board Meeting. We thank you again for your critical input and the dialogue regarding our application. We look forward to continuing our strong relationship with the City of Fargo and exploring ways to partner with and support the Fargo Park District to serve the mission of the Block 9 Plaza towards the betterment of downtown Fargo. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Dobrinz". The signature is written in a cursive style with a large, sweeping initial "L".

Lee Dobrinz
Board Chair, Downtown Community Partnership

cc: Melissa Rademacher - DCP President, Travis Koch – DCP Board Member and Block 9 Plaza Subcommittee Chair, Michael Erickson – DCP Board Vice Chair, Dave Leker - Interim Executive Director Fargo Park District, Kevin Boe - Programming & Facilities Director Fargo Park District



Planning & Development
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: planning@FargoND.gov
www.FargoND.gov



MEMORANDUM

TO: CITY COMMISSION
FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR *nc*
DATE: AUGUST 21, 2019
RE: RENAISSANCE ZONE APPLICATION FOR GREAT PLAINS 1001 HOLDINGS, LLC (281-F) LOCATED AT 1001 & 1011 NP AVE N; 28 10 ST N; 1016 1 AVE N; 11 11 ST N

The City of Fargo received a Renaissance Zone application from Great Plains 1001 Holdings, LLC to construct a mixed-use commercial and residential building at 1001 & 1011 Northern Pacific Avenue North; 28 10 Street North; 1016 1 Avenue North; 11 11 Street North. The request was reviewed by the Renaissance Zone Authority (RZA) on June 25, 2019.

Pursuant to the application, the intent of the project is to construct a 4-story, 220,000 square foot mixed-use project with 230 ground floor and structured parking stalls, a corner restaurant and three floors (160 units) of market-rate residential units.

Attached is a copy of the staff report and corresponding materials.

As indicated in the attached documentation, the project met all state and local requirements for approval and is consistent with a number of goals and objectives as established in the Fargo Renaissance Zone Development Plan. The application indicates an investment of \$32,267,549 which exceeds the minimum investment threshold as set forth in the plan.

The RZA unanimously recommended approval of this project.

Recommended Action: Approve the Renaissance Zone rehabilitation application for Great Plains 1001 Holdings, LLC and grant state income tax and property tax exemptions as recommended by the Renaissance Zone Authority.



**Staff Report
Renaissance Zone Application for
Great Plains 1001 Holdings, LLC (281-F)
1001 & 1011 NP Ave N; 28 10 St N; 1016 1 Ave N; 11 11 St N**

Project Evaluation:

The City of Fargo received a Renaissance Zone application from Great Plains 1001 Holdings, LLC to construct a mixed-use commercial and residential building at 1001 & 1011 Northern Pacific Avenue North; 28 10 Street North; 1016 1 Avenue North; 11 11 Street North. Pursuant to the application, the intent of the project is to construct a 4-story, 220,000 square foot mixed-use project with 230 ground floor and structured parking stalls, a corner restaurant and three floors (160 units) of market-rate residential units.

Construction is anticipated to begin Fall 2019 and the proposed timeframe of opening is late 2020 for phase 1 and early 2021 for phase 2.

The Planning Department has reviewed the application and has provided a project ranking based on the analysis below.

Lines 1: Use consistent with the RZ Plan (as per Visions and Goals): As noted in the 2015 Renaissance Zone Development Plan the desired land use on the southwest corner of Block 37 is identified as: *clearance and redevelopment of mixed-use or commercial/retail with ground floor interaction on 10th Street and NP Avenue; housing on upper floors; definition of block corners shall be critical on this block.* As proposed, the project will contribute to a number of goals and objectives as outlined in the RZ Plan as follows:

1. *Activity Generator [goal]:* Develop activity generating enterprises along Renaissance Zone's major commercial corridors: Robert Street/2nd Avenue.

The mixed-use project will generate activity by replacing the surface parking lots and several existing structures with residential and commercial/retail land uses. The project adds 230 residential units, 5,500 square feet of commercial space, and 230 ground floor and structured parking stalls.

2. *Walkable Districts [goal]:* Create "walkable districts" that integrate a wide range of activities and land uses; thus encouraging on-street activity...

The project is mixed-use and includes residential and some ground floor commercial/retail along the street, with a restaurant proposed at the corner of NP Avenue and 10th Street North.

3. *Ground Floor Uses [goal]:* Reserve ground floor land uses to those that will encourage streets to come to life – shops, offices, cafes, restaurants and other "public" facilities.

A restaurant proposed at the corner of NP Avenue and 10th Street North.

4. *Neighborhood Center [goal]:* Make "Broadway" Fargo's "Main Street" – a pedestrian-friendly, mixed-use magnet that anchors downtown neighborhoods.

The project is not located along Broadway, but will expand activity in this area of downtown.

5. *Urban Design [goal]:* Projects will embody strong urban design principles inclusive of building massing and form, building materials, pedestrian orientated design, streetscape, building orientation and recognition

of the importance of defined block corners, architectural style, high building coverage percentages, limited setbacks or downtown district appropriate setbacks, design longevity and street level transparency.

The project proposes near zero lot lines and high lot coverage. There are walk-up residential units and 5,500 square feet of restaurant at the corner of 10th Street North and NP Avenue North. While the Renaissance Zone specifically calls out that the definition of block corners are critical on this block, what staff is unsure of is the community's value of enhancement, and its relationship of urban design and street activity. Renaissance Zone projects are anticipated to be conscience of four-sided design, which has been seen with other projects within the downtown.

6. *Transportation [goal]:* Manage downtown transportation, accessibility and parking issues in a manner that will allow for further commercial developments and will make the entire area more user-friendly.

The project proposes approximately 230 parking stalls to support increased density on the site. Northern Pacific Avenue has a protected bike lane and is also served by several bus routes.

7. *Safe Streets – Safe Neighborhoods [goal]:* Encourage safe streets and safe neighborhoods by relying on and utilizing the “natural surveillance” of lively and active streets.

The project will increase the “natural surveillance” with the 160 residential and corner restaurant space which will increase activity on and along the street.

8. *High Quality Housing [goal]:* Continue to encourage the production of unique high quality housing that is developed in areas targeted for residential development or as a component of a mixed-use project.

The residential units will be market rate with quality finishes, be well-lit, and include amenities such as a roof top terrace, bike parking, pet facilities and package room.

9. *Infill [goal]:* Encourage and actively pursue projects that increase the productivity of underutilized property such as surface parking lots, vacant land and parcels with low building to land value ratios. Infill projects shall conform and be consistent with urban design principles as set forth in Goal 5, above.

The project will replace under-utilized site in downtown with a mixed use, higher density project appropriate in an urban setting.

10. *Housing Amenities [goal]:* Integrate quality housing with public open space and neighborhood amenities, requiring the enhancement of existing amenities in conjunction with the creation of new ones.

The project will provide amenities of a rooftop terrace, bike parking, pet facilities and package room.

11. *Downtown Entryways [goal]:* Enhance auto entry experiences with landscaping improvements to all major corridors (Broadway, Roberts St, 1st/NP Avenue, Main Avenue) and gateway statements at Broadway/Main Avenue, Broadway/6th Ave N, 1st Avenue/Red River, Main Avenue/Red River and Main Ave/10th Street N.

The project will replace single story buildings and surface parking lots with a multi-story project along NP Avenue North, 10th Street North and 1st Avenue North, all of which are gateways into downtown.

12. *The Place to Be [goal]:* Make downtown the entertainment/cultural/recreational center of the city... Make downtown a key destination for visitors/conventioners and a key destination for residents.

This area of downtown is already experiencing revitalization from the Historic Union, Prairie Roots Food Co-Op, Woodrow Apartments and Jade properties projects.

13. *A Place Like No Other [goal]:* Highlight the unique historic character of the Renaissance Zone by placing a high value on historic preservation and overall awareness of the history of the area.

The site does not have any historic structures, but the project proposes to incorporate historic elements of the site into the branding and design.

14. *24 Hours a day – 7 Days per Week – 365 Days a Year [goal]:* Design spaces, facilities and features that will attract people to the area both day and night, on weekdays and weekends, and during all seasons of the year.

One hundred and sixty residential units and additional ground floor commercial/retail will generate more activity with new visitors and residents.

15. *Connections and Coordination [goal]:* ... Strong connections between people, places and things to do are vital to creating a strong sense of community.

The project replaces single story buildings and surface parking lots along the streetscape, which will improve the pedestrian experience and walkability, and will provide connections to Broadway from the West.

(18/20 points)

Line 2: Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in this RZ Plan? [note that for mixed-use projects the total square footage should be dissected into commercial and residential totals for comparison to minimum investment thresholds]:

Pursuant to City of Fargo Renaissance Zone standards, in order to qualify for consideration, a project must meet a minimum \$40 per square foot capital improvement threshold for commercial rehabilitation and \$100 per square foot for any new construction.

According to the application, the structure accommodates 220,000 square feet, as follows:

Lot Size: 92,826 SF

**Proposed Building Total: 220,000 SF
Commercial: approximately 5,500 SF
Residential: approximately 134,000 SF
Parking: approximately 78,000 SF**

Overall, the application estimates a total capital investment of \$32,267,549 which calculates to approximately \$146 per square foot.

(10/10 points)

Line 3: The new construction or proposed improvements are representative of “High Priority Land Uses” as defined by this RZ Plan (see pg. 29).

Primary Sector Business: N/A

Active Commercial, Specialty Retail or Destination Commercial: The proposed project will produce a new building on an underutilized lot in Fargo’s downtown core and increase activity, and will provide a 5,500 square foot restaurant.

Mixed Use Development: The proposed uses will include a restaurant, residential units, and structured parking in one building structure.

Large, upscale residential units: The proposed residential development will include 160 premium marking rate units.

(17/20 points)

Line 4: The investment is located in a “Targeted Area” as defined by this RZ Plan (see pg. 29)? Consideration shall be given to whether this property has been vacant or underutilized for a period of time and/or whether the property is specifically targeted for clearance (see spreadsheet).

- 1) Parcels that have been vacant or underutilized for an extended period of time:

This site has been a surface parking lot and low density development (single story buildings) for a number of years.

(5/5 points)

- 2) Parcels specifically targeted for clearance:

The RZ Plan designates Block 37 as being appropriate for: clearance and redevelopment of mixed-use or commercial/retail with ground floor interaction on 10th Street and NP Avenue; housing on upper floors; definition of block corners shall be critical on this block.

(5/5 points)

(10/10 points)

Line 5: The project will create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or will contribute to street level activation?:

This project will enhance public space with pedestrian activity by creating a node in this area of downtown. The building form will improve the pedestrian experience.

(8/10 points)

Line 6: Consideration and analysis as to the total actual investment in the project?

As proposed, the redevelopment project and improvement costs significantly exceed both the 50% (true and full value of the building) and \$100 per square foot requirement. As previously noted, the application represents a total estimated investment of \$32,267,549.

(10/10 points)

Line 7: Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community?:

The applicant expects the restaurant would be a new business.

(10/10 points)

Line 8: Is the project located within a historic district? Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective?:

This property is not located within the boundary of the Downtown Historic District. The project will be consistent with historic urban development and the building exterior must conform the Downtown Mixed-Use design standards.

(10/10 points)

Summary:

This application received a score of 93 on a 100-point scale. The applicant met all required criteria and the use is consistent with the RZ Plan. In addition, the proposed new construction project surpasses the local capital improvement requirement of \$40 per square foot for a commercial rehab and \$100 per square foot for new construction.

This project is consistent with the RZ Plan to provide a mixed-use development within a target area that acts as an activity generator by providing for residential units and street-level retail activity.

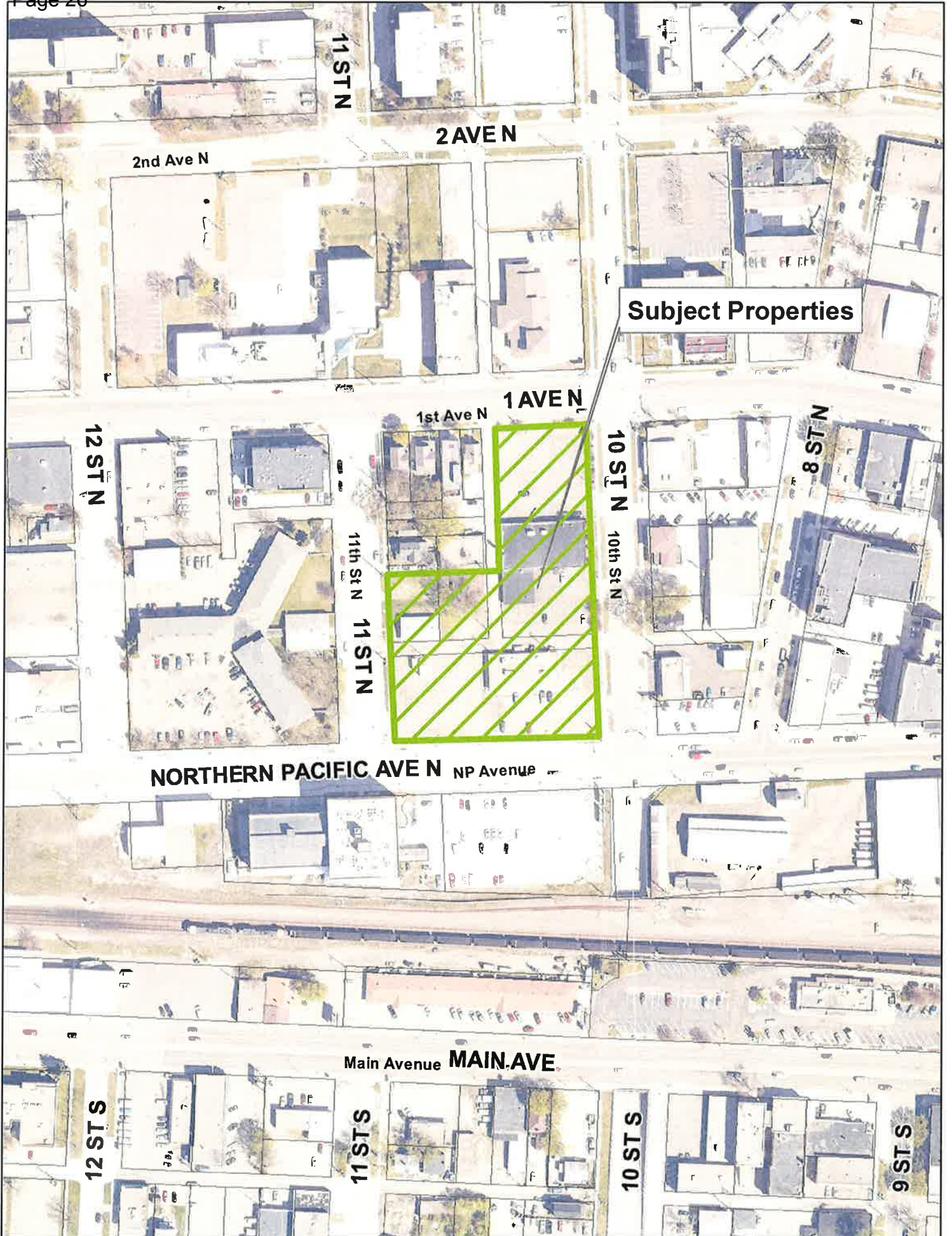
The amount invested in the project exceeds state and local guidelines. The project does not involve the relocation of commercial businesses from another North Dakota city. The applicant will not be seeking any historic preservation tax credits, however the applicant is proposing to secure a PILOT project to aid in the new construction.

This project will make use of a lot that is currently underutilized. Staff believes that this project will be a benefit to the downtown community and will positively contribute to the health of surrounding businesses.

Suggested motion:

Recommend approval to the Fargo City Commission to approve the application submitted by Great Plains 1001 Holdings, LLC and to grant the property tax exemption and the State income tax exemptions as allowed by the ND Renaissance Zone law contingent upon completion of the project and verification of costs.

Minimum Criteria (Proposals involving the purchase of income-generating property)			
		Possible Points	Staff Rating
1	Use consistent with the plan (as per Vision and Goals)	20	18
2	Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in the RZ Plan?	10	10
3	The new construction or proposed improvements are representative of "High Priority Land Uses" as defined in the RZ Plan: <ul style="list-style-type: none"> • Primary sector business • Active Commercial, Specialty Retail and/or Destination Commercial • Mixed use development (combination of housing, commercial, and/or retail uses in a horizontal or vertical fashion) • Large, upscale residential units 	20	17
4	The investment is located in a 'Target Area' as defined by the RZ Plan: <ul style="list-style-type: none"> • Parcels that have been vacant or underutilized for an extended period of time • Parcels specifically targeted for clearance 	10	10
5	The project will create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or will contribute to street level activation: <ul style="list-style-type: none"> • Incorporation of "civic" or "public" space within a redevelopment proposal will receive additional consideration • Demonstrated commitment to strengthening pedestrian corridors and issues of "connection" • Attention to streetscape amenities • Contribution to street activity 	10	8
6	Consideration and analysis as to the total actual investment in the project: <ul style="list-style-type: none"> • Consideration can be given for the level of capital investment in a project. (i.e., additional consideration can be given for higher levels of investment) 	10	10
7	Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community: <ul style="list-style-type: none"> • Commercial tenants that are re-locating within the Downtown Area (as defined by the 1996 Downtown Area Plan) are not eligible for tax incentives without special approval from the Zone Authority • Commercial tenants that are relocating from a North Dakota community (other than Fargo) to the Fargo Renaissance Zone are not eligible for tax incentives without special approval from the Zone Authority. 	10	10
8	Is the project located within a historic district? Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective? <ul style="list-style-type: none"> • Although not included in the Project Review Guidelines, historic preservation is considered an important component of downtown projects even when Historic Preservation and Renovation Tax Credits are not being requested. 	10	10
Total Rating (100 possible points)		100	93



Subject Properties

11 ST N

2 AVE N

2nd Ave N

1st Ave N

1 AVE N

10 ST N

10th St N

8 ST N

12 ST N

11th St N

11 ST N

NORTHERN PACIFIC AVE N NP Avenue

Main Avenue MAIN.AVE

12 ST S

11 ST S

10 ST S

9 ST S

APPLICATION FOR RENAISSANCE ZONE – REHABILITATION OR PURCHASE (NEW CONSTRUCTION)

Property owners, business owners, developers or investors interested in pursuing a Renaissance Zone project should review the *2015 RZ Plan*. The RZ Plan delineates the current geographical boundaries of the program (only certain blocks within the downtown core are included) and provides additional detail on minimum investment requirements and applicable program goals and objectives that must be met.

Property Owner Information
Name (<i>printed</i>): <u>Great Plains 1001 Holdings, LLC</u>
Address: <u>210 Broadway Suite 300</u>
Primary Phone: <u>701.237.2279</u>
Alternative Phone: _____
Email: _____

Representation Information (<i>if applicable</i>)
Name (<i>printed</i>): <u>Mike Zimney</u>
Address: <u>210 Broadway Suite 300</u>
Primary Phone: <u>701.237.2279</u>
Alternative Phone: _____
Email: <u>zimney@kilbournegroup.com</u>

Location of property involved in the application decision
Address or Parcel Number: <u>1001 NP - 28 10 ST N - 1016 1 AVE N - 11 11 ST N</u>
Legal Description (<i>attach separate sheet if more space is needed</i>): <u>see attached</u>
Renaissance Zone Block Number: <u>37</u>
Current Use of Property: <u>Single story buildings (former Nestor and Park Co.) and parking lots</u>
How will this property affect historical properties: <u>N/A</u>



Application Type (Please place a checkmark next to corresponding application type requested)			
Purchase <input type="checkbox"/>	Purchase with Major Improvements <input checked="" type="checkbox"/>	Historic Preservation and Renovation <input type="checkbox"/>	
Rehabilitation <input type="checkbox"/>	Lease <input type="checkbox"/>		
Is this A Historic Tax Credit Project: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Square Footage
Lot: <u>92,848 (35,545 + 39,768 + 10,535 + 7,000)</u> sf Building: <u>14,802 (5,000 + 9,802)</u> sf
List Each Floor sf Separately <u>14,802 (5,000 + 9,802)</u>
<u>We expect the restaurant would be a new business</u>

Project Description	
Expected Date of Purchase:	<u>1001 NP = 2015. 28 10 ST N/1016 1 AVE N/11 11 ST N = late summer</u>
Expected Date of Occupancy:	<u>Late 2020 (phase 1). Early 2021 (phase 2)</u>
Will this be your primary place of Residency?	<u>n/a</u>

Scope of Work
A four-story mixed-use project with three floors of market rate apartments and ground floor with structured parking, a corner restaurant, and apartments.
Project Metrics:
<ul style="list-style-type: none"> • +/- 220,000 SF • 5,500 SF commercial • +/- 160 units • +/- 230 parking stalls

Estimated Tax Impact	
Current True and Full Value:	<u>\$1,863,000 (\$644,000 + \$1,219,000 + \$70,000 + \$49,000)</u>
Current Annual Property Tax:	<u>\$28,600 (288.60 mills)</u>
Estimated Value of Building after Improvements:	<u>\$27,427,417</u>
Estimated Five-Year Impact:	<u>\$1,864,602.51</u>

Acknowledgement – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the forgoing information is true and complete to the best of our knowledge.	
Owner (Signature):	<u></u> Date: <u>5.8.19</u>
Representative (Signature):	<u></u> Date: <u>5/7/19</u>

Office Use Only	
Date Filed:	_____ Planning Office Contact: _____

Please complete the following that apply:

A. Is the proposed use of the project consistent with the RZ Plan (as per Visions and Goals)? As noted in the 2015 Renaissance Zone Development Plan the desired land use on Block 10 will contribute to a number of goals and objectives as outlined in the RZ Plan as follows:

1. *Activity Generator [goal]:* Will the project develop activity-generating enterprises along major commercial corridors of the Renaissance Zone? If true, how?

Yes - addition of apartment units and ground floor commercial will generate foot traffic, new residents, and activation along NP, 10 ST N, and 1st Ave N.

2. *Walkable Districts [goal]:* Will the project create “walkable districts” that integrate a wide range of activities and land uses that encouraging on-street activity? If true, how?

Yes, the project is mixed-use and will include residential apartments and 5,500 SF commercial space intended for a restaurant on the corner of NP and 10 St N.

3. *Ground Floor Uses [goal]:* Will the project reserve ground floor land uses to those that will encourage streets to come to life – shops, offices, cafes, restaurants and other “public” facilities? If true, how?

The ground floor will have commercial space at the corner of NP and 10 St N.

4. *Neighborhood Center [goal]:* Will the project make “Broadway” Fargo’s “Main Street” – a pedestrian-friendly, mixed-use magnet that anchors downtown neighborhoods? If true, how?

This project will continue to expand the activity and residents living in the "10-U" area of downtown.

5. *Urban Design [goal]:* Will the project the projects embody strong urban design principles inclusive of building massing and form, building materials, pedestrian orientated design, streetscape, building orientation and recognition of the importance of defined block corners, architectural style, high building coverage percentages, limited setbacks or downtown district appropriate setbacks, design longevity and street level transparency? If true, how?

The building will have walk up units along along NP and 1 Ave N. There will be near zero lot lines and outdoor restaurant seating along 10 St N. The ground floor will have walk-up apartments and 5,500 SF of restaurant space at the corner of NP and 10 St N. The project will have a high lot coverage and a height appropriate for the surrounding area.

6. *Transportation [goal]:* Will the project manage downtown transportation, accessibility and parking issues in a manner that will allow for further commercial developments and make the entire area more user-friendly. If true, how?

The project will have +/-230 parking stalls that will be used to support the increased density at this site. The project is along NP with a protected bike lane which improves the connection from this area to Broadway. The site is also served by a number of bus routes.

7. *Safe Streets – Safe Neighborhoods [goal]:* Will the project encourage safe streets and safe neighborhoods by relying on and utilizing the “natural surveillance” of lively and active streets? If true, how?

The 160 new apartments on this site, the restaurant space, and the ground floor residential units will significantly increase the amount of activity on the site.

8. *High Quality Housing [goal]:* Will the project continue to encourage the production of unique, high quality housing that is developed in areas targeted for residential development or as a component of a mixed-use project? If true, how?

The apartments will be market rate with quality finishes, be well-lit, and include amenities such as a roof top terrace, bike parking, pet facilities, and package room.

9. *Infill [goal]:* Will the project encourage and actively pursue projects that increase the productivity of underutilized property such as surface parking lots, vacant land and parcels with low building to land value ratios? (Infill projects shall conform and be consistent with urban design principles as set forth in Goal 5 above.) If true, how?

The completion of this project will replace two underutilized sites with a higher density project appropriate for an urban setting.

10. *Housing Amenities [goal]:* Will the project integrate quality housing with public open space and neighborhood amenities, requiring the enhancement of existing amenities in conjunction with the creation of new ones? If true, how?

Amenities will include a roof top terrace, club room, bike parking, pet facilities, and package room.

11. *Downtown Entryways [goal]:* Will the project enhance auto entry experiences with landscaping improvements to all major corridors (Broadway, Roberts St, 1st/NP Avenue, Main Avenue) and gateway statements at Broadway/Main Avenue, Broadway/6th Ave N, 1st Avenue/Red River, Main Avenue/Red River and Main Ave/10th Street N? If true, how?

The replacement of single story buildings surrounded by parking lots with multi-story near zero lot line development will improve this site along the very visible corridors of 10 St N, 1st Ave, and NP.

12. *The Place to Be [goal]:* Will the project make downtown the entertainment/cultural/recreational center of the city, a key destination for visitors/conventioners, and a key destination for residents? If true, how?

This area of downtown is already experiencing revitalization from Union Storage, the Prairie Roots Food Co-Op, Woodrow Apartments, and Jade Properties.

- 13. *A Place Like No Other [goal]:* Will the project highlight the unique historic character of the Renaissance Zone by placing a high value on historic preservation and overall awareness of the history of the area? If true, how?

The site lacks any historic structures, but where possible, we will try to incorporate historic elements of the site into the branding and design.

- 14. *24 Hours a day – 7 Days per Week – 365 Days a Year [goal]:* Will the project design spaces, facilities and features that will attract people to the area both day and night, on weekdays and weekends, and during all seasons of the year? If true, how?

The 160 apartments located in the project will generate significantly more activity on this site. The addition of a restaurant space will help generate new visitors and activity.

- 15. *Connections and Coordination [goal]:* Will the project create strong connections between people, places, and things to do that are vital to creating a strong sense of community? If true, how?

The removal of the parking lot gaps along the streetscape will greatly improve the pedestrian experience. As this area of downtown continues to redevelop, the walkability and connection to Broadway and downtown as a whole will improve.

B. Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in this RZ Plan? [Note that for mixed-use projects the total square footage should be dissected into commercial and residential totals for comparison to minimum investment thresholds]:

Pursuant to City of Fargo Renaissance Zone standards, in order to qualify for consideration, a project must meet a minimum \$25 square foot capital improvement threshold for residential rehabilitation, \$40 per square foot capital improvement threshold for commercial rehabilitation, and \$100 per square foot for any new construction.

- I. The structure accommodates 220,000 square feet, as follows:
 - a. Lot Size: 92,826 SF
 - b. Proposed Building Total: 220,000 SF
 - c. Overall, the application estimates a total capital investment (cost incurred for the repair, replacement or renovation of a building's: exterior, roof, structure, electrical and/or plumbing systems, heating/ventilation/air conditioning systems, windows, exterior doors, elevator improvements and accessibility. The square footage used to calculate required investment levels will be based on the square footage of the entire building excluding the basement) of \$ 32,267,549, which calculates to approximately \$ 146 per square foot.

Please complete the following that apply:

A. The proposed development or lease are representative of "High Priority Land Uses" as defined by this RZ Plan (see pg. 29).

1. Is this a Primary Sector Business? If true, how?

n/a

2. Is this an Active Commercial, Specialty Retail or Destination? If true, how?

Yes - the project will contain a 5,500 SF restaurant space

3. Is this a Mixed-Use Development? If true, how?

Yes - residential, commercial, parking

4. Does this development include large, upscale residential units? If true, how?

Yes - premium market rate apartments

B. Target Area Considerations: consideration shall be given to whether this property has been vacant or underutilized for a period of time and/or whether the property is specifically targeted for clearance.

1) Is this parcels vacant or underutilized for an extended period of time? If true, how?

Yes - surface parking lot and low density development

2) Is this a parcel specifically targeted for clearance in the Renaissance Zone Plan?

Yes - "...Clearance and redevelopment"

C. Will the project create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or contribute to street level activation?

Yes - pedestrian connectivity will be improved by creating a node in this area of downtown. The creation of zero lot line development, walk up units, and the corner restaurant will improve the pedestrian experience.

D. Will the proposed project meet investment minimum criteria? How?

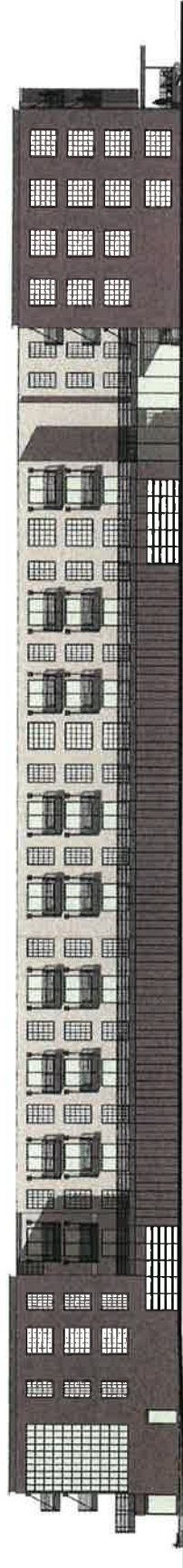
Yes - \$146/SF

E. Will the proposed project accommodate the relocation of a business from another North Dakota community? If true, how?

We expect the restaurant would be a new business

F. Is the project located within a historic district? Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective? If true, how?

Yes - site plan will be consistent with historic urban development and building exterior will conform to the DMU design standards.



WEST ELEVATION



NORTH ELEVATION - 1ST STREET N.

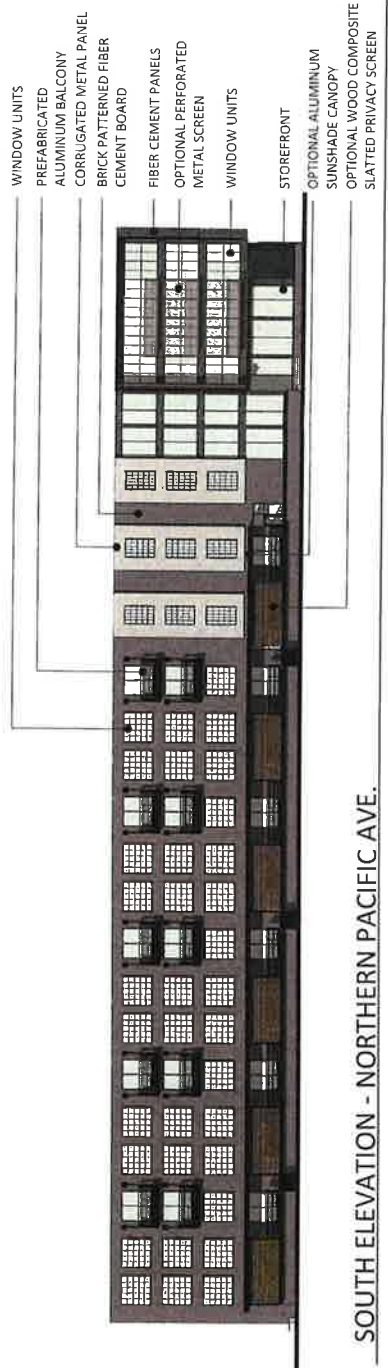
1001 NP MIXED USE
EXTERIOR ELEVATIONS

06/06/19 | JLG 16121 | © 2019 JLG ARCHITECTS





EAST ELEVATION - 10TH STREET

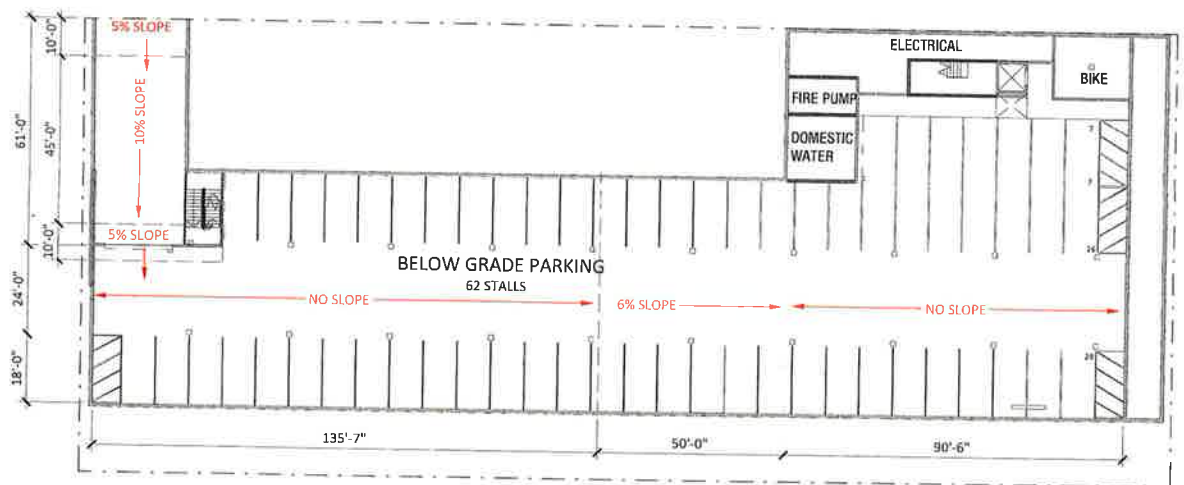


SOUTH ELEVATION - NORTHERN PACIFIC AVE.

1001 NP MIXED USE
EXTERIOR ELEVATION

05/24/19 | 15016121 | © 2019 JLG ARCHITECTS



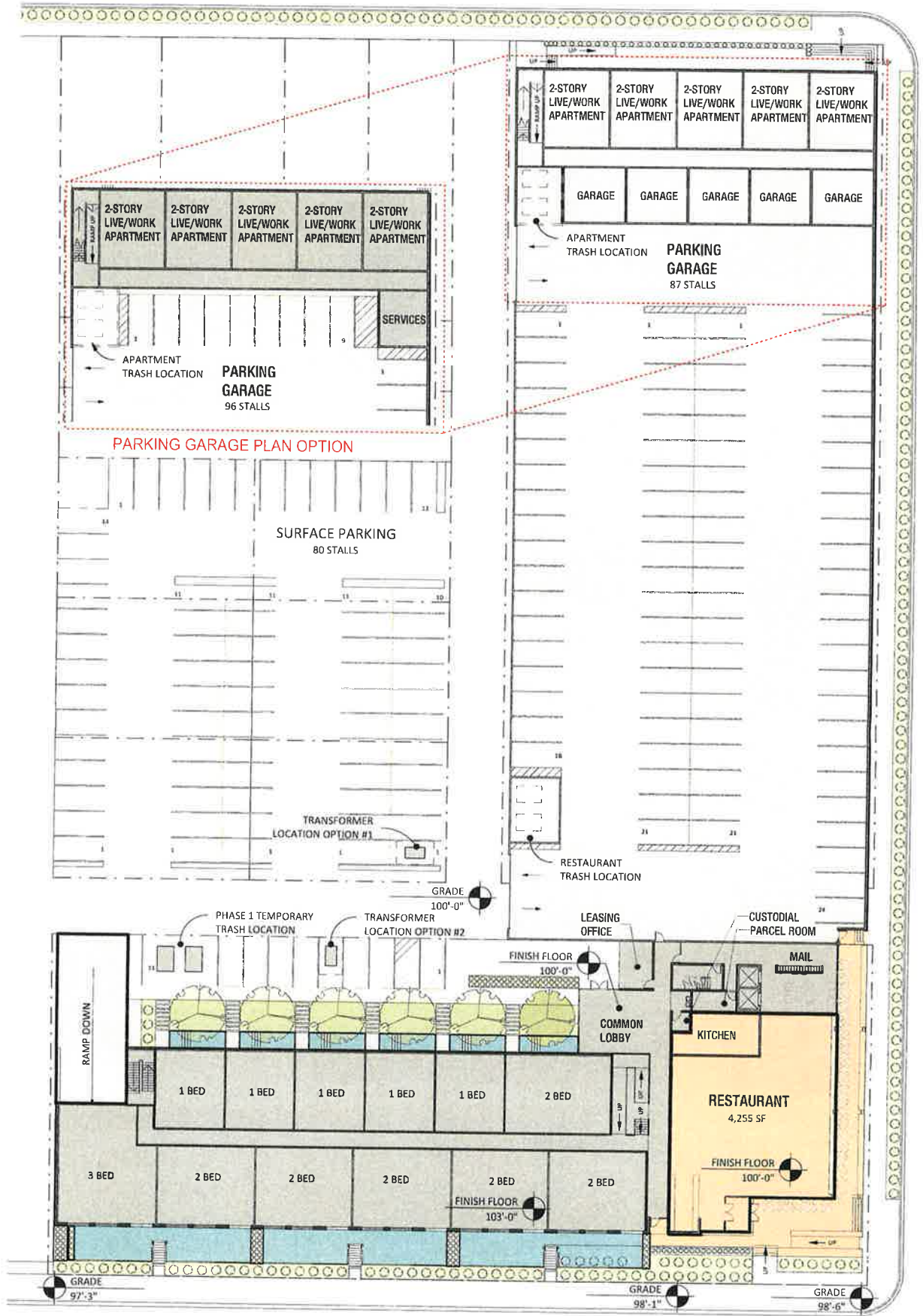


1001 NP MIXED USE

PARKING LEVEL PLAN

95/24/19 | JLG 1612 | © 2019 JLG ARCHITECTS





1001 NP MIXED USE

FIRST FLOOR PLAN

05/24/19 | JLG 16121 | © 2019 JLG ARCHITECTS



UNIT SUMMARY

PHASE I

	STUDIO	1 BED	2 BED	3 BED	T.H.	TOTAL	BEDS
1ST	-	5	6	1	-	12	20
2ND	4	10	6	1	-	21	29
3RD	4	10	7	1	-	22	31
4TH	4	10	7	1	-	22	31
TOTAL	12	35	26	4	-	77	111
UNIT MIX	16%	45%	34%	5%	0%	100%	
UNIT SIZE	522 SF	725 SF	1,015 SF	1,494 SF	1,363 SF		

PHASE II

	STUDIO	1 BED	2 BED	3 BED	T.H.	TOTAL	BEDS
1ST	-	-	-	-	5	5	10
2ND	2	7	9	2	-	20	33
3RD	4	7	11	2	-	24	39
4TH	6	7	7	4	-	24	42
TOTAL	12	21	27	8	5	73	124
UNIT MIX	16%	29%	37%	11%	7%	100%	
UNIT SIZE	522 SF	725 SF	1,015 SF	1,494 SF	1,363 SF		

PHASE I & II

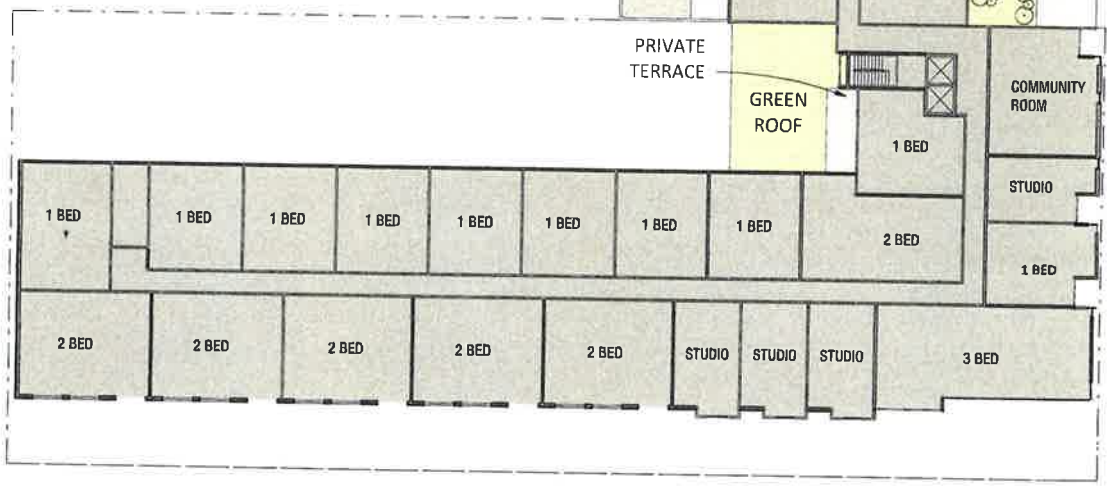
	STUDIO	1 BED	2 BED	3 BED	T.H.	TOTAL	BEDS
1ST	-	5	6	1	5	17	30
2ND	6	17	15	3	-	41	61
3RD	8	17	18	3	-	46	70
4TH	10	17	14	5	-	46	70
TOTAL	24	56	53	12	5	150	231
UNIT MIX	16%	37%	35%	8%	3%	100%	
UNIT SIZE	522 SF	725 SF	1,015 SF	1,494 SF	1,363 SF		

PARKING SUMMARY

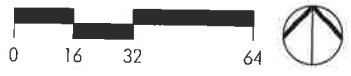
APARTMENT PARKING	
SURFACE PARKING	30
ENCLOSED (ON GRADE)	84
ENCLOSED (BELOW GRADE)	62
GARAGE (TWO STALL GARAGE)	10
TOTAL	186
PARKING RATIO	1.24 STALLS/ UNIT

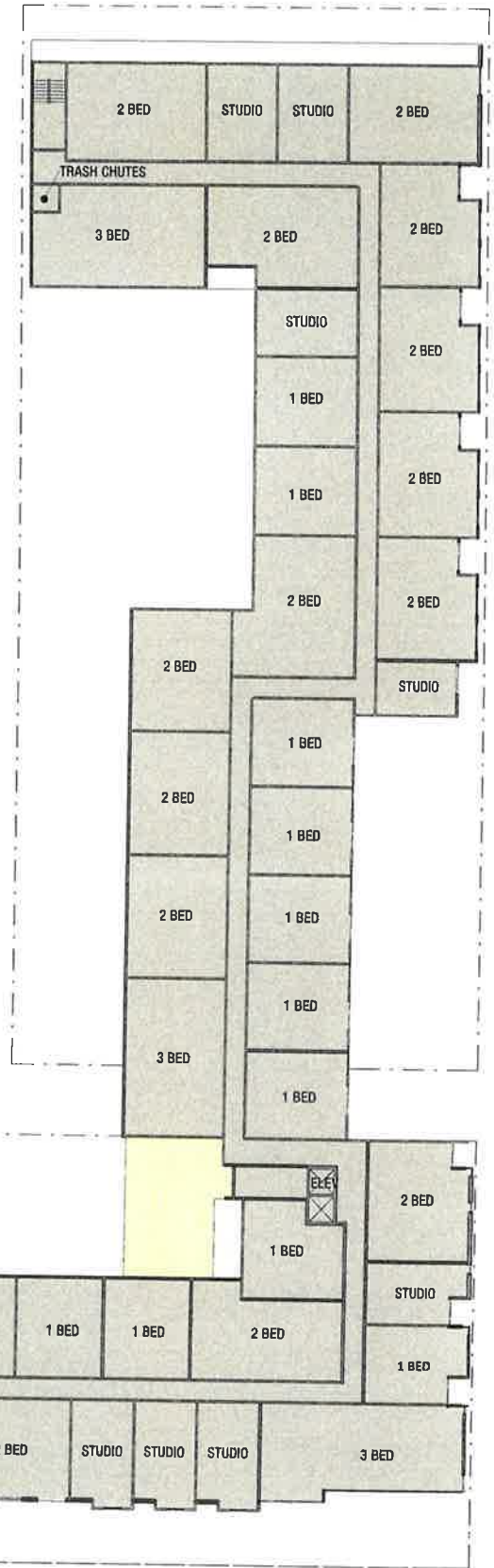
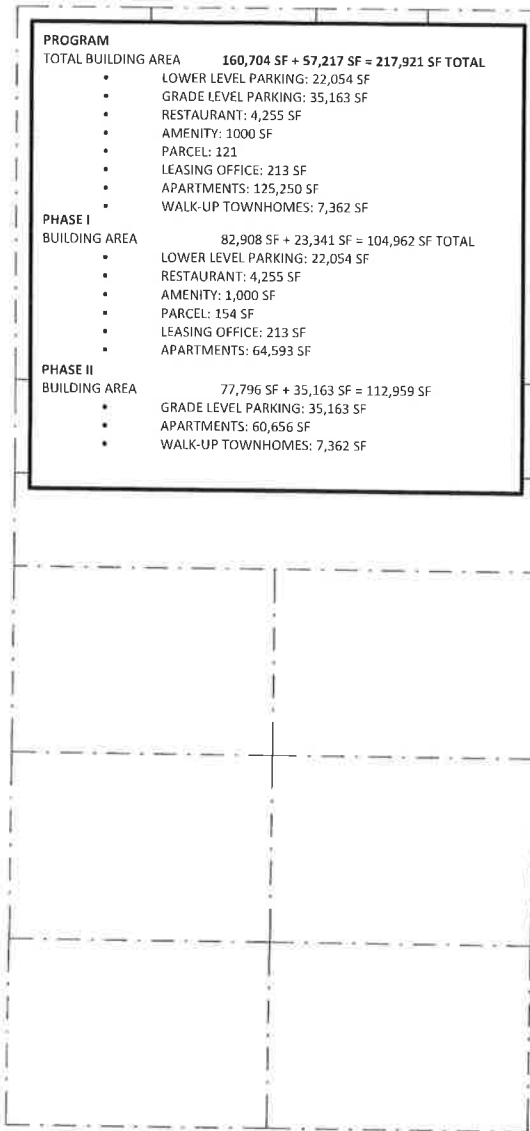
RESTAURANT PARKING	
TOTAL SURFACE PARKING	50

TOTAL BUILDING PARKING 236 STALLS



1001 NP MIXED USE
 SECOND FLOOR PLAN
 05/24/19 | JLG 15121 | © 2019 JLG ARCHITECTS



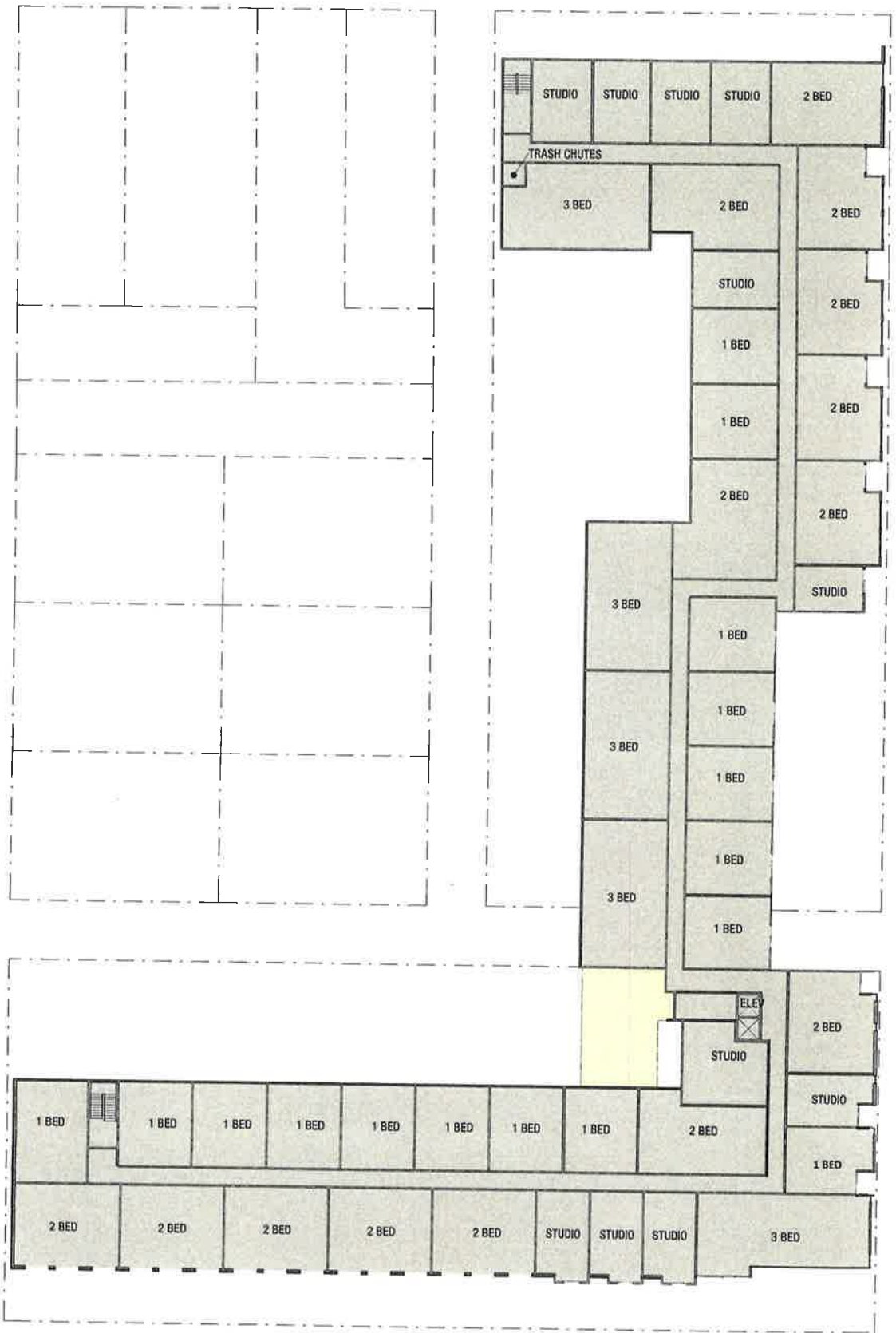


1001 NP MIXED USE

THIRD FLOOR PLAN

05/24/19 | JLG 16121 | © 2019 JLG ARCHITECTS



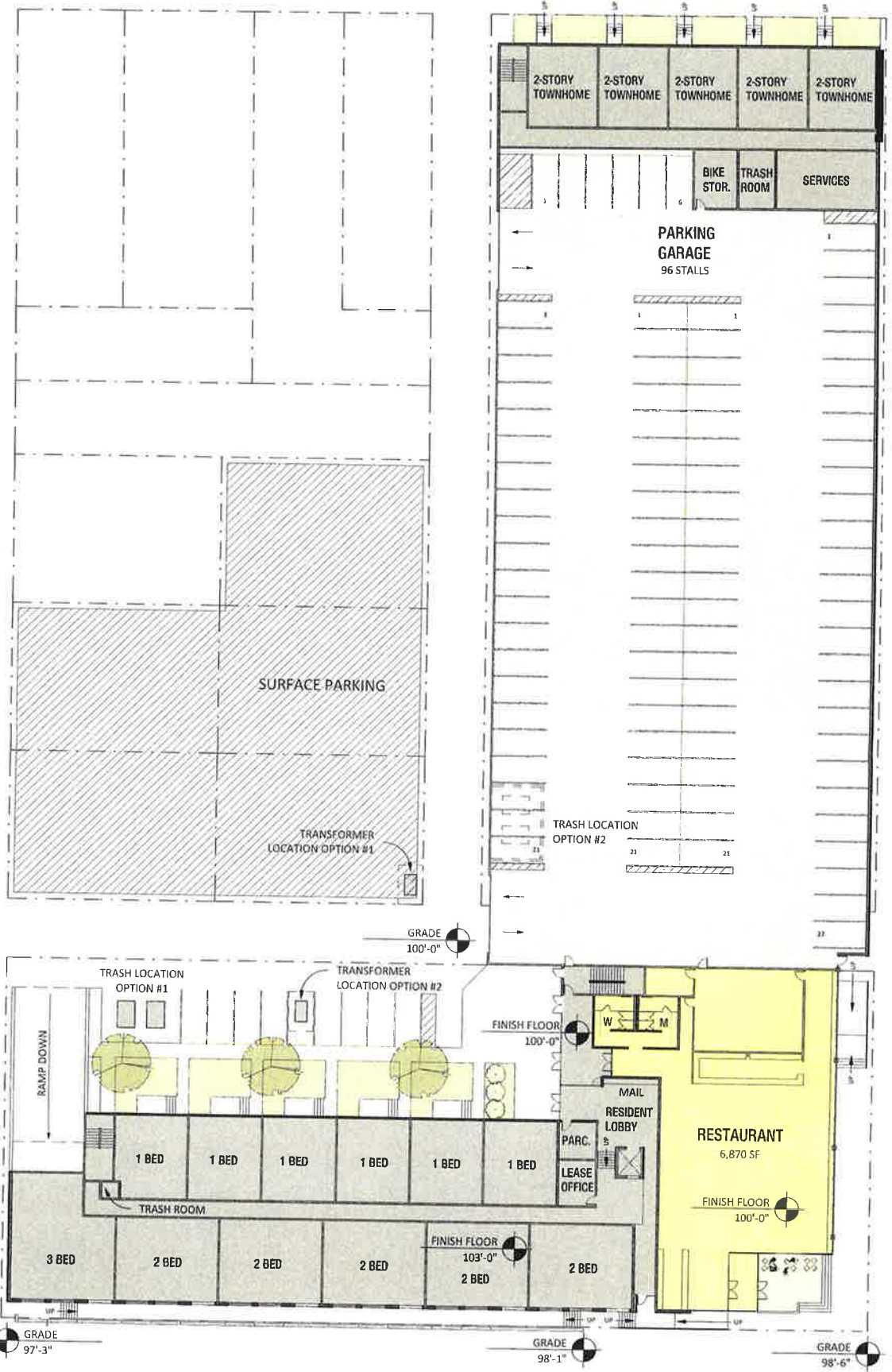


1001 NP MIXED USE

FOURTH FLOOR PLAN

05/24/19 | JLG 16121 | © 2019 JLG ARCHITECTS





1001 NP MIXED USE

FIRST FLOOR PLAN

05/01/19 | ILC 16121 | © 2019 JLG ARCHITECTS



UNIT SUMMARY

PHASE I

	STUDIO	1 BED	2 BED	3 BED	T.H.	TOTAL	BEDS
1ST	-	6	5	1	-	10	19
2ND	4	9	7	1	-	14	30
3RD	4	9	8	1	-	21	32
4TH	4	9	8	1	-	22	32
TOTAL	12	33	28	4	-	67	113
UNIT MIX	16%	43%	36%	5%	0%	100%	
UNIT SIZE	522 SF	725 SF	1,015 SF	1,494 SF	1,363 SF		

PHASE II

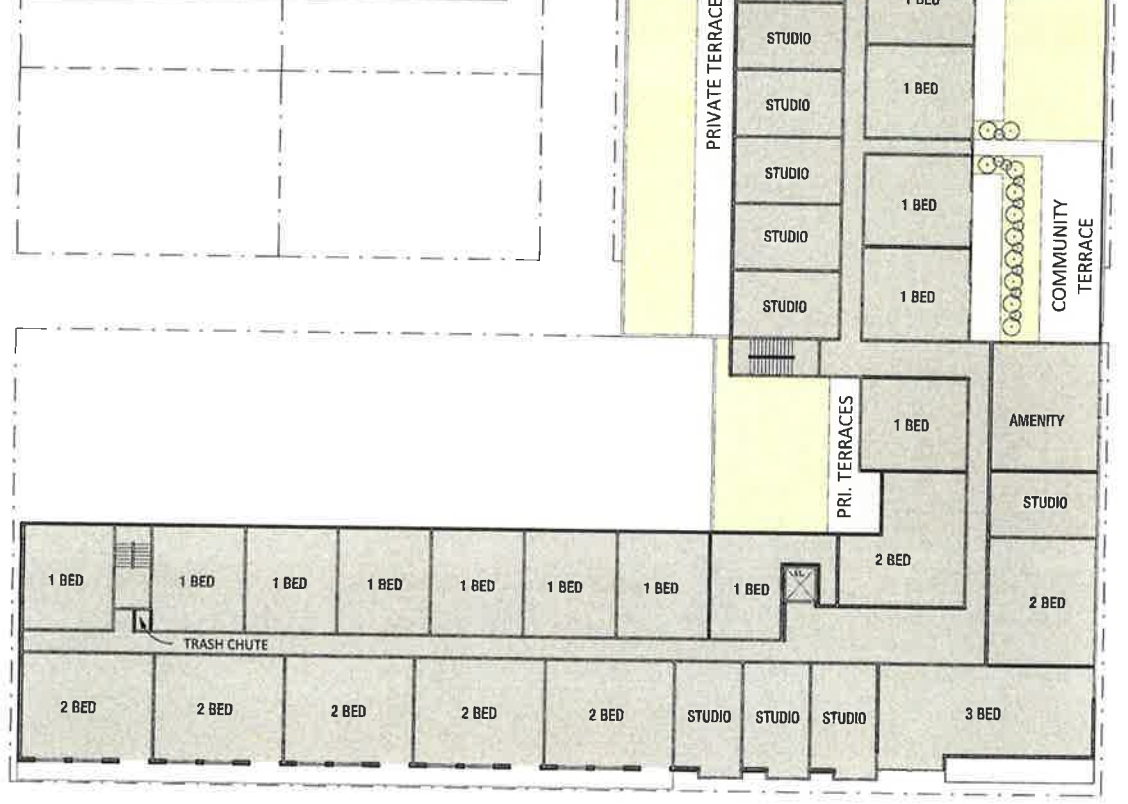
	STUDIO	1 BED	2 BED	3 BED	T.H.	TOTAL	BEDS
1ST	-	-	-	-	5	5	10
2ND	8	8	5	2	-	23	32
3RD	13	8	5	2	-	28	37
4TH	13	8	5	2	-	28	37
TOTAL	34	24	15	6	5	84	116
UNIT MIX	40%	29%	18%	7%	6%	100%	
UNIT SIZE	522 SF	725 SF	1,015 SF	1,494 SF	1,363 SF		

PHASE I & II

	STUDIO	1 BED	2 BED	3 BED	T.H.	TOTAL	BEDS
1ST	-	6	5	1	5	17	29
2ND	12	17	12	3	-	44	62
3RD	17	17	13	3	-	50	69
4TH	17	17	13	3	-	50	69
TOTAL	46	57	43	10	5	161	229
UNIT MIX	29%	35%	27%	6%	3%	100%	
UNIT SIZE	522 SF	725 SF	1,015 SF	1,494 SF	1,363 SF		

PARKING SUMMARY

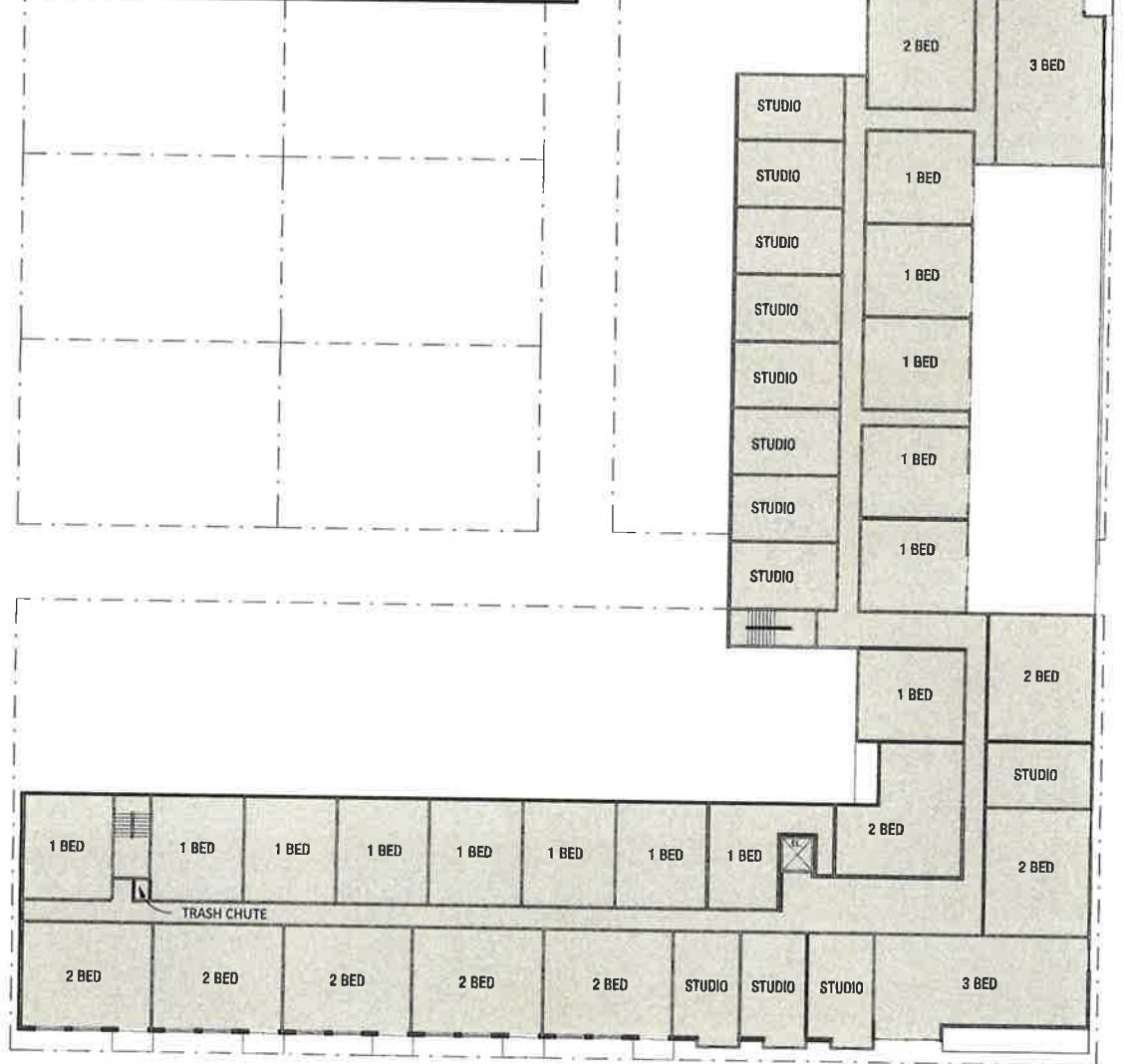
SURFACE PARKING (EST.)	80
ENCLOSED (ON GRADE)	96
ENCLOSED (BELOW GRADE)	61
TOTAL	237



1001 NP MIXED USE
 SECOND FLOOR PLAN
 05/01/19 | JLG ARCHITECTS



PROGRAM	
TOTAL BUILDING AREA	APPROX. 164,445 SF + 56,369 SF = 220,814 SF TOTAL
•	LOWER LEVEL PARKING: 22,372 SF
•	GRADE LEVEL PARKING: 33,997 SF
•	RESTAURANT: 6,870 SF
•	AMENITY: 1000 SF
•	PARCEL: 167
•	LEASING OFFICE: 207 SF
•	APARTMENTS: 123,981 SF
•	WALK-UP TOWNHOMES: 7,892 SF
PHASE I	
BUILDING AREA	APPROX. 86,998 SF + 22,372 SF = 109,370 SF TOTAL
•	LOWER LEVEL PARKING: 22,372 SF
•	GRADE LEVEL PARKING: N/A
•	RESTAURANT: 6,870 SF
•	AMENITY: 1000 SF
•	PARCEL: 167 SF
•	LEASING OFFICE: 207 SF
•	APARTMENTS: 64,772 SF
•	WALK-UP TOWNHOMES: N/A
PHASE II	
BUILDING AREA	APPROX. 77,447 SF + 33,997 SF = 111,444 SF
•	LOWER LEVEL PARKING: N/A
•	GRADE LEVEL PARKING: 33,997 SF
•	COMMERCIAL: N/A
•	RESTAURANT: N/A
•	AMENITY: N/A
•	APARTMENTS: 59,209 SF
•	WALK-UP TOWNHOMES: 7,892 SF

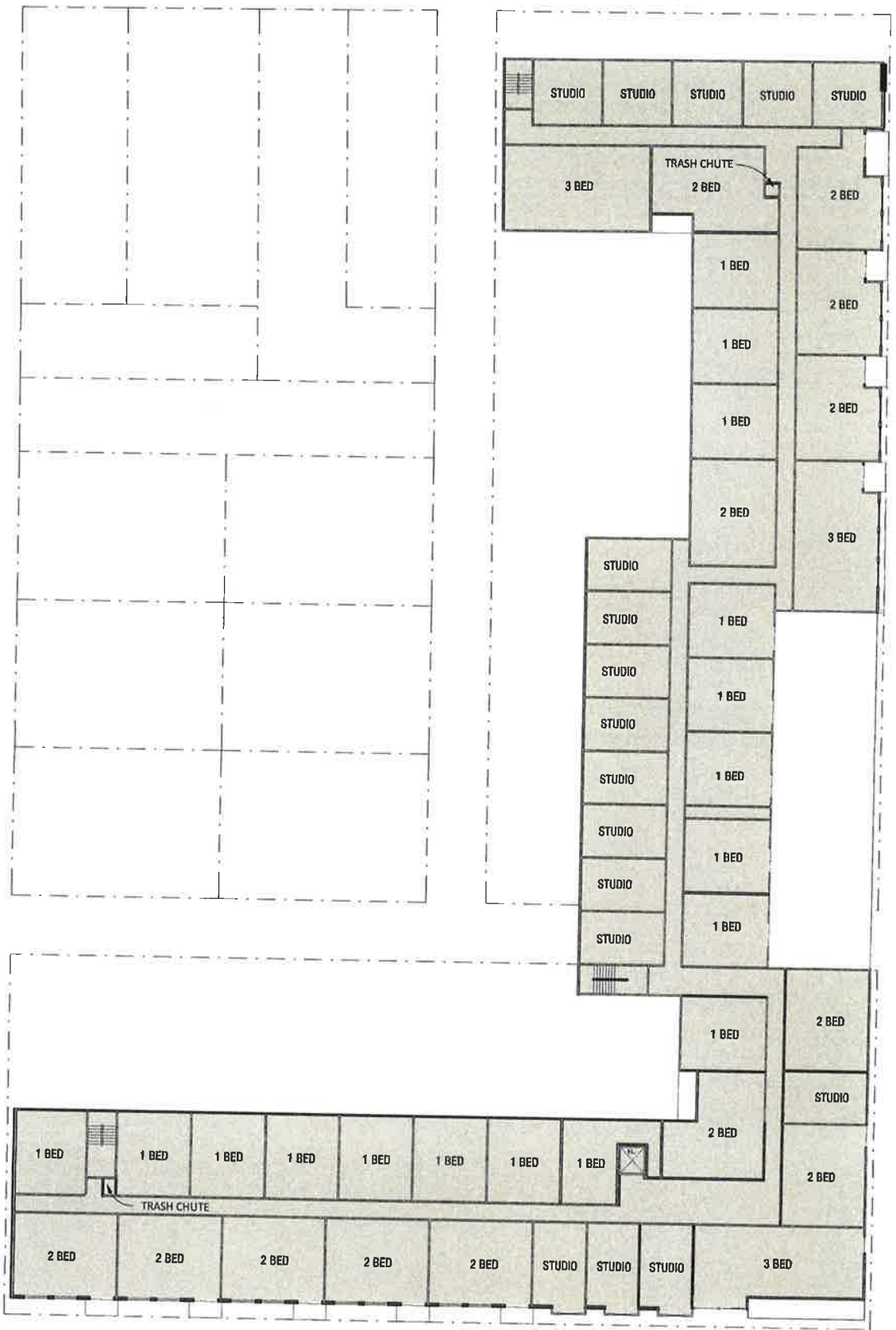


1001 NP MIXED USE

THIRD FLOOR PLAN

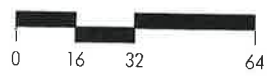
05/01/19 | JLG F&I 21 | © 2019 JLG ARCHITECTS

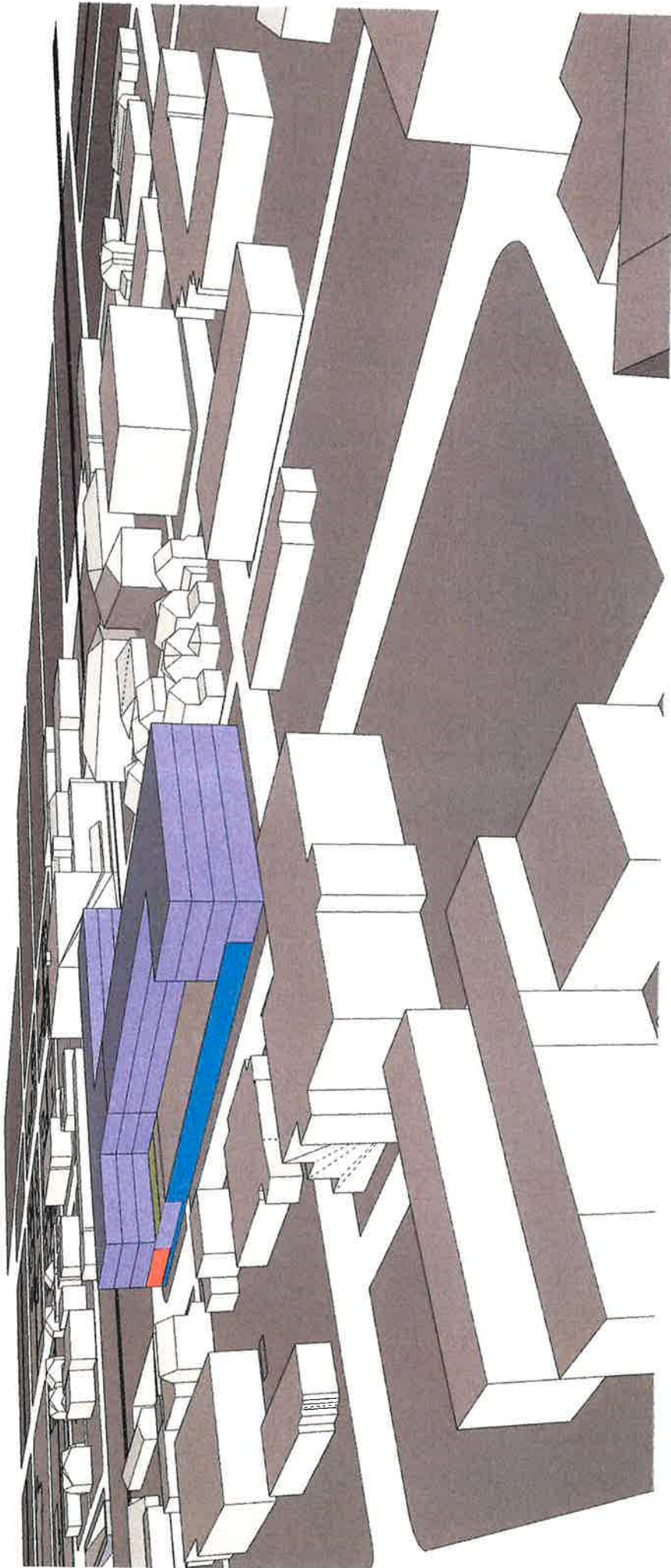




1001 NP MIXED USE
FOURTH FLOOR PLAN

05/01/19 | JLG 16121 | © 2019 JLG ARCHITECTS







40f

August 21, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Great Plains 1001 Holdings, LLC for a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The exemption requested is for a project to be located at 1001 NP Ave. and 28 10 St. N. where the applicant will construct a mixed use project containing apartments and commercial space.

The Tax Exempt Review Committee has met to consider this application. There were no written or verbal protests submitted at the time the committee met and none have been filed to date.

Attached is a "but-for" financial analysis report analyzing the need for this payment in lieu of tax (PILOT) incentive for this project.

The committee feels this project meets the necessary criteria to be eligible for an exemption due to current policy and the result of the "but-for" financial analysis. The committee recommends approval of a 10 year, payment in lieu of taxes according to the attached payment schedule. The PILOT will begin after expiration of the 5 year Renaissance Zone exemption.

SUGGESTED MOTION:

Approval of a 10 year, payment in lieu of tax for the improvements according to the attached payment schedule.

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka". The signature is written in a cursive style with a large initial "B".

Ben Hushka
Tax Exempt Review Committee

Payment In Lieu of Property Tax
Payment Schedule

Pursuant to N.D.C.C. Chapter 40-57.1

PROJECT OPERATOR: Great Plains 1001 Holdings, LLC

ASSUMPTIONS: **\$24,427,417 Improvement Value**

To begin after 5 year Renaissance Zone exemption

PILOT Years 1-2 = 90%
PILOT Years 3-10 = Reduced by 10% per year

PAYMENT SCHEDULE:

<u>YEAR</u>	<u>IN LIEU PAYMENT</u>
1	\$ 56,504
2	\$ 56,504
3	\$ 96,082
4	\$ 135,660
5	\$ 175,237
6	\$ 214,815
7	\$ 254,393
8	\$ 293,971
9	\$ 333,548
10	\$ 373,126

****Note** - The applicant will pay property tax on the land in addition to these in lieu payments.

RECEIVED

JUN 4 2019

Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo City or County

FARGO ASSESSOR BY EMAIL FROM JIM GILMOUR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business Great Plains 1001 Holdings, LLC
2. Address of project 1001 NP; 28 ST N; 1016 1 AVE N; 11 11 ST N
City Fargo County Cass
3. Mailing address of project operator 210 Broadway Suite 300
City Fargo State ND Zip 58102
4. Type of ownership of project
[] Partnership [] Subchapter S corporation [] Individual proprietorship
[] Corporation [] Cooperative [x] Limited liability company
5. Federal Identification No. or Social Security No. being processed
6. North Dakota Sales and Use Tax Permit No.
7. If a corporation, specify the state and date of incorporation
8. Name and title of individual to contact Mike Allmendinger
Mailing address 210 Broadway - Suite 300
City, State, Zip Fargo, ND 58102 Phone No. 701.237.2279

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.
[] Property Tax Exemption [x] Payments In Lieu of Taxes
Number of years 2020 Beginning year 2036 Ending year
Percent of exemption X Amount of annual payments (attach schedule if payments will vary)
10. Which of the following would better describe the project for which this application is being made:
[x] New business project [] Expansion of a existing business project

Description of Project Property

11. Legal description of project real property

100 INP = Lot: 1 Block: 25 ROBERTS 2ND LOTS 1-12 BLK 25 EXC S 8.5' & E 7.5'
~~28-10 ST N = Lot: 7 Block: 26 ROBERTS 2ND LOTS 7 THRU 12 BLK 26 LESS E 7.1/2' **9-21-94 SPL FR 01-2382-02730-000, 2740-000, 2760-000 & 2770-000~~
 11 11 ST N = Lot: 1 Block: 26 ROBERTS 2ND W 70' OF LOT 1 BLK 26 W 70' OF LOT 2 **2-26-94 LOT DESC CORR
~~1016-1 Ave N = Lot: 1 Block: 26 ROBERTS 2ND E 70' OF LOT 1, 2 & 3 BLK 26 S 1' OF E 70' OF LOT 4 **2-25-94 LOT DESC CORR~~

12. Will the project property be owned or leased by the project operator? Owned Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

Yes No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? New construction Existing facility

If existing facility, when was it constructed? _____

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Fall 2019

b. Description of project to be constructed including size, type and quality of construction
A four-story mixed-use project with three floors of market rate apartments and ground floor with structured parking, a corner restaurant, and apartments.
Project Metrics: • +/- 220,000 SF • 5,500 SF commercial • +/- 160 units • +/- 230 parking stalls

c. Projected number of construction employees during the project construction 15

14. Approximate date of commencement of this project's operations Late 2020 (phase 1). Early 2021 (phase 2)

15. Estimated market value of the property used for this project:

a. Land..... \$ 823,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 27,427,417

d. Total..... \$ 28,250,417

e. Machinery and equipment \$ 0

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) 823,000 [REDACTED]

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 27,427,417

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 27,427,417

e. Enter the consolidated mill rate for the appropriate taxing district..... 288.60

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 395,777

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: Ag processing Manufacturing Retailing
 Wholesaling Warehousing Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Leasing of residential apartments and commercial space

19. Indicate the type of machinery and equipment that will be installed

n/a

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual revenue	<u>2514169</u>	<u>2991800</u>	<u>3046500</u>	<u>3102400</u>	<u>3159400</u>
Annual expense	<u>698096</u>	<u>689242</u>	<u>703000</u>	<u>717100</u>	<u>731400</u>
Net income	<u>1816073</u>	<u>2302557</u>	<u>2343500</u>	<u>2385300</u>	<u>2428000</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) <u>n/a</u>					
	(2) _____					
Estimated payroll	(1) <u>n/a</u>					
	(2) _____					

(1) - full time
(2) - part time

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? Yes No

23. Has the project operator conducted this business at this or any other location either in or outside of the state?
 Yes No

24. Has the project operator or any officers of the project received any prior property tax incentives? Yes No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

n/a - new project on this location

Business Competition

25. Is any similar business being conducted by other operators in the municipality? Yes No

If YES, give name and location of competing business or businesses

n/a - new project on this location

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? Yes No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? Yes No

If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

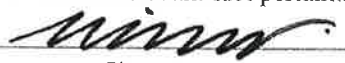
28. The project operator is reapplying for property tax incentives for the following reason(s):

- To present additional facts or circumstances which were not presented at the time of the original application
- To request continuation of the present property tax incentives because the project has:
 - moved to a new location
 - had a change in project operation or additional capital investment of more than twenty percent
 - had a change in project operators
- To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Michael Allmendinger, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

 President 5.13.19
 Signature Title Date

Project	Great Plains 1001 Holdings, LLC				
Project Value	\$27,427,417				
Current Value	\$1,584,000				
Mills	0.2886				
	Current Taxes	New Taxes	Incentive	Abatement	Proposed Schedule
Year 1	\$22,857.12	\$0.00	RZ	100%	\$22,857.12
Year 2	\$22,857.12	\$0.00	RZ	100%	\$22,857.12
Year 3	\$22,857.12	\$0.00	RZ	100%	\$22,857.12
Year 4	\$22,857.12	\$0.00	RZ	100%	\$22,857.12
Year 5	\$22,857.12	\$0.00	RZ	100%	\$22,857.12
Year 6	\$22,857.12	\$39,577.76	PILOT	90%	\$62,434.88
Year 7	\$22,857.12	\$39,577.76	PILOT	90%	\$62,434.88
Year 8	\$22,857.12	\$79,155.52	PILOT	80%	\$102,012.64
Year 9	\$22,857.12	\$118,733.29	PILOT	70%	\$141,590.41
Year 10	\$22,857.12	\$158,311.05	PILOT	60%	\$181,168.17
Year 11	\$22,857.12	\$197,888.81	PILOT	50%	\$220,745.93
Year 12	\$22,857.12	\$237,466.57	PILOT	40%	\$260,323.69
Year 13	\$22,857.12	\$277,044.34	PILOT	30%	\$299,901.46
Year 14	\$22,857.12	\$316,622.10	PILOT	20%	\$339,479.22
Year 15	\$22,857.12	\$356,199.86	PILOT	10%	\$379,056.98

City of Fargo, North Dakota

Payment in Lieu of Taxes Program

“But-For” Report

1011 Northern Pacific Avenue North

Downtown District



June 4, 2019



Table of Contents

	<u>Page</u>
1. Purpose	1
2. Project	2
3. Project Financing	3
4. Return Analysis	4
5. Conclusion	6

Purpose

The purpose of this report is to establish and determine the allowable value of the payment in lieu of taxes (PILOT) tax exemption for Great Plains 1001 Holdings, LLC (Kilbourne Group) (the "Developer").

PFM first reviewed the application/proforma to ensure that appropriate assumptions regarding property value, rent, vacancy, and expenses were used by the Developer. Based on those assumptions, PFM projected a 15-year cash flow, calculating an internal rate of return. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy. The proposed project will be an investment of the Developer so PFM also calculated an internal rate of return for the project.



Project

The project being proposed by Great Plains 1001 Holdings, LLC includes constructing 161 apartment units at 1011 Northern Pacific Ave N. The apartments will range from units at approximately 530 square feet to three bedroom units at approximately 1,499 square feet, including five townhomes with about 1,365 square feet. There will also be structured parking available, as well as a corner restaurant and walk up units. As noted in the previous section, the proposed project is to be an investment property for the Developer.

The Developer has stated that the construction will be completed by Late 2020 (phase 1) and Early 2021 (phase 2) with occupancy immediately following. The Developer has requested PILOT financing assistance in an amount in excess of \$3.06 million on a present value basis to complete the project. This amount is based on projections of the future tax payments less the projected PILOT payments. Both the estimated tax payments and estimated PILOT payments assume a property value increase of 2% per year. This amount assumes five years of 100% exemption, followed by two years of 90% exemption, and a 10% decrease in exemption each year for the remaining eight years.



Project Financing

The Developer is investing 46% equity, or \$14,520,397, and will be privately financing \$16,997,152. The Developer is additionally requesting PILOT assistance through annual property tax savings. The private financing is estimated to be a 25-year loan at a 5% interest rate resulting in an annual principal and interest payment of \$1,244,977.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and the operating expenses. The Developer is proposing a rent of \$995 per month for studio units, \$1,275 per month for one bedroom units, \$1,655 per month for two bedroom units, \$2,250 per month for three bedroom units, and \$2,275 per month for townhomes. The Developer provided estimates of annual operating expenses, as follows; General and Administrative - \$20,757, Marketing - \$103,784, Repairs/Maintenance - \$176,432, Utilities - \$269,837, Property Tax - \$395,777, Insurance - \$6,227, and Management Fee - \$121,059. The total expenses, assuming the Developer pays full real estate taxes, are approximately 37% of gross operating income. PFM used the given assumptions for Year 1 and, using a 2% inflationary factor for expenses and 1.7% for revenues, developed a 15-year cash flow. PFM assumed Year 1 vacancy rate would be 20% for 10 months of the year assuming a March 1 occupancy and 5% beyond Year 2.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over the 15-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without PILOT assistance the Developer would have about a 7.77% internal rate of return. The Developer would have about a 9.40% internal rate of return if it received the public assistance for the full 15 years. 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 of 1.84x without assistance in the first 15 years with a Year 4 coverage of 1.54x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.89x with a Year 4 coverage of 1.86x. The minimum coverage of 0.97x occurs in Year 1 when the project is still assumed to be in the rent-up period. Debt coverage is important to developers when securing financing for their projects. Many times banks will require a minimum coverage in the range of 1.10x – 1.50x. The debt service coverage is high for this project due to the large, upfront equity contribution which results in less debt.

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 minimum internal rate of return of 10.00%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$3,230,549 or 10.25% in order for the project to become viable without assistance. This reduces the amount to be financed from \$16,997,152 to \$15,254,944 and reduces the annual debt service payment from \$1,244,976 to \$1,117,366. It is somewhat unlikely that a reduction in project costs of this magnitude would occur at this stage in the process.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rate would have to increase by 15.0%. This increases annual revenue from \$3,141,748 to \$3,550,564 in Year 5. PFM believes this is a large increase to rents and is unlikely to 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 \$2,048,641 or 6.5% and rental rates would have to increase by 5.5%. Both of these options occurring is unlikely, but it is possible so it should be considered.



The above scenarios show the circumstances in which the project would become viable without public assistance. Based on the information provided PFM's analysis demonstrates that the project as currently anticipated 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 units, the rental market, and monthly expenses. Both the internal rate of return without assistance and the debt service coverage are very low. The base scenario without assistance along with the sensitivity analyses demonstrate that the project would likely not be feasible without assistance.

PFM determines that with public assistance, based on 5 years of 100% property tax exemption followed by two years of 90% exemption, and a 10% decrease in exemption each year for the remaining eight years, the Developer's internal rate of return, based on the assumptions outlined in this report, would be 9.40%. Furthermore, the Year 4 debt coverage ratio increases from 1.54x to 1.86x when assistance is provided. Based upon the information provided, the project would not be feasible "but-for" public assistance as it is currently shown by the Developer.





409

August 21, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Great Plains Antique Holdings, LLC for a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The exemption requested is for a project to be located at 1017 4th Ave. N. where the applicant will construct an apartment project.

The Tax Exempt Review Committee has met to consider this application. There were no written or verbal protests submitted at the time the committee met and none have been filed to date.

Attached is a "but-for" financial analysis report analyzing the need for this payment in lieu of tax (PILOT) incentive for this project.

The committee feels this project meets the necessary criteria to be eligible for an exemption due to current policy and the result of the "but-for" financial analysis. The committee recommends approval of a 15 year, payment in lieu of taxes according to the attached payment schedule.

SUGGESTED MOTION:

Approval of a 15 year, payment in lieu of tax for the improvements according to the attached payment schedule.

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka". The signature is written in a cursive style.

Ben Hushka
Tax Exempt Review Committee

Payment In Lieu of Property Tax
Payment Schedule

Pursuant to N.D.C.C. Chapter 40-57.1

PROJECT OPERATOR: Great Plains Antique Holdings, LLC

ASSUMPTIONS: **\$10,294,522 Improvement Value**

PILOT Years 1-5		= 100%
PILOT Years 6-7		= 90%
PILOT Years 8-15		= Reduced by 10% per year

PAYMENT SCHEDULE:

YEAR	IN LIEU PAYMENT
1	\$ 7,316
2	\$ 7,316
3	\$ 7,316
4	\$ 7,316
5	\$ 7,316
6	\$ 22,171
7	\$ 22,171
8	\$ 37,026
9	\$ 51,881
10	\$ 66,736
11	\$ 81,591
12	\$ 96,446
13	\$ 111,301
14	\$ 126,156
15	\$ 141,011

****Note** - The applicant will pay property tax on the land in addition to these in lieu payments.

Application For Property Tax Incentives For
New or Expanding Businesses

RECEIVED

JUN 11 2019

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo
City or County

FARGO ASSESSOR

BY EMAIL FROM JIM GILMOUR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator of new or expanding business Great Plains Antique Holdings, LLC

2. Address of project 1017 4th Ave N
City Fargo County Cass

3. Mailing address of project operator 210 Broadway Suite 300
City Fargo State ND Zip 58102

4. Type of ownership of project
 Partnership Subchapter S corporation Individual proprietorship
 Corporation Cooperative Limited liability company

5. Federal Identification No. or Social Security No. 84-1914674

6. North Dakota Sales and Use Tax Permit No. _____

7. If a corporation, specify the state and date of incorporation _____

8. Name and title of individual to contact Mike Allmendinger
Mailing address 210 Broadway - Suite 300
City, State, Zip Fargo, ND 58102 Phone No. 701.237.2279

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.

<input type="checkbox"/> Property Tax Exemption	<input checked="" type="checkbox"/> Payments In Lieu of Taxes
_____ Number of years	<u>2020</u> Beginning year <u>2036</u> Ending year
_____ Percent of exemption	<u>X</u> Amount of annual payments (attach schedule if payments will vary)

10. Which of the following would better describe the project for which this application is being made:
 New business project Expansion of an existing business project

Description of Project Property

11. Legal description of project real property

Lot: 5 Block: 30 ROBERTS 2ND ADDN LTS 1,2,3 & 4, B LK 30 INCLUSIVE, INCL THE W1/2 OF THE VACA ALLEY A DJ THERETO & ALL THAT PT OF E1/2 OF VAC ALLEY ADJ TO LT 9 DESC AS FOLL: BEG AT THE SW COR OF SD LT 9; THN W ALG THE S LN OF LT 9 EXT WLY A DIST OF 10'; THN N ALG A LN PARA W& PERP DIST 10' W OF THE W LN OF SD LT 9 A DIST OF 50'; THN SELY TO A PT ON THE W LN OF SD LT 9, A DIST OF 49' N OF THE SW COR THEREOF; THN S ALG SD W LN A DIST OF 49' TO THE PLACE OF BEG; & ALL THAT PT OF THE E1/2 OF VAC ALL

12. Will the project property be owned or leased by the project operator? Owned Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

Yes No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? New construction Existing facility

If existing facility, when was it constructed? _____

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application September 2019

b. Description of project to be constructed including size, type and quality of construction
?


c. Projected number of construction employees during the project construction 15

14. Approximate date of commencement of this project's operations December 2020

15. Estimated market value of the property used for this project:

- a. Land..... \$ 909,940
- b. Existing buildings and structures for which an exemption is claimed..... \$ 0
- c. Newly constructed buildings and structures when completed \$ 10,294,522
- d. Total..... \$ 11,204,461
- e. Machinery and equipment \$ 0

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

- a. Land (not eligible) 
- b. Eligible existing buildings and structures..... \$ 0
- c. Newly constructed buildings and structures when completed..... \$ 10,294,522
- d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 10,294,522
- e. Enter the consolidated mill rate for the appropriate taxing district 288.60
- f. Annual amount of the tax exemption (Line d multiplied by line e) \$ 144,432

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: Ag processing Manufacturing Retailing
 Wholesaling Warehousing Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Leasing of residential apartments

19. Indicate the type of machinery and equipment that will be installed

n/a

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
	Year 1	Year 2	Year 3	Year 4	Year 5
Annual revenue	743,657	1,136,200	1,156,900	1,177,800	1,199,300
Annual expense	302,752	308,800	315,000	321,300	327,700
Net income	440,905	827,400	841,900	856,500	871,600

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) n/a					
	(2)					
Estimated payroll	(1) n/a					
	(2)					

(1) - full time
(2) - part time

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? Yes No

23. Has the project operator conducted this business at this or any other location either in or outside of the state?
 Yes No

24. Has the project operator or any officers of the project received any prior property tax incentives? Yes No
 If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).
 n/a - new project on this location

Business Competition

25. Is any similar business being conducted by other operators in the municipality? Yes No

If YES, give name and location of competing business or businesses
 n/a - new project on this location

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? Yes No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? Yes No

If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):

- To present additional facts or circumstances which were not presented at the time of the original application
- To request continuation of the present property tax incentives because the project has:
 - moved to a new location
 - had a change in project operation or additional capital investment of more than twenty percent
 - had a change in project operators
- To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Michael Allmendinger, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

 Signature President Title Date

Project	Great Plains Antique Holdings, LLC			
Project Value	\$10,294,522			
Current Value	\$757,000			
Mills	0.2886			
	Current Taxes	New Taxes	Abatement	Proposed Schedule
Year 1	\$10,923.51	\$0.00	100%	\$10,923.51
Year 2	\$10,923.51	\$0.00	100%	\$10,923.51
Year 3	\$10,923.51	\$0.00	100%	\$10,923.51
Year 4	\$10,923.51	\$0.00	100%	\$10,923.51
Year 5	\$10,923.51	\$0.00	100%	\$10,923.51
Year 6	\$10,923.51	\$14,854.99	90%	\$25,778.50
Year 7	\$10,923.51	\$14,854.99	90%	\$25,778.50
Year 8	\$10,923.51	\$29,709.99	80%	\$40,633.50
Year 9	\$10,923.51	\$44,564.98	70%	\$55,488.49
Year 10	\$10,923.51	\$59,419.98	60%	\$70,343.49
Year 11	\$10,923.51	\$74,274.97	50%	\$85,198.48
Year 12	\$10,923.51	\$89,129.97	40%	\$100,053.48
Year 13	\$10,923.51	\$103,984.96	30%	\$114,908.47
Year 14	\$10,923.51	\$118,839.96	20%	\$129,763.47
Year 15	\$10,923.51	\$133,694.95	10%	\$144,618.46

Parcel Number	Address	Date Application Received	1st Publication Date	2nd Publication Date	Notice Delivery To School/County	Notice Delivery To School/County	Estimated Micro-remnants Value	Building Value to Remain Terrible	County Share of Levy / Full	Antidote Tax Growth	Number of Years Granted	Discount Rate for Present Value	Total Gross Estimated Stream	Present Value of Stream
01-2382-02353-000	1017 4th St. N.	6/4/2019	6/17/2019	6/24/2019	7/15/2019	8/13/2019	\$10,984,533	\$297,000	0.0%	288.50	10	4.50%	\$1,235,179	\$537,100

PLOT #	% Bd Ex	PLOT #/Pmt	Full Bd Tax	Benefit	PV of Benefit	PLOT # & Land Tax
1	100%	\$7,316	\$148,550	\$141,732	\$10,984,533	\$10,984,533
2	100%	\$7,316	\$148,550	\$141,732	\$10,984,533	\$10,984,533
3	100%	\$7,316	\$148,550	\$141,732	\$10,984,533	\$10,984,533
4	100%	\$7,316	\$148,550	\$141,732	\$10,984,533	\$10,984,533
5	100%	\$7,316	\$148,550	\$141,732	\$10,984,533	\$10,984,533
6	90%	\$22,711	\$148,550	\$128,779	\$97,000	\$10,924
7	90%	\$22,711	\$148,550	\$128,779	\$97,000	\$10,924
8	90%	\$22,711	\$148,550	\$128,779	\$97,000	\$10,924
9	90%	\$22,711	\$148,550	\$128,779	\$97,000	\$10,924
10	60%	\$67,261	\$148,550	\$68,814	\$30,700	\$88,188
11	50%	\$111,301	\$148,550	\$57,104	\$2,000	\$114,808
12	30%	\$86,146	\$148,550	\$37,249	\$2,000	\$129,783
13	20%	\$106,154	\$148,550	\$22,394	\$3,950	\$144,818
14	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
15	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
16	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
17	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
18	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
19	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
20	0%	\$148,550	\$148,550	\$0	\$0	\$148,550
TOTALS		\$1,535,820	\$2,970,989	\$1,433,179	\$1,118,000	\$1,539,427
Buildings Tax to Remain		\$7,316	\$2,970,989	\$3,508		

County Share P/LT	County Add'l P/LOT	Co Share Imp. Tax	Full Imp Net Tax	Benefit	PLOT # & Tax	% Bd Ex
\$1,205	\$24,420	\$25,625	\$148,550	\$118,814	\$38,343	79%
\$1,205	\$24,420	\$25,625	\$148,550	\$118,814	\$38,343	79%
\$1,205	\$24,420	\$25,625	\$148,550	\$118,814	\$38,343	79%
\$1,205	\$24,420	\$25,625	\$148,550	\$118,814	\$38,343	79%
\$1,205	\$24,420	\$25,625	\$148,550	\$118,814	\$38,343	79%
\$3,833	\$3,851	\$7,684	\$148,550	\$104,528	\$47,630	70%
\$3,833	\$3,851	\$7,684	\$148,550	\$104,528	\$47,630	70%
\$5,072	\$2,851	\$7,923	\$148,550	\$92,241	\$56,916	62%
\$8,072	\$19,714	\$27,786	\$148,550	\$97,000	\$84,409	48%
\$14,107	\$14,497	\$28,604	\$148,550	\$55,392	\$89,778	37%
\$116,616	\$19,244	\$135,860	\$148,550	\$10,052	\$121,346	2%
\$24,381	\$21,815	\$46,196	\$148,550	\$18,252	\$133,635	1%
	\$1,304	\$25,625	\$148,550	\$9,238	\$148,922	4%

Land Value	Improvement Value	Year	Mill Levy	CO Levy	%	Full Imp Net Tax	Co Share Imp. Tax
\$260,000	\$10,984,533	2022	288.50	48.90	17.3%	\$148,550	\$25,625
\$290,000	\$10,984,533	2023	288.50	48.90	17.3%	\$148,550	\$25,625
\$320,000	\$10,984,533	2024	288.50	48.90	17.3%	\$148,550	\$25,625
\$350,000	\$10,984,533	2025	288.50	48.90	17.3%	\$148,550	\$25,625
\$380,000	\$10,984,533	2026	288.50	48.90	17.3%	\$148,550	\$25,625
\$410,000	\$10,984,533	2027	288.50	48.90	17.3%	\$148,550	\$25,625
\$440,000	\$10,984,533	2028	288.50	48.90	17.3%	\$148,550	\$25,625
\$470,000	\$10,984,533	2029	288.50	48.90	17.3%	\$148,550	\$25,625
\$500,000	\$10,984,533	2030	288.50	48.90	17.3%	\$148,550	\$25,625
\$530,000	\$10,984,533	2031	288.50	48.90	17.3%	\$148,550	\$25,625
\$560,000	\$10,984,533	2032	288.50	48.90	17.3%	\$148,550	\$25,625
\$590,000	\$10,984,533	2033	288.50	48.90	17.3%	\$148,550	\$25,625
\$620,000	\$10,984,533	2034	288.50	48.90	17.3%	\$148,550	\$25,625
\$650,000	\$10,984,533	2035	288.50	48.90	17.3%	\$148,550	\$25,625

CALCULATION OF ADDITIONAL TAX DUE TO COUNTY

City of Fargo, North Dakota

Payment in Lieu of Taxes Program

“But-For” Report

1017 4th Avenue North

Downtown District



June 12, 2019



Table of Contents

	<u>Page</u>
1. Purpose	1
2. Project	2
3. Project Financing	5
4. Return Analysis	6
5. Conclusion	8

Purpose

The purpose of this report is to establish and determine the allowable value of the payment in lieu of taxes (PILOT) tax exemption for Great Plains Antique Holdings, LLC (Kilbourne Group) (the "Developer").

PFM first reviewed the application/proforma to ensure that appropriate assumptions regarding property value, rent, vacancy, and expenses were used by the Developer. Based on those assumptions, PFM projected a 15-year cash flow, calculating an internal rate of return. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy. The proposed project will be an investment of the Developer so PFM also calculated an internal rate of return for the project.



Project

The project being proposed by Kilbourne Group (the "Developer") includes constructing 68 apartment units at 1017 4th Avenue North. The apartments will range from studio units of approximately 596 square feet to three bedroom units of approximately 1,292 square feet. There will also be 90 structured parking stalls available. As noted in the previous section, the proposed project is to be an investment property for the Developer.

The Developer has stated that the construction will be completed by December 2020 with occupancy immediately following. The Developer has requested PILOT financing assistance in an amount in excess of \$1,087,000 million on a present value basis to complete the project. This amount is based on projections of the future tax payments less the projected PILOT payments. Both the estimated tax payments and estimated PILOT payments assume a property value increase of 1.70% per year. This amount assumes five years of 100% exemption, followed by two years of 90% exemption, and a 10% decrease in exemption each year for the remaining eight years.



Project Financing

The Developer is investing more than 46% equity, or \$5,227,346, and will be privately financing \$6,023,978. The Developer is additionally requesting PILOT assistance through annual property tax savings. The private financing is estimated to be a 25-year loan at a 5.85% interest rate resulting in an annual principal and interest payment of \$448,192.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and the operating expenses. The Developer is proposing a rent of \$975 per month for studio units, \$1,075 per month for one bedroom units, \$1,550 per month for two bedroom units, and \$1,950 per month for three bedroom units. The Developer provided estimates of annual operating expenses, as follows; General and Administrative - \$8,998, Marketing - \$44,988, Repairs/Maintenance - \$76,480, Utilities - \$116,970, Property Tax - \$178,372, Insurance - \$2,699, and Management Fee - \$52,617. The total expenses, assuming the Developer pays full real estate taxes, are approximately 41% of gross operating income. PFM used the given assumptions for Year 1 and, using a 2% inflationary factor for expenses and 1.70% for revenues, developed a 15-year cash flow. PFM assumed Year 1 vacancy rate would be 40% for 12 months of the year assuming a January 1 occupancy and 5% beyond Year 2.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over the 15-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without PILOT assistance the Developer would have about 7.46% internal rate of return. The Developer would have about a 9.01% internal rate of return if it received the public assistance for the full 15 years. 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 of 1.73x without assistance in the first 15 years with a Year 4 coverage of 1.49x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.84x with a Year 4 coverage of 1.82x. The minimum coverage of 0.96x occurs in Year 1 when the project is still assumed to be in the rent-up period. Debt coverage is important to developers when securing financing for their projects. Many times banks will require a minimum coverage in the range of 1.10x – 1.50x. The debt service coverage is high for this project due to the large, upfront equity contribution which results in less debt.

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 minimum debt coverage of 1.20x and a minimum internal rate of return of 10.00%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$1,586,324 or 14.10% in order for the project to become viable without assistance. This reduces the amount to be financed from \$6,023,978 to \$5,174,657 and reduces the annual debt service payment from \$448,192 to \$385,000. It is somewhat unlikely that a reduction in project costs of this magnitude would occur at this stage in the process.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rate would have to increase by 16.55%. This increases annual revenue from \$1,187,166 to \$1,366,215 in Year 5. PFM believes this is a large increase to rents and is unlikely to 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 \$1,125,132 or 10% and rental rates would have to increase by 4.80%. Both of these options occurring is unlikely, but it is possible so it should be considered.



The above scenarios show the circumstances in which the project would become viable without public assistance. Based on the information provided PFM's analysis demonstrates that the project as currently anticipated 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 units, the rental market, and monthly expenses. Both the internal rate of return without assistance and the debt service coverage are very low. The base scenario without assistance along with the sensitivity analyses demonstrate that the project would likely not be feasible without assistance.

PFM determines that with public assistance, based on 5 years of 100% property tax exemption followed by two years of 90% exemption, and a 10% decrease in exemption each year for the remaining eight years, the Developer's internal rate of return, based on the assumptions outlined in this report, would be 9.01%. Furthermore, the Year 4 debt coverage ratio increases from 1.49x to 1.82x when assistance is provided. Based upon the information provided, the project would not be feasible "but-for" public assistance as it is currently shown by the Developer.



40h

MEMORANDUM

TO: CITY COMMISSION

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR *NC*

DATE: AUGUST 21, 2019

RE: RENAISSANCE ZONE APPLICATION FOR DFI KESLER, LLC AND DFI BJ, LLC (280-F) LOCATED AT 617 & 621 1ST AVENUE NORTH; 624 2ND AVENUE NORTH

The city received a Renaissance Zone (RZ) application from DFI Kesler, LLC and DFI BJ, LLC to construct a mixed-use commercial and residential building at 617 & 621 1st Avenue North; 624th 2nd Avenue North. The request was reviewed by the Renaissance Zone Authority (RZA) on June 25, 2019. Note that the original application was from only DFI Kesler, LLC; however, the application was amended to include DFI BJ, LLC after the item was heard by the Renaissance Zone Authority.

Pursuant to the application, the intent of the project is to construct a 6-story, 140,000 square foot mixed-use project with ground floor commercial/retail, five floors (95 units) of market-rate residential units with 88 underground parking on surface parking lots.

Attached is a copy of the staff report and corresponding materials.

As indicated in the attached documentation, the project met all state and local requirements for approval and is consistent with a number of goals and objectives as established in the Fargo Renaissance Zone Development Plan. The application indicates an investment of \$21,889,421 which exceeds the minimum investment threshold as set forth in the plan.

The RZA unanimously recommended approval of this project.

Recommended Action: Approve the Renaissance Zone rehabilitation application for DFI Kesler, LLC and DFI BJ, LLC and grant state income tax and property tax exemptions as recommended by the Renaissance Zone Authority.



**Staff Report
Renaissance Zone Application for
DFI Kesler LLC (280-F)
617 & 621 1st Avenue North; 624 2nd Avenue North**

Project Evaluation:

The City of Fargo received a Renaissance Zone application from DFI Kesler, LLC to construct a mixed-use commercial and residential building at 617 & 621 1st Avenue North; 624th 2nd Avenue North. Pursuant to the application, the intent of the project is to construct a 6-story, 140,000 square foot mixed-use project with ground floor commercial/retail, five floors (95 units) of market-rate residential units with 88 underground parking on surface parking lots.

Note: Previously approved project 250-F at 624 2nd Avenue North has been canceled and the property is now part of this application.

Construction is anticipated to begin later in 2019 and the proposed timeframe of opening is spring 2021.

The Planning Department has reviewed the application and has provided a project ranking based on the analysis below.

Lines 1: Use consistent with the RZ Plan (as per Visions and Goals): The 2015 Renaissance Zone Development Plan does not specify a specific desired land use for Block 10, however, a primary development strategy is to *redevelop surface parking lots*. As proposed, the project will contribute to a number of goals and objectives as outlined in the RZ Plan as follows:

1. *Activity Generator [goal]:* Develop activity generating enterprises along Renaissance Zone's major commercial corridors: Robert Street/2nd Avenue.

The mixed-use project will generate activity by replacing the surface parking lots with residential and commercial/retail land uses. The project adds 95 residential units, 13,000 square feet of commercial space, and 88 structured parking stalls.

2. *Walkable Districts [goal]:* Create "walkable districts" that integrate a wide range of activities and land uses; thus encouraging on-street activity...

The project is mixed-use and includes residential and ground floor commercial/retail along the street.

3. *Ground Floor Uses [goal]:* Reserve ground floor land uses to those that will encourage streets to come to life – shops, offices, cafes, restaurants and other "public" facilities.

The ground floor will provide commercial/retail uses along 1st and 2nd Avenues North and Roberts Alley.

4. *Neighborhood Center [goal]:* Make "Broadway" Fargo's "Main Street" – a pedestrian-friendly, mixed-use magnet that anchors downtown neighborhoods.

The project is located within the first block west of Broadway, and will provide uses of residential, commercial/retail and parking along 1st and 2nd Avenues North and Roberts Alley.

5. *Urban Design [goal]:* Projects will embody strong urban design principles inclusive of building massing and form, building materials, pedestrian orientated design, streetscape, building orientation and recognition of the importance of defined block corners, architectural style, high building coverage percentages, limited setbacks or downtown district appropriate setbacks, design longevity and street level transparency.

The project proposes near zero lot lines and high lot coverage, with commercial/retail along 1st and 2nd Avenues North and Roberts Alley that provide storefronts with frequent doors and large amounts of clear glazing.

6. *Transportation [goal]:* Manage downtown transportation, accessibility and parking issues in a manner that will allow for further commercial developments and will make the entire area more user-friendly.

The project proposes 88 parking stalls to provide parking for the Black Building during the day and residents during nights and weekends, with vehicular access from the alley to the west to maintain a pedestrian friendly streetscape.

7. *Safe Streets – Safe Neighborhoods [goal]:* Encourage safe streets and safe neighborhoods by relying on and utilizing the “natural surveillance” of lively and active streets.

The project will increase the “natural surveillance” with the additional residential and commercial/retail space which will increase activity on and along the street.

8. *High Quality Housing [goal]:* Continue to encourage the production of unique high quality housing that is developed in areas targeted for residential development or as a component of a mixed-use project.

The residential units will be market rate with quality finishes, be well-lit, and include amenities such as a roof top terrace, bike parking, pet facilities and package room.

9. *Infill [goal]:* Encourage and actively pursue projects that increase the productivity of underutilized property such as surface parking lots, vacant land and parcels with low building to land value ratios. Infill projects shall conform and be consistent with urban design principles as set forth in Goal 5, above.

The project will replace surface parking lots in downtown with a mixed use project appropriate in an urban setting.

10. *Housing Amenities [goal]:* Integrate quality housing with public open space and neighborhood amenities, requiring the enhancement of existing amenities in conjunction with the creation of new ones.

The project will provide amenities of a rooftop terrace, bike parking, pet facilities and package room.

11. *Downtown Entryways [goal]:* Enhance auto entry experiences with landscaping improvements to all major corridors (Broadway, Roberts St, 1st/NP Avenue, Main Avenue) and gateway statements at Broadway/Main Avenue, Broadway/6th Ave N, 1st Avenue/Red River, Main Avenue/Red River and Main Ave/10th Street N.

The project will replace surface parking lots along 1st and 2nd Avenues North and Roberts Alley and improve the gateways downtown.

12. *The Place to Be [goal]:* Make downtown the entertainment/cultural/recreational center of the city... Make downtown a key destination for visitors/conventioneers and a key destination for residents.

The project will build upon the vibrancy that is occurring in downtown with the addition of commercial and housing options. The addition of commercial/retail along Roberts Alley will provide a unique and pedestrian friendly experience in downtown.

13. *A Place Like No Other [goal]*: Highlight the unique historic character of the Renaissance Zone by placing a high value on historic preservation and overall awareness of the history of the area.

The project plans to incorporate the history of the site by playing homage to the original Kesler Block Apartment built on the site.

14. *24 Hours a day – 7 Days per Week – 365 Days a Year [goal]*: Design spaces, facilities and features that will attract people to the area both day and night, on weekdays and weekends, and during all seasons of the year.

Ninety-five residential units and additional ground floor commercial/retail will generate more activity with new visitors and residents.

15. *Connections and Coordination [goal]*: ... Strong connections between people, places and things to do are vital to creating a strong sense of community.

The project replaces surface parking lots along the streetscape, which will improve the pedestrian experience and walkability, and will provide connections from Broadway to the west.

(19/20 points)

Line 2: Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in this RZ Plan? [note that for mixed-use projects the total square footage should be dissected into commercial and residential totals for comparison to minimum investment thresholds]:

Pursuant to City of Fargo Renaissance Zone standards, in order to qualify for consideration, a project must meet a minimum \$40 per square foot capital improvement threshold for commercial rehabilitation and \$100 per square foot for any new construction.

According to the application, the structure accommodates 140,000 square feet, as follows:

Lot Size: 33,837 SF

Proposed Building Total: 140,000 square feet

Commercial: approximately 13,000 SF

Residential: approximately 96,000 SF

Parking: approximately 31,000 SF

Overall, the application estimates a total capital investment of \$21,889,421 which calculates to approximately \$156 per square foot.

(10/10 points)

Line 3: The new construction or proposed improvements are representative of “High Priority Land Uses” as defined by this RZ Plan (see pg. 29).

Primary Sector Business: N/A

Active Commercial, Specialty Retail or Destination Commercial: The proposed project will produce a new building on a previously vacant and underutilized lot in Fargo’s downtown core and increase activity on an underutilized block.

Mixed Use Development: The proposed uses will include commercial/retail, residential units, and structured parking in one building structure.

Large, upscale residential units: The proposed residential development will include 95 premium marking rate units.

(18/20 points)

Line 4: The investment is located in a “Targeted Area” as defined by this RZ Plan (see pg. 29)? Consideration shall be given to whether this property has been vacant or underutilized for a period of time and/or whether the property is specifically targeted for clearance (see spreadsheet).

- 1) Parcels that have been vacant or underutilized for an extended period of time:

This site has been a surface parking lot for a number of years.

(5/5 points)

- 2) Parcels specifically targeted for clearance:

The RZ Plan designates Block 10 as being appropriate for: *preservation and rehabilitation; and redevelopment of surface parking lots.*

(5/5 points)

(10/10 points)

Line 5: The project will create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or will contribute to street level activation?:

This project will enhance public space with pedestrian activity and streetscape amenities by providing a mixed-use infill project along with outdoor seating areas.

(9/10 points)

Line 6: Consideration and analysis as to the total actual investment in the project?

As proposed, the redevelopment project and improvement costs significantly exceed both the 50% (true and full value of the building) and \$100 per square foot requirement. As previously noted, the application represents a total estimated investment of \$21,889,421.

(10/10 points)

Line 7: Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community?:

The project does not involve the movement or relocation of a business from another North Dakota community.

(10/10 points)

Line 8: Is the project located within a historic district? Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective?:

This property is located within the boundary of the Downtown Historic District. The project proposes to restore the original historic building pattern by building to the sidewalk, the storefronts will have high transparency similar to historic buildings, and the parking will be hidden. The project proposes to incorporate the history of the site by playing homage to the original Kesler Block Apartment built on this site.

(10/10 points)

Summary:

This application received a score of 96 on a 100-point scale. The applicant met all required criteria and the use is consistent with the RZ Plan. In addition, the proposed new construction project surpasses the local capital improvement requirement of \$40 per square foot for a commercial rehab and \$100 per square foot for new construction.

This project is consistent with the RZ Plan to provide a mixed-use development within a target area that acts as an activity generator by providing for residential units and street-level retail activity.

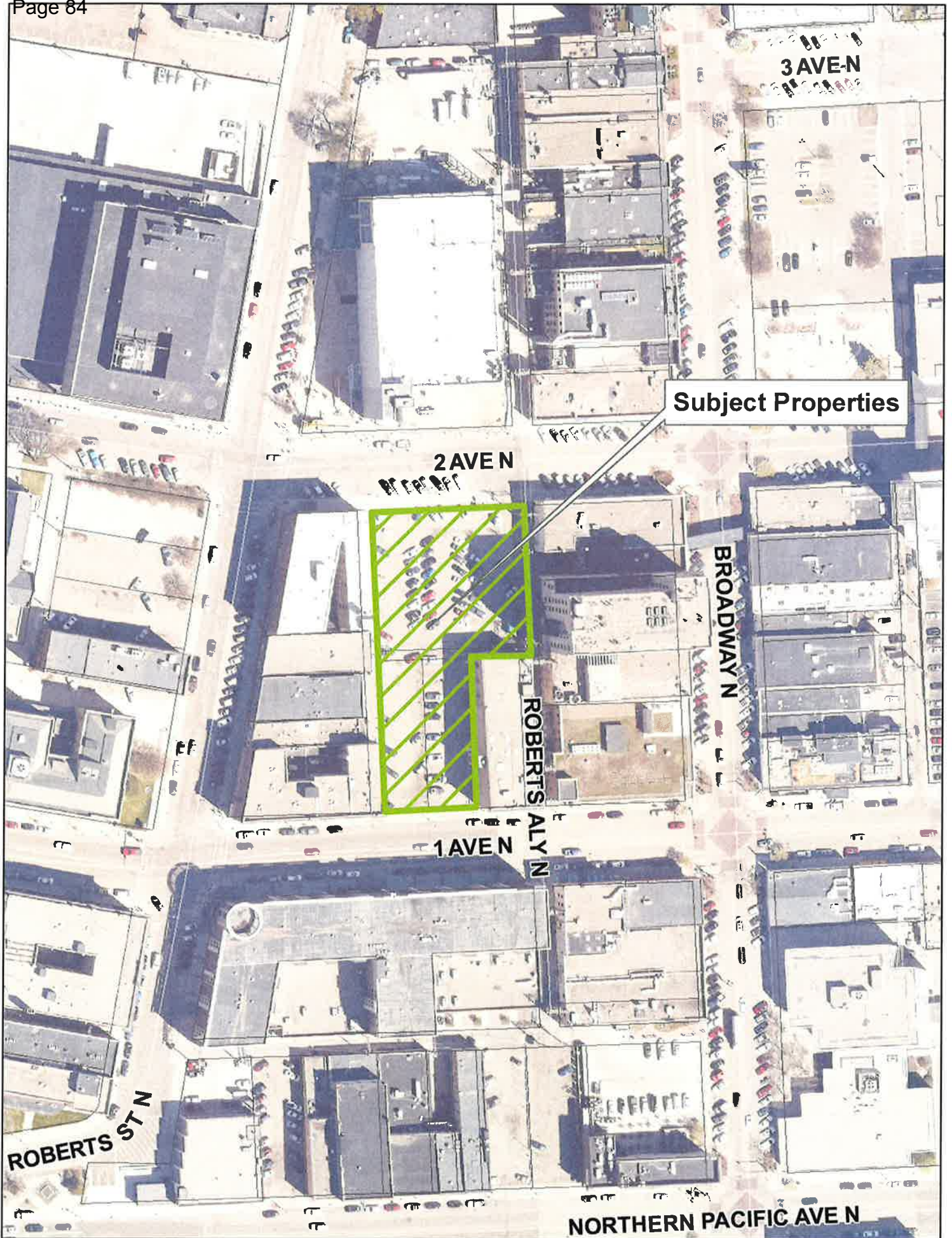
The amount invested in the project exceeds state and local guidelines. The project does not involve the relocation of commercial businesses from another North Dakota city. The applicant will not be seeking any historic preservation tax credits, however the applicant has applied for a ~~HF~~ **PILOT project to aid in the new construction.**

This project will make use of a lot that is currently underutilized. Staff believes that this project will be a benefit to the downtown community and will positively contribute to the health of surrounding businesses.

Suggested motion:

Recommend approval to the Fargo City Commission to approve the application submitted by DFI Kesler LLC and to grant the property tax exemption and the State income tax exemptions as allowed by the ND Renaissance Zone law contingent upon completion of the project and verification of costs.

Minimum Criteria (Proposals involving the purchase of income-generating property)			
		Possible Points	Staff Rating
1	Use consistent with the plan (as per Vision and Goals)	20	19
2	Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in the RZ Plan?	10	10
3	The new construction or proposed improvements are representative of "High Priority Land Uses" as defined in the RZ Plan: <ul style="list-style-type: none"> • Primary sector business • Active Commercial, Specialty Retail and/or Destination Commercial • Mixed use development (combination of housing, commercial, and/or retail uses in a horizontal or vertical fashion) • Large, upscale residential units 	20	18
4	The investment is located in a 'Target Area' as defined by the RZ Plan: <ul style="list-style-type: none"> • Parcels that have been vacant or underutilized for an extended period of time • Parcels specifically targeted for clearance 	10	10
5	The project will create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or will contribute to street level activation: <ul style="list-style-type: none"> • Incorporation of "civic" or "public" space within a redevelopment proposal will receive additional consideration • Demonstrated commitment to strengthening pedestrian corridors and issues of "connection" • Attention to streetscape amenities • Contribution to street activity 	10	9
6	Consideration and analysis as to the total actual investment in the project: <ul style="list-style-type: none"> • Consideration can be given for the level of capital investment in a project. (i.e., additional consideration can be given for higher levels of investment) 	10	10
7	Consideration as to whether the project will include or accommodate the relocation of a business from another North Dakota community: <ul style="list-style-type: none"> • Commercial tenants that are re-locating within the Downtown Area (as defined by the 1996 Downtown Area Plan) are not eligible for tax incentives without special approval from the Zone Authority • Commercial tenants that are relocating from a North Dakota community (other than Fargo) to the Fargo Renaissance Zone are not eligible for tax incentives without special approval from the Zone Authority. 	10	10
8	Is the project located within a historic district? Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective? <ul style="list-style-type: none"> • Although not included in the Project Review Guidelines, historic preservation is considered an important component of downtown projects even when Historic Preservation and Renovation Tax Credits are not being requested. 	10	10
Total Rating (100 possible points)		100	96



3 AVE N

Subject Properties

2 AVE N

BROADWAY N

ROBERTS ALY N

1 AVE N

ROBERTS ST N

NORTHERN PACIFIC AVE N

APPLICATION FOR RENAISSANCE ZONE – REHABILITATION OR PURCHASE (NEW CONSTRUCTION)

Property owners, business owners, developers or investors interested in pursuing a Renaissance Zone project should review the *2015 RZ Plan*. The RZ Plan delineates the current geographical boundaries of the program (only certain blocks within the downtown core are included) and provides additional detail on minimum investment requirements and applicable program goals and objectives that must be met.

Property Owner Information
Name (<i>printed</i>): <u>DFI Kesler LLC</u>
Address: <u>624 2 AVE N & 617/621 1 AVE N</u>
Primary Phone: <u>701.237.2279</u>
Alternative Phone: _____
Email: _____

Representation Information (<i>if applicable</i>)
Name (<i>printed</i>): <u>Mike Zimney</u>
Address: <u>210 Broadway Suite 300</u>
Primary Phone: <u>701.237.2279</u>
Alternative Phone: _____
Email: <u>zimney@kilbournegroup.com</u>

Location of property involved in the application decision
Address or Parcel Number: <u>624 2 AVE N & 617/621 1 AVE N</u>
Legal Description (<i>attach separate sheet if more space is needed</i>): <u>see attached</u>
Renaissance Zone Block Number: <u>10</u>
Current Use of Property: <u>Surface Parking Lots</u>
How will this property affect historical properties: <u>N/A</u>

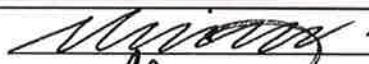
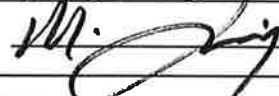
Application Type (Please place a checkmark next to corresponding application type requested)			
Purchase <input type="checkbox"/>	Purchase with Major Improvements <input checked="" type="checkbox"/>	Historic Preservation and Renovation <input type="checkbox"/>	
Rehabilitation <input type="checkbox"/>	Lease <input type="checkbox"/>		
Is this A Historic Tax Credit Project: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Square Footage
Lot: <u>6,499 + 7,600</u> sf Building: <u>n/a</u> sf
List Each Floor sf Separately <u>n/a</u>
<small>It is not expected. We expect the retail businesses will be new businesses or expansion of existing businesses from the city or region.</small>

Project Description	
Expected Date of Purchase:	<u>June 2018 (624 2nd Ave N). 617/621 1 AVE N transferred to DFI Kesler Fall 2019</u>
Expected Date of Occupancy:	<u>Spring 2021</u>
Will this be your primary place of Residency?	<u>n/a</u>

Scope of Work
A six-story mixed-use project with ground floor retail five floors of market-rate apartments and underground parking. This project will be built on three different parking lots, (617/621 1st Ave N & 624 2nd Ave N) spanning between 1st and 2nd Ave N.
Project Metrics (all three parcels):
<ul style="list-style-type: none"> • +/- 140,000 SF • +/-13,000 SF commercial • +/-95 units • +/-85 parking stalls

Estimated Tax Impact	
Current True and Full Value:	<u>\$490,000 (\$286,000 + \$94,000 + \$110,000)</u>
Current Annual Property Tax:	<u>\$7,070 (288.60 mills)</u>
Estimated Value of Building after Improvements:	<u>\$18.6MM (Construction Cost \$21.9M)</u>
Estimated Five-Year Impact:	<u>\$1,368,658</u>

Acknowledgement – We hereby acknowledge that we have familiarized ourselves with the rules and regulations to the preparation of this submittal and that the forgoing information is true and complete to the best of our knowledge.	
Owner (Signature):	<u></u> Date: <u>6/13/19</u>
Representative (Signature):	<u></u> Date: <u>6/13/19</u>

Office Use Only	
Date Filed: _____	Planning Office Contact: _____

Please complete the following that apply:

A. Is the proposed use of the project consistent with the RZ Plan (as per Visions and Goals)? As noted in the 2015 Renaissance Zone Development Plan the desired land use on Block ¹⁰ will contribute to a number of goals and objectives as outlined in the RZ Plan as follows:

1. *Activity Generator [goal]:* Will the project develop activity-generating enterprises along major commercial corridors of the Renaissance Zone? If true, how?

Yes - addition of apartment units and ground floor commercial will generate foot traffic, new residents, and activation on former surface parking lots.

2. *Walkable Districts [goal]:* Will the project create “walkable districts” that integrate a wide range of activities and land uses that encouraging on-street activity? If true, how?

Yes, the project is mixed-use and will include residential apartments and ground floor retail.

3. *Ground Floor Uses [goal]:* Will the project reserve ground floor land uses to those that will encourage streets to come to life – shops, offices, cafes, restaurants and other “public” facilities? If true, how?

The ground floor will have retail along 2nd Ave, 1st Ave, and Roberts Alley.

4. *Neighborhood Center [goal]:* Will the project make “Broadway” Fargo’s “Main Street” – a pedestrian-friendly, mixed-use magnet that anchors downtown neighborhoods? If true, how?

This project will continue to expand Broadway’s revitalization west along 1st and 2nd Ave and continue the retail presence and activity along Roberts Alley.

5. *Urban Design [goal]:* Will the project the projects embody strong urban design principles inclusive of building massing and form, building materials, pedestrian orientated design, streetscape, building orientation and recognition of the importance of defined block corners, architectural style, high building coverage percentages, limited setbacks or downtown district appropriate setbacks, design longevity and street level transparency? If true, how?

The building will have near zero lot lines and retail along 1st Ave, 2nd Ave, and Roberts Alley. The storefronts will be designed with frequent doors and a large amount of clear glazing. The project will have a high lot coverage and a height appropriate for the surrounding area.

6. *Transportation [goal]:* Will the project manage downtown transportation, accessibility and parking issues in a manner that will allow for further commercial developments and make the entire area more user-friendly. If true, how?

The project will have +/-85 parking stalls that will be used to support parking needs for Black Building during the day and the residential users during nights and weekends. The parking entrance will be located off of Graver Alley to maintain pedestrian friendly streetscape.

7. *Safe Streets – Safe Neighborhoods [goal]:* Will the project encourage safe streets and safe neighborhoods by relying on and utilizing the “natural surveillance” of lively and active streets? If true, how?

These parking lots currently provide very limited "eyes on the streets." The addition of the 96 apartments and ground floor retail will significantly increase the amount of foot traffic, visitors, and activity on and along the site.

8. *High Quality Housing [goal]:* Will the project continue to encourage the production of unique, high quality housing that is developed in areas targeted for residential development or as a component of a mixed-use project? If true, how?

The apartments will be market rate with quality finishes, be well-lit, and include amenities such as a roof top terrace, bike parking, pet facilities, and lobby residence lounge.

9. *Infill [goal]:* Will the project encourage and actively pursue projects that increase the productivity of underutilized property such as surface parking lots, vacant land and parcels with low building to land value ratios? (Infill projects shall conform and be consistent with urban design principles as set forth in Goal 5 above.) If true, how?

The completion of this project will replace three very visible parking lots in the heart of downtown with a mixed use project appropriate in an urban setting.

10. *Housing Amenities [goal]:* Will the project integrate quality housing with public open space and neighborhood amenities, requiring the enhancement of existing amenities in conjunction with the creation of new ones? If true, how?

Amenities will include a roof top terrace, bike parking, pet facilities, and lobby/residence lounge.

11. *Downtown Entryways [goal]:* Will the project enhance auto entry experiences with landscaping improvements to all major corridors (Broadway, Roberts St, 1st/NP Avenue, Main Avenue) and gateway statements at Broadway/Main Avenue, Broadway/6th Ave N, 1st Avenue/Red River, Main Avenue/Red River and Main Ave/10th Street N? If true, how?

The replacement of parking lots along 1st Ave, 2nd Ave, and Roberts Alley will improve these important and very visible gateways in downtown.

12. *The Place to Be [goal]:* Will the project make downtown the entertainment/cultural/recreational center of the city, a key destination for visitors/conventioneers, and a key destination for residents? If true, how?

This project will build upon the vibrancy that is already occurring along these streets with the addition of new retail and housing options. The addition of retail along Roberts Alley will continue the efforts of creating a unique and pedestrian friendly experience in downtown.

13. *A Place Like No Other [goal]*: Will the project highlight the unique historic character of the Renaissance Zone by placing a high value on historic preservation and overall awareness of the history of the area? If true, how?

The Kesler project plans to incorporate the history of this site by playing homage to the original Kesler Block Apartment built on this site.

14. *24 Hours a day – 7 Days per Week – 365 Days a Year [goal]*: Will the project design spaces, facilities and features that will attract people to the area both day and night, on weekdays and weekends, and during all seasons of the year? If true, how?

The 96 apartments located in the project will generate significant more activity on this site. The addition of ground floor retail will help generate new visitors and activity.

15. *Connections and Coordination [goal]*: Will the project create strong connections between people, places, and things to do that are vital to creating a strong sense of community? If true, how?

The removal of the parking lot gaps along the streetscape will greatly improve the pedestrian experience. This improvement in walkability will have continue the expansion of Broadway's success to points west.

B. Does the investment comply with minimum investment thresholds (locally determined) for residential and commercial projects as set forth in this RZ Plan? [Note that for mixed-use projects the total square footage should be dissected into commercial and residential totals for comparison to minimum investment thresholds]:

Pursuant to City of Fargo Renaissance Zone standards, in order to qualify for consideration, a project must meet a minimum \$25 square foot capital improvement threshold for residential rehabilitation, \$40 per square foot capital improvement threshold for commercial rehabilitation, and \$100 per square foot for any new construction.

1. The structure accommodates 140,000 square feet, as follows:
 - a. Lot Size: 33,837 SF
 - b. Proposed Building Total: 140,000 SF
 - c. Overall, the application estimates a total capital investment (cost incurred for the repair, replacement or renovation of a building's: exterior, roof, structure, electrical and/or plumbing systems, heating/ventilation/air conditioning systems, windows, exterior doors, elevator improvements and accessibility. The square footage used to calculate required investment levels will be based on the square footage of the entire building excluding the basement) of \$ 21,889,421, which calculates to approximately \$ 156 per square foot.

Please complete the following that apply:

A. The proposed development or lease are representative of "High Priority Land Uses" as defined by this RZ Plan (see pg. 29).

1. Is this a Primary Sector Business? If true, how?

n/a

2. Is this an Active Commercial, Specialty Retail or Destination? If true, how?

Yes - ground floor retail

3. Is this a Mixed-Use Development? If true, how?

Yes - residential, commercial, parking

4. Does this development include large, upscale residential units? If true, how?

Yes - premium market rate apartments

B. Target Area Considerations: consideration shall be given to whether this property has been vacant or underutilized for a period of time and/or whether the property is specifically targeted for clearance.

1) Is this parcels vacant or underutilized for an extended period of time? If true, how?

Yes - surface parking lot

2) Is this a parcel specifically targeted for clearance in the Renaissance Zone Plan?

Yes - "...redevelopment of surface parking lots"

C. Will the project create civic space or public space and/or will enhance pedestrian connectivity, streetscape amenities or contribute to street level activation?

Yes - out door seating area will be created along the west alley. Streetscape will be greatly improved with the redevelopment of the surface lots

D. Will the proposed project meet investment minimum criteria? How?

Yes - \$156 SF

E. Will the proposed project accommodate the relocation of a business from another North Dakota community? If true, how?

It is not expected. We expect the retail businesses will be new businesses or expansion of existing businesses from the city or region.

F. Is the project located within a historic district? Will the project fit contextually and will the project contribute or enhance the area from an architectural perspective? If true, how?

Yes - site plan will be consistent with historic urban development and building exterior will conform to the DMU design standards.

KELSER

FARGO, ND



100 Washington Blvd, Suite 1000
Fargo, ND 58103
701.785.1234



1000 Broadway, Suite 1000
Fargo, ND 58102
701.785.1234

Developed by KESLER Construction, LLC. All other trademarks and registered trademarks are the property of their respective owners. All rights reserved. © 2018 KESLER Construction, LLC. All rights reserved.

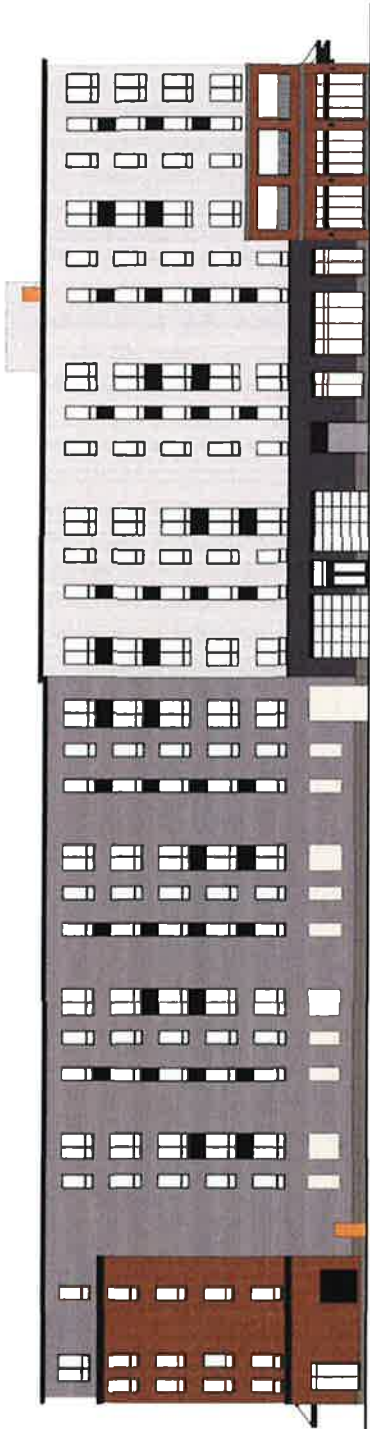
Project: _____

Client: _____

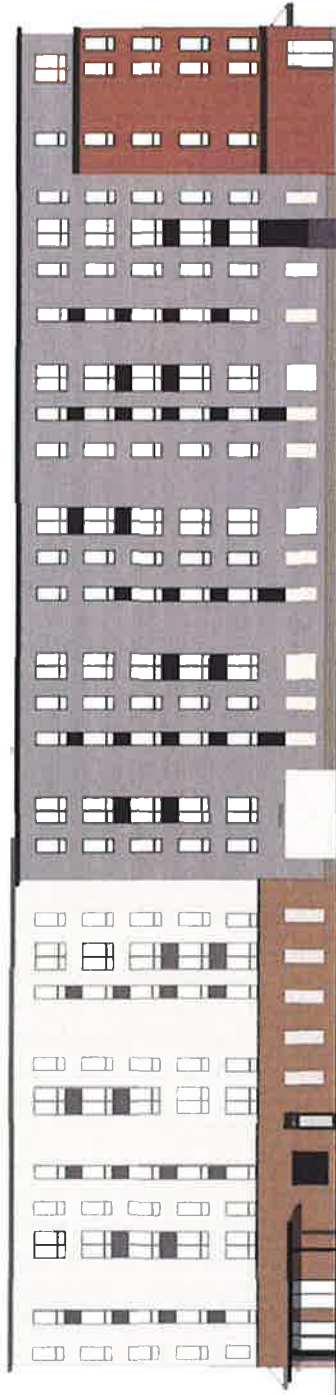
Contract #: _____

NOT FOR CONSTRUCTION

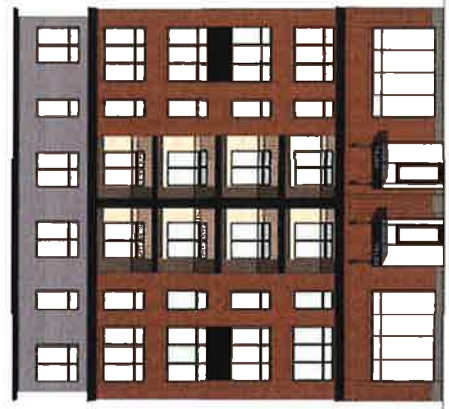
KESLER SCHEME I V3	ORIGINAL ISSUE Date: _____
	REVISIONS No. Description Date
2/17/21 Printed by: _____ Checked by: _____ Submitted: _____	
KELSER	ELEVATIONS E1



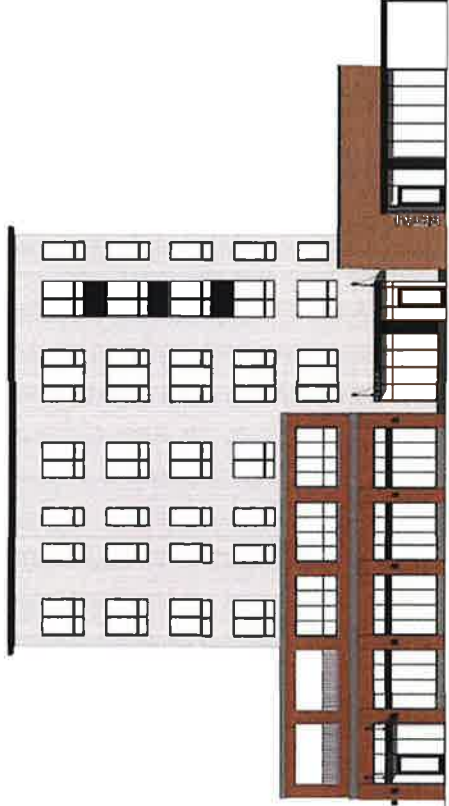
EAST ELEVATION - ROBERTS ALLEY



WEST ELEVATION - ALLEY



SOUTH ELEVATION - 1ST AVE N



NORTH ELEVATION - 2ND AVE N

KELSER

FARGO, ND



500 Broadway Avenue, Suite 200
FARGO, ND 58102
701.785.1234



KILBURN GROUP

© 2014 KILBURN GROUP, INC. ALL RIGHTS RESERVED.
NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF KILBURN GROUP, INC.

Project: _____
Date: _____

NOT FOR CONSTRUCTION

KESLER
SCHEME I
V3

ORIGINAL ISSUE	DATE
REVISIONS	DATE
217A1	PROJECT NUMBER
41	CW
3/20/14	DISCIPLINE
1/1/14	DATE

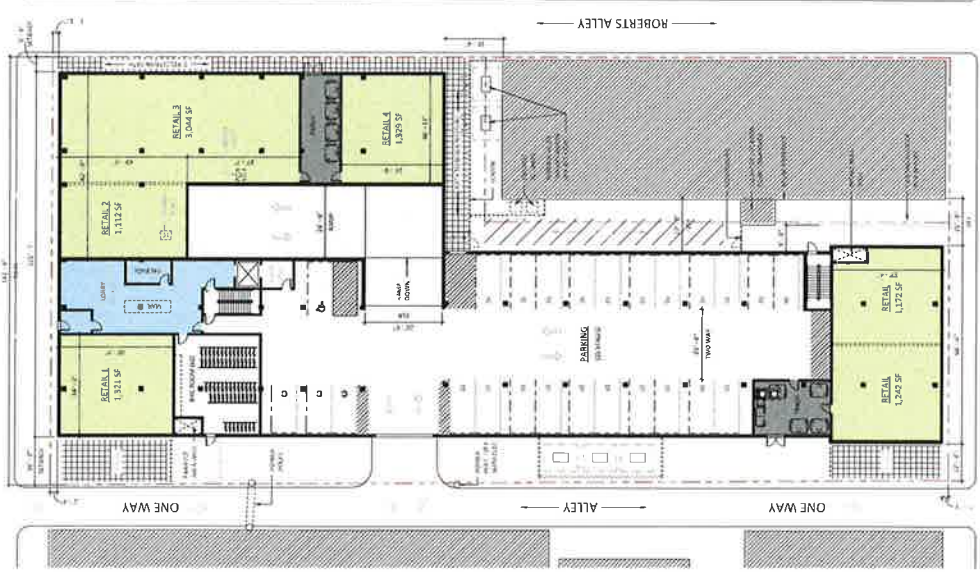
KELSER
Scheme I - Fit Plans
V3



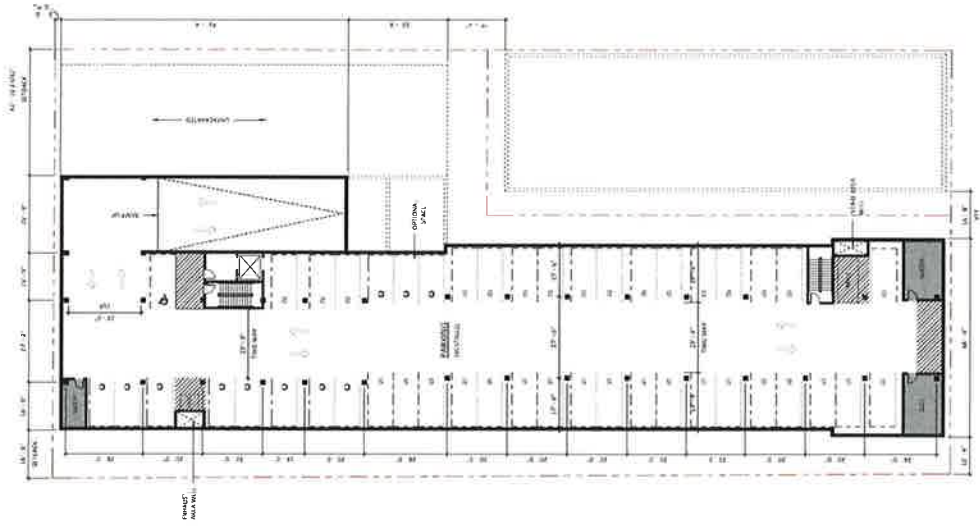
LEVEL 2 AMENITY SPACE



TYPICAL FLOOR PLAN (LEVEL 2-4)



LEVEL 1



LOWER LEVEL - P1



40i

August 21, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by DFI BJ, LLC for a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The exemption requested is for a project to be located at 621-617 1 Ave. N. where the applicant will construct a mixed use project containing apartments and commercial space.

The Tax Exempt Review Committee has met to consider this application. There were no written or verbal protests submitted at the time the committee met and none have been filed to date.

Attached is a "but-for" financial analysis report analyzing the need for this payment in lieu of tax (PILOT) incentive for this project.

The committee feels this project meets the necessary criteria to be eligible for an exemption due to current policy and the result of the "but-for" financial analysis. The committee recommends approval of a 10 year, payment in lieu of taxes according to the attached payment schedule. The PILOT will begin after expiration of the 5 year Renaissance Zone exemption.

SUGGESTED MOTION:

Approval of a 10 year, payment in lieu of tax for the improvements according to the attached payment schedule.

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka". The signature is written in a cursive style.

Ben Hushka
Tax Exempt Review Committee

Payment In Lieu of Property Tax
Payment Schedule

Pursuant to N.D.C.C. Chapter 40-57.1

PROJECT OPERATOR: DFI BJ, LLC

ASSUMPTIONS: **\$7,975,350 Improvement Value**

To begin after 5 year Renaissance Zone exemption

PILOT Years 1-10 = 100%*

*Existing tax on improvements (paving) will be included

PAYMENT SCHEDULE:

<u>YEAR</u>	<u>IN LIEU PAYMENT</u>
1	\$ 404
2	\$ 404
3	\$ 404
4	\$ 404
5	\$ 404
6	\$ 404
7	\$ 404
8	\$ 404
9	\$ 404
10	\$ 404

****Note** - The applicant will pay property tax on the land in addition to these in lieu payments.

Description of Project Property

11. Legal description of project real property

see attached

12. Will the project property be owned or leased by the project operator? Owned Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

Yes No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? New construction Existing facility

If existing facility, when was it constructed? _____

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application 10/1/2019

b. Description of project to be constructed including size, type and quality of construction

A six-story mixed-use project with ground floor retail five floors of market-rate apartments and underground parking. This project will be built on three different parking lots, (617/621 1st Ave N & 624 2nd Ave N).

PILOT application would only apply to the 617/621 1st Ave N parcels.

c. Projected number of construction employees during the project construction 20

14. Approximate date of commencement of this project's operations April 2021

15. Estimated market value of the property used for this project:

a. Land..... \$ 176,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed \$ 7,975,350

d. Total..... \$ 8,151,350

e. Machinery and equipment..... \$ 0

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) [REDACTED]

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 7,975,350

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 7,975,350

e. Enter the consolidated mill rate for the appropriate taxing district 288.60

f. Annual amount of the tax exemption (Line d multiplied by line e) \$ 117,623.00

Description of Project Business

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: Ag processing Manufacturing Retailing
 Wholesaling Warehousing Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Leasing of residential apartments and commercial space

19. Indicate the type of machinery and equipment that will be installed

n/a

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual revenue	<u>1,398,100</u>	<u>1,991,300</u>	<u>2,031,100</u>	<u>2,071,700</u>	<u>2,113,114</u>
Annual expense	<u>471,600</u>	<u>481,000</u>	<u>490,600</u>	<u>500,400</u>	<u>510,408</u>
Net income	<u>926,500</u>	<u>1,510,300</u>	<u>1,540,500</u>	<u>1,571,300</u>	<u>1,602,706</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) <u>n/a</u>					
	(2) _____					
Estimated payroll	(1) <u>n/a</u>					
	(2) _____					

(1) - full time
(2) - part time

KESLER PROJECT - SOUTH PARCEL				
Project	DFI BJ LLC		Units	Parking
Project Value	\$7,975,350		41	30
Land Value	\$176,000		Commercial	
Mills	0.2886		5,620	
	Land Taxes	New Taxes	Incentive	Proposed Schedule
Year 1	\$2,414	\$0	PILOT	\$2,908
Year 2	\$2,414	\$0	PILOT	\$2,908
Year 3	\$2,414	\$0	PILOT	\$2,908
Year 4	\$2,414	\$0	PILOT	\$2,908
Year 5	\$2,414	\$0	PILOT	\$2,908
Year 6	\$2,414	\$0	PILOT	\$2,908
Year 7	\$2,414	\$0	PILOT	\$2,908
Year 8	\$2,414	\$0	PILOT	\$2,908
Year 9	\$2,414	\$0	PILOT	\$2,908
Year 10	\$2,414	\$0	PILOT	\$2,908

Parcel Number	01-2381-00330-000
Address	01-2381-00400-000 617/621 1 Ave. N
1st Publication Received	6/17/2019
2nd Publication Date	6/24/2019
TRC Meeting Date	7/15/2019
Commission Hearing Date	7/15/2019
Notice Delivered To School/County	7/15/2019
School/County 30 Day Response	
Exemption Type	Pilot
Estimated Improvements Value	\$7,975,550
Building Value to Remain Taxable	\$28,000
Current Land Value	\$778,000
County Share of Levy (%)	17.3%
Anticipated Tax Growth	0.0%
Current Mill Levy	288.6
Number of Years Granted	10
Discount Rate (for Present Value)	4.50%
Total Gross Estimated Benefit	\$1,148,803
Present Value of Benefit	\$967,800

% Bid Ex	Pilot Pymt	Full Bid Tax	Benefit	PV of Benefit	Pilot & Land Tax
1 100%	\$404	\$175,084	\$174,680	\$109,700	\$2,944
2 100%	\$404	\$175,084	\$174,680	\$109,500	\$2,944
3 100%	\$404	\$175,084	\$174,680	\$109,300	\$2,944
4 100%	\$404	\$175,084	\$174,680	\$109,100	\$2,944
5 100%	\$404	\$175,084	\$174,680	\$108,900	\$2,944
6 100%	\$404	\$175,084	\$174,680	\$108,700	\$2,944
7 100%	\$404	\$175,084	\$174,680	\$108,500	\$2,944
8 100%	\$404	\$175,084	\$174,680	\$108,300	\$2,944
9 100%	\$404	\$175,084	\$174,680	\$108,100	\$2,944
10 100%	\$404	\$175,084	\$174,680	\$107,900	\$2,944
TOTALS	\$4,040	\$1,150,843	\$1,148,803	\$907,400	
Building Tax To Remain	\$404	Current Land Tax	\$2,540		

Land Value	Improvement Value	Year	Mill Levy	CO Levy	%	Full Impr Net Tax	Co Share Impr Tax
\$176,000	\$7,975,550	2021	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2022	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2023	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2024	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2025	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2026	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2027	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2028	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2029	288.6	46.90	17.3%	\$115,108	\$19,898
\$176,000	\$7,975,550	2030	288.6	46.90	17.3%	\$115,108	\$19,898

Calculation of Additional Tax Due to County

County % P/L T	County Addl P/L T	Co Share Impr Tax	Full Impr Net Tax	Benefit	Pilot & Tax
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944
\$70	\$0	\$19,898	\$115,108	\$114,703	\$2,944

Cass County approved 7 year participation

City of Fargo, North Dakota

Payment in Lieu of Taxes Program

“But-For” Report

624 2nd Avenue North

617/621 1st Avenue North

Downtown District



June 4, 2019



Table of Contents

	<u>Page</u>
1. Purpose	1
2. Project	2
3. Project Financing	3
4. Return Analysis	4
5. Conclusion	6

Purpose

The purpose of this report is to establish and determine the allowable value of the payment in lieu of taxes (PILOT) tax exemption for DFI Kesler, LLC (the "Developer") (Kilbourne Group).

PFM first reviewed the application/proforma to ensure that appropriate assumptions regarding property value, rent, vacancy, and expenses were used by the Developer. Based on those assumptions, PFM projected a 15-year cash flow, calculating an internal rate of return. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy. The proposed project will be an investment of the Developer so PFM also calculated an internal rate of return for the project.



Project

The project being proposed by DFI Kesler, LLC includes constructing 95 market rate apartment units, retail space, and structured parking at 624 2nd Ave N and 617/621 1st Ave N. The apartments will range from studio units at approximately 575 square feet to three bedroom units at approximately 1,340 square feet. There will also be structured parking available, as well as retail space. As noted in the previous section, the proposed project is to be an investment property for the Developer.

The Developer has stated that the construction will be completed by April 2021 with occupancy immediately following. The Developer has requested PILOT financing assistance in an amount in excess of \$2.23 million on a present value basis to complete the project. This amount is based on projections of the future tax payments less the projected PILOT payments. Both the estimated tax payments and estimated PILOT payments assume a property value increase of 1.70% per year. This amount assumes five years of 100% exemption, followed by 10 years of 64% exemption.



Project Financing

The Developer is investing 26% equity, or \$5,570,985, and will be privately financing \$15,750,936. The Developer is additionally requesting PILOT assistance through annual property tax savings. The private financing is estimated to be a 25-year loan at a 5.85% interest rate resulting in an annual principal and interest payment of \$1,243,785.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and the operating expenses. The Developer is proposing a rent of \$970 per month for studio units, \$1,300 per month for one bedroom units, \$1,850 per month for two bedroom units, and \$2,100 per month for three bedroom units. The Developer provided estimates of annual operating expenses, as follows; General and Administrative - \$14,396, Marketing - \$71,981, Repairs/Maintenance - \$122,368, Utilities - \$187,151, Property Tax - \$279,835, Insurance - \$4,319, and Management Fee - \$71,384. The total expenses, assuming the Developer pays full real estate taxes, are approximately 38% of gross operating income. PFM used the given assumptions for Year 1 and, using a 2% inflationary factor for expenses and 1.70% for revenues, developed a 15-year cash flow. PFM assumed Year 1 vacancy rate would be 35% for 10 months of the year assuming an April 1 occupancy and 5% beyond Year 1.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over the 15-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without PILOT assistance the Developer would have about a 7.33% internal rate of return. The Developer would have about a 9.99% internal rate of return if it received the public assistance for the full 15 years. 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 of 1.29x without assistance in the first 15 years with a Year 4 coverage of 1.00x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.36x with a Year 4 coverage of 1.23x. The minimum coverage of 0.69x occurs in Year 1 when the project is still assumed to be in the rent-up period. Debt coverage is important to developers when securing financing for their projects. Many times banks will require a minimum coverage in the range of 1.10x – 1.50x.

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 minimum debt coverage of 1.20x and a minimum internal rate of return of 10.00%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$2,201,921 or 10.3% in order for the project to become viable without assistance. This reduces the amount to be financed from \$15,750,936 to \$14,124,332 and reduces the annual debt service payment from \$1,243,876 to \$1,115,421. It is somewhat unlikely that a reduction in project costs of this magnitude would occur at this stage in the process.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rate would have to increase by more than 14.6%. This increases annual revenue from \$2,868,887 to \$2,342,694 in Year 5. PFM believes this is a large increase to rents and is unlikely to 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 \$1,121,921 or 5.3% and rental rates would have to increase by 7.2%. Both of these options occurring is unlikely, but it is possible so it should be considered.



The above scenarios show the circumstances in which the project would become viable without public assistance. Based on the information provided PFM's analysis demonstrates that the project as currently anticipated 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 units, the rental market, and monthly expenses. Both the internal rate of return without assistance and the debt service coverages are low. The base scenario without assistance along with the sensitivity analyses demonstrate that the project would likely not be feasible without assistance.



PFM determines that with public assistance, based on 5 years of 100% property tax exemption followed by 10 years of 36% exemption, the Developer's internal rate of return, based on the assumptions outlined in this report, would be 9.99%. Furthermore, the Year 4 debt coverage ratio increases from 1.00x to 1.23x when assistance is provided. Based upon the information provided, the project would not be feasible "but-for" public assistance as it is currently shown by the Developer.





MEMORANDUM

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 
Aaron Nelson, Planning Coordinator 

DATE: August 22, 2019

SUBJECT: St. Paul's Newman Center Addition – Tax Increment Financing

City staff has completed work on a Renewal Plan for redevelopment in the Roosevelt Neighborhood. The Renewal Plan is attached for your review. Also attached you will find a Resolution to adopt the Plan, the report of the City's financial advisor, and the Developer Agreement.

Tax Exempt Review Committee has reviewed the request and financial advisor report, and recommends approval of the Renewal Plan and Developer Agreement providing up to \$950,000 in assistance to the developer, plus administration costs and interest. The Renewal Plan also provides for about \$300,000 to the City of Fargo for future acquisition and demolition of dilapidated houses within the neighborhood. The plan and agreement include an additional \$47,500 to be paid to the City of Fargo for administrative costs. The estimated term of assistance is 10 years, to begin after the completion of the project in 2021.

A public hearing is part of the review process of the Renewal Plan and Developer Agreement. One of the purposes of the hearing is to provide potential competitors an opportunity to comment if they feel the agreement would result in unfair competition.

Recommended Motion:

Approve the Resolution adopting the Renewal Plan and Developer Agreement with to provide Tax Increment Financing.

Attachments:

1. Resolution
2. Financial "But For" Report
3. Renewal Plan
4. Development Agreement

James Gilmour

From: Ryan Downs <rdowns@sretrust.com>
Sent: Wednesday, August 21, 2019 5:01 PM
To: James Gilmour
Subject: Apartment TIF Proposal

Jim,

As mentioned via phone, our firm represents a large population of workforce housing in the FM area and our client, Sterling Properties, LLLP is the largest property tax paying entity in Fargo. The proposed TIF for the property at 11th Ave North doesn't represent an even playing field for the apartment owners who are working hard to stay competitive in this challenging market. Our property taxes continue to go up, while our rents this year are down by 1% through June. Essentially, through our higher taxes, I feel that we are subsidizing our future competition if something like this passes. If Fargo was in desperate need for development, this would be a good incentive but we've experienced a historical multifamily construction boom over the last three years and this is simply over and above the duty of the local government with this climate of surplus apartments.

As a business representative and as a resident in the community, I feel that our tax dollars need to be utilized in other areas. I'd like to express my objection to this proposal.

Sincerely,

Ryan Downs | President
Sterling Management
D 701.353.2727 | C 218.556.9759
www.sretrust.com

CONFIDENTIAL COMMUNICATION: Emails from this individual normally contain confidential and privileged material and are for the sole use of the intended recipient. Use or distribution by an unintended recipient is prohibited and may be a violation of law. If you believe you received this email in error, please do not read the email's body and inform the sender you have deleted this and all copies of the email. Thank you.

RESOLUTION
BOARD OF CITY COMMISSIONERS OF THE
CITY OF FARGO

TAX INCREMENT FINANCING DISTRICT 2019-02

Commissioner _____ moved for approval of the following:

WHEREAS, Certain areas within the City are in need of redevelopment in order to prevent further deterioration, to encourage investment and to preserve property values; and

WHEREAS, The Board of City Commissioners desires to avail itself of the power and authority granted by Chapter 40-58 NDCC.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners as follows:

1. That one or more slum or blighted areas, or areas consisting of industrial or commercial property, or a combination of those areas of properties, exist in the City of Fargo.
2. That the development, rehabilitation, conservation or redevelopment, or a combination thereof, of the area contained within the Renewal Plan for Tax Increment Financing District No. 2019-02, is necessary in the interest of public health, safety, morals or welfare of the residents of the City of Fargo and will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the rehabilitation or redevelopment of the development area by private enterprise.
3. That there are buildings within the area contained within the Renewal Plan with deteriorated conditions, and other soil conditions existing that discourage redevelopment. The Renewal Area, as defined in the Renewal Plan, is blighted due to the presence of these buildings and deteriorated conditions have substantially impaired the growth of the City, and have slowed the provision of appropriate redevelopment in this area. As a result, the Board of City Commissioners finds that a blighted condition exists in the said area.
4. That the area designated as the Renewal Plan for Tax Increment Financing District No. 2019-02 is appropriate for a development project.
5. That such development, rehabilitation, conservation or redevelopment of the area contained in the Renewal Plan for Tax Increment Financing District No. 2019-02 requires the powers and authority granted in Chapter 40-58 NDCC.
6. That the Renewal Plan for Tax Increment Financing District No. 2019-02 is hereby officially adopted by the Board.

7. That a Developer Agreement be prepared in regard to the Tax Increment Financing.
8. That the appropriate staff be directed to request the County Auditor and Treasurer to compute, certify and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and that the County Auditor and Treasurer shall do so in accordance with this section.

Said motion was seconded by Commissioner _____ and, upon call of the roll, the motion carried with Commissioner(s) _____ not being present, Commissioners _____ voting aye, Commissioners _____ voting nay and Commissioner(s) _____ abstaining and the motion therefore being declared carried.

RENEWAL PLAN
TAX INCREMENT FINANCING DISTRICT NO. 2019-02

CITY OF FARGO, NORTH DAKOTA

August 2019

RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2019-02	1
SUBSECTION 1.1. DEFINITIONS.....	1
SUBSECTION 1.2. STATUTORY AUTHORITY.....	1
SUBSECTION 1.3. STATEMENT OF PUBLIC PURPOSE.....	2
SUBSECTION 1.4. DESCRIPTION OF RENEWAL AREA.....	3
SUBSECTION 1.5. DESCRIPTION OF TIF DISTRICT.....	3
SUBSECTION 1.6. LAND ACQUISITION, DEVELOPMENT, DEMOLITION AND REMOVAL OF STRUCTURES, REDEVELOPMENT, IMPROVEMENTS, OR REHABILITATION.....	3
SUBSECTION 1.7. LAND USE ATTRIBUTES.....	4
SUBSECTION 1.8. ESTIMATE OF DEVELOPMENT COSTS.....	5
SUBSECTION 1.9. ESTIMATE OF BONDED INDEBTEDNESS.....	5
SUBSECTION 1.10. TAX INCREMENT FINANCING.....	5
SUBSECTION 1.11. ESTIMATE OF TAX INCREMENT.....	6
SUBSECTION 1.12. DURATION OF THE TIF DISTRICT.....	6
APPENDIX A: LEGAL DESCRIPTION OF PROPERTY	
APPENDIX B: MAP OF THE TIF DISTRICT	
APPENDIX C: ZONING MAP	
APPENDIX D: PHOTOS OF EXISTING CONDITIONS	
APPENDIX E: PLAN FOR REDEVELOPMENT	
APPENDIX F: MAP OF THE RENEWAL AREA	

RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2019-02

Subsection 1.1. Definitions.

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

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

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

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

“County” means Cass County, North Dakota.

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

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

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

“State” means the State of North Dakota.

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

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

“Tax Increment Financing District” or “TIF District” means Tax Increment Financing District No. 2019-02.

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

Subsection 1.2. Statutory Authority.

The creation of the Renewal Area and the establishment of Tax Increment Financing District No. 2019-02 are authorized by the Urban Renewal Law. Specifically the creation of the Renewal Area is authorized under North Dakota Century Code, Sections 40-58-01.1(7) and (14), which provide that the local governing body may designate industrial or commercial property, a slum or

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

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

Subsection 1.3. Statement of Public Purpose

In adopting the Renewal Plan for TIF District No. 2019-02, the City Commission intends to make the following findings:

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

Factual basis: This Renewal Area is blighted due to the presence of deteriorated or deteriorating structures (substandard house size, unsound basements or foundations, inadequate roofing, asbestos construction materials) which substantially impairs the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. Photos of the Renewal Area can be found in Appendix D.

- (b) The Renewal Area includes residential properties as well as a few commercial properties.

Factual basis: The renewal area is primarily residential with some commercial, and considered blighted as described in (a) above. Blighted areas are eligible for renewal.

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

Factual basis: The renewal area is designated in the Roosevelt/NDSU Neighborhood Land Use Plan for a mix of residential development, as well as some residential/commercial mixed-use development.

- (d) Comparable replacement dwellings or housing is available to persons displaced by the proposed Tax Increment Project.

Factual basis: The rental vacancy rate in Fargo is 9%. The housing on the block proposed for redevelopment is vacant.

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

Factual basis: The City Commission has found that the proposed development is consistent with the goals that are embodied in the Go2030 Comprehensive Plan. Most notably, the proposed development seeks to address several key initiatives of the Go2030 plan, including initiatives for/to Promote Infill, Quality New Development,

and High Quality Affordable Housing near NDSU. In addition, the proposed development conforms to the Roosevelt-NDSU Neighborhood Land Use Plan. The proposed use of the property is consistent with zoning, adjacent residential land use, and transportation facilities. The proposed development will not burden the existing infrastructure as the property is served with the water and sewer main lines.

Redevelopment of dilapidated houses conforms to Go2030, Community Development plans, and neighborhood plans.

Subsection 1.4. Description of Renewal Area

The renewal area is the Roosevelt/NDSU Neighborhood and is generally bounded by 14th Avenue North on the north, Broadway North on the east, 7th Avenue North on the south, and Barrett Street North on the west, excluding the NDSU campus. A map of the Renewal Area is attached as Appendix F.

Subsection 1.5. Description of TIF District

TIF District No. 2019-02 consists of the parcel legally described in Appendix A. A map of the approximate boundaries of the TIF District is attached hereto as Appendix B.

The development site is located southeast of North Dakota State University and is within the block bounded by 12th Avenue North on the north, 12th Street North on the east, 11th Avenue North on the south, and University Drive North on the west. The project map is attached as Appendix B. The property is zoned MR-3 (Multi-Dwelling Residential) and PUD (Planned Unit Development). A zoning map is attached as Appendix C. Adjacent land uses to the west, south, and east are residential; to the north is commercial.

The proposed project includes the removal of the existing religious institution and single- & multi-dwelling residences, and the construction of a new religious institution, an apartment building, attached single-dwelling townhome units, and associated on-site parking. The project includes the redevelopment of the entire block and will be redeveloped in accordance with the PUD Master Land Use Plan and PUD zoning district. The redevelopment plan (PUD Master Plan) is attached as Appendix E.

Subsection 1.6. Land Acquisition, Development, Demolition and Removal of Structures, Redevelopment, or Improvements

The Development of the Renewal Area includes the following activities:

Land Acquisition – The estimate is \$465,000.

Demolition & Site Cleaning/Grading – This cost is the estimate of the cost to remove existing buildings and foundations, trees, and concrete and inspect for and remove asbestos, plus fill and grade the site. The estimate is \$220,000.

Public Works Improvements – This is the cost for needed improvements for sidewalks,

approach and curb repair, road repair, new utility services, and landscaping in the boulevard. The estimate is \$265,000.

Administrative/TIF Fees – Other Tax Increment costs include the administrative costs. These are estimated to be \$47,500 in administrative costs for the City of Fargo.

Neighborhood Projects – This cost is for the acquisition and demolition of dilapidated houses within the Renewal Area. The estimate is \$200,000 to \$300,000.

These costs represent estimated costs for planning purposes, and may be different when this plan is implemented with a development agreement. The development agreement costs will be determined after a review by City financial advisors. The maximum allowed costs will be specified in the development agreement.

Subsection 1.7. Land Use Attributes – TIF District & Neighborhood

(a) *Zoning or Planning Changes.*

TIF District – The original 23 lots in this TIF District have been zoned MR-3 (Multi-Dwelling Residential) with PUD (Planned Unit Development) and platted as four lots. No zoning and planning changes are required to accommodate this project.

Neighborhood – The Neighborhood contains a variety of zoning districts, predominantly single- and multi-dwelling residential. Almost half of the neighborhood is within the SR-3 (Single-Dwelling Residential) zoning district, and about 2/5 of the neighborhood is located within either the MR-2 or MR-3 (Multi-Dwelling Residential) zoning districts.

(b) *Maximum Densities.*

TIF District – The property within the TIF District will be developed in accordance with the PUD (Planned Unit Development) zoning district, which allows a residential density of 32 dwelling units per acre. The subject property has an area of 3.82 acres, which would allow a maximum of 122 dwelling units. The applicant's proposal of 121 units is within the allowable density on this property.

Neighborhood – Projects within the Neighborhood will conform to the maximum densities prescribed by the existing zoning districts. These projects would be located within the Neighborhood, but outside of the TIF District.

(c) *Building Requirements.*

All properties within this district are subject to the provisions of the City of Fargo Building Codes and the Land Development Code.

(d) *Plan relationship to land use objectives (land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public imps.)*

The physical improvements outlined in the plan meet critical needs required for the redevelopment of this property. The project complies with the PUD (Planned Unit Development) zoning district and the redevelopment goals of the Go2030

Comprehensive Plan. The development provides for new residential dwelling units within an existing residential neighborhood.

Subsection 1.8. Estimate of Development Costs

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

Property Acquisition	\$465,000
Demolition & Site Cleanup	\$220,000
Public Works Improvements	\$265,000
Administration	\$47,500
<u>Neighborhood Housing Site Acquisitions</u>	<u>\$300,000</u>
TOTAL	\$1,297,500

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

Subsection 1.9. Estimate of Bonded Indebtedness

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

Subsection 1.10. Tax Increment Financing.

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

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

Each year the County Auditor will compute the amount of tax increment generated within the Renewal Area in accordance with the TIF Act. Any year which there is an "incremental value" as provided in the TIF Act, an increment will be payable to the City and deposited in the fund created

by the County Auditor for that purpose. Any year in which there is "lost value" pursuant to the TIF Act, no increment will be payable to the City.

Subsection 1.11. Estimate of Tax Increment.

It is anticipated that the Development will result in an increase in true and full value of the Renewal Area redevelopment site to \$14 million. The value of the development site within the TIF district is less than \$2 million. The increase in value will be approximately \$12 million. Under the mill rate in effect as of the date of this Plan, the Renewal Area will generate tax increment each year in the estimated amount of \$156,000.

Subsection 1.12. Duration of the TIF District.

The City anticipates that the TIF District will continue until all development costs are reimbursed through the receipts of tax increment. The estimated time period would be ten years after completion of the project. The first substantial tax increment payment will be recovered in 2022.

APPENDIX A
LEGAL DESCRIPTION OF PROPERTY

Lots 1-4 & 15-23 of Bolley's Subdivision of Part of Block 9, Chapin's Addition and Lots 1-10, Block 2, College Addition to the City of Fargo

(Said description contains the block bounded by 12th Avenue North, University Drive North, 11th Avenue North, and 12th Street North, and is to be replatted as Lots 1-4, Block 1, St. Paul's Newman Center Addition to the City of Fargo)

APPENDIX B
MAP OF THE TIF DISTRICT

TIF District No. 2019-02



APPENDIX C
ZONING MAP

TIF District No. 2019-02



Zoning Districts

AG	LC	MHP	SR-2
DMU	LI	NC	SR-3
GC	MR-1	NO	SR-4
GI	MR-2	PA	SR-5
GO	MR-3	UMU	

 TIF District



APPENDIX D
PHOTOS OF EXISTING CONDITIONS

1119 University Dr N





1213 11th Ave N



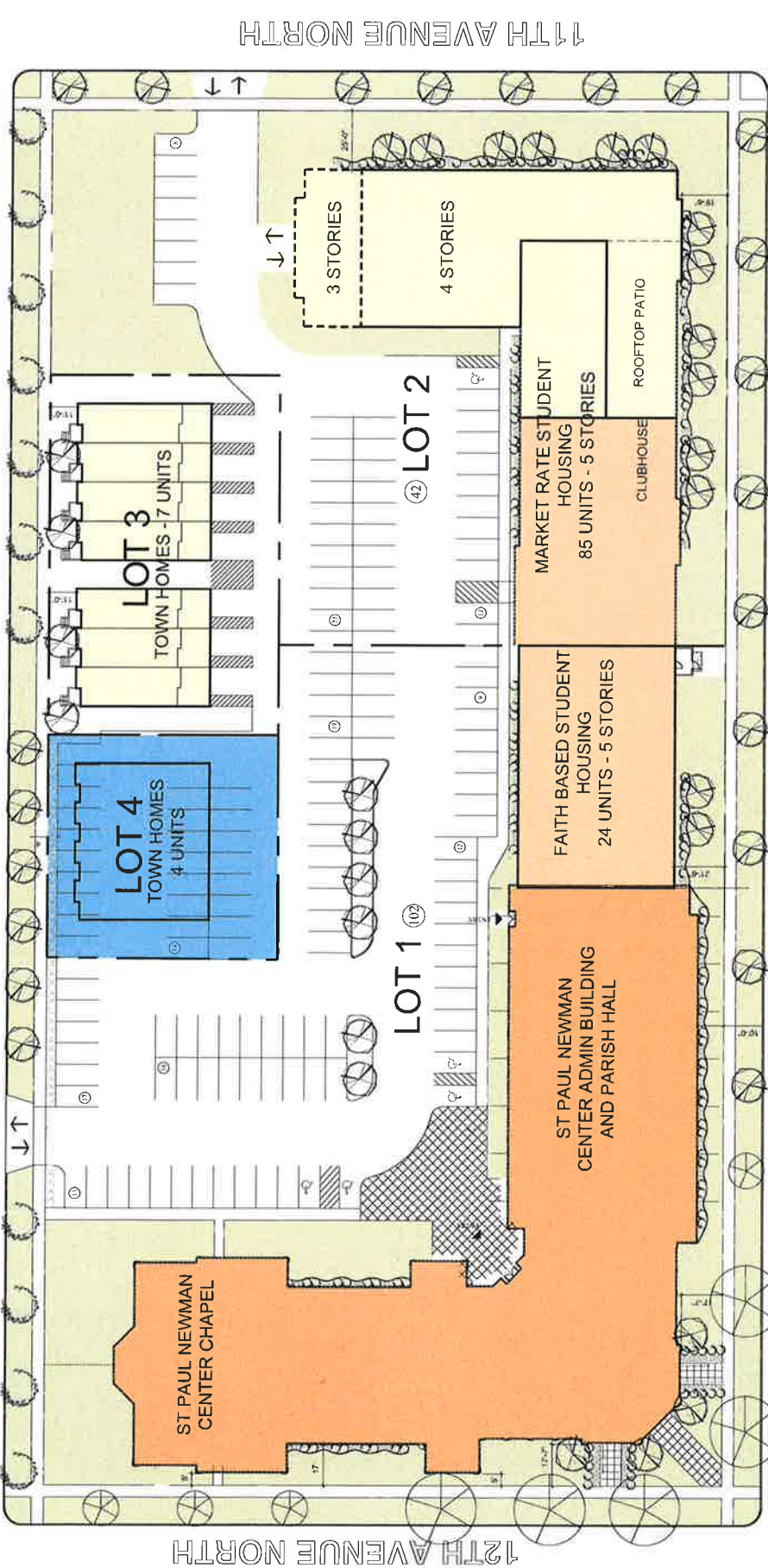
1118 12th St N



APPENDIX E
PLAN FOR REDEVELOPMENT

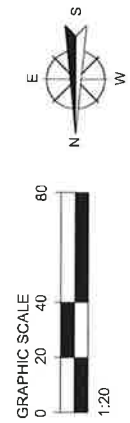
OPTION "D"
MASTER LAND USE PLAN
 For February 11, 2019 City Commission Hearing

12TH STREET NORTH



UNIVERSITY DRIVE

11TH AVENUE NORTH



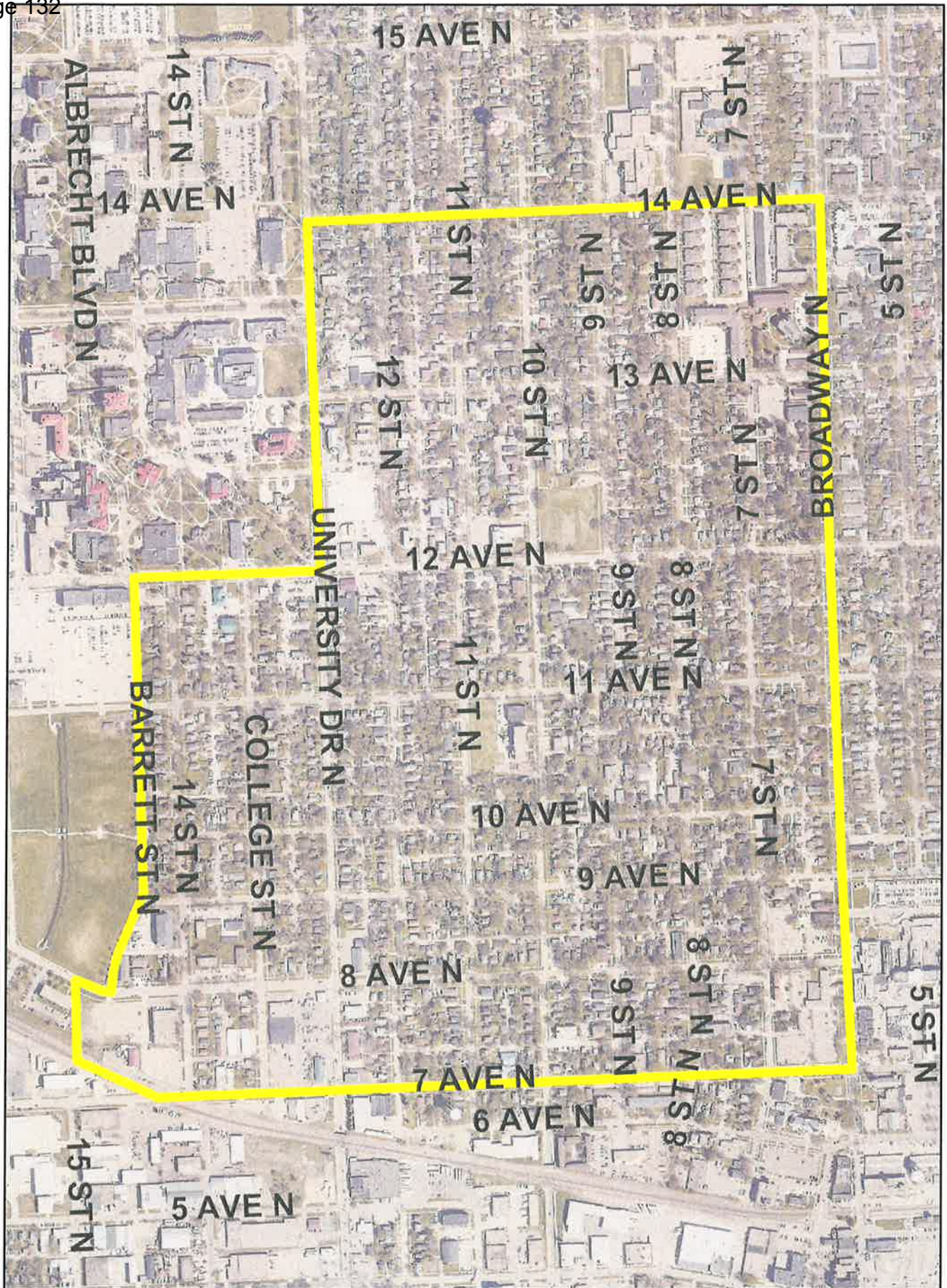
OPTION D


HOUSING	7	85
TOWNHOME	4	24
OPTIONAL TH	143	23 LESS STALLS
FAITH BASED	24	
MARKET RATE	85	
PARKING	83	
UNDERGROUND	143	
SURFACE	23	
OPTIONAL TH	23	
LESS STALLS		



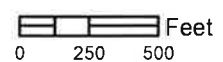
DATE: FEBRUARY 5, 2019

APPENDIX F
MAP OF THE RENEWAL AREA



 Renewal Area

Renewal Area



City of Fargo, North Dakota

Tax Increment Financing Program

“But-For” Report

University Drive and 11th Avenue North



June 11, 2019



Table of Contents

	<u>Page</u>
1. Purpose	1
2. Project	2
3. Assistance Request	3
4. Project Financing	4
5. Return Analysis	5
6. Conclusion	7

Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for University Drive and 11th Avenue North, a development by Roers (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. 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 an 85-unit rental apartment building and seven townhomes located at University Drive and 11th Avenue North. The intent of the Developer is to sell the townhomes upon completion.

The Developer stated the construction will be completed in July 2021 with occupancy immediately following. The Developer has requested TIF assistance in the amount of approximately \$950,000 to complete the project.



Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. According to Policy #3, the maximum TIF assistance is 15 years and the Developer is asking for a 10-year exemption.

Requested Reimbursement

Below is the detailed requested cost of the proposed project to be reimbursed.

Demolition of buildings, asbestos and tree removal	\$ 220,000
Public Infrastructure	435,000
Land Write Down	465,000
Legal and TIF Fees	<u>65,000</u>
Total Requested Cost to be Reimbursed	\$1,185,000

The Developer is requesting a total of approximately \$950,000 of costs to be reimbursed.

Policy #8

Policy #8 limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of \$11,592,425 the Developer can receive up to \$1,738,863. The Developer is requesting approximately \$950,000 which is below the maximum allowed. Policy #8 also states that the Developer must provide at least 10% of total capital costs as Developer's equity in the project. It is estimated the Developer will contribute \$5,000,000 as equity which is over 35% of the total capital costs.

Land Cost

The Developer states the purchase price to acquire the property for the project is \$2,107,000 including the land value at \$189,700. The price is based on the actual purchase price of the property. Land acquisition is reimbursable under the Policy. The Developer is not requesting to be reimbursed for the land acquisition, however, they are asking to be reimbursed for land write down costs.

Policy #3

Policy #3 states the length of the term will be limited to 15 years or less. It is the intention of the City to enter into an agreement that limits the TIF payments to a maximum of 10 years.



Project Financing

The Developer is investing 35% equity, or \$5,000,000, and will be privately financing \$9,100,000. The Developer is additionally requesting annual TIF assistance in the total amount of approximately \$900,000. The private financing is estimated to be a 30-year loan with an estimated interest rate of 5.50% resulting in an annual principal and interest payment of \$626,129. The application states the project will be completed by July 2021.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, operating expenses, and the sale of the seven townhomes. The Developer is proposing rents of \$725 for studio, \$895 for a one-bedroom unit, \$1,300 for a two-bedroom unit and \$1,800 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market. The Developer also provided estimates of sale prices for the townhomes, listing two 2-story townhomes at \$264,900 and five 2.5-story townhomes at \$274,900. Annual estimates of operating expenses for the 85-unit rental development were provided, as follows; Maintenance Costs - \$85,850, Utilities - \$112,200, Miscellaneous fees - \$21,250, Real Estate Taxes - \$179,796 a year (PFM estimate), and Administration Costs - \$94,211. The total expenses are approximately 52% of gross operating income, excluding the revenue gained from selling the townhomes. The operating expense assumptions appear reasonable, though the total expenses as a percentage of gross operating income is higher than average because of low rents proposed by the Developer.

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 2.43% internal rate of return. The Developer would have about a 9.79% internal rate of return 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 3 of 2.49x without assistance after the sale of the townhomes in Years 1 and 2, with a Year 5 coverage of 0.97x. If the City provided assistance to the project the maximum debt coverage is projected to be 2.96x in Year 2, with a Year 5 coverage of 1.46x.

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 10.00%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$2,326,500 or 16.50% in order for the project to become viable without assistance. This reduces the amount to be financed from \$9,100,000 to \$7,598,500 and reduces the annual payment from \$626,129 to \$522,818 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rates would have to increase by 30.5%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from \$1,122,360 to \$1,464,680. 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 \$1,410,000 or 10.0% and rental rates would have to increase by 11.95%. While either of these events could occur, PFM does not believe they are likely to occur at once.



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, monthly expenses, and the ability to sell the townhomes at the projected sales price. 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, based on 10 years of TIF assistance, the Developer's internal rate of return, based on the assumptions outlined in this report, would be 9.79%. Based on the 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, NORTH DAKOTA

and

ROERS DEVELOPMENT, INC.

TAX INCREMENT FINANCING DISTRICT 2019-02

TABLE OF CONTENTS
(Included for Convenience of Reference Only)

ARTICLE I	Definitions.....	1
Section 1.1.	Definitions.....	1
ARTICLE II	Representations, Warranties and Covenants.....	5
Section 2.1.	Representations, Warranties and Covenants by City.....	5
Section 2.2.	Representations, Warranties and Covenants by Developer.....	5
ARTICLE III	Completion of Improvements; Reimbursement of Certain Costs.....	8
Section 3.1.	Completion of Improvements by Developer.....	8
Section 3.2.	Intentionally Left Blank.....	8
Section 3.3.	Reimbursement by City of Certain Costs; Terms of Tax Increment Note.....	8
Section 3.4.	Release and Indemnification Covenants.....	10
Section 3.5.	Intentionally Left Blank.....	11
Section 3.6.	Use of Tax Increments.....	11
ARTICLE IV	Construction Of Minimum Improvements.....	12
Section 4.1.	Construction of Minimum Improvements.....	12
Section 4.2.	Commencement and Completion of Construction.....	12
Section 4.3.	Certificate of Completion.....	12
ARTICLE V	Insurance And Condemnation.....	14
Section 5.1.	Insurance.....	14
Section 5.2.	Condemnation.....	14
ARTICLE VI	Intentionally Left Blank.....	15
ARTICLE VII	Mortgage Financing.....	16
Section 7.1.	Limitation Upon Encumbrance of Property.....	16
Section 7.2.	Notice of Mortgage.....	16
Section 7.3.	Notice of Default; Copy to Mortgagee.....	16
Section 7.4.	Mortgagee's Option to Cure Defaults.....	16
Section 7.5.	City's Option to Cure Default on Mortgage.....	16
ARTICLE VIII	Prohibitions Against Assignment And Transfer; Indemnification.....	18
Section 8.1.	Status of Developer; Transfer of Substantially All Assets.....	18
Section 8.2.	Prohibition Against Transfer of Property and Assignment of Agreement.....	18
Section 8.3.	Approvals.....	20
ARTICLE IX	Events of Default.....	21
Section 9.1.	Events of Default Defined.....	21
Section 9.2.	Remedies on Default.....	21
Section 9.3.	No Remedy Exclusive.....	22
Section 9.4.	No Additional Waiver Implied by One Waiver.....	22
Section 9.5.	Agreement to Pay Attorney's Fees and Expenses.....	22

TABLE OF CONTENTS
(continued)

ARTICLE X	Additional Provisions.....	24
Section 10.1.	Titles of Articles and Sections	24
Section 10.2.	Notices and Demands	24
Section 10.3.	Counterparts.....	24
Section 10.4.	Law Governing	24
Section 10.5.	No Filing of Agreement	24
Section 10.6.	Modification.....	24
Section 10.7.	Legal Opinions.....	25
Section 10.8.	Approvals; Officer Action	25
ARTICLE XI	Termination of Agreement; Expiration.....	26
Section 11.1.	City's Option to Terminate.....	26
Section 11.2.	Expiration.....	26
Section 11.3.	Effect of Termination or Expiration	26
Section 11.4.	No Third Party Beneficiaries	26
EXHIBIT A	– LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY	A-1
EXHIBIT B	– INTENTIONALLY OMITTED.....	B-1
EXHIBIT C	– FORM OF TAX INCREMENT NOTE	C-1
EXHIBIT D	– INTENTIONALLY OMITTED	D-1
EXHIBIT E	– INTENTIONALLY OMITTED.....	E-1
EXHIBIT F	– FORM OF CERTIFICATION.....	F-1
EXHIBIT G	– INTENTIONALLY OMITTED	G-1
EXHIBIT H	– FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL.....	H-1

DEVELOPER AGREEMENT

THIS AGREEMENT is dated as of _____, 2019; is by and between the City of Fargo, North Dakota, and ROERS DEVELOPMENT, INC., a North Dakota Corporation; and provides as follows:

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the sum of the products of the various eligible expenses initially borne by Developer and the City that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Five Percent (5%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date such expense was incurred to the date of the Tax Increment Note.

"Developer" means ROERS DEVELOPMENT, INC., a North Dakota corporation or permitted successors or assigns.

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

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer.

"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 August 26, 2019, including all exhibits thereto, as the same may be amended from time to time.

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

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

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

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

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

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

"Maturity Date" means the date that is (15) years from the date of the issuance of the Tax Increment Note.

"Minimum Improvements" means the improvements contemplated by and in accordance with this Agreement and generally described in Section 4.1. The Improvements may exceed, but shall not be less than, the Minimum Improvements, as provided in Section 4.1.

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

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

"Party" means either the Developer or City.

"Parties" mean the Developer and City.

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

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

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of \$997,500 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 5% 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.

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

"TIF District" means the area identified as the "District," or "District 2019-02" under the City's Development Plan approved by the Board of City Commissioners of the City of Fargo on August 26, 2019, as the same may be amended.

"Unavoidable Delays" means any delay outside the control of the Party claiming its occurrence which is the direct result of strikes; other labor troubles; unusually severe or prolonged bad weather; unavailability of materials; Acts of God; fire or other casualty to the Improvements; remediation of contaminants, pollutants or hazardous substances; unforeseen soil conditions, hazardous materials or concealed conditions; litigation (including without limitation bankruptcy proceedings) 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 corporation duly organized and in good standing under the laws of the State of North Dakota, is not in violation of any provisions of its agreement or the laws of the State of North Dakota and is authorized to enter into and perform its obligations under this Agreement.

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

(c) The Developer, with respect to its construction, operation and maintenance of the Improvements upon the Development Property, will cause the same to occur in accordance in all

material respects with this Agreement and all local, state and federal laws and regulations (including without limitation environmental, zoning, building code and public health laws and regulations and including any relocation requirements under local, state or federal law).

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

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

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

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

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

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

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

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

development of the Development Property will be favored over the development of other properties.

(l) The Developer will spend enough in construction of the Minimum Improvements, when combined with the value of the Development Property, to generate an estimated minimum market value of Nine Million Dollars (\$9,000,000).

(m) The Developer expects that, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2021.

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

(o) As of the Closing Date, the Developer shall have submitted to the City Construction Plans for the Improvements, and such Construction Plans shall have been approved by the City pursuant to Section 4.2.

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

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

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

ARTICLE III

Completion of Improvements; Reimbursement of Certain Costs

Section 3.1. Completion of Improvements by Developer. Subject to Unavoidable Delays as provided in Section 4.2, below, the Developer shall have substantially completed the Improvements by December 31, 2021. The Developer's use of the Development Property shall be

subject to (a) all of the conditions, covenants, restrictions and limitations imposed by this Agreement and also to (b) building and zoning laws and ordinances and all other local, state and federal laws and regulations.

Section 3.2. Intentionally Left Blank.

Section 3.3. Reimbursement by City of Certain Costs; Terms of Tax Increment Note.

The Developer hereby represents to the City that the Developer has incurred and paid and will incur and pay significant Development Costs. The reimbursements that establish the principal balance of the Tax Increment Note whose principal and interest are payable to the Developer shall be as follows. The City hereby agrees to defray a portion of the Development Costs up to \$997,500, as follows:

1. Property Acquisition	\$465,000
2. Demolition & Site Cleanup	\$220,000
3. Public Works Improvements	\$265,000
4. Administrative Costs (Fees)	<u>\$ 47,500</u>
TOTAL	\$997,500

The demolition and site clearing and public works improvement costs may be transferred between categories so long as the total costs do not exceed \$997,500 (including the administrative fee). The administrative fee will be paid by Developer to the City at the time of issuance 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 may be recognized as an eligible expense under this Agreement. In addition to the foregoing costs, Developer shall be entitled to reimbursement over and above the foregoing eligible expenses an agreed upon interest rate of Five Percent (5%) Per Annum to be paid to Developer under the Tax Increment Note. All of the said costs, and interest, meet the representation set forth at Section 2.2(g) by issuing the Tax Increment Note, substantially in the form of Exhibit C to this Agreement, subject to the following conditions:

(a) There shall be one (1) Tax Increment Note. The principal amount of the Tax Increment Note shall be determined by adding the \$997,500 (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 be issued for a period of fifteen (15) years from the date of issuance.

(b) The Tax Increment Note shall be delivered only if no Event of Default shall have occurred and be at the time continuing.

(c) This subsection intentionally left blank.

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered when the Certificate of Completion has been delivered and when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the Developer has incurred and paid eligible costs of the Improvements to be borne by Developer which will not be otherwise reimbursed or paid hereunder. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the costs of the Improvements have been incurred, together with evidence satisfactory to the City of the nature and amount of the costs of the Improvements and of the costs incurred by the Developer. Each certification shall demonstrate the specific purpose and amount of the costs of the Improvements and their compliance with the representation set forth at Section 2.2(g). The City's determination of a cost's compliance with the representation set forth at Section 2.2(g) shall, if based on the advice of its city attorney after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on each May 1 and November 1, commencing on the May 1 after completion of the project, issuance of the certificate of completion and Tax Increment Note, and continuing through the Maturity Date (the "Payment Dates"), in the amount described in this subsection. Notwithstanding the previous sentence, in the event that ad valorem property taxes for the Development Property are paid in full on or before February 15th of each year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. The City's Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request. If such payment is made, then it shall be unnecessary to make the payout of annual increment in two payments as is otherwise provided in this paragraph. 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. 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 within the preceding six (6) months. 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. It is recognized, understood and agreed that Available

Tax Increments does not include such taxes captured from Lot One (1), Block One (1), St. Paul's Newman Center Addition to the City of Fargo which is intended to contain certain faith-based housing that is expected to be subject to property taxes that may be captured within the District but applied toward eligible expenses other than those set forth in the Development Agreement.

(f) The unpaid principal of the Tax Increment Note shall bear interest at Five Percent (5.00%) per annum from the date of issuance, compounded annually. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

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

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

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

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

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

Section 3.4. **Release and Indemnification Covenants.**

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

other wrongful acts of the Indemnified Parties. This paragraph (a) shall only apply to claims made prior to the issuance of a Certificate of Completion.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever brought prior to the issuance of a Certificate of Completion and arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Improvements; provided that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.

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

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

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

Section 3.5. Intentionally left blank.

Section 3.6. **Use of Tax Increments.** The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

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

ARTICLE IV

Construction Of Minimum Improvements

Section 4.1 Construction of Minimum Improvements. The development shall be an eighty-five (85) unit apartment building and seven (7) attached townhomes in conformance with the requirements of the Planned Unit Development for the project as approved by the Board of City Commissioners at its meeting of _____, 2019. The Improvements constructed by the Developer may, and are hereby permitted to and encouraged to, exceed in scope, scale and nature the Minimum Improvements. The Minimum Improvements constitute the lowest (or minimum) amount of Improvements which meet the development required to be provided hereunder by the Developer.

Section 4.2 Commencement and Completion of Construction. Subject to Unavoidable Delays, by December 31, 2021, the Developer shall have substantially completed the construction of the Minimum Improvements.

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

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

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

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

If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.4, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this

Agreement, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion.

ARTICLE V

Insurance And Condemnation

Section 5.1. **Insurance.**

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

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

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

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

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

Section 5.2. **Condemnation.** In the event that title to and possession of the Improvements, or any material part thereof, but solely as to the Development Property and Improvements which the Developer retains ownership of, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or other person (except the City) prior to the Maturity Date (treated for this purpose as being the earlier of the date when the principal of and premium, if any, and interest on the Tax Increment Note are paid in full, or fifteen (15) years

after the issuance of the Tax Increment Note) the Developer shall, with reasonable promptness after such taking, notify the City as to the nature and extent of such taking.

ARTICLE VI

Intentionally left blank.

ARTICLE VII

Mortgage Financing

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

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

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

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

Section 7.4. **Mortgagee's Option to Cure Defaults.** After any breach or default referred to in Section 7.3, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Development Property covered by its mortgage) and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided, however, that if the breach or default is with respect to construction covered by the Mortgage, nothing contained in this Section or any other Section of this Agreement shall be deemed to require such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the work covered by the Mortgage (beyond the extent necessary to conserve or protect the work or construction already made), provided that any such holder shall not devote

the Development Property or portion thereof to a use inconsistent with the Development Plan or this Agreement without the agreement of the City.

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

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

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

ARTICLE VIII

Prohibitions Against Assignment And Transfer; Indemnification

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

Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to the Maturity Date (treated for this purpose as

the earlier of the date on which all principal of and premium, if any, and interest on the Tax Increment Note have been paid or fifteen (15) years after issuance of the Tax Increment Note):

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

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

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the remaining obligations undertaken in this Agreement by the Developer with respect to the relevant portion of the Development Property.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed with respect to the relevant portion of the Development Property all of the remaining obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (unless the Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 8.2(b)(ii) shall not apply); provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however

consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written approval by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

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

(iv) The City and Developer recognize that as a result of this project being eligible for treatment as an Opportunity Zone project, Developer intends to assign its interest, rights and obligations under this Agreement to an appropriate entity, to be proposed by Developer prior to commencement of construction of this project and, therefore, the City authorizes its Mayor and City Administrator to review and grant said prior written approval of any assignment of this Developer Agreement to such other entity, said approval to require the signature of both the Mayor and City Administrator, including any persons lawfully serving as acting mayor or acting city administrator at the time.

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

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

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

ARTICLE IX

Events of Default

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

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

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

(c) If the Improvements are not substantially completed by December 31, 2021, as such time may be extended by Unavoidable Delays.

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

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

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

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

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

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

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

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

As a remedy for an Event of Default:

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

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

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

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

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

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

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

ARTICLE X

Additional Provisions

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

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

(a) in the case of the Developer, _____, President, to ROERS DEVELOPMENT, INC., 4445 2nd Ave. SW, Fargo, North Dakota 58103, and

(b) in the case of the City, to the City at 200 North 3rd Street, Fargo, North Dakota 58102, Attention: Director of Planning and Development;

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

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

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

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

Section 10.5. **No Filing of Agreement.** The Parties agree that this Agreement shall not be filed against the Development Property, and each Party agrees that if it shall inadvertently cause or

suffer this Agreement to be so filed, it will take such actions as may be necessary to remove, satisfy and render ineffective any such filing.

Section 10.6. Modification. If the Developer is requested by the holder of a Mortgage or by a prospective holder of a prospective Mortgage to amend or supplement this Agreement in any manner whatsoever, the City will, in good faith, consider the request with a view to granting the same unless the City, in its reasonable judgment, concludes that such modification is not in the public interest, or will significantly and undesirably weaken the financial security provided to the interests of the City by the terms and provisions of this Agreement.

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

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

ARTICLE XI

Termination of Agreement; Expiration

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

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

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

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

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

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Timothy Mahoney, 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 _____, 2019, by Timothy 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
Fargo City Attorney
505 Broadway, Suite 206
Fargo, ND 58102
(701) 280-1901
ejohnson@lawfargo.com

ROERS DEVELOPMENT, INC.

By _____,
_____, President

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the President of ROERS DEVELOPMENT, INC., a North Dakota Corporation.

Notary Public

EXHIBIT A

Legal Description

**Lots Two (2), Three (3) and Four (4) of Block One (1),
St. Paul's Newman Center Addition to the City of Fargo**

EXHIBIT B

INTENTIONALLY LEFT BLANK.

EXHIBIT C
FORM OF TAX INCREMENT NOTE

No. R-1

\$997,500

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

TAX INCREMENT
REVENUE NOTE OF 20__
(TAX INCREMENT DISTRICT 2019-02 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 ROERS DEVELOPMENT, INC. (the "Developer"), or the registered assign, the principal sum of Nine Hundred Ninety-Seven Thousand Five Hundred Dollars and no/100 cents (\$997,500.00), an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of Five Percent (5.0%) 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 August 26, 2019 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and ROERS DEVELOPMENT, INC., a North Dakota corporation, 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 ROERS DEVELOPMENT, INC., 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, amounts due on this Note shall be payable on each May 1 and November 1, commencing the May 1 after issuance hereof and continuing through the Maturity Date (the "Payment Dates"). Notwithstanding the previous sentence, in the event that ad valorem property taxes for the Development Property are paid in full on or before February 15th of each year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the

County Auditor upon written request submitted by the Developer. The City's Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request. If such payment is made, then it shall be unnecessary to make the payout of annual increment in two payments as is otherwise provided in this paragraph. The Maturity Date shall be fifteen years after issuance of this note.

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 equal to the lesser of (1) the Available Tax Increments received within the 6-month period preceding said Payment Date, and (2) the sum of (i) the accrued and unpaid interest on the Note and (ii) the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

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

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

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

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

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

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

"The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by

law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

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

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

It is recognized, understood and agreed that Available Tax Increments does not include such taxes captured from Lot One (1), Block One (1), St. Paul's Newman Center Addition to the City of Fargo which is intended to contain certain faith-based housing that is expected to be subject to property taxes that may be captured within the District but applied toward eligible expenses other than those set forth in the Development Agreement.

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

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

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

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$997,500 (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 2019-02, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2019-02 (ROERS NEWMAN Project) Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2019-02 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 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 ROERS DEVELOPMENT, INC., by reorganization, merger or acquisition, (2) a member of ROERS DEVELOPMENT, INC., (3) to a lender of ROERS DEVELOPMENT, INC., as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to ROERS DEVELOPMENT, INC., 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 ROERS DEVELOPMENT, INC.. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

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

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

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

CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

By: _____
Timothy Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

Tax Increment Revenue Note of 20__ (District 2019-02)

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

ROERS DEVELOPMENT,
INC.

, 20

EXHIBIT D
INTENTIONALLY LEFT BLANK

EXHIBIT E

INTENTIONALLY LEFT BLANK.

EXHIBIT F

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the "City") and ROERS DEVELOPMENT, INC., a North Dakota corporation (the "Developer") have entered into an agreement dated as of the ____ day of _____, 2019; and

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

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

CITY OF FARGO, NORTH DAKOTA

By: _____
Timothy Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

EXHIBIT G
INTENTIONALLY LEFT BLANK.

EXHIBIT H

FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL

[Fargo]

Re: Development Agreement by and between the City of Fargo, North Dakota, and ROERS DEVELOPMENT, INC., a North Dakota corporation

Ladies and Gentlemen:

As counsel for ROERS DEVELOPMENT, INC., a North Dakota corporation (the "Company"), and in connection with the execution and delivery of a certain Developer Agreement (the "Development Agreement") dated as of _____, 2019, between the Company and the City of Fargo, North Dakota (the "City"), we hereby render the following opinion:

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

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

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

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

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

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

Very truly yours



Dr. Timothy J. Mahoney, Mayor

Fargo City Hall
200 3rd Street North
Fargo, ND 58102

Phone 701.241.1310 | Fax: 701.476.4136

TMahoney@FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY

DATE: AUGUST 20, 2019

SUBJECT: HUMAN RELATIONS COMMISSION APPOINTMENTS

The terms of Laetitia Hellerud, Abdiwali Sharif-Abdinasir and Paul Jensen on the Human Relations Commission expire on July 1, 2019. Ms. Hellerud and Mr. Sharif-Abdinasir would like to continue their service on that Board; however, Mr. Jensen has resigned his position. In addition, David Lanpher, whose term would have expired on July 1, 2020, has resigned his position.

I am recommending the recommending the reappointment of Ms. Hellerud and Mr. Sharif-Abdinasir and the appointment of Barry Amundson and Adam Martin to fill the vacancy created by the resignations of Mr. Jensen and Mr. Lanpher. Mr. Amundson's appointment to the Board will expire on July 1, 2022 and Mr. Martin's will expire on July 1, 2020. Web applications for Mr. Amundson and Mr. Martin are attached for your reference.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Laetitia Hellerud and Abdiwali Sharif-Abdinasir and the appointment of Barry Amundson for three-year terms ending July 1, 2022 and the appointment of Adam Martin to the Human Relations Commission to fill the unexpired term of David Lanpher for a term ending July 1, 2020.

Attachments
mmapts19hrc

Kember Anderson

From: no reply
Sent: Friday, March 30, 2018 12:31 PM
To: Commissions Applications
Subject: New Form Submission: Getting involved in government

Name: *[Adam Martin]*

Mailing Address: *[1113 University N]*

City: *[Fargo]*

State: *[North Dakota]*

Zip: *[58102]*

Work Phone: *[BLANK]*

Home Phone: *[7014121664]*

E-mail: *[Adam@f5project.org]*

Which boards or commissions would you like to be considered for? *[Human Relations Commission]*

Briefly state why you would like to be on this panel: *[I believe that I can bring a new, and lived experience point of view]*

How many hours per month could you volunteer as a panel member? *[Whatever needed]*

Please list any past experience you have with city government here or in other cities: *[None]*

Please describe any professional experience you have related to the responsibilities of the panel you are interested in: *[Founder of F5 Project]*

We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.

Copyright © 2018 City of Fargo

Kember Anderson

From: no reply
Sent: Wednesday, June 13, 2018 11:10 PM
To: Commissions Applications
Subject: New Form Submission: Getting involved in government

Name: [Barry Amundson]
Mailing Address: [21 Broadway S. Apt. 508]
City: [Fargo]
State: [North Dakota]
Zip: [58103]
Work Phone: [701-451-5665]
Home Phone: [7128992689]
E-mail: [barryamundson1@hotmail.com]

Which boards or commissions would you like to be considered for? [Human Relations Commission]
Briefly state why you would like to be on this panel: [I strongly believe in diversity in our community. It what makes us strong. I would like to be part of an effort to make Fargo more of a welcoming community to immigrants, people of color, gays, and those moving here from other parts of the United States. We are after all the UNITED States of America. I often greet people and talk with them that fit into those categories when I'm out and about in the city. Sometimes all it takes is a smile. I believe that an accepting community can help prevent crime, fill jobs, boost economic activity and improve the quality of life.]

How many hours per month could you volunteer as a panel member? [15 hours]

Please list any past experience you have with city government here or in other cities: [I have covered city council meetings in several communities as a reporter so I have a good idea on how city government works.]

Please describe any professional experience you have related to the responsibilities of the panel you are interested in: [I am a writer so perhaps something I could write would be helpful to the human rights commission.]

We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.